

**DEVELOPMENT AGREEMENT BETWEEN  
M-III LONGVIEW, LLC AND THE CITY OF LEE'S SUMMIT, MISSOURI FOR THE  
NEW LONGVIEW COMMERCIAL, PHASE II DEVELOPMENT**

THIS AGREEMENT (“**Agreement**”) is made this \_\_\_\_ day of January, 2018, by and between **M-III Longview, LLC**, a Delaware limited liability company (the “**Developer**”), and the **City of Lee’s Summit, Missouri**, a municipal corporation (“**City**”).

WHEREAS, on December 15, 2016, the City Council concluded a public hearing for Application #PL2016167, for Preliminary Development Plan, of approximately 13.2 acres of land generally lying between SW Longview Blvd., SW Fascination Dr., and SW Kessler Dr., on property legally described in **Exhibit A** (“**Property**”), comprised of the “Developer Property” and the “Yarco Property” (each as defined below), which will be developed as the New Longview Commercial, Phase II (“**Development**”) as shown in **Exhibit B**, a map of the Preliminary Development Plan;

WHEREAS, following the public hearing for the Development, the Council voted to approve the application for the Development, subject to the Developer entering into a development agreement with the City to provide for the certain “Improvements” (as defined below) necessary for the Development;

WHEREAS, in satisfaction of the City Council’s condition of approval, the Developer and the City now desire to enter into this Agreement;

WHEREAS, the parties agree that the obligations assumed by the Developer pursuant to this Agreement are reasonably related to the impact that will be caused by the Development on the public services provided by the City and other public jurisdictions and on facilities that are constructed and maintained by the City and other public jurisdictions; and

WHEREAS, the parties have freely negotiated in good faith and this Agreement reflects the desires of the parties.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Definitions.** Words or terms not defined elsewhere in this Agreement shall have the following definitions:
  - A. “**Certificate of Final Acceptance**” as defined in the Design and Construction manual as adopted by the City of Lee’s Summit.
  - B. “**Certificate of Occupancy**” as defined in Chapter 7, Lee’s Summit Building Code, as adopted by the City of Lee’s Summit.
  - C. “**Certificate of Substantial Completion**” as defined in the Design and Construction manual as adopted by the City of Lee’s Summit

- D. **“City Engineer”** shall mean the City Engineer or their designated representative.
- E. **"Developer"** shall mean M-III Longview, LLC or its successors and assigns in the Property.
- F. **“Developer Property”** shall mean and refer to the portion of the Development land owned by Developer as of the date of this Agreement.
- G. **“Improvements”** shall mean, collectively, the Road Improvements, Sanitary Sewer Improvements, Sidewalk Improvements and Water Line Improvements (each as defined below).
- (1) **“Road Improvements”** shall mean and refer to the construction of a traffic signal at the intersection of 3rd Street and Kessler Drive with interconnect to the adjacent traffic signal at Longview Boulevard.
  - (2) **“Sanitary Sewer Improvements”** shall mean the sanitary sewer infrastructure improvements serving the Developer Property to be constructed by Developer in the location(s) shown on **Exhibit B**.
  - (3) **“Sidewalk Improvements”** shall mean and refer to the sidewalk improvements to be constructed by Developer in the location(s) shown on **Exhibit B**.
  - (4) **“Water Line Improvements”** shall mean and refer to the water line infrastructure improvements serving the Developer Property to be constructed by Developer in the location(s) shown on **Exhibit B**.
- H. **"Phasing of Development"** shall mean any and all development that occurs within the Development.
- (1) Phase I shall consist of the B&B Theater New Longview 7, to be constructed on the Developer Property, and the Yarco Development Senior Multi-Family of 172 dwelling units, to be constructed by Yarco on the Yarco Property.
  - (2) Phase II shall consist of any development beyond the specific developments listed in Phase I and generally includes retail and office uses, restaurant uses, medical office, outdoor performance area, and a commercial parking deck (if constructed).
- I. **"Preliminary Development Plan"** shall mean the preliminary development plan for the Development approved by Ordinance No. 8034 on December 15, 2016.
- J. **“Roadway Improvement, Sidewalk and Utility Easement Agreement”** shall mean and refer to the agreement pursuant to which Developer shall dedicate the Improvements to the City, and the City shall thereafter maintain such Improvements, as contemplated under **Section 2.J, "Dedication"** of this Agreement.

