
COOPERATIVE AGREEMENT

among the

CITY OF LEE'S SUMMIT, MISSOURI,

the

**NEW LONGVIEW
COMMUNITY IMPROVEMENT DISTRICT,**

and

M-III LONGVIEW, LLC

and

FASCINATION AT NEW LONGVIEW OWNERS ASSOCIATION, INC.

dated as of

December 10, 2019

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COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (“**Agreement**”), entered into as of this 10th day of December, 2019, by and among the **CITY OF LEE’S SUMMIT, MISSOURI**, a constitutional charter city and political subdivision of the State of Missouri (the “**City**”), the **NEW LONGVIEW COMMUNITY IMPROVEMENT DISTRICT**, a community improvement district and political subdivision of the State of Missouri (“**District**” or “**CID**”), **M-III LONGVIEW, LLC**, a Delaware limited liability company (the “**Developer**”), and **FASCINATION AT NEW LONGVIEW OWNERS ASSOCIATION, INC.**, a Missouri non-profit corporation (the “**Owners Association**”), (the City, the District, the Developer, and the Owners Association being sometimes collectively referred to herein as the “**Parties**”, and individually as a “**Party**”, as the context so requires).

WITNESSETH:

WHEREAS, the City Council of the City of Lee’s Summit, Missouri (the “**City Council**”), did on February 19, 2019, pass Ordinance No. 8557, which approved the formation of the District and the Petition to Establish the New Longview Community Improvement District (the “**Petition**”), and also approved this Agreement and authorized the City Manager to execute this Agreement; and

WHEREAS, on December 4, 2019, the CID Board of Directors adopted Resolution No. 2019-____ authorizing and directing the District to enter into this Agreement; and

WHEREAS, the qualified voters within the District approved imposition of the District Sales Tax pursuant to the CID Act, as evidenced by the certified election results of the Jackson County Election Board dated July 24, 2019, and the District is authorized to enter into this Agreement for the administration of the District Revenues; and

WHEREAS, M-III Longview LLC is the current owner of the majority of the real estate which is located within the District boundaries, and certain property in the CID area will be improved by Developer in accordance with the land-use approvals granted by the City which will be funded with CID revenues; and

WHEREAS, the Parties desire to set forth through this Agreement their respective duties and obligations with respect to the administration, enforcement, and operation of the District Sales Tax, the use of the District Revenues, and this Agreement.

NOW, THEREFORE, for and in consideration of the premises, and the mutual covenants herein contained, the Parties agree as follows:

ARTICLE 1

DEFINITIONS, RECITALS AND EXHIBITS

Section 1.1. Recitals and Exhibits. The representations, covenants and recitations set forth in the foregoing recitals and the exhibits attached to this Agreement are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section, and the appropriate exhibits are incorporated into each Section of this Agreement that makes reference to an exhibit.

Section 1.2. Definitions. Words and terms defined elsewhere in this Agreement shall have the meanings assigned therein. Whenever used in this Agreement, the following words and phrases, unless the context otherwise requires, shall have the following meanings:

“**Action**” shall have the meaning set forth in **Section 7.4**.

“**Activity Plaza**” means the property generally located at the southeast corner of the intersection of Longview Boulevard and Fascination Drive, which is Tract A of the Fascination at New Longview final plat as shown on the attached **Exhibit B** and depicted in more detail on **Exhibit C**, which will be improved with hardscape and landscape improvements and outdoor public gathering features and improvements, which will be funded, owned and maintained in accordance with this Agreement.

“**Affiliate**” means any person, entity or group of persons or entities which controls a party, which a party controls or which is under common control with a party. As used herein, the term “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract, by vote of the District Board of Directors, or otherwise.

“**Annual Board of Directors Report**” means the Annual Board of Directors Report in substantially similar form to **Exhibit F**, filed with the City by the Developer pursuant to **Section 5.6(E)**.

“**Applicable Laws and Requirements**” means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, policy, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by any Governmental Authorities.

“**Application for Reimbursement**” means the Application for Reimbursement in substantially similar form to **Exhibit E**, filed with the City by the Developer pursuant to **Section 6.3**.

“**CID Act**” means the Missouri Community Improvement District Act, Sections 67.1401, *et seq.*, RSMo, as amended.

“**CID Area**” means the property within the CID boundaries.

“**CID Board of Directors**” means the governing body of the District.

“**CID Budget**” means the budget for the CID as set forth in **Exhibit D**.

“**CID Obligations**” means bonds, loans, debentures, notes, special certificates, or other evidences of indebtedness issued by the District pursuant to the CID Act, subject to the restrictions in **Section 6.4**.

“**CID Petition**” means the petition to establish the District, approved by the City Council on February 19, 2019, by Ordinance No. 8557.

“**CID Project**” means, collectively, all of the work undertaken by or at the direction of Developer within the CID Area in accordance with the CID Petition and funded with or reimbursed by District revenues, including all of the CID Public Improvements.

“**CID Public Improvements**” means the following terms and any land and features associated with such items:

- (1) the Activity Plaza;
- (2) the Parking Structure;
- (3) the Public Landscape;
- (4) the Streetscape Improvements;
- (5) all utilities, surface parking, sidewalks, pedestrian paths and other public improvements funded with District Revenues within the CID Area that are not included in the items listed immediately above.

“**City Council**” means the City Council of the City.

“**City Indemnified Parties**” shall have the meaning set forth in **Section 7.2**.

“**City Manager**” means the City Manager of the City.

“**Costs of Formation**” means those costs and expenses which are eligible to be paid under the CID Act and which are or have been incurred by or at the direction of the City, Developer, and the District and their staff, legal counsel, surveyors, engineers and other consultants in the process of preparing for the District, petitioning the City for formation of the District, considering the CID Petition, holding public meetings and hearings and forming the District, negotiating and approving this Agreement, and holding the first meeting of the District, including all activities through the conclusion of the first District meeting.

“**County Assessor**” shall mean the County Assessor of Jackson County, Missouri.

“**District Revenues**” means the monies actually collected, pursuant to this Agreement and the CID Act, from the imposition of the District Sales Tax.

“**District Sales Tax**” means the district-wide sales and use tax levied by the District on the receipts from the sale at retail of all tangible personal property or taxable services at retail within the District boundaries pursuant to the CID Act in the maximum amount of one percent (1.0%), as established by resolution of the District and approved by the qualified voters of the District, in accordance with this Agreement.

“**Event of Default**” means any event specified in **Section 8.1** of this Agreement.

“**Excusable Delays**” means delays due to acts of terrorism, acts of war or civil insurrection, strikes, riots, floods, earthquakes, fires, tornadoes, casualties, acts of God, labor disputes, governmental restrictions or priorities, embargoes, national or regional material shortages, failure to obtain regulatory approval from any Federal or State regulatory body, unforeseen site conditions, material litigation by parties other than the Parties not caused by the Parties’ failure to perform, or any other condition or circumstances beyond the reasonable or foreseeable control of the applicable party using reasonable diligence to overcome which prevents such party from performing its specific duties or obligation hereunder in a timely manner.

“**Governmental Authorities**” or “**Governmental Authority**” means any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise), whether now or hereafter in existence, that have jurisdiction over some or all of the CID Area and the CID Project, including the City.

“**Maintenance Costs**” shall have the meaning set forth in **Section 3.2**.

“**Maintenance Reserve Fund**” shall have the meaning set forth in **Section 3.2**.

“**Maximum Amount**” shall have the meaning set forth in **Section 6.1**.

“**Maximum Reimbursement Interest**” shall have the meaning set forth in **Section 6.3**.

“**Mayor**” means the Mayor of the City.

“**North Arch**” means the historic arch structure located on land owned by the Owners Association and generally located to the south of the intersection of Longview Boulevard and SW Longview Road, which is Tract A of the Tower Park Commercial Phase 1 final plat area on **Exhibit B**.

“**Operating Costs**” means the actual, reasonable expenses which are necessary for the operation of the District which shall include, but are not limited to, costs associated with notices, publications, meetings, supplies, equipment, photocopying, the engagement of general and special legal counsel engaged by the District and the City, respectively, financial auditing services performed for the District or the City on behalf of the District, and other consultants or services, and shall also include reasonable attorneys’ fees for the formation of the District.

“**Owners Association**” means the Fascination at New Longview Owners Association, Inc., which is incorporated as a non-profit corporation pursuant to Missouri law for the benefit of certain property in the CID Area.

“**Parking Structure**” means the structured parking facility to be built by Developer and funded with District revenues which will provide approximately 160 parking spaces.

“**Property Maintenance Code**” means Chapter 16 of the Lee’s Summit Code of Ordinances.

“**Public Landscape**” means the trees, plants and vegetation, and any associated planters, containers, irrigation systems and other related improvements, which are constructed for the CID Project and funded pursuant to the line item in the CID Budget as Landscape, including any land areas associated with such features.

“**Restrictions**” shall have the meaning set forth in **Section 3.2**.

“**Reimbursable Project Costs**” means those actual and reasonable costs and expenses of the CID Project which are set forth in the CID Budget.

“**RSMo**” means the Revised Statutes of Missouri, as amended.

“**Streetscape Improvements**” means the hardscape improvements, benches, planters, signage, monuments and other features and improvements which are constructed in public rights-of-way, or adjacent to such areas, for the CID Project and funded pursuant to the line item in the CID Budget as Streetscape, including and right-of-way or other land areas associated with such features.

ARTICLE 2

REPRESENTATIONS

Section 2.1. Representations by the District. The District represents that:

A. The District is a community improvement district and political subdivision, duly organized and existing under the laws of the State of Missouri, including particularly the CID Act.

B. The District has authority to enter into this Agreement and to carry out its obligations under this Agreement. By proper action of the CID Board of Directors, the District has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

C. The Reimbursable Project Costs are authorized in the CID Petition.

D. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement and the performance of or compliance with the terms and conditions of this Agreement by the District will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the District is a party or by which it or any of its property is bound, or any order, rule or regulation of any court or governmental body applicable to the District or any of its property, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the District under the terms of any instrument or agreements to which the District is a party.

E. The District acknowledges that the construction of the CID Project is of significant value to the District, the property within the District and the general public. The District finds and determines that the CID Project will promote the economic welfare and the development of the City and the State of Missouri through: (i) the creation of temporary and permanent jobs; (ii) stimulating additional development in the area near the CID; (iii) increasing local and state tax revenues and (iv) creating public interest and increased pedestrian and shopping traffic in the CID area. Further, the District finds that the CID conforms to the purposes of the CID Act.

F. There is no litigation or proceeding pending or threatened against the District affecting the right of the District to execute or deliver this Agreement or the ability of the District to comply with its obligations under this Agreement or which would materially adversely affect its financial condition.

Section 2.2. Representations by the City. The City represents that:

A. The City is duly organized and existing under the laws of the State of Missouri as a constitutional charter city.

B. The City has authority to enter into this Agreement and to carry out its obligations under this Agreement, and the Mayor is duly authorized to execute and deliver this Agreement.

C. The City acknowledges that the construction of the CID Project is of significant value to the District, the property within the District and the general public. The City finds and determines that the CID Project will promote the economic welfare and the development of the City and the State of Missouri through: (i) the creation of temporary and permanent jobs; (ii) stimulating additional development in the area near the CID; (iii) increasing local and state tax revenues and (iv) creating public interest and increased

pedestrian and shopping traffic in the CID area. Further, the City finds that the CID conforms to the purposes of the CID Act.

D. There is no litigation or proceeding pending or threatened against the City affecting the right of the City to execute or deliver this Agreement or the ability of the City to comply with its obligations under this Agreement.

Section 2.3. Representations by the Developer. The Developer represents that:

A. The Developer has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Developer herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Developer, enforceable in accordance with its terms.

B. The execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. No litigation, proceedings or investigations are pending or, to the knowledge of the Developer, threatened against the Developer, any member of the Developer or the CID Project which litigation, proceedings or investigations would in any manner challenge or adversely affect the existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer, the terms and provisions of this Agreement.

D. The Developer acknowledges that Section 285.530, RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Developer therefore covenants, and will provide an affidavit from any general contractor directly employed by Developer to construct the CID Project attesting that it is not knowingly in violation of subsection 1 of Section 285.530, RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work related to this Agreement, and that its employees are lawfully eligible to work in the United States.

Section 2.4. Representations by the Owners Association. The Owners Association represents that:

A. The Owners Association has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Owners Association herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Owners Association, enforceable in accordance with its terms.

B. The execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. No litigation, proceedings or investigations are pending or, to the knowledge of the Owners Association, threatened against the Owners Association, any member of the Owners Association which litigation, proceedings or investigations would in any manner challenge or adversely affect the existence or powers of the Owners Association to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Owners Association, the terms and provisions of this Agreement.

ARTICLE 3

CID PROJECT

Section 3.1. CID Project.

A. Developer, or its successors and assigns, will undertake the CID Project in accordance with all Applicable Laws and Requirements and the CID Petition. The District is not authorized to make, and the Developer will not receive reimbursement for, any improvements or services other than those listed in the CID Budget attached hereto as **Exhibit D**, subject to **Article 6**. Neither the City nor the District shall not have any obligation to design and construct any portions of the CID Project.

B. Developer and the District shall comply with all laws regarding the payment of prevailing wages to contractors or subcontractors of the Developer. Developer and the District shall indemnify the City for any damage resulting to the City from failure of either the Developer, or any contractor or subcontractor of the Developer, or the District to pay prevailing wages pursuant to all Applicable Laws and Requirements; provided that any indemnification obligation of the District shall be limited to the extent permitted by law.

Section 3.2. Ownership and Maintenance of CID Public Improvements and the CID Project.

A. Maintenance of Private Development and the CID Project. So long as this Agreement is in effect, Developer and its successor(s) in interest with respect to all private development undertaken by Developer or its successor(s) in interest, and the District with respect to the CID Project, shall maintain or cause to be maintained the buildings, improvements and structures within the CID Area which it each respectively owns in a good state of repair and in conformity with Applicable Laws and Requirements.

B. Ownership of the CID Public Improvements. Except for CID Public Improvements expressly dedicated to and accepted by the City upon completion in accordance with City codes and procedures, Ownership of the CID Public Improvements shall be pursuant to one of the following arrangements:

1. Fee title to the CID Public Improvements shall be vested in the name of the District; or

2. The District shall lease the Public Improvements from a private party for the life of the District using a form of lease approved by the City Attorney's office; or

3. A public access easement shall be granted to the CID and the public for the life of the District pursuant to a form of easement agreement approved by the City Attorney's office; provided, however, that the Developer, the Owners Association, or other affiliated entity shall grant to the CID a public access easement for the Activity Plaza contemporaneously with the execution

of this Agreement and the Developer, the Owners Association, or other affiliated entity shall grant to the CID one or more additional public access easements, in substantially the form of the public access easement approved by the City Attorney's office for the Activity Plaza, for other CID Public Improvements as such improvements are in the engineering design phase but prior to commencement of construction of any future CID Public Improvement.

No reimbursement to Developer for the CID Public Improvements shall occur until the District has provided proof to the City and Developer that one of the above-referenced ownership structures has been satisfied. One of the ownership structures recited above shall be in effect while the District is in existence. Upon termination of the District, title to the CID Public Improvements shall be transferred in accordance with **Section 5.5**.

C. Maintenance of the CID Public Improvements. Except for CID Public Improvements expressly dedicated to and accepted by the City upon completion in accordance with City codes and procedures, the following provisions shall apply to the ownership, maintenance and upkeep of the CID Public Improvements:

1. Developer, on behalf of the Owners Association, shall have the primary obligation to maintain or cause to be maintained the CID Public Improvements in a good state of repair and in conformity with Applicable Laws and Requirements and in accordance with the City's Property Maintenance Code. The Developer shall further provide for all liability insurance and payment of taxes (if applicable) associated with the CID Public Improvements.

2. The Owners Association shall have the joint obligation with Developer to maintain or cause to be maintained the CID Public Improvements within the Restrictions Property (as defined below) in a good state of repair and in conformity with Applicable Laws and Requirements. The Owners Association's annual budget shall include a line item for the funding of maintenance of CID Public Improvements within the Restrictions Property and the Owners Association shall each year provide a copy of such budget to the City Attorney's office.

3. If the Developer and the Owners Association fail to maintain the CID Public Improvements as required by this Agreement, then the District shall have the joint obligation with the Developer and the Owners Association to maintain the CID Public Improvements as provided in this Agreement.

In such event, the District's annual budget shall include a line item for the funding of an annual fiscal year reserve fund in the amount described in the engineering letter to be attached at the appropriate time as **Exhibit G** (the "**Maintenance Reserve Fund**"). The annual funding of the Maintenance Fund shall be based on the completion of the improvements as described in **Exhibit G**. The Maintenance Reserve Fund shall be an account that is established and maintained by the City on behalf of the District pursuant to the City's sales tax administration duties as provided in this Agreement. The City, as the co-administrator of the District Sales Tax, shall deposit appropriate amounts in the Maintenance Reserve Fund in the order of priority set forth in **Section 5.3** to fund up the Maintenance Reserve Fund on an annual basis. The moneys accumulated in the Maintenance Reserve Fund shall be used exclusively to fund the costs of the maintenance, upkeep, and repair of the CID Public Improvements (the "**Maintenance Costs**"). Interest earned on funds that are accumulated in the Maintenance Reserve Fund shall be deposited in the Maintenance Reserve Fund and expended in accordance with this Section for Maintenance Costs.

4. Developer has caused the Declaration of Easements, Covenants, Assessments and Restrictions of Fascination at New Longview (the "**Restrictions**") to be recorded with the land

records of Jackson County as Instrument No. 2018E0047118, which provides for the maintenance of those CID Public Improvements located within the property subject to the Restrictions as legally defined in Exhibit A attached to the Restrictions (“**Restrictions Property**”) in accordance with this subsection. A copy of the Restrictions is attached as **Exhibit I**. Pursuant to the Restrictions, the Developer has created the Owners Association. The Restrictions:

- a. Provide for assessments which may be imposed on all developable lots on the Restrictions Property to cover the maintenance costs for the CID Public Improvements, if necessary, but subject to the Developer’s and the District’s obligation to maintain such CID Public Improvements pursuant to the reserves established hereunder;
- b. Provide that the Restrictions shall be perpetually in effect;
- c. Provide that property owners in the Restrictions Property are subject to the imposition of common area maintenance charges and assessments related to the maintenance of the Activity Plaza, the Parking Structure, and other CID Public Improvements ; and
- d. Provide that each lot owner and any successive buyer or transferee shall be obligated under the Restrictions.

5. If the Developer, the Owners Association, and the District fail to maintain the CID Public Improvements, then the City shall have the right to maintain or provide for the maintenance of the CID Public Improvements, the right to incur Maintenance Costs and the right to request reimbursement from the Maintenance Reserve Fund pursuant to this Agreement. The right of the City to provide for such maintenance and incur Maintenance Costs shall not obligate the City to undertake such maintenance.

6. All requests for payment from the Maintenance Reserve Fund for Maintenance Costs shall be processed in accordance with Section 6.3 pursuant to an Application for Reimbursement. All Applications for Reimbursement that are approved for Maintenance Costs shall be paid solely from the Maintenance Reserve Fund. Any payments for Maintenance Costs that are incurred by any Party as allowed by this Agreement shall be paid exclusively from funds that are available in the Maintenance Reserve Account.

7. Funds in the Maintenance Reserve Fund shall not be expended on the North Arch maintenance.

Section 3.3. Changes. Developer shall promptly notify the City in writing of any changes in the location of the principal place of business of Developer and of any other material adverse change in fact or circumstance directly affecting the CID Project.

Section 3.4. Use Limitations. Developer covenants that the uses within the District boundaries shall at all times be in accordance with Applicable Laws and Requirements, including the zoning and subdivision approvals granted by the City, and all conditions thereof, for the CID Area.

Section 3.5. North Arch. During the effective period of the District, the Developer, the Owners Association, and District will cooperate and make good faith efforts to keep ownership of the North Arch structure, and the real property on which it is located, in fee ownership of the Owners Association. District Revenues shall be appropriated by the District to keep the North Arch in a good state of repair and

shall provide for the regular maintenance of the North Arch in accordance with the terms and conditions of the Historic Preservation Easement for the North Arch which is attached as Exhibit H.

ARTICLE 4

TRANSFER OF PROPERTY IN THE CID AREA

Section 4.1. Sale to Third Party. If Developer proposes to sell, assign, transfer, convey and/or otherwise dispose of any property within the District boundaries, Developer shall insert in any document transferring any interest in real property within the CID, or shall cause any transferee to insert language reasonably similar to the following in such document, and shall have such document signed by the transferee indicating acknowledgment and agreement to the following provision:

Community Improvement District: Grantee acknowledges and consents that the Property is a part of the New Longview Community Improvement District (“District”) created by ordinance of the City of Lee’s Summit, Missouri (“City”), and that the District imposes a sales tax on eligible retail sales conducted within the District that will be applied toward the costs of the CID Project that provide a generalized benefit to all property within the District. Grantee shall, or shall cause any applicable tenant of Grantee, to forward to the City copies of its State of Missouri sales tax returns for the Property when and as they are filed with the Missouri Department of Revenue. Grantee hereby acknowledges and agrees that the City and the District are third party beneficiaries of the obligations in this paragraph and shall have a separate and independent right to enforce these reporting requirements.

Section 4.2. Lease to Third Party. Developer shall cause all leases of property in the District entered into after the date of this Agreement to contain a provision that is in substantial compliance with the following:

Community Improvement District: Tenant acknowledges and consents that the Leased Premises are a part of the New Longview Community Improvement District (“District”) created by ordinance of the City of Lee’s Summit, Missouri (“City”), that the District imposes a sales tax on Tenant’s eligible retail sales that will be applied toward the costs of the CID Project that will provide a generalized benefit to the Development. Tenant shall forward to the City copies of Tenant’s State of Missouri sales tax returns for its property located in the District when and as they are filed with the Missouri Department of Revenue. Tenant hereby acknowledges and agrees that the City and the District are third party beneficiaries of the obligations in this paragraph and shall have a separate and independent right to enforce these reporting requirements.

Section 4.3. Consent by Developer, Tenants and Transferees.

A. The Developer shall ensure that any documents transferring its interest in property located within the District shall make the obligations set forth in this Article a covenant running with the land that shall be enforceable against any purchaser, lessee or other transferee or possessor as if such purchaser, lessee or possessor were originally a party to and bound by this Agreement, which obligations shall only terminate upon the end of the term of the District.

B. Failure of the Developer to require that such restrictions be placed in any such lease/sales contract shall in no way modify, lessen or diminish the obligations and restrictions set forth herein relating to the District's and the City's rights of enforcement and remedies under this Agreement, or otherwise form the basis of a default on the part of the Developer hereunder.

ARTICLE 5

DISTRICT SALES TAX

Section 5.1. Imposition, Collection and Administration of the District Sales Tax. The CID Board of Directors adopted Resolution No. 2019:03 dated May 14, 2019 that imposes the District Sales Tax within the District boundaries (subject to qualified voter approval). The qualified voters within the District approved the District Sales Tax, as evidenced by the certified election results issued by the Jackson County Election Board dated July 24, 2019. The District has notified the Missouri Department of Revenue of the District Sales Tax, which will become effective on January 1, 2020, for a period of thirty (30) years from such date, or such other period to coincide with the termination of the District in accordance with the CID Act. The District Sales Tax shall be collected by the Missouri Department of Revenue as provided in the CID Act. The District, in cooperation with the City, shall direct the Missouri Department of Revenue to deposit monthly District Revenues in an account managed by the City (the "**City Account**"). The City Account shall be used for the collection and disbursement of District Revenues only and the City shall not commingle other City funds in the City Account.

In connection with the monthly deposit of District Revenues by the Missouri Department of Revenue into the City Account and the City's distribution of District Revenues as provided in Section 5.3 A.-C. below, the District, by this Agreement, authorizes the City to perform all functions incident to the administration, enforcement and operation of the District Sales Tax. In connection with the monthly deposit of District Revenues by the City into the District Account (as defined below) and the District's distribution of District Revenues as provided in Section 5.3 C.i.-iii., the District reserves for itself authority to perform all functions incident to the administration, enforcement and operation of the District Sales Tax. In order to seek to maximize District Revenues and operational efficiencies, the District and the City agree to cooperate with each other in the performance of functions incident to the administration, enforcement and operation of the District Sales Tax. The District official charged with formulating a budget for the District shall request that the CID Board of Directors appropriate the District Revenues in accordance with the budget, the CID Petition, and this Agreement. The Parties acknowledge that, in accordance with the Petition and Section 99.845, RSMo, the District has not consented to the capture of any portion of the District Sales Tax under any tax increment financing plan currently in effect within the CID Area and that no portion of the District Sales Tax shall be subject to capture under any future tax increment financing plan within the CID Area unless the District consents as provided in Section 99.845, RSMo.

Section 5.2. Costs of Formation and Operating Costs. The City and Developer have incurred Costs of Formation which are reimbursable pursuant to the CID Act, this Agreement, and the Reimbursement Agreement between the District and the Developer dated May 14, 2019 ("**Reimbursement Agreement**"). The City shall submit invoices to Developer for all Costs of Formation that have been incurred by the City, and such invoices will be paid by Developer to the City within thirty (30) days after receipt of such invoices. All payments to the City by Developer for the Costs of Formation incurred by the City, along with Costs of Formation incurred by Developer, may be reimbursed to Developer in the order of priority set forth in **Section 5.3** for reimbursement of the Costs of Formation. The Operating Costs of the District which are advanced by Developer on behalf of the District shall be reimbursed to Developer with District Revenues in the order of priority set forth in **Section 5.3** for payment and reimbursement of Operating Costs.

Section 5.3. Distribution of the District Revenues. Beginning in the first month following the effective date of the District Sales Tax and continuing each month thereafter until the expiration or repeal of the District Sales Tax, the City on behalf of the District shall, not later than the fifteenth (15th) day of each month, distribute the District Revenues received in the preceding month in the following order of priority:

A. Pay the City an administration fee equal to 1.0% of District Revenues.

B. Deposit funds in the Maintenance Reserve Account until the Maintenance Reserve Account is fully funded for such fiscal year as required by **Section 3.2**, if applicable.

C. Transfer remaining District Revenues to the District for deposit in an account managed by the District (the "**District Account**"). The District Account shall be used for the deposit and disbursement of District Revenues only and the District shall distribute District Revenues in the District Account in the following order of priority:

- i. Pay the Operating Costs of the District.
- ii. Reimburse Developer for funds advanced by Developer for payment of Operating Costs, and interest thereon.
- iii. Make reimbursement payments to Developer for payment of the Costs of Formation, as such Costs of Formation have been approved by the City in accordance with this Agreement.
- iv. Payment of debt service or the CID Obligations authorized pursuant to **Section 6.4**, if any.
- v. Reimburse Developer for any Reimbursable Project Costs that are set forth in an approved Application for Reimbursement pursuant to **Section 6.3**, at such time as reimbursement is authorized pursuant to **Section 6.1**.

Section 5.4. Records of the District. Any District records pertaining to the District Sales Tax or the administration and operation of the District shall be provided to the City upon written request of the City, as permitted by law. Any City records pertaining to the District Sales Tax or the administration, enforcement and operation of the District Sales Tax shall be provided to the District upon written request of the District, as permitted by law. The District and the City agree to cooperate with each other to provide to each other such information and documentation pertaining to the District Sales Tax as reasonably necessary to enable the District to satisfy budgeting and financial reporting requirements under the CID Act and applicable state law.

Section 5.5. Abolishment of District. After Developer has been reimbursed for all Reimbursable Project Costs, the District shall continue to stay in existence as long the District continues to operate and maintain the CID Public Improvements, for up to the maximum time period authorized in the Petition. The District may be terminated earlier than the maximum time period specified in the Petition if the District proceeds as authorized by the CID Act. Upon termination, the District shall implement the procedures in the CID Act for repeal of the District Sales Tax and abolishment of the District. Upon repeal of the District Sales Tax, the District shall:

- A. Pay all outstanding amounts set forth in **Section 5.3**.

B. Retain any remaining District Revenues until such time as the District is abolished and the District has provided for the transfer of any funds remaining in a manner permitted by the CID Act.

Upon termination of the District, title to the CID Public Improvements shall be abandoned by the CID and transferred to the Developer or Developer's successors in interest to the CID Project, to the Owners Association, or to another private party which shall assume ownership and maintenance responsibility of the CID Public Improvements.

Section 5.6. CID Board of Directors and Insurance.

A. The CID Board of Directors shall consist of five members, at least one of which will be a representative of the City.

B. All members of the CID Board of Directors shall meet all qualifications of the CID Act and the Missouri Constitution.

C. Successor members of the CID Board of Directors shall be appointed by the Mayor with the consent of the City Council as provided in the CID Petition and in compliance with Section 67.1451.5, RSMo. In the event of a vacancy on the CID Board of Directors, interim members will be elected by the remaining existing members of the CID Board of Directors in compliance with Section 67.1451.5, RSMo.

D. City representatives may be appointed to a majority of the positions on the Board of Directors in accordance with the CID Act in the event that the District ceases to operate in accordance with the Petition, this Agreement, the CID Act or any Applicable Laws and Requirements.

E. The District will maintain reasonable levels of directors' and officers' liability insurance throughout its existence. The cost of such liability insurance shall be an Operating Cost of the District.

F. The District shall, no later than fifteen (15) days after the start of each fiscal year, submit the names of the current CID Board of Directors to the City Council. All reports shall be made by the Developer to the City in an Annual Board of Directors Report in substantially the same form as **Exhibit F**.

Section 5.7. Pledge of District Revenues and Collateral Assignment of Agreement to Lender. Developer shall have the right, without the consent of the City, to pledge its right to receive any District Revenues for Reimbursable Project Costs under this Agreement to a lender for the CID Project. Upon Developer's request, the City will send any such revenues to such lender directly until Developer directs otherwise. Developer shall also have the right, without the consent of the City, to collaterally assign its rights and obligations under the Agreement to such lender, provided that the lender assumes by contract all obligations and duties of Developer under this Agreement in the event of a transfer to lender.

Section 5.8. Notification of Sales Tax. The District notified the Missouri Department of Revenue of the approval of the District Sales Tax by letter dated August 1, 2019, which notice included a list of existing retail businesses currently operating within the District. The District shall notify the Missouri Department of Revenue of any new retail businesses opening within the District and the City shall assist the District by providing information requested by the Missouri Department of Revenue necessary to register a retail business for collection of the District Sales Tax by the state.

ARTICLE 6

REIMBURSEMENTS TO DEVELOPER

Section 6.1. Requirements of and Limitations on Reimbursement to Developer.

A. Developer, or its successors and assigns, will develop and construct the CID Project in accordance with the CID Petition. The Developer shall receive reimbursement for Reimbursable Project Costs, any Operating Costs funded by Developer, any Costs of Formation funded by Developer, and the Maximum Reimbursement Interest in accordance with **Section 6.3**.

B. The District shall reimburse the Developer for Reimbursable Project Costs approved by the City pursuant to **Section 6.3**, and subject to the limitations set forth in this Section. Reimbursable Project Costs shall be reimbursed from available District Revenues and from no other source of funds. The City shall review and certify Reimbursable Project Costs in accordance with the procedures for review of reimbursement requests as set forth in **Section 6.3**.

C. The maximum amount of District Revenues used to reimburse Developer for Reimbursable Project Costs shall be \$5,480,000, plus any Operating Costs advanced by Developer and the Maximum Reimbursement Interest (the “**Maximum Amount**”).

Section 6.2. District’s Obligation to Reimburse Developer. The Parties agree that reimbursement of Reimbursable Project Costs will occur on a “pay as you go” basis as District Revenues are collected by the District in accordance with this Agreement. The District will only reimburse the Developer for Reimbursable Project Costs which may lawfully be paid or incurred by the District under the CID Act, which become reimbursable under the conditions and restrictions in **Section 6.1**, and which are approved pursuant to **Section 6.3**.

Section 6.3. Reimbursement Application Process.

A. The District appoints the City as its agent to administer the reimbursement application process. All requests for reimbursement of Reimbursable Project Costs shall be made by the Developer to the City in an Application for Reimbursement in substantially the form as **Exhibit E**. Each Application for Reimbursement shall include itemized invoices, receipts or other information, if any, reasonably requested by the City to confirm that each cost identified in the Application for Reimbursement has been incurred and qualifies for reimbursement pursuant to the CID Act and this Agreement.

B. Applications for reimbursement of Maintenance Costs from the Maintenance Reserve Fund may be made by any Party and shall follow the process set forth in paragraph D of this Section for the City to review and approve such reimbursement.

C. The District will not reimburse the Developer or any other party for any cost that is not eligible for reimbursement under the Reimbursement Agreement, the CID Act, the CID Petition or the terms and conditions of this Agreement. The Parties agree that the individual items which are scheduled to be reimbursed according to the CID Budget (the “**Reimbursable Line Items**”), to the extent actually incurred by Developer for the CID Project and certified by the City, up to the Maximum Amount, constitute Reimbursable Project Costs which are eligible for reimbursement in accordance with the CID Act and this Agreement. Developer may, in the aggregate, shift up to 10% of each Reimbursable Line Item for the CID Project to another Reimbursable Line Item for the CID Project without consent from the City, provided that the total amount of reimbursement for the CID Project shall not exceed the Maximum Amount and upon providing written notice to the City of the amounts shifted between Reimbursable Line Items through

Application for Reimbursement. Shifts between line items in an amount greater than 10% may be approved by the Finance Director following a request for same by Developer through an Application for Reimbursement. The Finance Director may seek the advice and consent of the City Council for such approval. In the event the Finance Director denies said request Developer shall have thirty (30) days to appeal to the City Council for a final determination on the Application for Reimbursement.

D. The Developer may submit an Application for Reimbursement to the Finance Director not more often than once each calendar month. The City shall either accept or reject each Application for Reimbursement within thirty (30) days after the submission thereof. If the City determines that any cost identified as a Reimbursable Project Cost is not eligible for reimbursement under the CID Act, the CID Petition or this Agreement, the City shall so notify the Developer in writing within said 30-day period, identifying the ineligible cost and the basis for determining the cost to be ineligible, whereupon the Developer shall have the right to identify and substitute other costs for reimbursement with a supplemental application for payment, subject to the limitations of this Agreement. The City may also request such additional information from the Developer as may be required to process the requested reimbursement, and the time limits set forth in this paragraph shall be extended by the duration of time necessary for the Developer to respond to such request by the City. The City's identification of any ineligible costs shall not delay the City's approval of the remaining costs on the Application for Reimbursement that the City determines to be eligible. Notwithstanding anything in this paragraph to the contrary, the Developer, the Owners Association, and the District may submit an Application for Reimbursement to the Finance Director for reimbursement of Maintenance Costs from the Maintenance Reserve Fund.

E. After the City approves an Application for Reimbursement, interest shall accrue at the prime rate established by Commerce Bank, plus one percent (1%) from the date the City approves an Application for Reimbursement of Reimbursable Project Costs until such costs are actually reimbursed with District Revenues (the "**Maximum Reimbursement Interest**"), which shall fluctuate from time to time, not to exceed the highest interest rate allowed by applicable law.

Section 6.4. Issuance of CID Obligations. The District may authorize the issuance of CID Obligations upon written approval of the City and subject to the following restrictions:

A. The final maturity date of the CID Obligations shall be no more than twenty (20) years from the date of issuance or the expiration of the term of the District, whichever is sooner; provided the term of the District is thirty (30) years pursuant to the Petition.

B. The maximum principal amount of the CID Obligations shall not exceed an amount calculated by a financial advisor to the District which is incorporates a projected amortization schedule based upon the development that is either open for business in the CID Area or for which the Developer has executed binding leases in the CID Area, along with the costs of issuance for such obligations. The City Finance Director and the City's financial advisor shall have the right to review such projections and all terms and conditions of the proposed bond issuance prior to the City providing written approval as required by this Section.

C. Reimbursement of interest on CID Obligations shall be limited to the Maximum Reimbursement Interest, unless otherwise approved by the City in writing.

ARTICLE 7

RELEASE AND INDEMNIFICATION

Section 7.1. Survival of Termination. The indemnification and covenants contained in this Article shall survive expiration or earlier termination of this Agreement.

Section 7.2. Developer Indemnity. The Developer hereby agrees that, anything to the contrary herein notwithstanding, it will defend, indemnify and hold harmless the City, its governing body members, employees and agents (collectively, the “**City Indemnified Parties**”) against any and all claims, demands, actions, causes of action, loss, damage, injury, liability and/or expense (including attorneys’ fees and court costs) to the extent resulting from, arising out of, or in any way connected with (i) the Developer’s failure to comply with any provision of this Agreement, (ii) the gross negligence or intentional misconduct of the Developer, an Affiliate of the Developer, or their respective officers, employees and agents in connection with this Agreement and the CID Project (iii) the presence of hazardous wastes, hazardous materials or other environmental contaminants on any property within the District or the CID Area, or (iv) otherwise arising out of the construction of the CID Project or the administration of this Agreement; provided in no event shall the Developer indemnify the City or the City Indemnified Parties from any negligence or willful misconduct caused by the City or the City Indemnified Parties. If the validity or construction of the CID Act and/or any other ordinance of the City adopted in connection with this Agreement or the CID Petition are contested in court, the Developer shall defend, hold harmless and indemnify the City from and against all claims, demands and/or liabilities of any kind whatsoever including, without limitation, any claim for attorney fees and court costs, and the Developer shall pay any monetary judgment and all court costs rendered against the City, if any. Any costs, fees, and expenses paid by Developer under this **Section 7.2** shall be Reimbursable Project Costs; provided that, if the event or circumstances giving rise to the claim against the City is due to the failure of the Developer or its contractors to comply with applicable Legal Requirements related to the construction of the CID Project or otherwise caused by the Developer’s gross negligence or intentional misconduct, no such costs, fees, and expenses paid by Developer under this **Section 7.2** shall be reimbursable. Notwithstanding anything to the contrary contained herein, the Developer indemnity set forth in this **Section 7.2** shall not be applicable to events which occur after Developer no longer owns any portion of the CID Project.

Section 7.3. District and City Indemnity. The District hereby agrees, to the extent permitted by law, that it will defend, indemnify and hold harmless the City Indemnified Parties and the Developer, its officers, employees and agents against any and all claims, demands, actions, causes of action, loss, damage, injury, liability and/or expense (including attorneys’ fees and court costs) to the extent resulting from, arising out of, or in any way connected with (i) the District’s failure to comply with any provision of this Agreement, or (ii) the negligence or intentional misconduct of the District or its officers, employees and agents. The City hereby agrees, to the extent permitted by law, that it will defend, indemnify and hold harmless the District, and its officers, employees and agents, against any and all claims, demands, actions, causes of action, loss, damage, injury, liability and/or expense (including attorneys’ fees and court costs) to the extent resulting from, arising out of, or in any way connected with (i) the City’s failure to comply with any provision of this Agreement, or (ii) the negligence or intentional misconduct of the City or its officers, employees and agents.

Section 7.4. Notification.

A. If any suit, action, investigation, claim or proceeding (collectively, an “**Action**”) is threatened, initiated or made as a result of which the Developer or the District may become obligated to

one or more of the City Indemnified Parties hereunder, any one of the applicable City Indemnified Parties shall give prompt notice to the Developer and the District of the occurrence of such event. After receipt of such notice, the Developer or the District, as applicable, at their cost, shall defend, contest and otherwise protect the City Indemnified Parties against the Action utilizing counsel of the Developer's choice. The City Indemnified Parties shall cooperate in good faith with the Developer and its counsel in the defense of an Action. The Developer shall provide to the City regular periodic reports on the status of such Action. If the indemnifying party fails to timely defend, contest or otherwise protect any of the City Indemnified Parties against such Action, the City Indemnified Parties shall have the right to do so and to hire the counsel of their choice, and, if such defense is undertaken by the City Indemnified Parties after notice to the Developer and the District asserting the failure of the Developer, or the District, as applicable, to timely defend, contest or otherwise protect against such Action, the cost of such defense shall be at the expense of the Developer or the District, as applicable.

B. If an Action is threatened, initiated or made as a result of which the City may become obligated to the District, the District shall give prompt notice to the City of the occurrence of such event. After receipt of such notice, the City, at its cost, shall defend, contest and otherwise protect the District against the Action utilizing counsel of the City's choice. The District shall cooperate in good faith with the City and its counsel in the defense of an Action. The City shall provide to the District regular periodic reports on the status of such Action. If the indemnifying party fails to timely defend, contest or otherwise protect the District against such Action, the District shall have the right to do so and to hire the counsel of its choice, and, if such defense is undertaken by the District after notice to the City asserting the failure of the City to timely defend, contest or otherwise protect against such Action, the cost of such defense shall be at the expense of the City.

Section 7.5. Settlements. All proposed settlements to any Action shall be subject to the mutual approval of the Developer or the District, as applicable, and the applicable City Indemnified Parties or the City, as applicable. Neither the Developer nor the District, as applicable, nor the City Indemnified Parties nor the City, as applicable, will unreasonably withhold their consent to a proposed settlement.

Section 7.6. Invalidity of Proceedings. Notwithstanding anything herein to the contrary, the City shall not be liable to the Developer or the District for damages or otherwise if all or any part of the CID Act, the ordinance approving the CID Petition, and/or any other ordinance of the City adopted in connection with this Agreement, the CID Project, or the CID Petition is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction. If, as a result of a final judgment, the revenue mechanisms and/or the reimbursements to the Developer contemplated by this Agreement cannot be implemented, the City and the District agree, subject to any necessary future legislative approvals by the City Council or CID Board of Directors, as applicable, to make good faith efforts to take all actions necessary to remedy any deficiencies and effectuate the intent of this Agreement.

ARTICLE 8

DEFAULTS AND REMEDIES

Section 8.1. Default and Remedies. An "Event of Default" shall occur upon the failure by any Party in the performance of any covenant, agreement or obligation imposed or created by this Agreement and the continuance of such failure for thirty (30) days after the other Party has given written notice to such Party specifying such failure.

If any Event of Default has occurred and is continuing, then any non-defaulting party may, upon its election or at any time after its election while such default continues, by mandamus or other suit, action or proceedings at law or in equity, enforce its rights against the defaulting party and its officers, agents and employees, and require and compel duties and obligations required by the provisions of this Agreement (except that in no event shall the City enjoin the Developer to undergo any construction).

Section 8.2. Rights and Remedies Cumulative. The rights and remedies maintained by any Party under this Agreement and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. Any Party shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding availability of an adequate remedy at law, and any Party hereby waives the right to raise such defense in any proceeding in equity.

Section 8.3. Waiver of Breach. No waiver of any breach of any covenant or agreement contained in this Agreement shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of an Event of Default, a non-defaulting Party may nevertheless accept from the defaulting party, any payment or payments without in any way waiving the non-defaulting party's right to exercise any of its rights and remedies as provided herein with respect to any such default or defaults in existence at the time when such payment or payments were accepted by the non-defaulting party.

Section 8.4. Excusable Delays. No Party shall be deemed to be in default of this Agreement because of Excusable Delays. Excusable Delays shall extend the time of performance for the period of such Excusable Delay.

ARTICLE 9

MISCELLANEOUS

Section 9.1. Effective Date and Term. This Agreement shall become effective on the date this Agreement has been fully executed by the Parties ("**Effective Date**"). This Agreement shall remain in effect for as long as the District is legally in existence.

Section 9.2. Modification. The terms, conditions, and provisions of this Agreement can be neither modified nor eliminated except in writing and by mutual agreement among the City, the District and the Developer. Any modification to this Agreement as approved shall be attached hereto and incorporated herein by reference.

Section 9.3. Jointly Drafted. The Parties agree that this Agreement has been jointly drafted and shall not be construed more strongly against another Party.

Section 9.4. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

Section 9.5. Validity and Severability. It is the intention of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of State of Missouri, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the

invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

Section 9.6. Execution of Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 9.7. City and District Approvals. Unless specifically provided to the contrary herein, all approvals of the City hereunder may be given by the City Manager or his or her designee without the necessity of any action by the City Council. The City Manager may seek the advice and consent of the City Council before granting any approval. Unless specifically provided to the contrary herein, all approvals of the District hereunder may be given by the Chairman of the District or his or her designee without the necessity of any action by the CID Board of Directors. The Chairman of the District may seek the advice and consent of the CID Board of Directors before granting any approval.

Section 9.8. Relationship. In the performance of this Agreement, the Developer shall act solely as an independent contractor. Neither this Agreement nor any agreements, instruments, documents, or transactions contemplated hereby shall in any respect be interpreted, deemed or construed as making the Developer a partner, joint venturer with, or agent of, the City. The City and the Developer agree that neither party will make any contrary assertion, claim or counterclaim in any action, suit, arbitration or other legal proceedings involving the City and the Developer.

Section 9.9. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties with respect to the matters herein and no other agreements or representations other than those contained in this Agreement have been made by the Parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the Parties.

Section 9.10. Limit on Liability. The Parties agree that:

A. No official, director, officer, agent, employee, representative, attorney or consultant of the City shall be personally or otherwise in any way liable to the Developer or the District in the event of any default, breach or failure of performance by the City under this Agreement or for any amount which may become due to the Developer or the District or with respect to any agreement, indemnity, or other obligation under this Agreement.

B, No member or shareholder of the Developer or the District and no official, director, officer, agent, employee, shareholder, representative, attorney or consultant of the Developer or the District shall be personally or otherwise in any way liable to the City or any third-party in the event of any default, breach or failure of performance by the Developer or the District under this Agreement or for any amount which may become due to the City with respect to any agreement, indemnity or other obligation under this Agreement.

Section 9.11. Headings. Headings of articles and sections are inserted only for convenience and are in no way to be construed as a limitation or expansion on the scope of the particular articles, sections or subsections to which they refer. Words in the singular shall include the plural, and vice versa, where appropriate.

Section 9.12. Notices. Any notice, demand, or other communication required by this Agreement to be given by either party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States First Class Mail, postage prepaid, or delivered personally or by a

reputable overnight delivery service to all parties listed below. Mailed notices shall be deemed effective on the third day after mailing and all other notices shall be effective when delivered.

To the City: City of Lee's Summit, Missouri
220 SE Green
Lee's Summit, Missouri 64063
Attn: City Manager

With a copy to: City of Lee's Summit, Missouri
220 SE Green
Lee's Summit, Missouri 64063
Attn: City Attorney

To the District: New Longview Community Improvement District
c/o Platform Ventures, LLC
4220 Shawnee Mission Pkwy
Suite 200B
Fairway, KS 66205

To the Developer: M-III Longview, LLC
c/o Platform Ventures, LLC
4220 Shawnee Mission Pkwy
Suite 200B
Fairway, KS 66205

With a copy to: Brian Engel, Esq.
Rouse Frets White Goss Gentile Rhodes, P.C.
4510 Belleview Ave., Suite 300
Kansas City, MO 64111

or to such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this paragraph.

Section 9.13. Waiver. The failure of either Party to insist upon a strict performance of any of the terms or provisions of this Agreement, or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either Party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party.

Section 9.14. Tax Implications. The Developer and the District acknowledge and represent that (1) neither the City nor any of its officials, employees, consultants, attorneys or other agents have provided to the Developer or the District any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (2) the Developer and the District are relying solely upon their own tax advisors in this regard.

Section 9.15. Exhibits. All exhibits which are attached or referred to in this Agreement are specifically incorporated herein by reference and form an integral part hereof.

Section 9.16. Agreement to Control. In the event of any conflict between the terms of this Agreement and any other agreements between the City and the Developer or the District, the provisions of this Agreement shall control and supersede the conflict.

Section 9.17. Recordation of Memorandum of Agreement. The Parties agree to execute and deliver a Memorandum of this Agreement in proper form for recording and/or indexing in the appropriate land or governmental records. Such Memorandum shall be recorded by the City.