- K. “**Staff**” shall mean employees of the City of Lee’s Summit.
- L. “**Temporary Certificate of Occupancy**” as defined in Chapter 7, Lee’s Summit Building Code, as adopted by the City of Lee’s Summit.
- M. “**Yarco**” shall mean Yarco-Devco, L.L.C., a Missouri limited liability company.
- N. “**Yarco Property**” shall mean and refer to the portion of the Development land owned by Yarco as of the date of this Agreement.

2. **Requirements for Improvements.** Unless otherwise specified herein, the provisions set forth in this Section 2, “Requirements for Improvements” shall be applicable to the financing, design, engineering and construction of the Improvements to be constructed by the Developer as required by this Agreement.

- A. Requirement to design, engineer and construct. The Developer, at its sole cost and expense, shall design, engineer and construct the Improvements. The City shall issue certificates of occupancy for structures in the Development pursuant to the schedule set forth in Section 3, “Timing of Issuance of Certificate of Occupancy” below.
- B. Construction Costs. All costs associated with designing, engineering and constructing of the Improvements shall be paid by the Developer. No cost shall be paid by the City for designing, engineering, constructing or managing the construction of any of the Improvements.
- C. Applicable Standards and Approvals. The Improvements shall be designed, engineered, constructed, placed into service and dedicated to the City in accordance with the ordinances of the City, including, but not limited to, the City’s Design and Construction Manual then in effect at the time the Improvements are constructed, and any other applicable rules, requirements and standards established by the City, and as provided in the Road Improvement, Sidewalk and Utility Easement Agreement. All such work shall be done in good and workmanlike manner. The Developer shall be responsible for obtaining approval for any portion of the Improvements that require approval of another jurisdiction. The City agrees to cooperate in good faith with the Developer in obtaining said required approvals from other jurisdictions for the Improvements.
- D. Project Schedule. Prior to the construction of the Improvements the Developer shall submit to the City Engineer a proposed Project Schedule for the Improvements to be constructed by the Developer. No permits will be issued for the Developer Property until the schedule has been reviewed by the City Engineer and staff of departments directly impacted by the timing of the Improvements. If conflicts with the schedule are determined, Staff shall return the schedule with comments, to be resubmitted by the Developer. The Developer shall be notified once it is determined that no conflicts exist with the schedule. The Project schedule shall be incorporated into this Agreement by addendum, and no action of the City Council will be required to incorporate the schedule.

E. Design Phase. The Developer shall submit all preliminary design documents to the City for approval before proceeding with the construction of the Improvements. On the basis of such approved preliminary design documents, the Developer shall:

- (1) Prepare detailed drawings, plans, design data, and estimates to show the character and scope of the work to be performed by contractors for all Improvements ("**Plans**").
- (2) Furnish to the City Engineer copies of such Plans and other documents and design data as may be required to secure approval of such governmental authorities as may have jurisdiction over design criteria applicable to the Improvements.
- (3) Furnish the number of approval copies of the final Plans for the Improvements as the City may require.
- (4) Ensure that the Plans conform to federal and state laws and City ordinances and regulations.

All final Plans shall be presented to the City Engineer for approval, and no action of the City Council will be required to incorporate the final Plans into this Agreement.

F. Construction. The Developer will construct all the Improvements according to the approved Plans. The Developer shall maintain, at its sole cost and expense, the Improvements, until such time as said Improvements are accepted by the City Engineer pursuant to Section 2.J, "Dedication" of this Agreement. The Developer shall not do or permit others under it to do any work related to the construction of the Improvements, until the Developer has paid for all required City and other governmental required permits and authorizations.

G. Right of Way Acquisition.

- (1) The Developer shall be responsible for acquiring or negotiating for the donation of any right-of-way or easements that are needed to construct the Improvements, including any necessary temporary construction easements.
- (2) In the event that the Developer is unable, after good faith negotiations, to acquire some or all of the right-of-way or easements necessary for those Improvements over which the City exercises jurisdiction, the Developer may submit a request to the City in the manner prescribed by Section 26, "Notice" below requesting that the City use its authority to acquire the property interests necessary for the Improvements. The City will respond to such a request within thirty (30) days of receipt of same, and in such response the City will indicate whether it agrees to enter into good faith negotiations or exercise its power of eminent domain to acquire the right-of-way or easements necessary for Improvements over which the City

exercises jurisdiction. The City is not obligated to use its authority to assist in the acquisition of property interests necessary for the Improvements.

- (3) In the event the City agrees to enter into good faith negotiations or exercise its power of eminent domain to acquire the right-of-way or easements necessary for Improvements over which the City exercises jurisdiction, prior to beginning any work to acquire said right-of-way or easements, the Developer shall first execute an Acquisition Funding Agreement with the City which provides for the terms and conditions under which the Developer will place all estimated Acquisition Costs in escrow with the City prior to commencement of condemnation for right-of-way or easements. The Acquisitions Costs shall include, but shall not be limited to: the actual price paid for all right-of-way or easements, whether determined by negotiation or eminent domain; expenses related to the establishment of acquisition values of right-of-way or easements, including appraisals; legal fees, other expenses paid to third parties, and expenses incurred by the City related to acquisition of right-of-way or easements, whether through negotiation or eminent domain; and any other reasonable and necessary costs or expenses related to acquisition of the right-of-way or easements. The Acquisition Funding Agreement shall obligate the Developer to reimburse the City in full for all Acquisition Costs that result from the City's use of its authority to acquire any portion of the Improvements.
- (4) The Developer shall dedicate or convey, as applicable, to the City, at no cost to the City, all property interests owned by the Developer which are necessary for the Improvements.

- H. Utility Relocation. The parties agree that all costs associated with relocating any existing utilities from any existing public or private easement, as a result of construction of the Improvements, shall be paid by the Developer, and are not the responsibility of the City. The parties agree that all costs associated with relocating any existing utilities from any existing right-of-way as a result of construction of the Improvements, which are not paid by a utility company, shall be paid by the Developer and are not the responsibility of the City.
- I. Inspections and Revisions. The Developer agrees to permit City employees, agents and contractors to inspect, observe, and oversee the construction of all Improvements in order to ascertain and determine that the standards of the City have been met. The Developer shall obtain the City Engineer's approval of all revisions materially altering the design or specifications of the Improvements.
- J. Dedication. Upon completion, inspection and approval of the Improvements by the City, the Developer will dedicate the Improvements to the City, for its use, operation and maintenance pursuant to the Roadway Improvements, Sidewalk and Easement Agreement in form reasonably acceptable to the City and Developer. The City shall be under no obligation to accept the dedication or conveyance of any Improvements constructed pursuant to this Agreement until it has been inspected

and approved to the satisfaction of the City Engineer and the parties have approved the form of Roadway Improvements, Sidewalk and Utility Easement Agreement. Upon written notice of the inspection and approval of the City Engineer, the Developer agrees to convey all the Improvements to the City free and clear of all liens and encumbrances or other obligations. Said conveyance shall be pursuant to the Roadway Improvements, Sidewalk and Utility Easement Agreement, and shall be sufficient, in the reasonable opinion of the City Attorney, to convey easement and other rights of record, with respect to the Improvements as set forth in Title Standard 4 of the Missouri Bar and as contemplated in this Agreement.

3. **Timing of Issuance of Certificates of Occupancy.**

- A. A Certificate of Occupancy for development within Phase I will not be issued until:
- a. The Developer and City have entered into the Roadway Improvements, Sidewalk and Easement Agreement and the same has been recorded in the real property records of Jackson County, Missouri; and
  - b. A recorded conveyance of private tracts along Longview Boulevard and other locations along or within the subdivision(s) generally described or in association with New Longview, Tower Park and Kessler; also generally identified as Tracts C, D, E, F, G, H, J of Tower Park Commercial Phase 1, Tract J of Tower Park Commercial Phase 2, and Tracts J, K, L, M, N, O, P, Q, R, S, U of New Longview Roadway Plat, to the City as public right-of-way. The City hereby acknowledges and agrees that the condition set forth in this subsection 3.A.b has been satisfied prior to the date of this Agreement.
  - c. The Developer shall create a property owners association that will hold title to, and maintain, all common areas within the Developer's Property at the time of the execution of this Agreement and have the same restrictions, duties, powers and responsibilities as a property owners association under Sections 5.340, 5.350, 5.360 and 16.150.E of the City's Unified Development Ordinance.
- B. A Temporary Certificate of Occupancy will not be issued for development within Phase II until either a Certificate of Substantial Completion or a Certificate of Final Acceptance has been issued for the Road Improvements as outlined in Section 1., "Definitions". An escrow deposit for full cost of the Road Improvements may be provided in lieu of construction thereof if no more than one traffic "Signal Warrant" (as defined in the Manual on Uniform Traffic Control Devices and determined by the City Traffic Engineer) is satisfied at the time development within Phase II commences.