Section 9.18. Estoppel. Upon Developer's request, the City shall deliver a written instrument to Developer or any other person, firm or corporation specified by Developer, duly executed and acknowledged, certifying that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modifications; whether or not Developer has observed and performed all of the terms, covenants and conditions on the part of Developer to be observed and performed, and if not, specifying the same; and such other matters as reasonably requested by Developer.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

CITY OF LEE’S SUMMIT, MISSOURI

By: _____
William A. Baird
Mayor

[SEAL]

ATTEST:

Trisha Fowler Arcuri
City Clerk

STATE OF MISSOURI)
) **SS.**
COUNTY OF JACKSON)

On this _____ day of December, 2019, before me appeared William A. Baird, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the **CITY OF LEE’S SUMMIT, MISSOURI**, a constitutional charter city and political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its City Council, and said William A. Baird acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

[SEAL]

DISTRICT:

**NEW LONGVIEW COMMUNITY
IMPROVEMENT DISTRICT**

By: _____
Mike Jenkins, Chairman

ATTEST:

Becky Ziegler, Secretary

CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

On this ___ day of December, 2019, before me, a Notary Public in and for said state, personally appeared Mike Jenkins, who is the Chairman of the New Longview Community Improvement District, known to me to be the person who executed the within Cooperative Agreement on behalf of the New Longview Community Improvement District and acknowledged to me that he executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires:

DEVELOPER:

M-III LONGVIEW, LLC

a Delaware limited liability company

By: Platform Investments, LLC, its manager

By: Platform Ventures, LLC, its manager

By: _____
Corey Walker, Senior Vice President

CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF KANSAS)
) ss
COUNTY OF JOHNSON)

On this ____ day of December, 2019, before me, a Notary Public in and for said state, personally appeared Corey Walker, the Senior Vice President of Platform Ventures, LLC, a Delaware limited liability company, known to me to be the person who executed the within Cooperative Agreement on behalf of said limited liability company and acknowledged to me that he executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires:

OWNERS ASSOCIATION:

FASCINATION AT NEW LONGVIEW OWNERS ASSOCIATION, INC.
a Missouri non-profit corporation

By: _____
Corey Walker, President

CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF KANSAS)
) ss
COUNTY OF JOHNSON)

On this ____ day of December, 2019, before me, a Notary Public in and for said state, personally appeared Corey Walker, the President of Fascination at New Longview Owners Association, Inc., a Missouri non-profit corporation, known to me to be the person who executed the within Cooperative Agreement on behalf of said non-profit corporation and acknowledged to me that he executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF CID AREA

A tract of land in the Southwest Quarter of Section 3 and the Northwest Quarter of Section 10, Township 47 North, Range 32 West of the 5th Principal Meridian in Lee's Summit, Jackson County, Missouri, being bounded and described as follows: Beginning at the Southwest corner of said Southwest Quarter point also being the Northwest corner of said Northwest Quarter; thence North 03°15'11" East on the West line of said Southwest Quarter, 75.00 feet; thence leaving said West line, South 87°11'23" East, 43.00 feet to a point on the North right-of-way line of Southwest 3rd Street, as now established, point also the Southwest corner of LOT 1, BERBIGLIA HEIGHTS, a subdivision of land recorded in Book 34 on Page 112 in the Jackson County Recorder of Deeds Office; thence continuing South 87°11'23" East on said North right-of-way line, 300.41 feet; thence South 73°09'12" East on said line, 61.83 feet; thence South 87°11'17" East on said line, 265.02 feet; thence South 02°48'37" West on said line, 10.00 feet; thence South 87°11'20" East on said line, 503.61 feet to the Southwest corner of Tract B10, WINTERSSET VALLEY 10th PLAT, a subdivision of land recorded on Document Number 2014E0094859 in the Jackson County Recorder of Deeds Office; thence continuing South 87°11'20" East on the South line of said Wintersset Valley 10th Plat, 44.36 feet; thence North 45°49'13" East on said South line of Wintersset Valley 10th Plat, 16.42 feet; thence South 87°11'20" East on said South line of Wintersset Valley 10th Plat, 138.33 feet; thence leaving said South line, South 02°48'40" West, 112.01 feet to a point on the South right-of-way line of said Southwest 3rd Street, point also being on the North line of Lot 1, NEW LONGVIEW COMMERCIAL DISTRICT FOURTH PLAT, LOT 1, a subdivision of land recorded on Document Number 2016E0046879 in said Jackson County Recorder of Deeds Office; thence North 87°11'20" West on said North line, 45.30 feet to the Northwest corner of said Lot 1 point also being on the Easterly right-of-way line of Southwest Kessler Drive, as now established; thence South 02°48'40" West on the West line of said Lot 1 and said Easterly right-of-way line, 167.31 feet; thence North 87°11'20" West on the West line of said Lot 1 and said Easterly right-of-way line, 12.00 feet; thence South 02°48'40" West on the West line of said Lot 1 and said Easterly right-of-way line, 164.68 feet to the Southwest corner of said Lot 1; thence leaving said Easterly right-of-way line, South 87°11'21" East on the South line of said Lot 1, 606.38 feet to a point on the Westerly line of BRIDLEWOOD 4th PLAT, a subdivision of land recorded in Book 169 on Page 63 of said Jackson County Recorder of Deeds Office; thence South 03°11'11" West on the West line of said Bridlewood 4th Plat and the West line of BRIDLEWOOD 5th PLAT, a subdivision of land recorded in Book 71 on Page 18 in said Jackson County Recorder of Deeds Office, 439.82 feet to the Northeast corner of Tract A, KESSLER RIDGE AT NEW LONGVIEW - FIRST PLAT, a subdivision of land Recorded on Document Number 2016E0123272 in said Jackson County Recorder of Deeds Office; thence North 86°48'44" West on the North line of said Tract A, 461.29 feet to the Northwest corner of said Tract A, point also being on the Easterly right-of-way line of said Southwest Kessler Drive; thence Northwesterly on said Easterly right-of-way line, with a curve to the left having an initial tangent bearing of North 31°35'13" West with a radius of 310.00 feet, a central angle of 05°37'55" and an arc distance of 30.47 feet; thence North 37°13'07" West on said Easterly right-of-way line, 123.26 feet; thence Northwesterly on said Easterly right-of-way line with a curve to the right being tangent to the last described course with a radius of 190.00 feet, a central angle of 02°01'30" and an arc distance of 6.71 feet; thence leaving said Easterly right-of-way line, North 87°00'49" West, 71.34 feet to a point on the Westerly right-of-way line of said Southwest Kessler Drive point also being the Southeast corner of Lot 1A, FASCINATION AT NEW LONGVIEW LOTS 1A-1E, INCLUSIVE TRACT A, a subdivision of land Recorded on Document Number 2018E0034938 in said Jackson County Recorder of Deeds Office; thence continuing North 87°00'49" West, on the South line of said Lot 1A, 117.45 feet; thence South 58°23'30" West on the South line of said Fascination at New Longview Lots 1A-1E, Inclusive Tract A, 407.26 feet; thence South 31°36'30" East on said South line, 49.74 feet; thence South 58°52'01" West on said South line, 143.96 feet to the Southwest corner of Lot 1E of said Fascination at New Longview Lots 1A-1E, Inclusive Tract A point also on the Easterly right-of-way line of Southwest Longview Boulevard as now established; thence leaving said Easterly right-of-way line, South 61°02'01" West, 116.09 feet to the Southeast corner of Lot 7, TOWER PARK COMMERCIAL - PHASE 2 LOTS 5, 6, 7 AND TRACTS A and B, a subdivision of land Recorded on Document Number 2005I0090051 of said Jackson County Recorders of Deeds Office point also on the Westerly right-of-way line of said Southwest Longview

Boulevard; thence South 58°46'36" West on the South line of said Lot 7, 34.91 feet; thence Southwesterly on the South line of Lot 7 with a curve to the left being tangent to the last described course with a radius of 130.00 feet, a central angle of 38°14'59" and an arc distance of 86.79 feet to the Southwest corner of said Lot 7; thence North 31°13'52" West on the West line of said Lot 7, 280.78 feet to the Northwest corner of said Lot 7 point also being on the Southerly right-of-way line of Southwest Sensation Drive, as now established; thence continuing North 31°13'52" West, 60.00 feet to a point on the Northerly right-of-way line of said Southwest Sensation Drive, point also on the Southerly line of Lot 3, TOWER PARK COMMERCIAL - PHASE 2 LOTS 3, 4 AND TRACT J, a subdivision of land recorded on Document Number 2004I0107121 in said Jackson County Recorder of Deeds Office; thence South 58°46'36" West on the South line of said Lot 3 and the said Northerly right-of-way line, 139.54 feet; thence North 31°13'27" West on said South line, 72.72 feet; thence North 58°46'33" East on said South line, 20.00 feet; thence North 31°13'27" West on said South line, 50.00 feet; thence North 86°44'52" West on said South line, 172.98 feet to the Southwest corner of said Lot 3, point also being on the Easterly right-of-way line of Southwest Longview Road, as now established, thence continuing North 86°44'52" West, 30.00 feet to a point on the West line of said Northwest Quarter; thence North 03°15'11" East on said West line, 876.09 feet to the Point of Beginning. Containing 1,541,727 square feet or 35.39 acres, more or less.

EXHIBIT B DEPICTION OF CID AREA

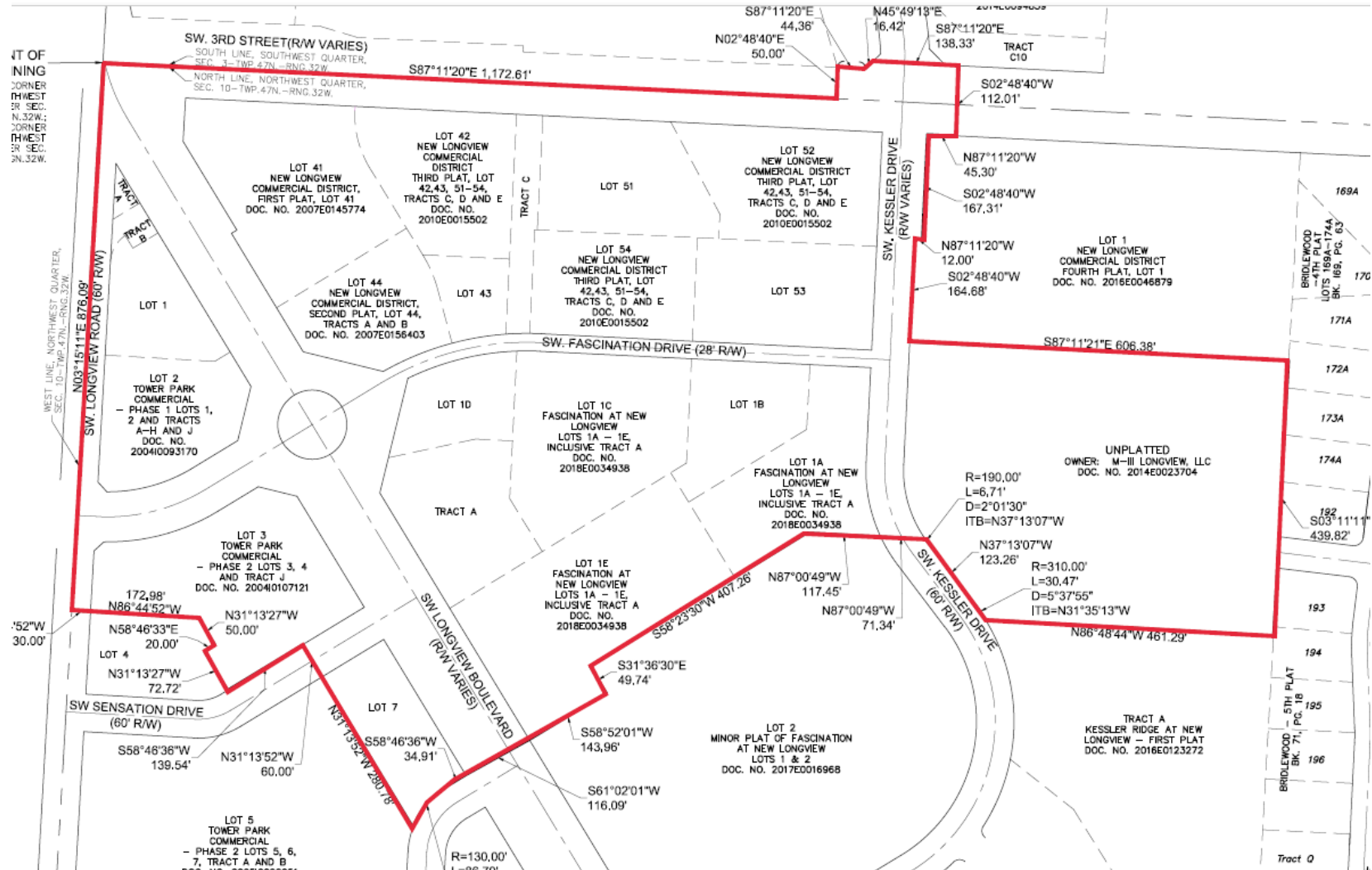


EXHIBIT C

MAP OF ACTIVITY PLAZA AND STREETScape IMPROVEMENTS

Proposed Improvements

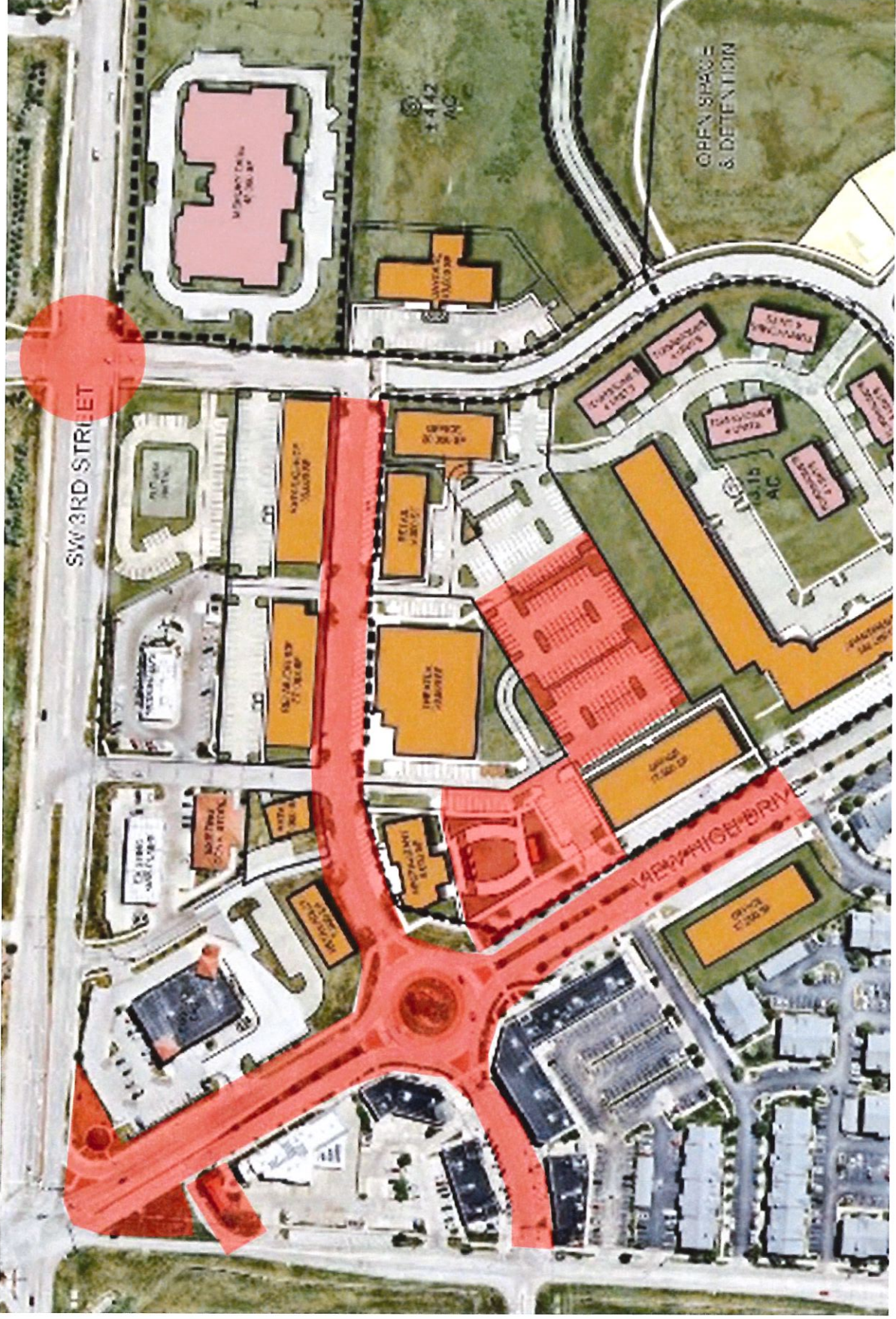


EXHIBIT D
CID BUDGET

Use	Amount	Comments
Activity Plaza (Fascination at NLV Tract A)	\$ 2,250,000	Saddle Plaza - Base
Central Green / Hardscape / Landscape		
Adjacent Streetscape along Fascination/Longview Blvd		
Pedestrian Connectivity		
Surface Parking		
Offsite Sitework Obligations	\$ 330,000	3rd St / Kessler Drive Traffic Signal & Other
Grading, Paving & Utilities	\$ 300,000	ROW & shared parking stalls
Professional Fees	\$ 300,000	legal, consulting, traffic study, other
Remaining Streetscape & Landscape	\$ 250,000	ROW & common areas
Balance of Fascination / Kessler		
North Arch	\$ 50,000	maintenance & upkeep as needed
Contingency	\$ 500,000	general contingency
Total (w/ surface parking)	\$ 3,980,000	
Structured Parking	\$ 1,500,000	Lot 1D - 160 deck parking spots
Grand Total (w/ structured parking)	\$ 5,480,000	

EXHIBIT E

FORM OF APPLICATION FOR REIMBURSEMENT

APPLICATION FOR REIMBURSEMENT

TO: City of Lee's Summit, Missouri
Attention: Mayor

Re: New Longview Community Improvement District

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Cooperative Agreement dated as of December 10, 2019 (the "Agreement") among the City of Lee's Summit, Missouri (the "City"), the New Longview Community Improvement District and M-III Longview, LLC (the "Developer"). In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on *Schedule 1* hereto is a Reimbursable Project Cost and was incurred in connection with the construction of CID Project.
2. These Reimbursable Project Costs have been paid by the Developer and are reimbursable under the Agreement.
3. Each item listed on *Schedule 1* has not previously been paid or reimbursed from money derived from the District Revenues and no part thereof has been included in any other Application previously filed with the City.
4. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
5. All necessary permits and approvals required for the work for which this application relates have been issued and are in full force and effect.
6. All work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.
7. If any cost item to be reimbursed under this application is deemed not to constitute a Reimbursable Project Cost within the meaning of the Agreement, the Developer shall have the right to substitute other eligible costs for payment hereunder.
8. The Developer is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes an Event of Default under the Agreement.
9. All of the Developer's representations set forth in the Agreement remain true and correct as of the date hereof.

Dated this _____ day of _____, 20____.

M-III LONGVIEW, LLC

By: _____

Name: _____

Title: _____

Approved for Payment this ____ day of _____, 20__:

CITY OF LEE'S SUMMIT, MISSOURI

By: _____

Name: _____

Title: _____

EXHIBIT F

ANNUAL BOARD OF DIRECTORS REPORT

TO: City of Lee's Summit, Missouri
Attention: Mayor

Re: New Longview Community Improvement District

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Cooperative Agreement dated as of December 10, 2019 (the "Agreement") among the City of Lee's Summit, Missouri (the "City"), the New Longview Community Improvement District and New Longview Partners, LLC (the "Developer"). In connection with said Agreement, the undersigned hereby states and certifies that:

1. For fiscal year _____, the current Directors for the New Longview Community Improvement District Board of Directors are:

- a. _____
- b. _____
- c. _____
- d. _____
- e. _____ (City Representative)

2. This Annual Board of Directors Report is filed no later than fifteen (15) days following the start of the fiscal year, pursuant to **Section 5.6(E)** of the New Longview Community Improvement District Cooperative Agreement.

Dated this _____ day of _____, 20____.

**NEW LONGVIEW COMMUNITY
IMPROVEMENT DISTRICT**

By: _____
Chairman

EXHIBIT G

ENGINEERING LETTER FOR MAINTENANCE FUND

[To Be Attached in Future, As Needed]

EXHIBIT H
HISTORIC PRESERVATION EASEMENT FOR THE NORTH ARCH

[Attached]



ELECTRONICALLY RECORDED
JACKSON COUNTY, MISSOURI
11/06/2018 03:15:14 PM
EASE FEE: \$ 84.00 22 Pages

INSTRUMENT NUMBER:
2018E0096524

(Space above reserved for Recorder of Deeds certification)

1. *Title of Document:* **Historic Preservation Easement – North Arch**
 2. *Date of Document:* ^{Nov}~~October~~ **2**, 2018
 3. *Grantor(s):* **M-III Longview LLC**
 4. *Grantee(s):* **City of Lee's Summit, Missouri, a municipal corporation**
 5. *Statutory Mailing Address(s):*

**Grantee's Address: City of Lee's Summit, Missouri
Development Services Department
220 SE Green Street
Lee's Summit, MO 64063**
 6. *Legal Description:* **See Attached Exhibit A**
 7. *Reference Book and Page(s):* **N/A**
-

HISTORIC PRESERVATION EASEMENT – NORTH ARCH

THIS HISTORIC PRESERVATION EASEMENT (“Easement”) is made this ^{2nd} day of ~~October~~ ^{November}, 2018, by **M-III LONGVIEW LLC** (“Grantor”), and the **CITY OF LEE’S SUMMIT, MISSOURI**, a municipal corporation (“Grantee”).

RECITALS OF CONSIDERATION

A. Grantor is the owner in fee simple of a parcel of land located in the City of Lee’s Summit, Jackson County, Missouri, in an area commonly known as “Fascination at New Longview,” and formerly known as “Longview Farms,” such parcel of land being legally described on Exhibit A attached hereto (together with all improvements on the land, the “Property”), the location of which is depicted in Exhibit B. The structure commonly known as the North Arch (the “Structure”) is located on the Property and is the subject matter of this Easement.

B. Grantor has agreed to preserve certain elements of the “Façade,” in accordance with the terms hereof. The term “Façade” means the exterior features of the Structure, as shown on Exhibit C attached hereto, together with the structural portions of the Structure that support such exterior features.

C. Grantor and Grantee desire to ensure that certain significant exterior features of the Façade are preserved to the reasonable extent possible for benefit of future generations through the grant of this Easement.

NOW THEREFORE, in consideration of the foregoing and for other good and sufficient consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants to Grantee, and Grantee hereby accepts, this Easement on the following terms and conditions:

Article I

BACKGROUND AND DEFINITIONS

A. Property Subject to Easement

The property subject to this Easement is comprised of the Façade.

B. Purpose

Subject to the terms hereof, this Easement is granted in perpetuity to preserve the Façade. This Easement, to be of the nature and character hereinafter further expressed, shall constitute a binding servitude upon the property of the Grantor subject to the terms contained herein, and to that end Grantor covenants on behalf of itself, its successors and assigns, with Grantee, its successors and assigns, such covenants being deemed to run as a binding servitude, in perpetuity, with the land, to do upon the Property each of the following covenants and stipulations, which contribute to the public purpose of which the tax increment financing funds (“TIF Funds”) have

been or will be expended in that they aid significantly in the preservation of the Façade and help maintain and assure the present and future historic integrity of the Structure.

In furtherance of this purpose, after the Effective Date the Façade shall not be altered, restored, renovated or extended except in a way that would, in the reasonable opinion of Grantee, be in keeping with the historic character of the Structure. Alterations, renovations or improvements to the Façade shall be architecturally compatible with the original function and appearance of the Structure in Grantee's reasonable opinion. Except as otherwise may be specifically set forth herein, in no event may any exterior construction to, or alteration, renovation or redecoration of, the Façade be undertaken without the prior written approval of Grantee as hereinafter provided.

C. Baseline Data

In order to document the present condition of the Façade, to permit Grantor and Grantee to monitor the future condition of the Façade, and to assure compliance with the terms hereof, Grantee has prepared an inventory of the condition of the Façade existing on the Effective Date which is attached hereto as Exhibit C (the "Baseline Data"), which inventory shall include, without limitation, photographs of the Façade and plans, drawings, and specifications related thereto. The identity and condition of each element of the Façade and all related exterior architectural features shall be detailed in the Baseline Data.