3. **Indemnification.**

- A. General Indemnity. The Developer shall indemnify, release, defend, be responsible for and forever hold harmless the City, its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, from and

against all lawsuits, suits, actions, costs, claims, demands, damages, disability, losses, expenses, including reasonable attorney's fees and other defense costs or liabilities of any character and from any cause whatsoever, brought because of bodily injury or death received or sustained, or loss or damage received or sustained, by any person, persons, or property arising out of or resulting from any act, error, or omission of the Developer or its officers, agents, employees, or subcontractors, to the extent such loss or injury arises out of or is related to the performance of this Agreement; provided, however, that the Developer need not save harmless the City from claims, demands, losses and expenses arising out or to the extent caused by the sole negligence of the City, its employees or agents. This indemnification obligation shall survive the termination or expiration of this Agreement.

- B. No Limitations or Waiver. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement, or by a limitation of the amount or type of damages or compensation payable by or for the Developer under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitation of any insurance held by the Developer. The City does not, and shall not, waive any rights against the Developer which it may have by reason of this indemnification, because of the acceptance by the City, or the deposit with the City by the Developer, of any of the insurance policies described in this Agreement. In addition, the parties agree that this indemnification by the Developer shall not be limited by reason of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.
- C. Notification of Claims. With respect to any claims which are subject to indemnity hereunder, the Developer shall immediately notify the City of any and all claims filed against the Developer or the Developer and the City jointly, and shall provide the City with a copy of the same. Such notice shall be given in the manner prescribed by Section 26, "Notice" of the Agreement.
- D. Use of Independent Contractors. The fact that the Developer carries out any activities under this Agreement through independent contractors shall not constitute an avoidance of, or defense to, the Developer's duty of defense and indemnification under this section.

5. **Insurance**.

- A. General Provisions. Prior to commencing construction of the Improvements, the Developer shall file with the City evidence of liability insurance that is consistent with the requirements of the City's Design and Construction Manual and in the amounts set forth below.
- B. Limits and Coverage. Bodily Injury and Property Damage, Commercial General Liability Coverage – Occurrence Form unless otherwise agreed by the City:

- (1) Commercial General Liability: Minimum \$2,000,000 each occurrence limit for bodily injury and property damage; \$2,000,000 policy aggregate; \$2,000,000 products and completed operations aggregate.
- (2) Automobile Liability: Minimum \$2,000,000 combined single limit for bodily injury and property damage; applicable to owned, non-owned and hired automobiles.
- (3) Workers' Compensation: As required by state statute; if exempt, must submit letter stating the exemption; employer's liability \$1,000,000 each occurrence.
- (4) Umbrella/Excess Liability: An umbrella or excess liability policy in the minimum amount of \$2,000,000 each occurrence and aggregate; at least as broad as the underlying general liability, automobile liability and employer's liability.

The following endorsements shall attach to the policy:

- (1) The policy shall cover personal injury as well as bodily injury.
- (2) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (3) Broad form property damage liability shall be afforded.
- (4) The City shall be listed as an additional insured.
- (5) Standard form of cross-liability shall be afforded.
- (6) The policy shall not be cancelled, or materially modified so as to be out of compliance with the requirements of this section, or not renewed without thirty (30) days advance written notice of such event being given to the City.

The limits of liability for each policy coverage amount stated above shall be automatically adjusted upward as necessary to remain at all times not less than the maximum amount of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions pursuant to 537.600; provided that nothing herein or in any such policy shall be deemed to waive the City's sovereign immunity.

- C. Use of Contractors and Subcontractors. The Developer shall not permit any contractor or subcontractor to commence or continue work until they shall have obtained or caused to be obtained all insurance required under this Section and the City's Design and Construction Manual. Said insurance shall be maintained in full force and effect until the completion of construction of the Improvements, and issuance of a Certificate of Substantial Completion by the City or MoDOT, as appropriate.



- D. Workers' Compensation. The Developer shall ensure that all contractors or subcontractors performing work for the Developer obtain and maintain Workers' Compensation Insurance for all employees, and in case any work is sublet, the Developer shall require any subcontractors to provide Workers' Compensation insurance for all subcontractor's employees, in compliance with State laws, and to fully protect the City from any and all claims arising out of occurrences during construction of the Improvements. The Developer agrees to hold harmless, indemnify and reimburse the City for any damage, loss, costs, payments or expenses of any kind (including the City's reasonable attorney's fees) incurred or sustained by the City as a result of the failure of either the Developer or any contractor or subcontractor of the Developer to obtain and maintain such insurance. The Developer further waives its rights to subrogation with respect to any claim against the City for injury arising out of performance under this Agreement. The Developer shall provide the City with a certificate of insurance indicating Workers' Compensation coverage prior to commencing construction of the Improvements.
6. Bonds. The Developer shall, or shall ensure that its contractors shall, provide for the following bonds for the Improvements and all other public infrastructure improvements that are constructed by the Developer and dedicated to the City.
- A. Performance Bond. Prior to commencement of construction and ending upon acceptance of the Improvements by the City, the Developer shall, or shall ensure that its contractors shall, maintain a Performance Bond in a form approved by the City Attorney, in an amount equal to the cost of the Improvements covered by such bond, as determined by the City Engineer, conditioned upon the faithful performance of the provisions, terms and conditions of the construction contract. The Performance Bond shall name the City as an obligee and copies of certificates of such bond shall be delivered to the City.
- B. Payment Bonds. Prior to commencement of construction and ending upon acceptance of the Improvements by the City, the Developer shall, or shall ensure that its contractors shall, maintain a Payment Bond in a form approved by the City Attorney, in an amount equal to the cost of the Improvements covered by such bond, as determined by the City Engineer, conditioned upon the faithful payment of the provisions, terms and conditions of the construction contract. The Payment Bond shall name the City as an obligee and copies of certificates of such bond shall be delivered to the City.
- C. Maintenance Bonds. Prior to acceptance and dedication of the Improvements, the Developer shall, or shall ensure that its contractors shall, provide a Maintenance Bond in a form approved by the City Attorney, in an amount equal to fifty percent (50%) of the cost of the Improvements as approved by the City Engineer, which shall be in effect for a term of three (3) years from the date that the City issues a Certificate of Substantial Completion for such Improvements covered by the bond, conditioned upon the faithful performance of the provisions, terms and conditions of the construction contract. The Maintenance Bond shall name the City as an obligee and copies of certificates of such bond shall be delivered to the City.