In the event Grantor alters, restores or modifies the Façade in accordance with the terms of this Easement, Grantor and Grantee will, together, periodically update the photographs and other documentation in the Baseline Data to reflect the upgraded condition of the Façade. Once the Façade has been restored to a good and sound state of repair, Grantee shall prepare a revised inventory of the Façade's condition to identify and document the condition of each element of the Façade depicted in the original Baseline Data. Once such revised Baseline Data has been completed, such revised Baseline Data shall be accepted by Grantor and Grantee as an accurate depiction of the condition of the Façade as restored.

Article II

RESTRICTIONS, COVENANTS AND AGREEMENTS.

Grantor covenants on behalf of itself, its successors and assigns to do, or refrain from doing, each of the following acts.

A. Maintenance

Grantor shall maintain the Façade in a good and sound state of repair, as depicted in the Baseline Data, in order to preserve the original architectural character and integrity of the Façade, as the same may be revised from time to time.

B. Long-Term Maintenance Plan

Grantor is the Declarant of Fascination at New Longview. Grantor intends Fascination at New Longview Owners Association, Inc. (the "Association") to be the successor owner of the

Property. Grantor intends to use funds generated by the Association or provided by a future community improvement district or other special tax district to satisfy its maintenance obligations under Section C of this Article. A failure on the part of a future community improvement district or special tax district to provide such funding does not relieve the then-current owner of the Property of such obligations. All maintenance must comply with Section C of this Article.

C. Façade and Viewshed Alterations Prohibited Without Grantee's Prior Written Approval

Exterior changes, alterations, additions and improvements to the Façade as would not, in the reasonable opinion of Grantee, adversely affect the structural soundness, or fundamentally alter the historic character, of the Façade may be made thereto by Grantor upon prior written consent of Grantee, which consent shall be granted or withheld in accordance with the terms of this Easement. The view and visibility of the Façade and the Structure from public rights-of-way, including streets, sidewalks, pedestrian areas, parks and any other public areas where the public is generally allowed to gather or traverse (the "Viewshed Areas"), shall not be blocked or obstructed by the placement or construction, whether temporary or permanent, if any other structure or object within the boundaries of the Property and any other adjacent areas or properties under ownership or control of Grantor, or any affiliated or related persons or entities of Grantor, without the prior written approval of the Grantee. Structures and objects which are prohibited from the Viewshed Areas include, but are not limited to, buildings, structures (whether temporary or permanent), trees, plants, vegetation, poles, flags, banners, awnings, wires, tents, utility boxes and related structures, signage, bill boards, advertising, vehicles, trailers, automobiles (except for parking as allowed pursuant to the City Code), whether fixed to the Structure or standing independently of the Structure. Temporary gatherings, festivals and related events which are allowed by permission of the City pursuant to the City Code or a City-issued permit shall not be treated as prohibited Viewshed Area obstructions pursuant to this paragraph.

D. Commercial or Industrial Activities

No industrial or commercial activities shall be conducted on the Property except to the extent permissible under then applicable land use regulations or as set forth in that certain Tax Increment Financing Contract by and between Grantor and Grantee dated as of December 1, 2016, as may be amended or modified.

E. Signage

No commercial signs, billboards or advertising shall be displayed on the Façade other than those approved by Grantee in its reasonable discretion. Notwithstanding the foregoing, Grantor and Grantee may mutually elect to affix at the Property such historical and interpretative signs as Grantor shall elect provided the historical or structural integrity of the Façade is not materially affected thereby.

F. Payment of Taxes

Grantor shall pay before delinquent all general taxes, special assessments, water charges, sewer service charges and any and all other charges which, if unpaid, would become a lien on the Property. The obligation to pay shall not apply during (i) any period Grantor has (a) timely objected to the amount or validity of the charge, (b) diligently prosecuted the appeal of such assessment or charge, and (c) effectively stayed any enforcement action relating to any such lien against the Property, and (ii) any grace period following the conclusion of such appeal.

G. Reference on Conveyance

Grantor agrees (i) to insert a reference to the existence of this Easement in any deed or other legal instrument by which it transfers title to the Property or any interest therein (including a leasehold interest) and (ii) to notify Grantee of any such conveyance or other transfer of interest (providing the name, address and contact information for such transferee) at least ten (10) days prior to the date of any such conveyance or transfer. The failure to include such reference in the legal instrument shall authorize the City to void such transaction upon such declaration by the City Council.

Article III

GRANTOR'S RESERVED RIGHTS

Grantor reserves for itself, its successors and assigns, all rights as fee owner of the Property, including, without limitation, the right to use and enjoy the Property in any way and for any purpose not prohibited by this Easement or otherwise prohibited by law. Without limiting the generality of the foregoing, Grantor reserves the right to make alterations to any interior features of the Structure without prior consultation with Grantee, except as required by applicable City Code provisions, provided that any such interior alteration shall not materially impair the historical or structural integrity of the Façade or the structural integrity of the Structure.

Article IV

EASEMENT ADMINISTRATION

A. Evidence of Compliance

Grantee acknowledges that the intended uses of the Property are compatible with the purposes of this Easement. For any sale, leasing, refinancing, mortgaging or other business purpose, Grantee shall, within ten (10) business days of request, furnish Grantor or its designee with a statement that (i) provides to the best of Grantee's knowledge, information and belief after reasonable inquiry, Grantor is in full compliance with its obligations under this instrument or (ii) that details any noncompliance with its obligations under this Easement.

B. Grantee Marker

Grantee is authorized to maintain one plaque or marker, not to exceed twelve (12) inches by twenty-four (24) inches, at a location mutually agreeable to Grantor and Grantee to afford public notice of (i) the history of the Property, (ii) Grantee's ownership of the right to enforce the terms of this Easement, and (iii) Grantee's name, address and phone number.

C. Inspection

Upon prior reasonable written notice to Grantor, its successors and assigns, Grantee shall be entitled to enter upon the Property for the purpose of inspecting the Façade to ensure there are no violations under the terms of this Easement. Any such inspection will be conducted in a manner that will not unreasonably interfere with the uses being made of the Property and Grantor's quiet enjoyment of the same at the time of such entry. Grantee's right to enter upon the Property is solely for the purpose of inspecting the Façade and making determinations regarding enforcement of this Easement. In the absence of evidence of a violation of the terms of this Easement, such inspection will not take place more often than annually.

D. Initial Work

Grantee acknowledges that Grantor intends to repair, renovate and alter the Structure ("Grantor's Initial Work") to preserve the physical integrity of the Structure and prevent further deterioration and consents to such work, subject to the terms of this Easement. Grantor hereby agrees that Grantor's Initial Work shall be performed in accordance with plans and specifications submitted by Grantor and approved by Grantee (as may be amended from time to time, "Grantor's Plans"); the approval of which shall be subject to the terms of this Easement.

E. Requests for Changes and Review of Proposed Work

Grantor shall notify Grantee promptly of any proposed work to the Façade requiring Grantee's prior approval pursuant to the terms of this Easement. Depending upon the nature of the proposed work, Grantee may request Grantor to furnish a written narrative, a sketch plan, or more detailed plans to enable Grantee to confer further with Grantor. Grantee shall notify Grantor within ten (10) business days following receipt of the initial requested information whether Grantee has sufficient information to complete its review of the proposed work and, if Grantee has sufficient information, whether the proposed work appears permissible and any areas of particular concern. At that time, Grantee shall also (i) furnish Grantor with a description of any additional information Grantee will reasonably require to approve the proposed work, if possible, or (ii) schedule a meeting with Grantor and its professional advisors to discuss and refine the scope of the proposed work to render it eligible for conceptual approval.

Once the scope of the proposed work is identified and Grantee has granted conceptual approval, Grantor shall submit to Grantee a set of plans and a work schedule in sufficient reasonable detail to enable Grantee to review the proposed work. Within twenty (20) business days of receipt of such plans ("Approval Period"), Grantee shall notify Grantor in writing whether it approves such plans, approves such plans with conditions, or disapproves such plans. If Grantee disapproves the plans or approves such plans with conditions, as the case may be, Grantee will identify with specificity its objections to the proposed plans. If the proposed plans

cannot be modified to make them acceptable, Grantee shall furnish Grantor with a written statement of the reasons for denying approval.

F. Standards for Review

In exercising its review authority hereunder concerning the Façade, Grantee shall look to the Baseline Data, the original designs for the Façade prepared by architect Henry Hoit and landscape architect George Kessler, Grantee's own reasonable general guidelines for review of alterations to historic resources located in Lee's Summit, Missouri, and Grantor's purpose in creating this instrument. Grantee agrees that any review of proposed changes shall take into account Grantor's budgetary constraints, code compliance, federal, state and local laws, this Easement and the TIF Plan, while maintaining those features of the Façade that make them unique.

All authority vested in the Grantee under this Easement shall be exercised by the City Director of Planning and Development, or his/her designee. If Grantor does not receive an approval of the plans for work for which Grantor has sought Grantee's consent as required under the terms of the Easement within the time period set forth herein, then the plans shall not be deemed approved, and Grantee and Grantor shall meet and negotiate in good faith to reach agreement on changes, modifications and additions to the plans for the work necessary to allow Grantee to approve such work within ten (10) days following the expiration of the Approval Period. If Grantee and Grantor are unable to reach agreement on the changes, modifications and additions to the plans for the work to enable Grantee to approve such work, then Grantor shall have the right to request that the City Council of Lee's Summit, Missouri schedule a hearing to consider the matter and to determine in its reasonable discretion whether Grantee's determination not to approve such work is reasonable. The City Council shall use the same standards as set forth in this Section during its review of the request.

G. Enforcement Rights of Grantee

In the event of a violation of any term, condition, covenant, or restriction contained in this Easement, upon prior reasonable written notice to Grantor, Grantee may institute a suit for one or more of the following: to compel the restoration of the Façade to the condition existing prior to the violation; or to enjoin by temporary or permanent injunction such violation. Grantee's failure to act shall not be deemed to be a waiver or a forfeiture of the right to enforce any term, condition, covenant, or purpose of this Easement in the future. If any legal action is undertaken by Grantee to enforce this Easement or to enjoin a violation, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection with such action.

H. Notice

All notices required by this Easement must be in writing. Notices may be given either by hand delivery, mail service or electronic mail. Mailed postal notice must be contained in an accurately addressed, sealed envelope, marked for delivery by first class registered or certified mail, with sufficient prepaid postage affixed and with return receipt requested.

Mailed notice to Grantor shall be addressed to Grantor as follows:

M-III Longview LLC
4220 Shawnee Mission Parkway, Suite 200 B
Fairway, KS 66205

or to such other address as Grantor may designate by notice.

Mailed notice to Grantee shall be addressed to:

City of Lee's Summit, Missouri
Development Services Department
220 SE Green Street
Lee's Summit, MO 64063

With a copy to:

David W. Bushek, Chief Counsel of Economic Development
Law Department
220 SE Green Street
Lee's Summit, MO 64063

or to such other address as Grantee may designate by notice.

Notice shall be deemed given and received as of the date of its hand or express mail delivery, or three days following the date of its mailing.

I. Assignment

Neither Grantor nor Grantee may assign its interest in this Easement without the prior written consent of the other party, which consent may be granted in the other party's reasonable discretion. Subject to the terms and provisions of Article VIII, Paragraph B. below, Grantee may hire or contract for advice and guidance regarding the administration and enforcement ("Grantee's Consultant") of this Easement, at no cost to Grantor except as may be specifically provided herein, which shall not be deemed an assignment and shall not require prior approval of Grantee. Notwithstanding the foregoing, such other party may not enforce the terms of this Easement, such right of enforcement being personal to Grantee, except as may otherwise be provided in this Easement. Any costs incurred by Grantee in connection with any such hiring or contracting shall be at the cost of Grantee, except that if such advice is sought in connection with an alleged violation of this Easement, and a violation by Grantor is established as provided in Article IV, Paragraph G. above, then the reasonable, actual, verified costs incurred by Grantee in connection with any such hiring or contracting shall be reimbursed to Grantee by Grantor.

Article V

CASUALTY DAMAGE OR DESTRUCTION; INSURANCE

A. Insurance

1. Property Insurance

Grantor shall keep the Structure insured against loss from the perils commonly insured under fire and extended coverage insurance policy in an amount equal to one hundred percent (100%) of the full replacement cost of the Structure. Such insurance shall (i) be issued by a company or companies reasonably acceptable to Grantee and include an Ordinance or Law Endorsement.

2. Issuance and Renewal of Insurance; Required Terms

Upon Grantee's acceptance of this instrument, and at least ten (10) days prior to each anniversary date (or if the policy is in force for a term longer than one calendar year, within ten (10) days before expiration of the term of the policy), Grantor shall cause its insurance carrier to furnish to Grantee certificates of insurance policies required hereunder.

B. Casualty Damage or Destruction

If the Structure is damaged or destroyed by fire, flood, windstorm, tornado, earth movement, or other casualty, Grantor shall notify Grantee in writing within ten (10) days of the damage or destruction. Grantor's notice shall include a statement of any emergency work which has been completed or commenced. In the event of any damage or destruction, Grantor shall make no exterior repairs or reconstruction of any type to the Façade without Grantee's prior written approval, other than temporary emergency work reasonably required to stabilize the Façade to prevent further damage, or to protect public safety.

C. Grantee Rights Upon Determination that Reconstruction or Restoration is Impracticable

If Grantor determines that restoration or reconstruction of the Structure is impracticable within the limits of available insurance proceeds and other funds reasonably available to Grantor, including funds advanced by Grantee, if any, Grantor may demolish, raze or remove the Structure, or the damaged elements thereof.

D. Review after Casualty Damage or Destruction

Unless Grantor shall determine that the restoration or reconstruction of the Structure and the Façade is impracticable (in accordance with the provisions of Article V.C. above, Grantor shall establish a schedule for completing the restoration or reconstruction work for the Structure and the Façade in accordance with plans and specifications to be submitted to Grantee for review and approval as set forth in this Easement, and promptly following such approval by Grantee, Grantor shall proceed to restore or reconstruct the Structure and the Façade.

Article VI

AMENDMENT, CONDEMNATION AND EXTINGUISHMENT

A. Amendment

Grantor and Grantee recognize that circumstances could arise that might justify the modification of certain of the restrictions contained in this Easement. To this end, Grantee shall consider in good faith any amendments to this Easement requested by Grantor provided that they are not inconsistent with the basic purpose of this Easement to protect the Façade. This Easement may be amended in the same manner as other easements under the laws of the State of Missouri.

B. Condemnation

If all or any part of the Property is threatened to be taken under the power of eminent domain by public, corporate or other authority other than Grantee, or any agency, department or division thereof, or otherwise acquired by such authority through a purchase in lieu of such a condemnation, Grantor shall defend against the condemnation to recover the full value of the Property, together with all incidental and direct damages recoverable under applicable law. Grantor and Grantee shall first satisfy prior claims against the Property and any net expenses reasonably incurred by Grantor and Grantee in connection with the condemnation. Thereafter, Grantor and Grantee shall share the balance of the condemnation proceeds in accordance with their interests in the Property as may be reasonably determined by the parties, or by a court of competent jurisdiction. If Grantor fails to defend against the condemnation to recover the full value of the Property, Grantee shall have the right to institute such defense.

C. Extinguishment

Grantor and Grantee recognize that circumstances may arise which might make impossible the continued ownership or use of the Property in a manner consistent with the purposes of this Easement, in which event it might become desirable to extinguish this Easement. In the event the parties mutually determine that extinguishment is appropriate and desirable, they may mutually agree to such extinguishment by appropriate action which is in recordable form, or petition a court of competent jurisdiction to extinguish the easement by the parties.

Article VII

MORTGAGEE SUBORDINATION AND RIGHTS OF MORTGAGE LENDERS

A. Subordination of Mortgages

Grantor and Grantee agree that all mortgages and rights in the Property of all mortgagees are subject to and subordinate at all times to this Easement and the rights of Grantee to enforce this Easement. Grantor hereby warrants and represents that the Property is not currently subject to any mortgages or other liens or, to the extent any such mortgages or other liens exists, Grantor will deliver to Grantee, concurrently with the execution of this Easement, an instrument, acceptable in form and content to Grantee, pursuant to which the holder of any such mortgage or

lien has agreed that all of its rights, titles and interests in the Property are subordinate to this Easement.

B. Rights of Mortgagees

(1) Proceeds on Condemnation or Casualty Loss

Notwithstanding any mortgage lender's relative priority in relation to this Easement, if a mortgage grants to a mortgagee the right to receive the proceeds of condemnation proceedings arising from any exercise of the power of eminent domain or the right to receive insurance proceeds as a result of any insured casualty occurring on the Property, the mortgagee shall have a prior claim to any such proceeds and shall be entitled to receive same in preference to Grantee until the mortgage has been paid off or discharged. This partial subordination of Grantee's relative priority in favor of a mortgage lender's competing claims to direct the application of condemnation or insurance proceeds shall only apply if the mortgage creating such mortgagee's right is recorded before the first discussion of the possibility of condemnation or eminent domain is published in the local news media, in the case of a condemnation, or before occurrence of the insured occurrence in the case of an insured loss.

(2) Mortgage Obligations Under Easement

Until a mortgagee or purchaser at foreclosure obtains ownership of the Property following foreclosure of its mortgage or deed in lieu of foreclosure, the mortgagee or purchaser shall have no obligation, debt or liability under this Easement; provided, however, that if at any time such mortgagee or purchaser shall operate the Property during the period of its ownership, it shall be obligated to maintain the Property, including without limitation the Façade, in accordance with the terms of this Easement.

(3) Extinguishment

Nothing contained herein shall give any mortgagee the right to extinguish this instrument, whether by foreclosure, deed in lieu of foreclosure, or otherwise.

Article VIII

THIRD PARTY RIGHTS NEGATED

A. Public Access Prohibited

This Easement shall not be construed to include a grant to the public of any right to enter the Property for any purpose.

B. No Third Party Enforcement Rights

Grantor and Grantee understand that strangers to this Easement may, by virtue of the grant, claim standing to influence Grantee's administration of its rights hereunder. Grantor and Grantee agree, to the maximum extent permissible by law, to deny standing to any persons, nonprofit institutions, or governmental entities to intervene, whether by action at law or equity,

in Grantee's interpretation, administration, and enforcement of its rights, burdens and benefits under this Easement. Nothing contained herein is intended to create any beneficial interest in any party that is not a signatory to this Easement. Under no circumstances does Grantor intend to create, nor does it create, any rights in third parties to intervene in Grantee's exercise of the discretionary powers entrusted to Grantee hereunder.

Grantor and Grantee understand that Grantee has the right to appoint a neutral, unrelated person or entity as a "third party enforcer" to ensure that Grantor complies with the terms of this Easement.

Article IX

DEFINITIONS AND MISCELLANEOUS

A. Use of Pronouns

The terms "Grantor" and "Grantee", wherever used herein, and any pronouns used in place thereof, shall mean and include the above-named Grantor and its successors and assigns and the above-named Grantee and its successors and assigns approved by Grantor.

B. Severability

If any provision of this Easement, or the applicability thereof to any person or circumstance, are found to be invalid, the remainder of the provisions of this Easement and the application of such provisions shall remain in full force and effect.

C. Binding Effect

The restrictions and covenants contained herein shall be deemed to run with the land in perpetuity as covenants at law and equitable servitudes, and extend to and be binding on Grantor and Grantee and their respective heirs, administrators, devisees, successors, and assigns in perpetuity.

D. Non-Waiver

The failure of Grantee to exercise any right or remedy granted under this instrument with respect to any particular violation shall not have the effect of waiving or limiting the exercise of such right or remedy with respect to the identical (or similar) type of violation at any subsequent time or the effect of waiving or limiting the exercise of any other right or remedy.

E. Governing Law

This Easement and the rights and obligations of the parties hereunder shall be governed by the laws of the State of Missouri.

F. Recording and Effective Date

Grantee shall do and perform at Grantor's expense all acts necessary to the prompt recording of this Easement in the land records of Jackson County, Missouri. Grantor and Grantee intend that the "Effective Date" of this Easement shall be the date this instrument is accepted by Grantee, even though such date is before the date this instrument is recorded among the land records of Jackson County, Missouri.

G. Entire Agreement

This Easement reflects the entire agreement of Grantor and Grantee. Any prior or contemporaneous correspondence, understandings, agreements and representations are null and void upon execution of this Easement unless the same are identified and incorporated herein by reference.

TO HAVE AND TO HOLD the said Easement, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining, unto and to the proper use and benefit of the said City of Lee's Summit, Missouri its successors and assigns, in fee simple.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, Grantor and Grantee (who joins in this deed to evidence its acceptance of the burdens and undertakings imposed hereunder) have executed this Easement as of the day and year first above written.

GRANTOR:

M-III LONGVIEW LLC

By: Platform Investments, LLC, its manager

By: Platform Ventures, LLC, its manager

Witness:

Kate Lester

By: Cory Walker

Name: Cory Walker

Title: Senior Vice President

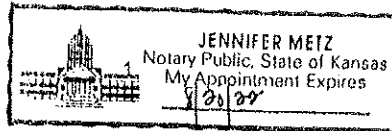
COUNTY OF JOHNSON)
STATE OF KANSAS), ss:

I hereby certify that on this 31st day of October, 2018, before me, the undersigned officer, a notary Public in and for the County and State aforesaid, personally appeared Cory Walker, as Senior Vice President of Platform Ventures, LLC, manager of Platform Investments, LLC, manager of M-III Longview LLC, known to me or satisfactorily proven to be the person whose name is subscribed to the within deed and acknowledged that he executed the same on behalf of said corporation for the purposes therein contained, and further acknowledged that said Easement is its free act and deed or said corporation.

In Witness Whereof, I have set my hand and official seal this 31st day of October, 2018.

Jennifer Metz
Notary Public

My commission expires: 8/20/22



GRANTEE:

CITY OF LEE'S SUMMIT, MISSOURI

(Corporate Seal)

Attest:

Trisha Fowler Arcuri
Trisha Fowler Arcuri, City Clerk

William A. Baird
William A. Baird, Mayor

Approved As To Form:

Brian Head
Brian Head, City Attorney

COUNTY OF JACKSON)
STATE OF MISSOURI), ss:

BE IT REMEMBERED, that on this 2nd day of Nov October, 2018, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came William A. Baird, the Mayor 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 is 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 person duly acknowledged the execution of the same to be the act and deed of said City.