- D. **Indemnity for Failure to Provide Bonds.** The Developer shall indemnify the City and its officers and employees for any damage or loss incurred or sustained by the City, its officers or employees, as a result of the failure of the Developer or its contractors to provide the bonds set forth in this Section.
7. **Prevailing Wage.** To the extent required by law, the Developer, and all contractors and subcontractors performing work for or on behalf of the Developer with respect to the Improvements, shall pay wages in accordance with, and in all respects comply with, Missouri's Prevailing Wage Law (Sections 290.210 – 290.340, RSMo.) and all other laws relating to the payment of wages. The Developer agrees to hold harmless, indemnify and reimburse the City for any damage, loss, costs, payments or expenses of any kind (including the City's reasonable attorney's fees) incurred or sustained by the City with regard to the failure of the Developer or any contractor or subcontractor to pay prevailing wages as required by law or this Agreement. The Developer shall submit sufficient information to the City's Director of Finance to allow City staff to verify that the Developer, and its contractors and subcontractors, have complied with prevailing wage laws and regulations.
8. **Remedies.** Each party to this Agreement agrees that if it fails to perform when due any act required by this Agreement to be performed, then, in addition to whatever other remedies are available to the non-defaulting parties hereto, the non-defaulting party shall have the right to enforce specific performance of this Agreement against the defaulting party, and such non-defaulting party shall, to the extent permitted by law, be entitled to its reasonable costs, attorneys' fees and court costs in connection with such enforcement.
9. **Rights and Remedies Non-Exclusive.** No right or remedy conferred upon or reserved to any party in this Agreement is intended to be exclusive of any rights or remedies, and each and every right and remedy shall be cumulative and shall be in addition to every right and remedy given now or hereafter existing at law or in equity.
10. **Non-Waiver.** No waiver of any condition or covenant contained in this Agreement or of any breach thereof, shall be taken to constitute a waiver of any subsequent condition, covenant or breach.
11. **Applicable Law.** This Agreement shall be governed by and construed according to the laws of the State of Missouri.
12. **Venue.** In the event this Agreement is litigated, venue shall be proper only in the Circuit Court of Jackson County, and the parties expressly waive any rights to venue inconsistent therewith.
13. **City Requirements and Prior Approval.** The Developer agrees to comply with all applicable laws and City ordinances, including, but not limited to, the City's Unified Development Ordinance, the Design and Construction Manual, and all planning or infrastructure requirements related to the development of the Property. The Developer acknowledges and agrees that the City is not, and shall not be, in any way liable for damages, losses or injuries that may be sustained as a result of the City's review and

approval of any Plans or Plats of or relating to the Development, the Property or the Improvements, or as a result of the issuance of any approvals, permits, certificates or acceptances for the development or use of any portion of the Development, the Property or the Improvements. The Developer further acknowledges and agrees that the City's review and approval of any such Plans or Plats and the issuance of any such approvals, permits, certificates or acceptances does not, and shall not, in any way be deemed to insure the Developer, or any of its successors, assigns, tenants, licensees or any third party, against damage or injury of any kind at any time. The parties agree that execution of this Agreement in no way constitutes a waiver of any requirements of applicable City ordinances or policies with which the Developer must comply and does not in any way constitute prior approval of any future proposal for development.

14. **Recording and Binding Effect.** No building permits shall be issued for any structure in the development until the agreement has been fully executed. The City shall file a copy of this Agreement or a memorandum of this Agreement in the office of the Recorder of Deeds for Jackson County, Missouri ("Office"). This Agreement shall run with the land and be binding on and inure to the benefit of the parties and their respective legal representatives, successors in interest, successors and assigns. Upon certification by the City Engineer of the completion of the Developer's obligations under this Agreement, the City Manager, in his sole discretion, may execute, on behalf of the City, a document suitable for recording in the Office, in such form as is approved by the City Attorney that acknowledges the completion of the Developer's obligations under the Agreement.
15. **Time of Essence.** Time is of the essence with respect to the duties and obligations set forth herein.
16. **Estoppel Letter.** Within 10 business days after any request by Developer from time to time, the City shall prepare and deliver to Developer an executed estoppel letter confirming for the benefit of any purchaser, lender and/or tenant whether the Developer is or is not in default under this Agreement and verifying the status of Developer's performance of its obligations under this Agreement.
17. **Representations.** The Developer represents that it owns the property described in **Exhibit A** on the date that this Agreement is executed. Each party represents and warrants that it (a) has made due and diligent inquiry into the facts and matters which are the subject matter of this Agreement; (b) fully understands the legal effect of this Agreement; (c) is duly authorized and empowered to execute, deliver and perform this Agreement according to its terms and conditions; and (d) has not assigned or transferred any claim against the other party that is the subject of this Agreement. The parties agree that the obligations assumed by the Developer pursuant to this Agreement are reasonably related to the impact that will be caused by the Development on the public services provided by the City and other public jurisdictions and on facilities that are constructed and maintained by the City and other public jurisdictions.
18. **No Waiver of Breach.** No waiver of any condition or covenant contained in this Agreement or any breach thereof shall be taken to constitute a waiver of any subsequent condition, covenant or breach.

19. **Rules of Construction.** Each party to this Agreement has received independent legal advice from its attorneys of choice with respect to entering this Agreement and the advisability of agreeing to the provisions herein. Because each party has had its respective legal counsel review the terms of this Agreement, the normal rules of construction to the effect that any ambiguities in its terms be resolved against the drafting party shall not be employed with regard to issues of its validity, interpretation, performance or enforcement.
20. **Assignment.** The Agreement may not be assigned or transferred, in whole or part, to any other person, firm, corporation, or entity without the prior, express, written consent of the other parties, which consent shall not be unreasonably withheld; provided, however, notwithstanding the foregoing, Developer may assign this Agreement to any entity that controls, is controlled by, or is under common control with the Developer entity hereunder without the City's approval (provided that no such assignment shall release Developer from its obligations under this Agreement). Subject to the foregoing, Developer shall request the consent of the City to any assignment of this Agreement to any person, firm, corporation, or entity to which any ownership interest in the Developer Property is transferred after the date of execution of this Agreement.
21. **Development of Yarco Property.** The City and Developer hereby acknowledge and agree that, except as otherwise expressly set forth in this Agreement, (i) Developer shall have no obligation to perform any work or construct any improvements on or with respect to the Yarco Property as a condition to its right to develop the Developer Property as contemplated herein, and (ii) the City shall not require the performance of any work or construction of any improvements (or satisfaction of any other conditions) on or with respect to the Yarco Property as a condition to the issuance of any permits, certificates of occupancy or other approvals necessary for the development of the Developer Property.
22. **Entire Agreement.** This Agreement and the acts provided for herein is the entire agreement between the parties with respect to the subject matter hereof, the terms and provisions of this Agreement are contractual and not mere recitals and no alterations, amendment, modification, or interpretation hereof shall be binding unless in writing and signed by all parties.
23. **Exhibits.** All Exhibits referenced in this Agreement are incorporated into this Agreement by such reference as if set forth in full in the text of this Agreement.
24. **Headings.** The paragraph headings contained herein are for convenience in reference and are not intended to modify, expand or limit the scope of any provision of the Agreement.
25. **Severability.** Any provision of this Agreement which is not enforceable according to law will be severed herefrom, and the remaining provisions shall be enforced to the fullest extent permitted by law.
26. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.

27. **Notice.** Any notice required by this Agreement shall be deemed to be given if it is mailed by United States registered mail, postage prepaid, and addressed as hereinafter specified.

Any notice to the City shall be addressed to:

City Manager  
City Hall  
220 SE Green Street  
Lee's Summit, Missouri 64063

With a copy to:

City Attorney  
City Hall  
220 SE Green Street  
Lee's Summit, Missouri 64063

Notices to Developer shall be addressed to:

Corey Walker, Senior  
Platform Ventures  
4220 Shawnee Mission Parkway, Suite 200-B  
Fairway, Kansas 66205

With a copy to:

Sean D. Ervin  
Rouse Frets Gentile Rhodes  
5250 W. 116<sup>th</sup> Place, Suite 400  
Leawood, Kansas 66211

Each party shall have the right to specify that notice be addressed to any other address by giving to the other party ten (10) days' written notice thereof.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the date first above written.

**CITY:**

**CITY OF LEE'S SUMMIT, MISSOURI**

By: \_\_\_\_\_  
Stephen A. Arbo, *City Manager*

Attest:

\_\_\_\_\_  
Trisha Fowler Arcuri, *City Clerk*

Approved as to form:

\_\_\_\_\_  
Brian W. Head, *City Attorney*

**DEVELOPER:**

**M-III LONGVIEW, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Notary for City of Lee's Summit

STATE OF MISSOURI     )  
  ) ss.  
COUNTY OF JACKSON    )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Stephen A. Arbo, the City Manager of the City of Lee's Summit, Missouri, a City duly incorporated and existing under and by virtue of the laws of the State of Missouri, who are personally known to me to be the same person who executed, as such official, the within instrument on behalf of and with the authority of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

[SEAL]

Notary for M-III Longview, LLC

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, who is personally known to me to be the same person who executed the within instrument on behalf of \_\_\_\_\_, and such person duly acknowledged the execution of the same to be the act and deed of \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

[SEAL]

**END OF DOCUMENT**



**EXHIBIT A**

LEGAL DESCRIPTION FOR PROPERTY

DEVELOPER PROPERTY

“Fascination at New Longview, Lot 1”

YARCO PROPERTY

“Fascination at New Longview, Lot 2”