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

Donna L. Lee
Notary Public

My commission expires: 02/09/2021



DONNA LEE
My Commission Expires
February 9, 2021
Jackson County
Commission #1758841

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

TOWER PARK COMMERCIAL PHASE 1 – TRACT B

Exhibit B

MAP SHOWING LOCATION OF PROPERTY

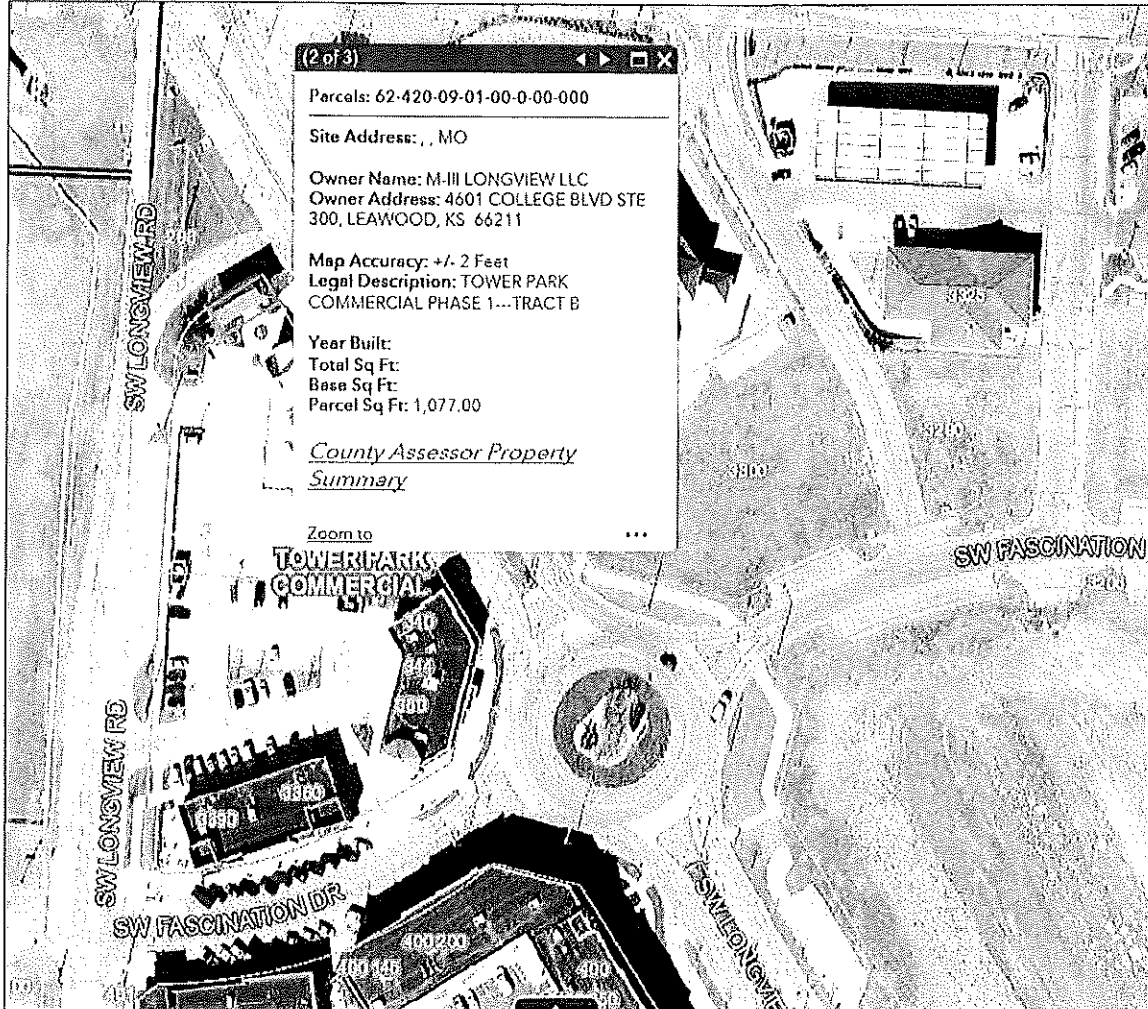


Exhibit C
BASELINE DATA

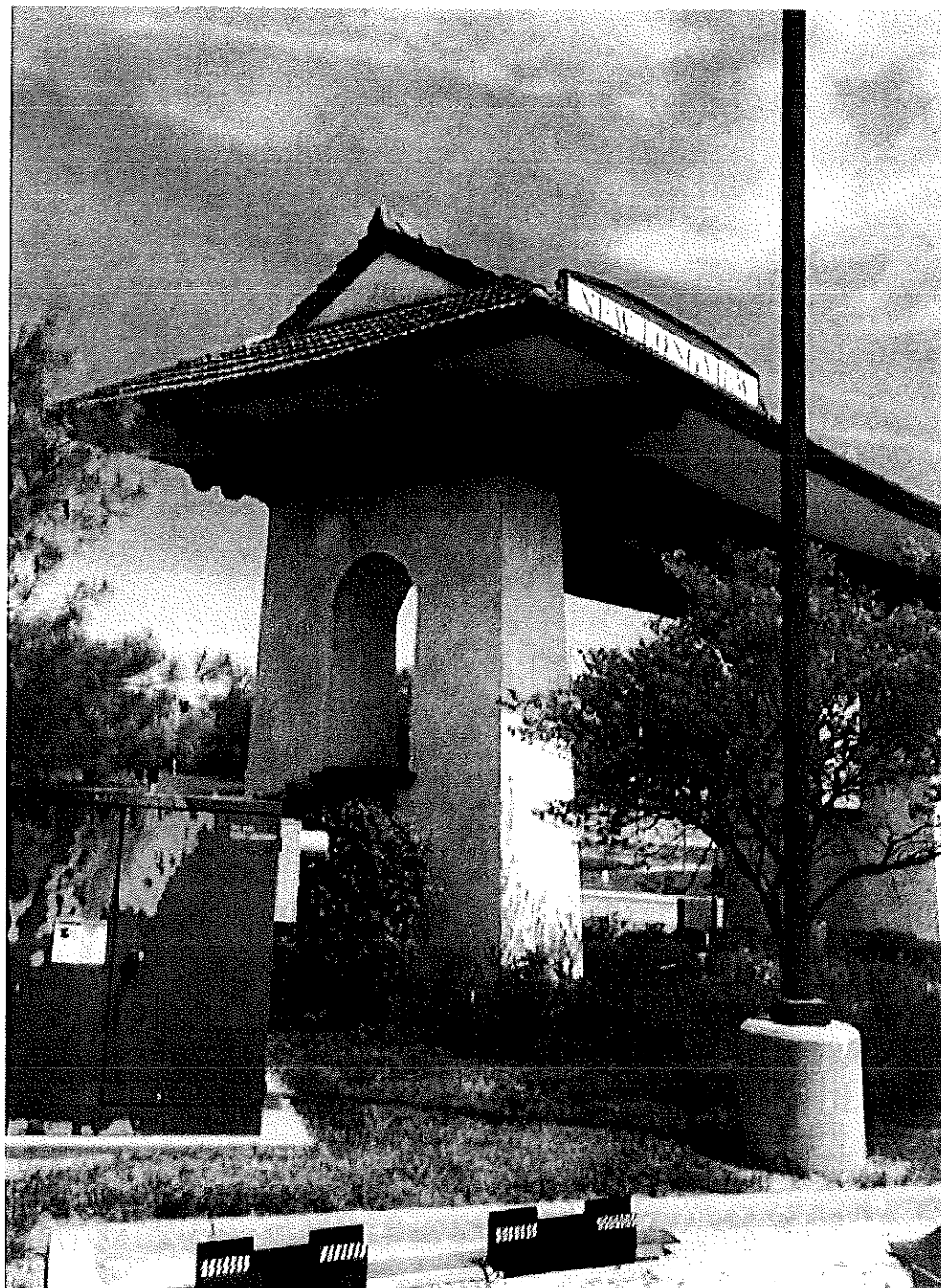










EXHIBIT I

**DECLARATION OF EASEMENTS, COVENANTS, ASSESSMENTS AND RESTRICTIONS OF
FASCINATION AT NEW LONGVIEW**

[Attached]



ELECTRONICALLY RECORDED
JACKSON COUNTY, MISSOURI
05/30/2018 01:07:57 PM
REST FEE: \$ 189.00 57 Pages

INSTRUMENT NUMBER:
2018E0047118

ASSURED QUALITY TITLE CO.

Ac111647

**DECLARATION OF EASEMENTS, COVENANTS,
ASSESSMENTS AND RESTRICTIONS
OF FASCINATION AT NEW LONGVIEW**

THIS DECLARATION OF EASEMENTS, COVENANTS, ASSESSMENTS AND RESTRICTIONS FOR FASCINATION AT NEW LONGVIEW (this "**Declaration**") is made and entered into as of this 29th day of May, 2018 by **M-III Longview LLC**, a Delaware limited liability company ("**Declarant**"), Grantor/Grantee, 4220 Shawnee Mission Pkwy., Suite 200B, Fairway, KS 66205.

RECITALS

A. Declarant is the owner of that certain real property located in the City of Lee's Summit, Jackson County, Missouri and legally described on **Exhibit A** attached hereto and by this reference made a part hereof (the "**Property**").

ON Page 37

B. Declarant desires to develop the Property into a mixed-use development collectively comprised of the "Retail Center," which is legally described on **Exhibit A-1** attached hereto and by this reference made a part hereof, and the "Outparcels," which are legally described on **Exhibit A-2** attached hereto and by this reference made a part hereof, each as generally depicted on the Site Plan attached hereto as **Exhibit B** and by this reference made a part hereof, to be named "Fascination at New Longview."

ON Page 40

ON Page 38 ON Page 39

C. Declarant desires to create and impose certain easements, covenants, assessments and restrictions with respect to the Property for the reciprocal benefit of the Property and the present and future owners and occupants of the Property, or any part thereof, as herein provided.

NOW, THEREFORE, Declarant hereby declares that the Property and all parts thereof shall be held, transferred, sold, conveyed, mortgaged, leased, occupied and used subject to the terms, provisions, covenants, conditions, restrictions, assessments and easements set forth in this Declaration, and hereby further declares as follows:

1. **Definitions.** Capitalized terms used in this Declaration shall have the following definitions:

(a) **“Activity Plaza”** shall mean the area shown as the “Activity Plaza” on the Site Plan.

(b) **“Association”** means a Missouri not-for-profit corporation to be duly formed to serve as the Owners’ association for the Property.

(c) **“Board”** means the Board of Directors of the Association.

(d) **“Building”** means any building or other enclosed structure located on a Parcel, including appurtenant canopies, loading docks, truck ramps and other outward extensions.

(e) **“Building Envelope Areas”** means the areas of the Property and each Parcel thereon on which Buildings are permitted to be located, as shown on the Parcel Site Plan, and such other areas of the Property as the Declarant shall from time to time designate as being Building Envelope Areas. The Declarant shall have the right, in its sole discretion and without the joinder of any other Owner, from time to time to reconfigure and designate in writing what are and are not Building Envelope Areas and to change Common Areas to Building Envelope Areas, and Building Envelope Areas to Common Areas, provided that areas occupied by then existing Buildings and areas already specifically approved by Declarant for a proposed Building may not be changed to Common Areas without the prior written consent of the applicable Owner.

(f) **“Business Day”** means a day or days which is/are neither a Saturday, Sunday, nor holiday observed by the United States Postal Service.

(g) **“CAM Paying Parcel”** or **“CAM Paying Outparcel”** (as the context requires) means any Parcel: (i) upon which any Building has been issued a certificate of occupancy (permanent or temporary) by the City, or (ii) upon which no Building has been issued a certificate of occupancy (permanent or temporary) by the City after the first six (6) months following conveyance by the Declarant to the first subsequent owner thereof.

(h) **“City”** means the City of Lee’s Summit, Missouri.

(i) **“Common Areas”** means all portions of the Property, exclusive of Building Envelope Areas, including, without limitation, the Common Area Tracts, parking areas (including the Parking Garage, if constructed and available for the use of all Owners and their respective Permittees), private streets, driveways, curb cuts, access roads, drive aisles, sidewalks, landscaped areas, entry features, storm water detention and retention areas, drainage facilities, BMP’s, parking lot and private street lighting, perimeter retaining walls, and other common use areas within the Property, whether or not shown on the Site Plan; provided, however, Declarant shall have the right, in its sole discretion and without the joinder of any other Owner, from time to time to designate in writing what are and are not Common Areas and to change Common Areas to Building Envelope Areas, and Building Envelope Areas to Common Areas, provided that areas occupied by then existing Buildings and areas already specifically approved by Declarant for a proposed Building

may not be changed to Common Areas without the prior written consent of the applicable Owner. Subject to Section 8 hereof, Common Areas shall include Building Envelope Areas on each Parcel prior to the commencement of construction of a Building on the Parcel.

(j) **“Common Area Tracts”** means all Common Areas that are separately platted as tracts and not intended for construction of a Building thereon. The Common Area Tracts are initially contemplated to include the Activity Plaza and Shared Access Drive. The Declarant shall have the right, in its sole discretion and without the joinder of any other Owner, from time to time to add Common Area Tracts or convert Common Area Tracts to Common Area or Building Area, provided that such areas as so converted shall then be subject to the provisions of this Declaration applicable thereto.

(k) **“Customer Parking Area”** means that part of the Common Area designated as “Customer Parking” as shown on the Site Plan, the location of which may be changed from time to time by Declarant in its reasonable discretion.

(l) **“Declarant”** means M-III Longview LLC, a Delaware limited liability company, or such person or entity as Declarant may expressly designate as being the successor Declarant by written notice to all Owners.

(m) **“Declaration”** means this Declaration of Easements, Covenants, Assessments and Restrictions for Fascination at New Longview and all Exhibits attached hereto, as amended or modified from time to time.

(n) **“Defaulting Owner”** shall have the meaning provided in Section 25 hereof.

(o) **“Design Criteria”** means Declarant’s design criteria for the Property, which may be specified, revised or amended from time to time by Declarant in its reasonable discretion.

(p) **“Detention Area”** means any stormwater detention or retention areas within a Common Area Tract, as required by the City, and all pipes, ponds, structures, and plantings therein.

(q) **“Employee Parking Area”** means that area (if any) designated as “Employee Parking” as shown on the Site Plan, the location of which may be changed from time to time by Declarant in its reasonable discretion by notice to the Owners and Occupants.

(r) **“Governmental Authorities”** means any federal, state, county, city or local governmental or quasi-governmental authorities, entity or body (or any departmental agency thereof).

(s) **“Governmental Requirements”** means all applicable laws, statutes, ordinances, codes, rules, regulations, orders and applicable judicial decisions or decrees, as presently existing and as hereafter amended of any Governmental Authorities.

(t) **“No Build Area”** means those portions (if any) of the Parcels not within the area designated as the “Building Envelope Area” detailed on the Parcel Site Plan, which No Build Areas

have been designated by Declarant as the areas upon which no buildings or similar above-ground structures shall be constructed. Declarant may change the No Build Area on a Parcel with the consent of the Owner of the Parcel (which consent shall not be unreasonably conditioned, withheld or delayed) provided such change does not create a material obstruction, affect access to the Parcel or any other Parcel, or unreasonably modify the traffic pattern to, from or within the Property.

- (u) **“Non-Defaulting Party”** shall have the meaning provided in Section 25 hereof.
- (v) **“Occupant”** means any Person (including, without limitation, an Owner) from time to time entitled to the use and occupancy of any portion of a Building on the Property under an ownership right or under any lease, sublease, license, concession, or other similar agreement.
- (w) **“Offices”** means a space within a Building which provides services to consumers or customers, including but not limited to financial institutions, real estate brokerages, stock brokerage and title companies, travel and insurance agencies, and medical, dental and legal clinics as well as an office used for general office purposes.
- (x) **“Outside Sales Area”** means any area used by a Permittee for temporary or permanent sales, displays, customer service or seating and/or storage purposes, which areas are located outside of the structure of such Permittee’s store or restaurant.
- (y) **“Outparcel(s)”** shall mean and refer to, individually and collectively, the Parcels shown as Lots 7, 43, 44, 52, 53 and 54 on the Site Plan and legally described on Exhibit A-2, and comprising a portion of the Property.
- (z) **“Outparcel CAM Expense”** shall have the meaning provided in Section 17 hereof.
- (aa) **“Owner”** means the record owner or owners of any Parcel, including Declarant, and any person or entity that shall subsequently own all or any portion of said Parcel.
- (bb) **“Parcel”** or **“Parcels”** means, as the context requires, any tract or parcel within the Property (including both the Outparcels and Retail Center), or lots as platted or subsequently platted or replatted, upon which a Building is or may be located.
- (cc) **“Parcel Site Plan”** means the detailed site plan of each Parcel depicting locations of buildings, parking lots, trees, landscaping, utilities, Building Envelope Area, No Build Areas, and other design features, which has been approved in writing by Declarant.
- (dd) **“Parking Areas”** shall include the Customer Parking Area, the Employee Parking Areas and all other parking lot areas on the Property, as shown on the Parcel Site Plans.
- (ee) **“Parking Garage”** shall mean any elevated parking structure (whether consisting of one or more levels above grade) constructed in the Retail Center. In the event any Parking Garage is open and available for use by all Owners and their Respective Permittees in the Retail Center, such Parking Garage shall constitute a Common Area and Parking Area for purposes of this Declaration, and the cost to maintain such Parking Garage as provided herein shall constitute

a Retail Center CAM Expense. In the event any Parking Garage is constructed solely for the use of the Owner of the Parcel on which such Parking Garage is constructed or for the use of less than all Owner's in the Retail Center, the cost to maintain the same shall be borne solely by such Owner or Owners entitled to use the Parking Garage and shall not constitute a Retail Center CAM Expense with respect to any Owner(s) not entitled to use the Parking Garage.

(ff) **"Perimeter Common Areas"** shall mean the Common Areas located within the areas shown as "Perimeter Common Areas" on the Site Plan (including any areas therein that are outside of the boundary of the Property, but required to be maintained by Declaration pursuant to an agreement with any governmental or other entity). The Declarant shall have the right, in its sole discretion and without the joinder of any other Owner, from time to time to reconfigure and designate in writing what are and are not Perimeter Common Areas, provided that such Perimeter Common Areas serve the Property or any portion thereof.

(gg) **"Permittees"** means all Occupants and the owners, officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of such Occupants insofar as their activities relate to the intended development, use and occupancy of the Property. Persons engaged in civic, public, charitable or political activities within the Property (except as part of their regular day-to-day activities as an Occupant) shall not be considered Permittees, and any person engaging in the activities set forth below shall not be considered Permittees:

- (i) Exhibiting any placard, sign or notice.
- (ii) Distributing any circular, handbill, placard or booklet.
- (iii) Soliciting memberships or contributions for private, civic, public charitable or political purposes.
- (iv) Parading, picketing or demonstrating.
- (v) Failing to follow Rules and Regulations established by the Declarant or the Association relating to the use and operation of the Retail Center.

(hh) **"Person"** means any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or Governmental Authority.

(ii) **"Property"** means the real property described on Exhibits A attached hereto and incorporated by reference herein, collectively comprised of the Retail Center and Outparcels.

(jj) **"Proportionate Share"** shall have the meaning provided in Section 17 hereof.

(kk) **"Reconciliation"** shall have the meaning provided in Section 17 hereof.

(ll) “**Recording Office**” means the office of the Register of Deeds of Jackson County, Missouri or such other office where documents are to be recorded for purposes of giving official public notice with respect to real property located in Jackson County, Missouri.

(mm) “**Restaurant**” means any operation or business which requires a governmental permit, license and/or authorization to prepare and/or serve food for either on or off-site consumption; provided, however, notwithstanding anything contained herein to the contrary, neither a grocery store or similar operation, a health foods store, a convenience store, nor a concession operation for a movie theatre shall be deemed a Restaurant.

(nn) “**Retail Center**” shall mean and refer to the area shown as the “Retail Center” on the Site Plan and legally described on Exhibit A-1 and comprising a portion of the Property.

(oo) “**Retail Center CAM Expense**” shall have the meaning provided in Section 17 hereof.

(pp) “**Rules and Regulations**” shall have the meaning set forth in Section 35(g) hereof.

(qq) “**Shared Access Drive**” shall mean the common access drive shown as the “Shared Access Drive” on the Site Plan.

(rr) “**Site Plan**” means the Fascination at New Longview Site Plan attached hereto as Exhibit B. Declarant reserves the right, in its reasonable discretion, to modify the Site Plan from time to time with the prior written consent of each Owner of a Parcel which may be directly and adversely affected by such modification (such consent not to be unreasonably withheld, conditioned or delayed).

(ss) “**Turnover Date**” means the earlier of: (i) the date all of the Buildings to be constructed on all of the Parcels have received permanent certificates of occupancy, or (ii) the date the Declarant, in its discretion, declares as being the Turnover Date under this Declaration; *provided, however*, the Declarant shall have the right to declare the Turnover Date for certain (but not all) purposes under this Declaration at any time.

2. **Conversion of Building Envelope Areas to Common Areas**. Those portions of each Parcel designated by Declarant as Building Envelope Areas under the terms of this Declaration (excluding any vacant Parcel) which are not actually occupied by buildings or permanent improvements as from time to time are constructed by the Owner of such Parcel shall automatically convert to and become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided herein. The Declarant and the applicable Owner may designate those areas outside of the Building Envelope Area to be maintained as Common Areas hereunder and those areas to be maintained by an Owner by agreement in writing so long as such designation does not increase the amount of any CAM Expense allocated to another Owner.

3. **Grant of Easements**. Subject to the provisions of this Declaration, Declarant hereby grants and conveys the following easements:

(a) Outparcels. Declarant, for itself, and its successors and assigns, hereby grants the following easements for the benefit of the Outparcels and Common Area Tracts contiguous to any of the Outparcels, and the Owners and Permittees of each:

(i) Access. A perpetual, nonexclusive easement in, to, over and across the Common Areas on the Outparcels, including without limitation the Shared Access Drive, for the purpose of vehicular and pedestrian ingress and egress over established and designated roads, driveways, parking lot aisles, pedestrian walkways and circulation elements between the public streets and perimeter roads and access ways and each Outparcel and Common Area Tract located thereon.

(ii) Drainage. A perpetual, nonexclusive easement in, to, over and through the drainage patterns and systems as are established from time to time by Declarant within the Common Areas on the Outparcels, for reasonable surface drainage purposes. Declarant hereby declares, creates and establishes a perpetual, non-exclusive right-of-way and easement to dispose of storm water into each Detention Area, to and through the point of entry into right-of-way or drainage easements of the City or to any subsequent location, taking into consideration reasonable storm drainage capacities. Declarant shall have the right, at its sole cost and expense, to designate and change the location or nature of any Detention Area, so long as Declarant provides access to and drainage facilities of an equal capacity and such modification is approved by the applicable Governmental Authorities.

(iii) Retaining Wall. A perpetual, nonexclusive easement in, over and through the perimeter of the Outparcels for one or more retaining walls, as generally depicted on the Site Plan or Parcel Site Plan, for the construction, maintenance, repair and replacement of any retaining wall. Declarant shall have the right to change, or authorize a change in, the location of any retaining wall in connection with the construction of improvements on the Outparcels. All replacement, modification, relocation, repair and maintenance of such retaining wall shall be performed in such a manner as does not unreasonably interfere with the normal and usual operation of the affected Outparcel(s), its customers, employees and invitees, customer and employee parking or the operation of the Outparcels for their permitted use.

(iv) Utilities. Such perpetual, non-exclusive easements through, under, across and on the Common Areas on each Outparcel, as are reasonably necessary, without unreasonably interfering with the Owner's use of its Outparcel, to provide rights-of-way for utility services to each Owner's respective Outparcel and access to the gas, electrical, communications, water, storm and sanitary sewer lines and systems and other utilities for the benefit of each Owner's Outparcel, and right-of-way for lines connecting therewith, provided that the location of utilities and any change in the location of utilities are subject to the written approval of the Declarant. Declarant acknowledges that the location of some now or hereafter existing utility facilities and easements will be changed in connection with the construction of improvements on the Outparcels, subject to the requirements set forth below. Such utility easements shall include the right to replace, modify, relocate, repair and maintain such utility lines and facilities as may be reasonably necessary to enjoy the

benefit of the utility easements granted by this Declaration, but nothing contained in this sentence shall in any way modify or limit any party's obligations set forth in this Declaration. All replacement, modification, relocation, repair and maintenance of such utility lines shall be performed in such a manner as does not unreasonably interfere with the normal and usual operation of the affected party's tenants, customers, employees and invitees, customer and employee parking or the operation of each Outparcel for its permitted use. Any party making such replacements or repairs shall promptly restore all paving, landscaping and any other improvements disturbed thereby to its former condition as near as possible at its sole cost and expense. Nothing herein contained shall restrict or prevent Declarant from granting to any public utility, public body or other public authority, or to any third party, easements over or under any Outparcel then owned by Declarant, for public utility lines and facilities, water, storm and sanitary sewer lines and conduits and facilities therefor, or for drainage or slope purposes, or for other utility-related purposes so long as such easements do not adversely affect the parking area in, or the use of, any other Outparcel.

(b) Retail Center. Declarant, for itself, and its successors and assigns, hereby grants the following easements for the benefit of the Retail Center and Common Area Tracts therein or immediately contiguous thereto, and the Owners and Permittees of each:

(i) Parking. A perpetual, nonexclusive easement in, to, over and across the Parking Areas in the Retail Center for the purpose of parking vehicles of Permittees on the Parking Areas, without charge to Permittees for such parking; provided, however, that such easement shall be limited to purposes connected with or incidental to the use of the Parking Areas in the Retail Center for commercial, retail, restaurant, office and shopping purposes. Each Occupant shall cause its employees to park in the Employee Parking Area (as such area [if any] may be designated by Declarant from time to time). In the event that any such Occupant shall fail to cause an employee to park in the Employee Parking Area, such Occupant may be charged Twenty and No/100 Dollars (\$20.00) for each violation of this covenant. Declarant in its sole reasonable discretion may adjust the amount to be charged to reflect inflation and any change in circumstance by notice in writing to the Owners.

(ii) Access. A perpetual, nonexclusive easement in, to, over and across the Common Areas in the Retail Center for the purpose of vehicular and pedestrian ingress and egress over established and designated roads, driveways, parking lot aisles, pedestrian walkways and circulation elements between the public streets and perimeter roads and access ways and each Parcel and Common Area Tract in the Retail Center.

(iii) Drainage. A perpetual, nonexclusive easement in, to, over and through the drainage patterns and systems as are established from time to time by Declarant within the Common Areas in the Retail Center, for reasonable surface drainage purposes. Declarant hereby declares, creates and establishes a perpetual, non-exclusive right-of-way and easement to dispose of storm water into each Detention Area, to and through the point of entry into right-of-way or drainage easements of the City or to any subsequent location, taking into consideration reasonable storm drainage capacities. Declarant shall have the

right, at its sole cost and expense, to designate and change the location or nature of any Detention Area, so long as Declarant provides access to and drainage facilities of an equal capacity and such modification is approved by the applicable Governmental Authorities.

(iv) Retaining Wall. A perpetual, nonexclusive easement in, over and through the perimeter of the Retail Center for one or more retaining walls, as generally depicted on the Site Plan or Parcel Site Plan, for the construction, maintenance, repair and replacement of any retaining wall. Declarant shall have the right to change, or authorize a change in, the location of any retaining wall in connection with the construction of improvements on the Property. All replacement, modification, relocation, repair and maintenance of such retaining wall shall be performed in such a manner as does not unreasonably interfere with the normal and usual operation of the affected Parcel(s) in the Retail Center, its customers, employees and invitees, customer and employee parking or the operation of the Parcels for their permitted use.

(v) Utilities. Such perpetual, non-exclusive easements through, under, across and on the Common Areas on each Parcel in the Retail Center, as are reasonably necessary, without unreasonably interfering with the Owner's use of its Parcel, to provide rights-of-way for utility services to each Owner's respective Parcel and access to the gas, electrical, communications, water, storm and sanitary sewer lines and systems and other utilities for the benefit of each Owner's Parcel, and right-of-way for lines connecting therewith, provided that the location of utilities and any change in the location of utilities are subject to the written approval of the Declarant. Declarant acknowledges that the location of some now or hereafter existing utility facilities and easements will be changed in connection with the construction of improvements on the Retail Center and each Parcel therein, subject to the requirements set forth below. Such utility easements shall include the right to replace, modify, relocate, repair and maintain such utility lines and facilities as may be reasonably necessary to enjoy the benefit of the utility easements granted by this Declaration, but nothing contained in this sentence shall in any way modify or limit any party's obligations set forth in this Declaration. All replacement, modification, relocation, repair and maintenance of such utility lines shall be performed in such a manner as does not unreasonably interfere with the normal and usual operation of the affected party's tenants, customers, employees and invitees, customer and employee parking or the operation of each Parcel for its permitted use. Any party making such replacements or repairs shall promptly restore all paving, landscaping and any other improvements disturbed thereby to its former condition as near as possible at its sole cost and expense. Nothing herein contained shall restrict or prevent Declarant from granting to any public utility, public body or other public authority, or to any third party, easements over or under any Parcel then owned by Declarant, for public utility lines and facilities, water, storm and sanitary sewer lines and conduits and facilities therefor, or for drainage or slope purposes, or for other utility-related purposes so long as such easements do not adversely affect the parking area in, or the use of, any other Parcel in the Retail Center.

(c) Reservation. Declarant reserves to itself and the Association (upon the formation thereof) the non-exclusive right, privilege and easement to use and go upon the Common Areas on

the Property (including Common Areas on the Parcels) for the respective purposes for which the Common Areas are designed and to perform Declaration's (and the Association's) obligations under this Declaration, without payment of any fee or other charge being made and without the consent or approval of any Owner, Occupant or Permittee.

4. **Prohibition Against Owners Granting Certain Easements.** Without Declarant's express written consent, no Owner (other than Declarant) or Occupant shall grant an easement or easements of the type set forth in this Declaration for the benefit of any property other than the Parcels.

5. **Construction.**

(a) All construction activities performed or authorized by Declarant or by an Owner within the Property shall be performed in compliance with all Governmental Requirements and all Rules and Regulations. All construction shall utilize new materials and shall be performed in a good, safe, workmanlike manner and in accordance with the plans and specifications approved by Declarant.

(b) Any construction activities (including the staging thereof) performed or authorized by Declarant or an Owner shall not:

(i) Cause any unreasonable increase in the cost of constructing improvements upon another Owner's Parcel.

(ii) Unreasonably interfere with construction work being performed on any other part of the Property.

(iii) Unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Property by any other Owner or its Permittees.

(iv) Cause any Building located on another Parcel to be in violation of any Governmental Requirements.

(c) Declarant may from time to time designate in the Rules and Regulations particular rules and regulations pertaining to construction (including, without limitation, construction entrances and staging areas) and each Owner and Occupant shall abide by such Rules and Regulations, provided Declarant provides reasonable written notice of such Rules and Regulations to all Owners and provided further that such Rules and Regulations are not discriminatory.

6. **Building Improvements.**

(a) Except as may be otherwise expressly agreed upon in writing by Declarant and the Owner of the Parcel with respect to items to be constructed by Declarant, at its expense, on a Parcel, each Owner, at its expense, shall construct and install all improvements to be constructed and installed on the Owner's Parcel, including, without limitation, Buildings, Parking Areas,

parking lot lighting, irrigation, landscaping, and water, electrical, and other utilities to service the Building(s) and Common Areas on the Parcel.

(b) Building(s) shall only be located within the Building Envelope Areas designated on the Parcel Site Plan and at such location as is approved by Declarant in writing. Each Owner of a Parcel within the Property (excepting Declarant) shall promptly commence construction of any Building on its Parcel after conveyance of such Parcel from Declarant to the Owner, and shall diligently complete such Building(s) within a reasonable time following commencement of construction.

(c) In the event that the Owner shall fail to commence on-site construction within one (1) year after the acquisition of the Parcel from Declarant, Declarant shall have the option exercisable at any time thereafter until the Owner actually commences on-site construction, to purchase the Parcel at the original purchase price of the Parcel sold by the Declarant. This option shall be exercised by Declarant by giving written notice to the Owner and the closing shall occur within thirty (30) days after the date thereof. Conveyance of the Parcel to Declarant shall be by special warranty deed, free and clear of all mortgages, mechanic's liens, judgment liens and similar monetary liens. Real property taxes and installments of special assessments shall be pro-rated (on a per diem basis) between buyer and seller as of the date of such closing.

(d) No improvements shall be constructed, erected, expanded, or altered on the Parcels until the plans and specifications for same (including site layout, exterior buildings materials and colors, irrigation, utility layout, and landscaping) have been first submitted to and approved in writing by Declarant. All buildings shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible with the other Buildings on the Property and shall in all respects be approved in writing by Declarant. No building walls or footings shall encroach from one Parcel onto another Parcel without prior written approval from Declarant and the Owner of the other Parcel. The design and construction of all Buildings and other improvements on the Property shall be first class quality. Each Parcel Owner agrees to cause its architect to work in good faith with Declarant and its designated architect so that the Buildings to be erected and constructed will have an overall cohesive and related architectural continuity and will be in harmony with the balance of the Property improvements.

(e) Preliminary civil engineering and architectural plans and specifications for all proposed improvements shall first be submitted to the Declarant in triplicate and shall include:

- (i) a statement regarding the proposed use of the improvements;
- (ii) a grading plan showing existing contour grades (in 1-foot contour intervals), finished spot grades, building finished floor elevations, and the location of all proposed and existing improvements. Existing and finished grades shall be shown at Parcel corners and at corners of proposed improvements. Lot drainage provisions, including any storm sewer locations, shall be indicated as well as cut and fill details if any changes are to occur in the finished lot contour at any exterior boundary of the Parcel. All grading and drainage

provisions shall fully comply with applicable Governmental Requirements as may be in effect from time to time;

(iii) a site plan showing the location of all existing and proposed improvements, including, without limitation, parking areas, parking lot lighting, trash receptacle locations, fire lanes, site ingress and egress, and the location of all delivery or pick-up doors, personnel doors, entry doors, exterior glass or windows, and any other openings in the buildings;

(iv) all exterior elevations, building materials and colors for proposed improvements;

(v) a detailed landscaping and irrigation plan; and

(vi) such other information as may be requested by the Declarant.

The Declarant may, in its reasonable discretion, permit plans and specifications to be submitted in scheduled phases and may, but shall not be required to, give conditional or partial approvals to plans and specifications; provided, however, that no permitted delay in the submission of plans or specifications and no conditional or partial approval shall in any way obligate the Declarant to any subsequent or additional approval, waiver or variance.

7. **Mechanic's Liens.** In the event any mechanic's lien is recorded against the Parcel of one Owner or any Common Area Tract as a result of services performed or materials furnished for the use of another Owner, such other Owner shall cause such lien to be discharged no later than fifteen (15) business days after the entry of a final judgment (after all appeals) for the foreclosure of such lien. Notwithstanding the foregoing, upon request of the Owner whose Parcel is subject to such lien, the Owner permitting or causing such lien to be recorded agrees to promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge. Nothing herein shall prevent the Owner permitting or causing such lien to be recorded from contesting the validity thereof in any manner such Owner chooses so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such Owner shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien of record. The Owner permitting or causing such lien shall defend, protect, indemnify and hold harmless the Declarant and each other Owner and its respective Parcel from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from such lien.

8. **Undeveloped Parcels.** During such time and to the extent as any Parcel in the Property shall not be improved with a completed Building(s), completed parking surfaces, or other completed similar improvements, the Owner (including the Declarant) of such Parcel, at the Owner's sole cost and expense and not as a CAM Expense, shall maintain such Parcel (or portion

thereof) in a slightly condition, regularly mown, free of silt, brush, trash and other debris. The provisions of this Section shall apply notwithstanding the fact that such Parcel may constitute a "CAM Paying Parcel" pursuant to Section 1(g)(ii) above (in which event the Owner of such Parcel shall be required to pay the CAM Expense allocable to such Parcel as otherwise provided herein, in addition to performing the foregoing obligations).

9. **Buildings.** Each Owner shall maintain, or cause to be maintained, at its sole cost and expense (except as otherwise expressly provided in this Declaration), its Parcel, and the Buildings located on its Parcel, in a slightly, safe condition and state of repair in conformance with the standards of other first class retail centers in the Greater Kansas City metropolitan area and in compliance with all Governmental Requirements. Each Parcel shall be maintained and operated by each Owner and/or Occupant in accordance with this Declaration, including the Rules and Regulations. No Owner or Occupant shall place, permit or construct any buildings, fences, walls, barriers, partitions or other improvements on any No Build Area or any Parking Area that would (i) unreasonably interfere with access to any other Parcel, or (ii) interfere with the right of the Permittees to park on the Parking Areas, without the prior written approval of Declarant, or (iii) interfere with or prevent any Owner from exercising the easement rights granted hereunder.

10. **Payment of Utilities.** Except as otherwise provided herein, each Owner shall make arrangements for and pay for, or cause to be paid, all charges for all utility services whether public or private supplied to Building(s) and Common Areas on its respective Parcel, including, without limitation, water and electricity for irrigation for the lawn areas and landscaping in the Common Areas and electricity for the parking lot lights in the Common Areas.

11. **Maintenance:** Declarant and/or the Owner's of each Outparcel or Parcel in the Retail Center (as applicable) shall maintain and/or provide maintenance services with respect to the Buildings and Common Areas on the Outparcels and in the Retail Center, respectively, as follows:

(a) **Outparcels.**

(i) **By Declarant as an Outparcel CAM Expense:** Declarant shall provide the following maintenance and other services (collectively, the "**Outparcel CAM Services**") with respect to: (1) the Perimeter Common Areas bordering the Outparcels and any Common Area Tracts within or immediately contiguous any Outparcel(s), including without limitation, the Shared Access Drive, and (2) the Activity Plaza, as Outparcel CAM Expenses:

(1) Maintaining, mowing, irrigating, weeding and trimming all lawn and landscaped areas, including without limitation, the replacement of trees, shrubs and other landscaping;

(2) Controlling the use of and maintaining in good condition and repair, the irrigation systems for the Perimeter Common Areas bordering the Outparcels and within the Activity Plaza, including without limitation, the replacement of any

irrigation controller therein and the cost of all utilities for irrigation of such Perimeter Common Areas and the Activity Plaza; and

(3) Striping and maintaining the Shared Access Drive in a level, smooth and even covered condition with the type of surfacing materials originally installed or such substitutes as shall in all respects be equal in quality or durability, including any temporary repair of potholes, curb breakage, and damage to paving, and thereafter the permanent repair of the same;

(4) Causing the Perimeter Common Areas, Shared Access Drive and Activity Plaza to be kept reasonably clean and free of dirt, rubbish, debris, snow and ice; and

(5) With respect to the Activity Plaza, conducting special events including, without limitation, festivals, fairs, live concerts and other entertainment events.

At least thirty (30) days prior to the beginning of each calendar year, Declarant will provide the Owners of the Outparcels with a detailed estimated budget of the expenses expected to be incurred as Outparcel CAM Expenses under this Section for the upcoming calendar year.

(ii) By Owner (including Declarant as an Owner): Each Outparcel Owner shall, at its sole cost and expense, provide and/or perform the following maintenance services with respect to its respective Outparcel:

(1) operating, maintaining, and repairing, at its sole cost and expense, in a clean, sightly and safe condition, the following items (if any) located on its Outparcel: any exterior shipping/receiving dock area; any truck ramp or truck parking area; any recycling center or similarly designated area for the collection of items intended for recycling; and its Building lighting; and

(2) operating, maintaining, and repairing, at its sole cost and expense, in a clean, sightly and safe condition its respective Building, including the exterior and interior of such Building, all areas included in Building Envelope Areas, and all Common Areas on such Outparcel, all in that state of condition and repair generally found in first-class retail centers of similar size, including without limitation the following:

(A) Striping and maintaining Parking Areas in a level, smooth and even covered condition with the type of surfacing materials originally installed or such substitutes as shall in all respects be equal in quality or durability, including any temporary repair of potholes, curb breakage, and damage to paving, and thereafter the permanent repair of the same;

(B) Maintaining, mowing, irrigating, weeding, and trimming all lawn and landscaped areas in the Common Areas and Building Envelope Areas;

(C) Controlling the use of and maintaining in good condition and repair, the irrigation systems for the Common Areas and Building Envelope Areas.

(D) Providing security for the Common Areas on such Owner's Outparcel, if in the reasonable judgment of such Owner, security is desirable or necessary. Such Owner shall not be liable in any way to Declarant or any other Owner, Occupant, Permittee or any other party for any lack of, failure, interruption, or defect in any such security, whether furnished by such Owner or third parties;

(E) Causing all trash containers on or serving such Outparcel to be emptied on a sufficiently regular basis; and

(F) Causing the Common Areas and all sidewalks on such Outparcel to be kept reasonably clean and free of dirt, rubbish, debris, snow and ice.

(b) Retail Center:

(i) By Declarant as Retail Center Cam Expenses: Declarant shall provide the following maintenance and other services (the "**Retail Center CAM Services**") in the Retail Center (including any Common Area Tracts therein, including without limitation the Activity Plaza) as Retail Center CAM Expenses:

(1) Maintaining, mowing, weeding and trimming all lawn and landscaped areas in the Perimeter Common Areas bordering the Retail Center and in the Activity Plaza, including without limitation, the replacement of trees, shrubs and other landscaping in the Perimeter Common Areas bordering the Retail Center and in the Activity Plaza;

(2) Controlling the use of and maintaining in good condition and repair, the irrigation systems for the Perimeter Common Areas bordering the Retail Center and in the Activity Plaza, including without limitation, the replacement of any irrigation controller therein and the cost of all utilities for irrigation of the Perimeter Common Areas bordering the Retail Center and in the Activity Plaza;

(3) Striping and maintaining Parking Areas in a level, smooth and even covered condition with the type of surfacing materials originally installed or such substitutes as shall in all respects be equal in quality or durability, including any temporary repair of potholes, curb breakage, and damage to paving, and thereafter the permanent repair of the same;

(4) Maintaining, mowing, weeding, and trimming all lawn and landscaped areas in the Common Areas and Building Envelope Areas, *provided, however,* any replacement of trees, shrubs, and other landscaping in the Common Areas located on a Parcel (other than any Common Area Tract) or in any Building Envelope Areas, as may be necessary from time to time as determined by Declarant, shall be performed by and at the expense of the applicable Owner;

(5) Controlling the use of and maintaining in good condition and repair, the irrigation systems for the Common Areas and Building Envelope Areas, *provided, however,* the replacement of any irrigation controller for a Common Area (other than any Common Area Tract) or Building Envelope Area on a Parcel shall be performed by and at the expense of the applicable Owner and all utilities for irrigation of such Common Areas and Building Envelope Areas on the Parcel shall be paid for by the Owner of the Parcel.

(6) Providing security for the Common Areas, if in the reasonable judgment of the Declarant, security is desirable or necessary. Declarant shall not be liable in any way to any Owner, Occupant, Permittee or any other party for any lack of, failure, interruption, or defect in any such security, whether furnished by Declarant or third parties;

(7) Causing all trash containers on the Common Areas to be emptied on a sufficiently regular basis;

(8) Causing the Common Areas and all sidewalks to be kept reasonably clean and free of dirt, rubbish, debris, snow and ice; and

(9) With respect to the Activity Plaza, conducting special events including, without limitation, festivals, fairs, live concerts and other entertainment events.

At least thirty (30) days prior to the beginning of each calendar year, Declarant will provide the Owners with a detailed estimated budget of the expenses expected to be incurred as CAM Expenses under this Section for the upcoming calendar year.

(ii) By Owner (including Declarant as an Owner):

(1) Notwithstanding anything contained herein to the contrary, each Owner shall have the obligation to operate, maintain, and repair, at its sole cost and expense, in a clean, sightly and safe condition, the following items (if any) located on its Parcel: any exterior shipping/receiving dock area; any truck ramp or truck parking area; any recycling center or similarly designated area for the collection of items intended for recycling; and its Building lighting.

(2) Each Owner shall have the obligation to operate, maintain, and repair, at its sole cost and expense, in a clean, sightly and safe condition their respective Building, including the exterior and interior of such Building, all areas included in Building Envelope Areas (other than lawn and landscaping to be maintained by Declarant under Section 11(b)(i) above), and the maintenance and replacement of those items which are expressly provided in Section 11(b)(i) above as being the responsibility of the Owner, and any Common Areas that are the subject of an agreement between Declarant and the Owner or the Occupant that such Common Area is to be maintained by the Owner or Occupant, all in that state of condition and repair generally found in first-class retail centers of similar size. Each Owner, at its sole expense, shall have the right to maintain the lawn and landscaping in its Building Envelope Area to a higher standard than the standard established by the Declarant under Section 11(a) above.

(c) By Agreement: Notwithstanding the foregoing provisions of this Section, Declarant and the respective Owners and Occupants may by agreement divide responsibilities for sidewalks, drives, lighting, landscaping and sprinkler system maintenance in a manner that is most efficient for the benefit of the Owners and Occupants so long as such agreements do not increase any CAM Expenses charged to any other Owner or Occupant. Without limiting the foregoing, Declarant shall have the right, without the consent or joinder of any other party or Owner, to enter into an agreement with any Owner pursuant to which such Owner agrees to perform all or some component(s) of the Outparcel CAM Services or Retail Center CAM Services (as applicable) at such Owner's sole cost and expense, in which event the square footage of such Owner's Parcel shall be subtracted from the denominator when determining the Proportionate Share of the other Outparcel Owners or Owners of Parcels in the Retail Center with respect to the services to be performed by such Owner.

12. Use Restrictions and Obligations. No Owner shall use or permit the use of all or any portion of its Parcel (including any Outparcel and/or Parcel in the Retail Center) in violation of any of the foregoing:

(a) The uses of the Parcels shall be consistent with this Declaration and consistent with and complimentary to uses by the other Permittees of the Property as an upscale mixed use center.

(b) Any use of a Parcel not permitted by the terms of the applicable zoning classification is not allowed.

(c) Without limiting the generality of the foregoing, the following uses shall not be permitted: (i) any of the uses set forth on Exhibit D attached hereto and made a part hereof by this reference (the "**Existing Restrictions**"), or (ii) any "Future Restriction" (as defined in Section 13 below); or (iii) any restrictions set forth in any recorded document or agreement affecting the Parcels (as applicable) as of the date of this Declaration or prior to the sale of any Parcel by Declarant, including without limitation the following:

(i) That certain Restrictive Covenant dated March 18, 2009 between Gale Communities, Inc., a Missouri corporation and McDonald's Real Estate Company, a Delaware corporation, recorded in the recorder's office of Jackson County, Missouri on March 18, 2010 as Instrument Number 2010E0025708;

(ii) That certain Shopping Center Easement Agreement and Declaration of Covenants, Conditions and Restrictions of New Longview Commercial Park dated March 16, 2010 between Gale Communities, Inc., a Missouri corporation and McDonald's Real Estate Company, a Delaware corporation, recorded in the recorder's office of Jackson County, Missouri on March 18, 2010 as Instrument Number 2010E0025708; and

(iii) That certain Use and Plan Approval Agreement dated December 13, 2007 between Missouri CVS Pharmacy, L.L.C., a Missouri limited liability company and Gale Communities, Inc., a Missouri corporation, recorded in the recorder's office of Jackson County, Missouri on December 19, 2017 as Instrument Number 2007E0159631.

(d) No Occupant shall use, or permit the use of, Hazardous Materials on, about, under or in its Parcel or the balance of the Property, except for customary cleaning supplies used in reasonable quantities in the ordinary course of its usual business operations conducted thereon, and gasoline, diesel, and related products in the event an Occupant is a convenience store offering fuel products, and except for other Hazardous Materials that are used in an Occupant's medical-related practice, and any such use shall at all times be in compliance with all Environmental Laws. Each Occupant agrees to defend, protect, indemnify and hold harmless each other Occupant from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including but not limited to costs of investigation, remedial or removal response, and reasonable attorneys' fees and cost of suit, arising out of or resulting from any Hazardous Material used or permitted to be used by such Occupant (except in compliance with all Environmental Laws), whether or not in the ordinary course of business. For the purpose of this Declaration, the term (i) "**Hazardous Materials**" shall mean and refer to the following: petroleum products and fractions thereof, asbestos, asbestos containing materials, urea formaldehyde, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials, substances and wastes listed or identified in, or regulated by, any Environmental Law, and (ii) "**Environmental Laws**" shall mean and refer to the following: all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

(e) In the event that any Parcel Owner uses or permits all or any portion of its Parcel to be used for any use or purpose in violation of any provision of this Section 12 or Section 13 below, such Owner shall immediately cease the use of its premises for the prohibited use within two (2) days of written notice thereof. In the event such prohibited use is not ceased within such 2-day period, Declarant shall have all rights and remedies available to it at law or in equity, including but not limited to, injunctive relief. Declarant may, in its sole discretion and without the joinder of any other party or Owner, waive or modify the use restrictions and obligations, when in its reasonable determination, such waiver or modification, is not detrimental to the Property.

(f) The use of any Outside Sales Areas shall be subject to Declarant's prior written approval, which may be withheld by Declarant in its sole discretion, and shall be subject to the limitations set forth in this Declaration.

13. **Future Restrictions.** Declarant may from time to time restrict or grant exclusive use rights for Owners and Occupants in order to provide for a harmonious mix of uses and to attract compatible Owners and Occupants, provided that no such future restrictions or exclusive use rights ("**Future Restrictions**") shall adversely apply to any Parcel previously conveyed by the Declarant without the prior written consent of the Owner of the Parcel. As such Future Restrictions are approved by Declarant, Declarant shall amend **Exhibit E** to this Declaration and record such amendment with the Recording Office to place such Future Restrictions of record and shall provide a copy of such amendment to all Owners. Subject to the first sentence of this Section, all such Future Restrictions shall be binding on all Owners and Occupants as if set forth herein. Notwithstanding the foregoing, no Future Restriction shall in any event materially and substantially abrogate or impair the right of any Owner or Occupant to continue a specific use approved in writing by the Declarant without the written consent of the Owner or Occupant so affected, which such consent shall not be unreasonably withheld or delayed.

14. **Signs.** All signs erected on the Property shall be professionally fabricated and installed, shall be of a design suitable for first-class retail centers in the Greater Kansas City metropolitan area, and shall be subject to the prior written approval (not to be unreasonably withheld or delayed) of the Declarant in accordance with its Design Criteria and at all times in conformity with Governmental Requirements. All signs must be kept in good order and repair at all times by the Owner of the Parcel, including, without limitation, immediately repairing or replacing failed lighting components to keep the sign fully illuminated and replacing damaged sign panels.

15. **Rights to Deny Access.** Declarant shall have the right to eject from the Common Area any persons not authorized, empowered or privileged to use the Common Area pursuant to this Declaration. Nothing herein shall prevent Declarant from restricting access to those portions of the Common Area located on such party's Parcel for such reasonable period or periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by any person or the public at large; provided however, that prior to closing off any portion of the Common Areas, as herein provided, the party closing such Common Area shall give written notice of its intention to do so to all other Owner/Occupants, and shall coordinate such closing with said Owners/Occupants so that no unreasonable interference with the use or the operation of the Property by the other Owner/Occupants, their customers, employees and invitees shall occur.

16. **Reconfiguration of the Property.** Subject to a requirement that any reconfiguration will be conducted in a manner that minimizes any interference with access and parking for the Parcels:

(a) Declarant may redevelop and alter the configuration of the Property without the prior consent or approval of any Owner(s) (other than the Owner of any Parcel to be

reconfigured or altered) provided such reconfiguration does not unreasonably adversely affect any other Owner/Occupant.

(b) Declarant shall be permitted to reconfigure the Parking Areas; provided that any reconfiguration or reduction be in conformity with Governmental Requirements, and provided such reconfiguration does not unreasonably and adversely affect any Owner or Occupant.

(c) Declarant shall be permitted to modify the Building Envelope Areas and any No Build Area without the prior consent or approval of any Owner(s) (other than the Owner on whose property the Building Envelope Areas and No Build Area lies).

17. **Common Area Maintenance Charges.**

(a) **Outparcels:** Commencing on the date each Outparcel becomes a CAM Paying Outparcel, the Owner of such CAM Paying Outparcel shall pay Declarant its Proportionate Share of the cost of the Outparcel CAM Services (the "**Outparcel CAM Expense**") during each calendar year in equal monthly installments, on or before the first day of each month, based on the Annual Estimate and subject to an annual reconciliation as set forth in Section 17(d) below. Each Outparcel Owner's Proportionate Share of Outparcel CAM Expenses shall be payable as follows:

(i) For purposes of this Section 17(a), "**Proportionate Share**" for a CAM Paying Outparcel shall be a fraction, the numerator of which is the square footage of the applicable CAM Paying Outparcel, and the denominator of which is the total square footage of all of the then CAM Paying Outparcels.

(ii) For purposes of this Declaration, the Outparcel CAM Expense shall include all real estate taxes and assessments and insurance premiums payable with respect to any Common Area Tracts within or immediately contiguous to the Outparcels, including without limitation the Shared Access Drive.

(iii) Declarant shall endeavor to provide each Outparcel Owner, at least 30 days prior to January 1 of each year following the date such Owner's Outparcel becomes a CAM Paying Outparcel, a statement setting forth the estimated Outparcel CAM Expenses for such calendar year (the "**Annual Estimate**") together with a calculation of such Owner's Proportionate Share of such estimated CAM Expenses. Declarant may adjust such Annual Estimate from time to time during any calendar year based on its revised estimate of anticipated CAM Expenses. In the event Declarant fails to provide such Annual Estimate, then until receipt thereof, each Owner shall pay its Proportionate Share of the Outparcel CAM Expenses as provided herein based on the prior year's actual Outparcel CAM Expenses. Declarant may perform maintenance services as provided in this Declaration using its own personnel or retain a professional property management company to fulfill such functions, and pay such management company a fee that shall be no more than the reasonable and customary fee charged by professional commercial property managers of similar properties in the Greater Kansas City metropolitan area, and such manager's fee

shall be included in the Outparcel CAM Expense. Outparcel CAM Expense shall include personnel to provide and supervise the maintenance services (including wages, employment taxes unemployment taxes, fringe benefits and uniforms). If Declarant does not retain a professional property management company, Declarant shall be entitled to include in Outparcel CAM Expense an administrative fee that shall be ten percent (10%) of the other Outparcel CAM Expenses. Neither the Declarant nor any of its owners, managers, or agents shall be liable to any Owner or other party for failure to establish or maintain any reserves or if any such reserves are inadequate.

(b) Retail Center: Commencing on the date each Parcel in the Retail Center becomes a CAM Paying Parcel, the Owner of such CAM Paying Parcel shall pay Declarant its Proportionate Share of the cost of the Retail Center CAM Services (the "**Retail Center CAM Expense**") during each calendar year in equal monthly installments, on or before the first day of each month, based on the Annual Estimate and subject to an annual reconciliation as set forth in Section 17(d) below. The Proportionate Share of Retail Center CAM Expenses payable by the Owners of Parcels in the Retail Center during each calendar year shall be payable as follows:

(i) For purposes of this Section 17(b), "**Proportionate Share**" for a CAM Paying Parcel shall be a fraction, the numerator of which is the square footage of the CAM Paying Parcel, and the denominator of which is the total square footage of all of the then CAM Paying Parcels in the Retail Center.

(ii) For purposes of this Declaration, the Retail Center CAM Expense shall include all real estate taxes and assessments payable with respect to: (a) any Common Area Tracts within or immediately contiguous to the Outparcels, including without limitation the Activity Plaza, and (b) the Parking Garage (if constructed and available for the use of all Owners and their respective Permittees).

Declarant shall endeavor to provide each Parcel Owner in the Retail Center, at least 30 days prior to January 1 of each year following the date such Owner's Parcel becomes a CAM Paying Parcel, a statement setting forth the estimated Retail Center CAM Expenses for such calendar year (the "**Annual Estimate**") together with a calculation of such Owner's Proportionate Share of such estimated CAM Expenses. Declarant may adjust such Annual Estimate from time to time during any calendar year based on its revised estimate of anticipated CAM Expenses. In the event Declarant fails to provide such Annual Estimate, then until receipt thereof, each Owner shall pay its Proportionate Share of the appropriate CAM Expenses as provided herein based on the prior year's actual CAM Expenses. Retail Center CAM Expense shall include all expenses incurred by Declarant in maintaining, repairing, replacing, managing, insuring, and operating the Common Areas in the Retail Center and all services and obligations incidental to the operation of the Retail Center, plus a reasonable reserve for future major Retail Center CAM Expenses, such as, without limitation, Parking Areas and Detention Areas. Retail Center CAM Expense shall not include any expenses associated with leasing or selling Parcels of the Retail Center, any expenses incurred by Declarant to review, revise and approve building plans and related matters or to exercise any reconfiguration or other similar rights of Declarant set

forth in this Declaration, any casualty losses to the Common Areas covered by insurance or recovered in full from any Occupant or third party, or any expenses incurred for maintenance to any Building or any part of the Retail Center which is not part of the Common Areas except as otherwise expressly authorized herein. Declarant may perform such services using its own personnel or retain a professional property management company to fulfill such functions, and pay such management company a fee that shall be no more than the reasonable and customary fee charged by professional commercial property managers of similar properties in the Greater Kansas City metropolitan area, and such manager's fee shall be included in the Retail Center CAM Expense. Retail Center CAM Expense shall include personnel to provide and supervise the maintenance services (including wages, employment taxes unemployment taxes, fringe benefits and uniforms). If Declarant does not retain a professional property management company, Declarant shall be entitled to include in Retail Center CAM Expense an administrative fee that shall be ten percent (10%) of the other Retail Center CAM Expenses. Neither the Declarant nor any of its owners, managers, or agents shall be liable to any Owner or other party for failure to establish or maintain any reserves or if any such reserves are inadequate.

(c) The Owner of each CAM Paying Outparcel or CAM Paying Parcel in the Retail Center, as applicable, shall pay its Proportionate Share of Outparcel CAM Expense or Retail Center CAM Expense, as appropriate, during each calendar year as follows:

(i) Each Owner shall remit, or cause to be remitted, payment of its estimated Proportionate Share of Outparcel CAM Expense or Retail Center CAM Expenses (as applicable) to the Declarant monthly, on or before the first day of each calendar month, as otherwise provided herein. Any amounts not paid within fifteen (15) days shall constitute a lien on the applicable Parcel or Outparcel as provided in Section 25 below. In addition, the Declarant may impose the following for any amounts due and payable under this Declaration and not paid within such fifteen (15) day period (all of which shall constitute a part of the lien):

(ii) A late charge equal to 10% of the amount due;

(iii) Interest at the Prime Rate as published in The Wall Street Journal, plus three percent (3%) (300 basis points), from the end of the 15-day period until paid in full; and

(iv) Reasonable attorney's fees and court costs incurred in the event that an attorney is employed to collect any amount due under this Declaration.

(d) Within ninety (90) days after the end of each calendar year, Declarant shall provide each Owner of a CAM Paying Parcel or CAM Paying Outparcel with a statement ("**Reconciliation**") together with supporting invoices and other materials setting forth the actual Retail Center CAM Expense or Outparcel CAM Expense (as appropriate) paid by Declarant for the preceding calendar year, and the share of the aggregate thereof that is attributable to each Owner's Parcel or Outparcel. The Reconciliation shall separately identify all major cost categories. If the amount paid with respect to a Parcel or Outparcel for such calendar year shall have exceeded

the share allocable to such Parcel or Outparcel, Declarant shall refund by check the excess to the Owner owning such Parcel or Outparcel at the time the Reconciliation is delivered (or credit the overpayment to subsequent amounts to be paid by the Parcel or Outparcel Owner), or if the amount paid with respect to a Parcel or Outparcel for such calendar year shall be less than the share allocable to such Parcel or Outparcel, the Owner of such Parcel or Outparcel at the time such Reconciliation is delivered shall pay the balance of such Owner's share to Declarant, with such amount to be paid in each case within twenty (20) days after receipt of such Reconciliation. Declarant shall use reasonable efforts to provide the Reconciliation within ninety (90) days after the end of the calendar year, but the failure to do so shall not relieve an Owner from payment of any shortfall unless that same is not provided by the end of the calendar year following the year the expenses were incurred.

(e) Each Owner of a CAM Paying Parcel or CAM Paying Outparcel, at its initial expense, shall have the right, exercisable within 90 days of receipt of the Reconciliation, to cause an audit to be performed of the Retail Center CAM Expense or Outparcel CAM Expenses (as appropriate) and the Owner's Proportionate Share as submitted by the Declarant. In the event such audit reveals an underpayment by the Owner, the Declarant shall be entitled to bill the Owner for any deficiency and such payment shall be made as provided herein and the cost of the audit shall be at the auditing Owner's expense. In the event such audit reveals an overpayment by the Parcel or Outparcel Owner, the Declarant shall refund such overpayment within 30 days of receipt of the results of such audit and the cost of said audit shall be (i) at the Declarant's sole expense if the audit (after the Reconciliation has been made) reveals an overpayment of more than five percent (5%) of the total year's Retail Center CAM Expenses or Outparcel CAM Expenses (as appropriate), or (ii) at the auditing Owner's expense if the audit (after the Reconciliation has been made) reveals an overpayment of five percent (5%) or less of the total year's Retail Center CAM Expenses or Outparcel CAM Expense (as appropriate). All audits shall be performed by a certified public accountant or a firm of certified public accountants. No auditors may be compensated based on a contingent fee or bonus arrangement.

18. Cross-Indemnification by Owners.

(a) Subject to Section 17 hereof, each Owner hereby indemnifies and agrees to hold harmless the Declarant and each other Owner from and against any and all losses, judgments and damages (actual and punitive) incurred or suffered by such indemnified parties to the extent arising or resulting from a breach by the indemnifying Owner or its respective tenants, and such tenants' customers and employees of any of their obligations under this Declaration, including the reasonable costs and expenses incurred by the Declarant and indemnified Owner in pursuing any claim related to such breach, which indemnified costs include, but are not limited to, reasonable attorney's fees incurred by the Declarant and indemnified Owner.

(b) Each Owner hereby agrees to defend, indemnify, and hold harmless the Declarant and the other Owners from and against all claims, liabilities, actions, judgments, responsibilities and damage of every kind and nature to the extent arising from or relating to (i) the presence and or removal of Hazardous Materials located on or discharged from the indemnifying party's Parcel, unless Hazardous Materials were released or located on the respective Parcel by the Declarant or

by an Owner or Occupant of another Parcel or by an owner or occupant of a tract outside of the Property, and (ii) the failure of the improvements located on the respective Parcel to comply with any applicable Governmental Requirements, including, without limitation, the Americans with Disabilities Act.

19. Insurance.

(a) Declarant shall maintain comprehensive commercial general liability in an amount not less than One Million Dollars (\$1,000,000) per occurrence with a general aggregate limit not less than Two Million Dollars (\$2,000,000) and with an umbrella policy in an amount not less than Three Million Dollars (\$3,000,000) per occurrence in excess of the aforescribed liability coverages.

(b) Each Owner shall keep in force with an insurance company authorized to do business in the State of Missouri, and which has a Best's Insurance Guide Rating of AVIII or better (an "**Authorized Carrier**"), a broad-form policy of commercial general liability insurance, including property damage, with respect to its Parcel and the business operated by it and any other Occupant of its Parcel, in which the limits of coverage shall not be less than One Million Dollars (\$1,000,000) per occurrence with a general aggregate limit not less than Two Million Dollars (\$2,000,000) and with an umbrella policy in an amount not less than Three Million Dollars (\$3,000,000) per occurrence in excess of the aforescribed liability coverages. Such amounts may be adjusted from time to time in the reasonable judgment of Declarant, in which case Declarant shall notify the Owner/Occupants in writing and which adjustments shall not be discriminatory. Such policy shall also insure the performance by an Owner of the indemnity agreement set forth in Section 18 and the waiver of subrogation provided in Section 20. In addition, the policy shall also name Declarant and any other person designated by Declarant (such as a property manager) and in privity with it, as an additional insured.

(c) Each Owner shall keep the improvements located on its Parcel insured by an Authorized Carrier for one hundred percent (100%) of the full replacement value thereof against all catastrophes and casualties included in the classification "All Risks of Physical Loss" with endorsements for sprinkler leakage and loss or damage caused by earth movement and surface water or flood, if such endorsements are available in the geographic area where the Parcels are located. Each Owner shall provide and maintain adequate builder's risk insurance for any period of construction.

(d) Each Owner policy shall require not less than fifteen (15) days written notice to the additional insured(s) if the policies are cancelled, not renewed, coverage limits are reduced or any other material modification is proposed. Upon reasonable request from time to time made, Declarant shall be furnished a certificate of insurance from the other Owners complying with the foregoing requirements. Declarant shall have the right to require an increase in such coverages required above based on inflation, claims history, and changes in risk factors. If the Occupant is other than the Owner, the Occupant may provide such insurance consistent with the requirements of an Owner.

20. **Waiver of Subrogation.** Each Owner, including the Declarant (“**Releasing Owner**”), shall release and hereby releases and waives for itself, and each person claiming by, through or under it each other Owner (“**Released Owner**”) from any loss or damage to all property of such Releasing Owner located on the Releasing Owner’s Parcel, which loss or damage is of the type covered by the insurance required to be maintained by the Releasing Owner under this Declaration, irrespective either of any negligence on the part of the Released Owner which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried, including any deductible or self-insurance reserve. Each Owner agrees to cause, if needed, appropriate endorsements to its policies of insurance with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release herein above given.

21. **Casualty.** In the event any of the Buildings in the Property are damaged by fire or other casualty (whether insured or not), the Owner upon whose Parcel such Building is located shall, subject to Governmental Requirements and/or insurance adjustment delays, promptly remove the debris resulting from such casualty and provide a sightly barrier, and within a reasonable time thereafter shall either (i) repair or restore the Building so damaged to a complete unit in the same or improved condition as existed prior to such casualty, such repair or restoration to be performed in accordance with all provisions of this Declaration, or (ii) erect another Building in such location, such construction to be performed in accordance with all provisions of this Declaration (including approval of all plans and specifications therefore), or (iii) subject to Declarant’s written approval, which may be withheld in Declarant’s sole discretion, demolish the damaged portion and/or the balance of such Building and restore the cleared area to either a hard surface condition or a landscaped condition. If the Owner fails to remove all debris resulting from such damage or destruction or take such action as is necessary to place the property in a safe condition within seventy-two (72) hours following such damage or destruction, or if such debris cannot be removed or property returned to a safe condition within such 72-hour period, to commence such removal or commence such other action as necessary to return the Parcel to a safe condition and to thereafter diligently pursue same until completion, Declarant shall have the right (but not obligation) to do so, upon prior written notice to the Owner, whereupon the Owner shall be liable to pay Declarant upon demand, the reasonable cost and expense incurred by Declarant. In the event that the Owner shall fail to commence to repair or restore the Building so damaged to a complete unit in the same condition as existed prior to such casualty or as may other wise be approved by Declarant in writing within one (1) year of the fire or other casualty and substantially complete construction within twenty-four months thereafter, Declarant shall have the option at any time thereafter until the Owner shall commence to repair or restore the Building or thereafter if the Owner shall fail to complete the same within twenty-four months thereafter, to purchase the Parcel at the then “**Fair Market Value**”. Fair Market Value shall be determined by an appraisal by a duly-licensed and experienced real estate appraiser. The Declarant’s costs of the appraisal, anticipated real estate commissions, title insurance, normal buyer’s closing costs (other than financing costs), prorated real estate taxes, and, if reconstruction has not commenced, the costs of demolition, removal of property and costs to ready the Parcel for sale shall all be deducted from the Fair Market Value. The option shall be exercised by Declarant by giving written notice to the Owner and the closing shall occur within thirty (30) days from the date thereof. Title to the Parcel

shall be conveyed to Declarant by special warranty deed, free and clear of all mortgages, mechanic's liens, judgment liens, and similar monetary liens.

22. **Condemnation.**

(a) **Owner's Right To Award.** Nothing herein shall be construed to give any Owner or Declarant any interest in any award or payment made to another Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party's Parcel or giving the public or any government any rights in said Parcel. In the event of any exercise of eminent domain or transfer in lieu thereof with respect to any part of the Parcels, the award attributable to the land and improvements of such portion of the Common Area shall be payable only to the Owner of the Common Area affected, and no claim thereon shall be made by the owners of any other portion of the Common Areas.

(b) **Collateral Claims.** All other Owners may file collateral claims with the condemning authority for their losses which are separate and improvements taken from another Owner.

(c) **Tenant's Claim.** Nothing in this Section shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.

(d) **Restoration of Common Areas.** The Owner of the portion of the Common Area so condemned shall promptly repair and restore the remaining portion of the Common Area on the Owner's Parcel as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair without contribution from any other Owner.

(e) **Preservation of Easements.** Except to the extent they burden the land taken, no easement or license set forth in this Declaration shall expire or terminate based solely upon such taking, except for that portion of the easement or license taken.

23. **Real Estate Taxes.**

(a) Except as otherwise expressly provided in this Declaration, each Owner shall pay, or cause to be paid, when due, all real estate taxes and assessments upon their respective Parcel which shall be assessed, levied, imposed or become a lien thereon.

(b) Each Owner shall, within 30 days of a written request by the Declarant, provide proof of payment of all taxes and assessments then due and owing on such Owner's property.

(c) In the event an Owner shall deem any real estate tax or assessment (including the rate thereof or the assessed valuation of the property in question or any other aspect thereof) to be paid by such party to be excessive or illegal, such party shall have the right, at its own cost and expense, to contest the same by appropriate proceedings, and nothing contained in this Section shall require such Owner to pay any such real estate tax or assessment as long as the amount or validity thereof shall be contested in good faith, and in the opinion of counsel for the Declarant,

the Owner's Parcel shall not thereby be in danger of being forfeited. A recovery of tax assessed against an Owner's Parcel shall be the property of such Owner.

(d) In the event an Owner shall fail to pay real estate taxes and assessments upon its Parcel, and has not contested appropriately such taxes or assessments, Declarant or any other Owner, after written notice to the non-paying Owner, shall have the right to pay such taxes and assessments, together with interest and penalties thereon, and shall be entitled to reimbursement for any sums so paid from the non-paying Owner.

24. **Estoppel Certificate.** Declarant agrees that, within 15 days after written request of an Owner, Declarant will issue to such other party, to a prospective purchaser or to any actual or prospective mortgagee of such Owner, an estoppel certificate stating: (i) whether, to the knowledge of Declarant, any default exists under this Declaration by the requesting Owner beyond applicable notice and cure periods, and if there are known defaults, specifying the nature thereof; and (ii) whether, to Declarant's knowledge, this Declaration has been assigned, modified or amended in any way (or if it has, then stating the nature thereof).

25. **Defaults, Right to Enforce.**

(a) The failure to observe or perform any of the covenants, conditions or obligations of this Declaration within thirty (30) days after the issuance of a notice by the Declarant or another Owner (each a "**Non-Defaulting Party**") specifying the nature of the default claimed shall constitute a material default and breach of this Declaration by the non-performing Owner (the "**Defaulting Owner**").

(b) In addition to any other right given at law or in equity, any Non-Defaulting Party shall have the right, but not the obligation, following the expiration of any applicable cure period to cure such default by the payment of money or the performance of some other action for the account of and at the expense of and after written notice to, the Defaulting Owner; *provided, however,* that in the event such default shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Non-Defaulting Party shall have the right to enter upon the Parcel of the Defaulting Owner (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Owner. Each Owner shall be responsible for the default of its Occupants. In the event any Non-Defaulting Party shall cure a default, the Defaulting Owner shall reimburse the Non-Defaulting Party for all costs and expenses incurred in connection with such curative action, plus interest as provided in Section 17(c) herein, within ten (10) days after receipt of written demand therefor, together with reasonable documentation supporting the expenditures made and showing such expenditures as paid in full.

(c) Costs, expenses and interest accruing and/or assessed pursuant to subsection (b), including all reasonable attorneys' fees, costs and expenses of collecting and enforcing the remedies provided herein shall constitute a lien against the Defaulting Owner's Parcel. Such lien

shall attach and take effect only upon recordation of a claim of lien in the Recording Office by the Non-Defaulting Party making such claim. The claim of lien shall conform to Missouri law and shall include the following:

- (i) The name of the lien claimant;
- (ii) A statement concerning the basis for the claim of lien and identifying the lien claimant as a Non-Defaulting Party;
- (iii) An identification of the Owner of the Parcel or interest therein against which the lien is claimed;
- (iv) A description of the Parcel against which the lien is claimed;
- (v) A description of the amount owed and (if applicable) work performed which has given rise to the claim of lien and a statement itemizing the amount thereof.

(d) Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Owner hereto, or any other Person, violating or attempting to violate or defaulting upon any of the provisions contained in this Declaration, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another Owner or Person of any of the terms, covenants or conditions of this Declaration, or to obtain a decree to compel performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to the Declarant or an Owner under this Declaration or at law or in equity shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

(e) The rights to enforce this Declaration are reserved exclusively to the Declarant, the Owners and their successors and assigns.

26. **Relationship to City Ordinances.** The provisions of this Declaration shall be valid and enforceable even if such provisions are more restrictive than the City's ordinances or other applicable laws. The parties entitled to enforce this Declaration shall also have the right to enforce, in a private civil action under this Declaration, all City ordinances and other laws that are applicable to the Property, even if the City or other applicable governmental authority chooses not to enforce the same. All such City ordinances and other applicable laws that are in effect from time to time shall be automatically incorporated into this Declaration by this reference.

27. **Formation of Association.**

(a) Upon the Turnover Date (including the Turnover Date for any limited purposes as determined by Declarant as provided in this Declaration), Declarant shall cause the Association to

be duly formed, at which time all of the rights, powers, duties and obligations of the Declarant hereunder shall be transferred to and assumed by the Association.

(b) The Association shall have one class of membership which shall consist of the Owners of the Parcels and every such Owner shall be a member.

(c) Each member shall have one vote for each square foot of land contained within the Parcel for which the member is the Owner. When more than one person is an Owner of any particular Parcel, all such persons shall be members and the votes for such Parcel shall be exercised as they, among themselves, shall determine, but in no event shall more than the specified number of votes be cast with respect to such Parcel. During any period in which a member is in default in the payment of any assessment levied by the Association under this Declaration, the voting rights of such member shall be suspended until such assessment is paid in full.

(d) Subject to the foregoing, the Association shall be the sole judge of the qualifications of each Owner to vote and their rights to participate in its meetings and proceedings.

(e) The Board shall consist of five individual directors, who shall be elected by the members of the Association from among its membership. No Parcel may have more than one individual serving as a director at any time. Where the Owner of a Parcel is a trust or entity, the Owner may designate an individual who may serve as the Parcel's representative on the Board if elected.

28. **Powers of the Association.** In addition to the powers granted by other portions of this Declaration or by law but subject to all of the limitations set forth in this Declaration, the Association, from and after its date of formation, shall have the power and authority to do and perform all such acts as are assigned to the Declarant under this Declaration as may be deemed necessary or appropriate by the Board to carry out and effectuate the purposes of this Declaration, including, without limitation:

(a) To enforce, in the Association's name, any and all building, use or other restrictions, obligations, agreements, reservations or assessments which have been or hereafter may be imposed upon any of the Parcels; provided, however, that this right of enforcement shall not serve to prevent waivers, changes, releases or modifications of restrictions, obligations, agreements or reservations from being made by the Association or other parties having the right to make such waivers, changes, releases or modifications under the terms of the deeds, declarations or plats in which such restrictions, obligations, agreements and reservations are set forth. The expense and cost of any such enforcement proceedings by the Association shall be paid out of the general funds of the Association, except as herein provided. Nothing herein contained shall be deemed or construed to prevent any Owner from enforcing any building, use or other restrictions in its or his own name.

(b) To maintain the applicable portions of the Property as provided in this Declaration.

- (c) To own the Common Area Tracts.
- (d) To maintain public liability, worker's compensation, fidelity, fire and extended coverage, director and officer liability, indemnification and other insurance with respect to the activities of the Association. Where possible, all insurance maintained by the Association shall name the Owners as additional insureds.
- (e) To levy the assessments and related charges which are provided for in this Declaration and to take all steps necessary or appropriate to collect such assessments and related charges.
- (f) To have employees and otherwise engage the services of a management company or other person or entity to carry out and perform all or any part of the functions and powers of the Association, including, without limitation, keeping of books and records.
- (g) To do any other things necessary or desirable in the judgment of the Board to keep the Property neat in appearance and in good order.
- (h) To exercise any architectural, aesthetic or other control and authority given and assigned to the Association in this Declaration, or in any other deed, declaration or plat relating to all or any part of the Property.
- (i) To make, amend and revoke reasonable rules, regulations, restrictions and guidelines and to provide means to enforce such rules, regulations and guidelines.
- (j) To borrow from lenders and to pledge or grant a security interest in future assessments and other assets of the Association to secure such loans.
- (k) To exercise such other powers as may be set forth in the Articles of Incorporation or Bylaws of the Association.

29. **Notices.** Any notice required or permitted to be given hereunder shall be given in writing and may be personally delivered (including recognized air courier service such as Federal Express or UPS) or mailed, United States Postal Service, registered or certified mail, postage prepaid, return receipt requested, at the following addresses or such other addresses as the Declarant or Owner of any Parcel for itself may designate in writing delivered or mailed as aforesaid for the purpose of receiving notices hereunder. Any notice to Declarant shall be to:

M-III Longview LLC
Attn: Corey Walker
4220 Shawnee Mission Parkway, Suite 200 B
Fairway, KS 66205
Phone: 816-285-3878
E-mail: corey.walker@platformv.com

Any notice to an Owner (other than Declarant) shall be to the address of the Parcel.

Any notices addressed as aforesaid shall be deemed given (and received) by the Owner to whom it is addressed as follows:

- (a) If personally delivered, on the date that it is delivered;
- (b) If sent by courier service, on the next following Business Day after placed in the hands of an agent for the courier service or deposited in a pick-up box for such service; or
- (c) If mailed, three (3) Business Days after deposited with the United States Postal Service.

30. **Assignment of Declarant's Rights.** The Declarant shall have the right and authority, by written agreement made expressly for that purpose, to assign, convey and transfer to any person(s) or entity, all or any part of the rights, benefits, powers, reservations, privileges, duties and responsibilities herein reserved by or granted to the Declarant, and upon such assignment the assignee shall then for all purposes be the Declarant hereunder with respect to the assigned rights, benefits, powers, reservations, privileges, duties and responsibilities. Such assignee and its successors and assigns shall have the right and authority to further assign, convey, transfer and set over the rights, benefits, powers, reservations, privileges, duties, and responsibilities of the Declarant hereunder.

31. **TIF/CID Districts.** Declarant and/or the City may implement a TIF/CID or other similar development financing tool which may entail a special real property tax assessment and/or an additional sales tax levy on goods and services sold or leased within the Property (or any part thereof). Each Owner hereby consents to such assessment or sales tax levy which may from time to time be implemented, agrees to fully and unconditionally cooperate with such implementation and agrees to issue such sales or other reports as are required by the relevant governmental entity.

32. **Extension of Property.** The Declarant shall have, and expressly reserves, the right, from time to time, to add to the existing Property and to the operation of the provisions of this Declaration other adjacent or nearby lands (without reference to any tract, street, park or right-of-way) by executing, acknowledging and recording in the Recording Office a written instrument subjecting such land to all of the provisions hereof as though such land had been originally described herein and subjected to the provisions hereof.

33. **Easements, Covenants and Restrictions to Run With the Land.** The mutual and reciprocal easements and covenants contained in this Declaration are hereby declared to be covenants running with the land and are for the benefit of and shall burden the Property and each Parcel constituting a part thereof, the current owners and tenants of each of said Parcels, their respective successors, assigns and grantees.

34. **Binding Effect.** This Declaration and benefits and obligations hereof shall be binding upon and inure to the benefit of, as the case may be, the parties hereto, their respective heirs, executors, administrators, successors, assigns, and grantees. Provided, however, upon conveyance of the entire fee simple ownership of a Parcel by an owner, the granting owner shall

be automatically and unconditionally released and discharged from any liability arising under this Declaration after the date the deed is recorded in the Recording Office.

35. **General Provisions.**

(a) **Construction.** The necessary grammatical changes required to make the provision of this Declaration apply in the plural sense where there is more than one owner and to either corporations, associations, partnership or individuals, males or females, shall in all instances be assumed as though fully expressed. The captions used in this Declaration are for convenience only and do not in any way limit or amplify the terms and provisions hereof.

(b) **Severability and Governing Law.** The invalidity or unenforceability of any provision of this Declaration shall not affect or impair the validity of any other provision. The laws of the State of Missouri shall govern the interpretation, validity, performance and enforcement of this Declaration.

(c) **Non-waiver.** No failure or delay on the part of an Owner to enforce any provision of this Declaration shall constitute a waiver of such provision, nor shall any express waiver of any provision of this Declaration constitute a waiver of any other provision of this Declaration.

(d) **Authority and Capacity.** Each party executing this document represents and warrants that (a) it has the capacity to enter into this Declaration and that (b) the officer or agent executing this Declaration has the authority of such party to do so.

(e) **Non-Partnership.** Nothing in this Declaration shall be construed as to create a partnership, joint venture, or agency relationship between the parties to the Declaration or their successors or assigns. The parties to this Declaration are and shall remain independent contracting parties.

(f) **Non-Recourse.** It is expressly understood and agreed that notwithstanding anything in this Declaration to the contrary, and notwithstanding any applicable law to the contrary, the liability of Declarant hereunder (including any successor Declarant hereunder) and any recourse by any Owner of any Parcel against Declarant shall be limited solely and exclusively to the interest of Declarant in and to the Property owned by Declarant and Declarant's interest in and to the Property, and neither Declarant, nor any of its constituent owners, shareholders, officers, directors, employees, or agents shall have any personal liability therefor, and each Owner, on behalf of itself and all persons claiming by, through or under such Owner, hereby expressly waives and releases Declarant and such owners, shareholders, officers, directors, employees, and agents from any and all personal liability, except for claims caused by the gross negligence or willful act of Declarant. In no event shall Declarant be liable for punitive or exemplary damages, consequential damages or for loss of profits. The provisions of this subsection shall not prevent the issuance or enforcement of any injunction (mandatory or prohibited) against Declarant.

(g) Rules and Regulations. Declarant may establish and enforce reasonable rules and regulations applicable to the Common Areas and rules pertaining to construction. Declarant hereby initially adopts the Rules and Regulations in the form of Exhibit C attached hereto (the “**Rules and Regulations**”), and which may be revised from time to time by Declarant in its sole discretion, upon prior written notice to the Owners.

36. Release or Modification of Restrictions.

(a) Except as provided in subsection (b) below, the terms and provisions of this Declaration may be amended, modified or terminated, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by both (i) the Declarant if prior to the Turnover Date or the Association (acting through its Board) if after the Turnover Date, and (ii) the Owners (excluding the Declarant and its affiliates) of Parcels containing at least 70% of the total square footage of all Parcels (excluding Parcels owned by the Declarant and its affiliates).

(b) Anything set forth in this Section to the contrary notwithstanding, but only prior to the Turnover Date, the Declarant shall have the absolute, unilateral right, power and authority to amend, modify, supplement or terminate any of the terms and provisions of this Declaration, as from time to time amended or supplemented, by executing, acknowledging and recording with the Recording Office an appropriate instrument in writing for such purpose, (i) if a typographical or factual error or omission needs to be corrected in the opinion of the Declarant, (ii) if the City requires such action as a condition to approval by the City of Lee’s Summit of some matter relating to the development of the Property, provided that at least 20 days’ advance written notice of the required amendment shall be given to the Owners for their review and comment prior to the Declarant executing and recording the same, (iii) to revise Exhibit B, (iv) to update Exhibit C, (vi) to add any Future Restrictions on Exhibit E pursuant to Section 13, or (vii) provided that at least 20 days’ advance written notice of the proposed amendment shall be given to the Owners for their review and comment, where such amendment, modification or termination is not materially adverse to any Owner (or if the materially adversely affected Parcel(s) consent thereto in writing is obtained from such Owners). No such amendment by the Approving Party shall require the consent of any Owner (except as provided in clause (iii) above).

(c) If the rule against perpetuities or any rule regarding restraints on alienation or similar restriction is applicable to any right, restriction or other provision of this Declaration, such right, restriction or other provision shall terminate (if not earlier terminated) upon lapse of 20 years after the death of the last survivor of the now-living children and grandchildren of the individuals signing this Declaration on behalf of the Declarant as of the date of such execution.

37. Rights and Obligations of Lenders. A breach of any of the easements, covenants or restrictions hereof with respect to any Parcel shall not defeat or render invalid the lien or charge of any such mortgage on such Parcel. Any property acquired through sale under foreclosure of any

mortgage effected by powers of sale, judicial proceedings, or otherwise, shall remain subject to all the charges and burdens affecting such Parcel by virtue of this Declaration.

[Remainder of page left blank intentionally. Signature page follows.]

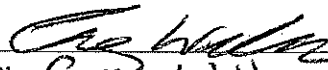
IN WITNESS WHEREOF, this Declaration has been executed by Declarant as of the day and year first above written.

DECLARANT:

M-III Longview LLC,
a Delaware limited liability company

By: Platform Investments, LLC
its Manager

By: Platform Ventures, LLC
its Manager

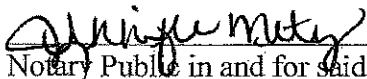
By: 
Name: Corey Walker
Title: SVP

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

This instrument was acknowledged before me, a Notary Public, on this 29th day of ~~April~~^{May}, 2018, by Corey Walker, as SVP of Platform Ventures, LLC, as manager of Platform Investments, LLC, as manager of M-III Longview LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Johnson County, Kansas the day and year last above written.

My Commission Expires:
8/20/18
[SEAL]


Notary Public in and for said County and State
Print Name: Jennifer Metz



LENDER CONSENT AND SUBORDINATION

The undersigned lender is the holder of that certain Deed of Trust, dated June 16, 2017, and recorded in the Recording Office as Instrument No. 2017E0054204 (the “Deed of Trust”).

To the extent the Deed of Trust encumbers the property benefitted and burdened by this Declaration, the undersigned lender hereby consents to the Declaration and subordinates the lien of such Deed of Trust to the provisions of this Declaration with the same effect as if this Declaration had been recorded prior to the recording of the Deed of Trust.

OakStar Bank

By: 
 Name: Jeffery Smith
 Title: Vice President

STATE OF Missouri)
) ss.
 COUNTY OF Henry)

This instrument was acknowledged before me, a Notary Public, on this 2nd day of May, 2018, by Jeff Smith, as VP of OakStar Bank.

My Commission Expires:
10.25.21
 [SEAL]

Michelle L Propst
 Notary Public in and for said County and State
 Print Name: Michelle L Propst

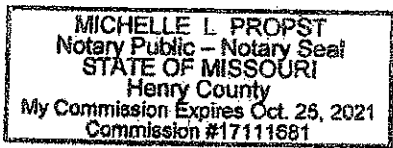


EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Lots 1A, 1B, 1C, 1D, 1E & Tract A, Final Plat of Fascination at New Longview, Lots 1A-1E & Tract A, a subdivision in Lee's Summit, Jackson County, Missouri.

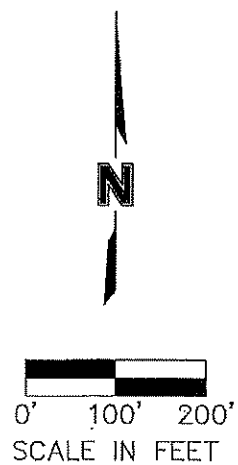
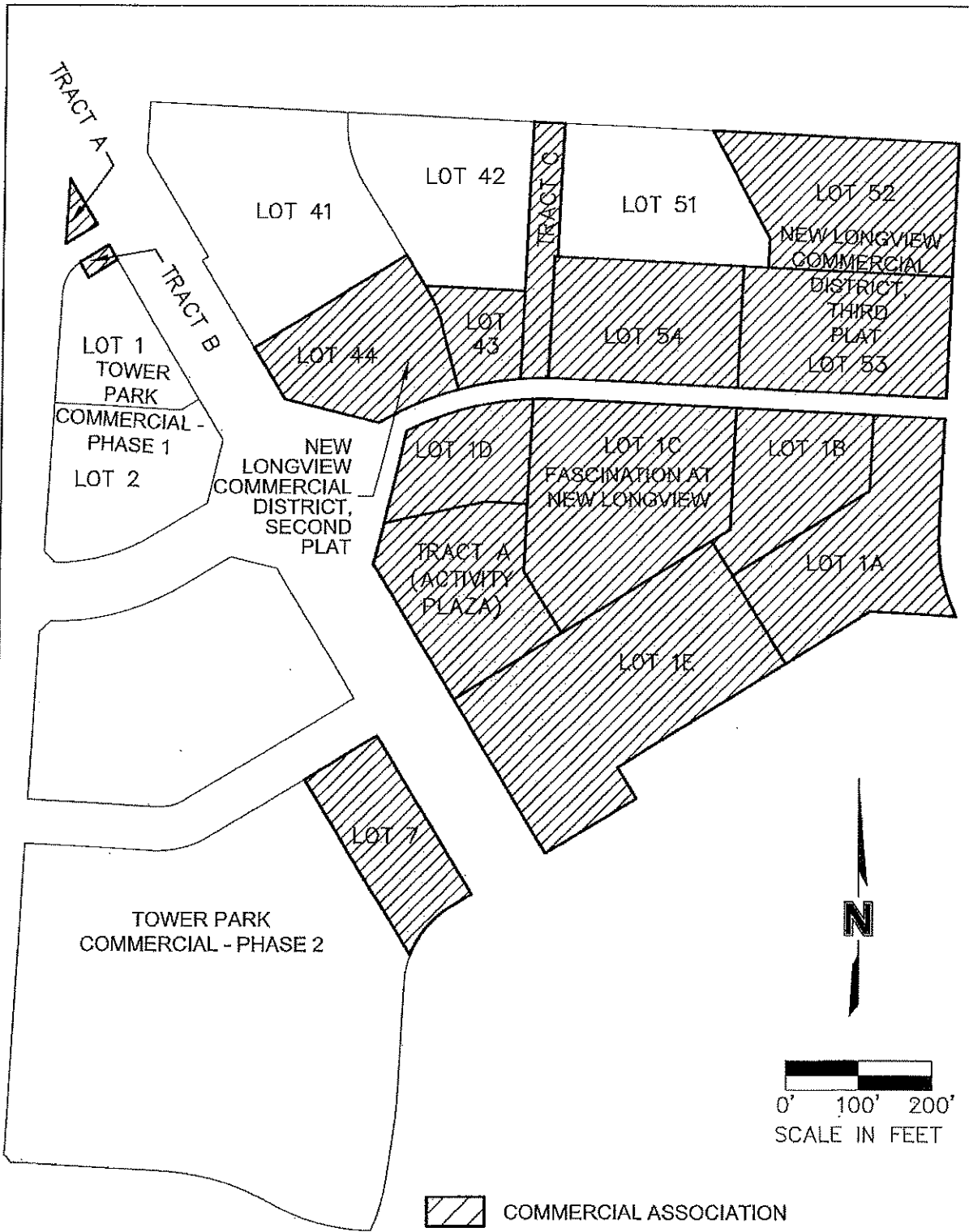
Lot 44, New Longview Commercial District, Second Plat, Lot 44 and Tracts A and B, a subdivision in Lee's Summit, Jackson County, Missouri.

Lots 43, 52, 53, 54 and Tract C, New Longview Commercial District, Third Plat, Lots 42, 43, 51-54, Tracts C, D and E, a subdivision in Lee's Summit, Jackson County, Missouri.

Tract A and Tract B, Tower Park Commercial – Phase 1, Lots 1 and 2 and Tracts A thru H and J, a subdivision in Lee's Summit, Jackson County, Missouri.

Lot 7, Tower Park Commercial - Phase 2, Lots 5, 6, 7, Tracts A and B, a subdivision in Lee's Summit, Jackson County, Missouri.

DWG: F:\2018\1001-1500\018-1363\40-Design\Survey\SRVY\Sheets\CCR Exhibits\Exhibit A.dwg
 DATE: May 16, 2018 1:42pm
 USER: nylfoughby



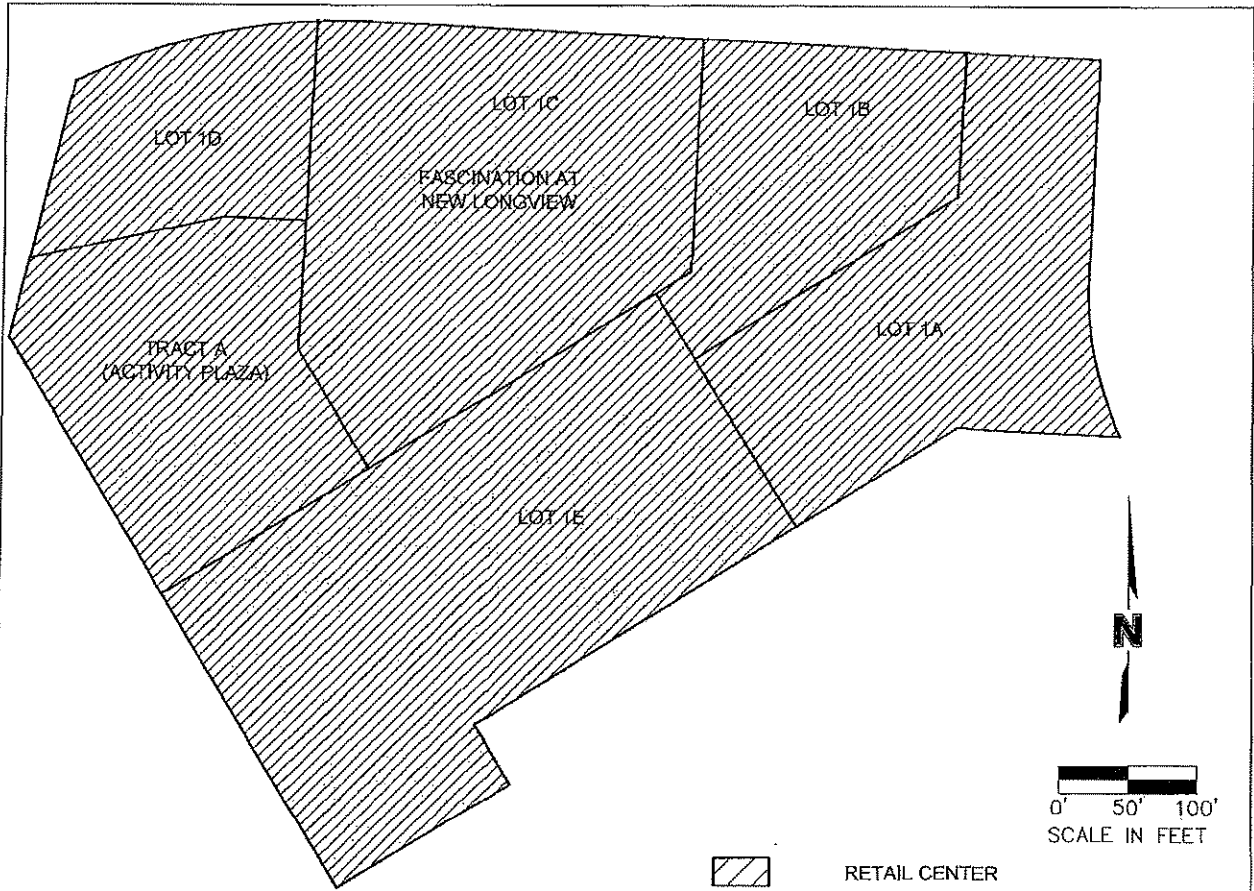
 COMMERCIAL ASSOCIATION

PROJECT NO: 018-1363	EXHIBIT A	 1301 BURLINGTON, SUITE 100 NORTH KANSAS CITY, MO 64116 TEL 816.587.4320 FAX 816.587.1393 www.olssonassociates.com	SHEET
DRAWN BY: NRW	COMMERCIAL ASSOCIATION		1
DATE: 2018.05.16	M-HI LONGVIEW, LLC		

EXHIBIT A-1
LEGAL DESCRIPTION OF THE RETAIL CENTER

Lots 1A, 1B, 1C, 1D, 1E & Tract A, Final Plat of Fascination at New Longview,
Lots 1A-1E & Tract A, a subdivision in Lee's Summit, Jackson County, Missouri.

F:\2018\101-1604\018-1363\40-Design\Survey\SRVY\Sheets\028 Exhibit\A\Exhibit A-1.dwg
 DWG: May 16, 2018 11:44am
 USER: newloughby



 RETAIL CENTER


PROJECT NO: 018-1363	EXHIBIT A-1		1301 BURLINGTON, SUITE 100 NORTH KANSAS CITY, MO 64116 TEL 816.587.4320 FAX 816.587.1363 www.olssonassociates.com	SHEET
DRAWN BY: NRW	RETAIL CENTER			1
DATE: 2018.05.16	M-HI LONGVIEW, LLC			

EXHIBIT A-2
LEGAL DESCRIPTION OF THE OUTPARCELS

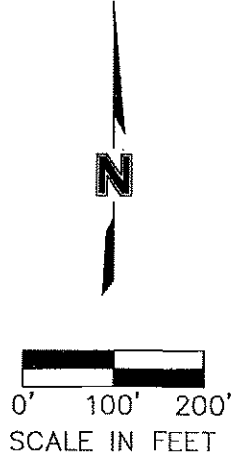
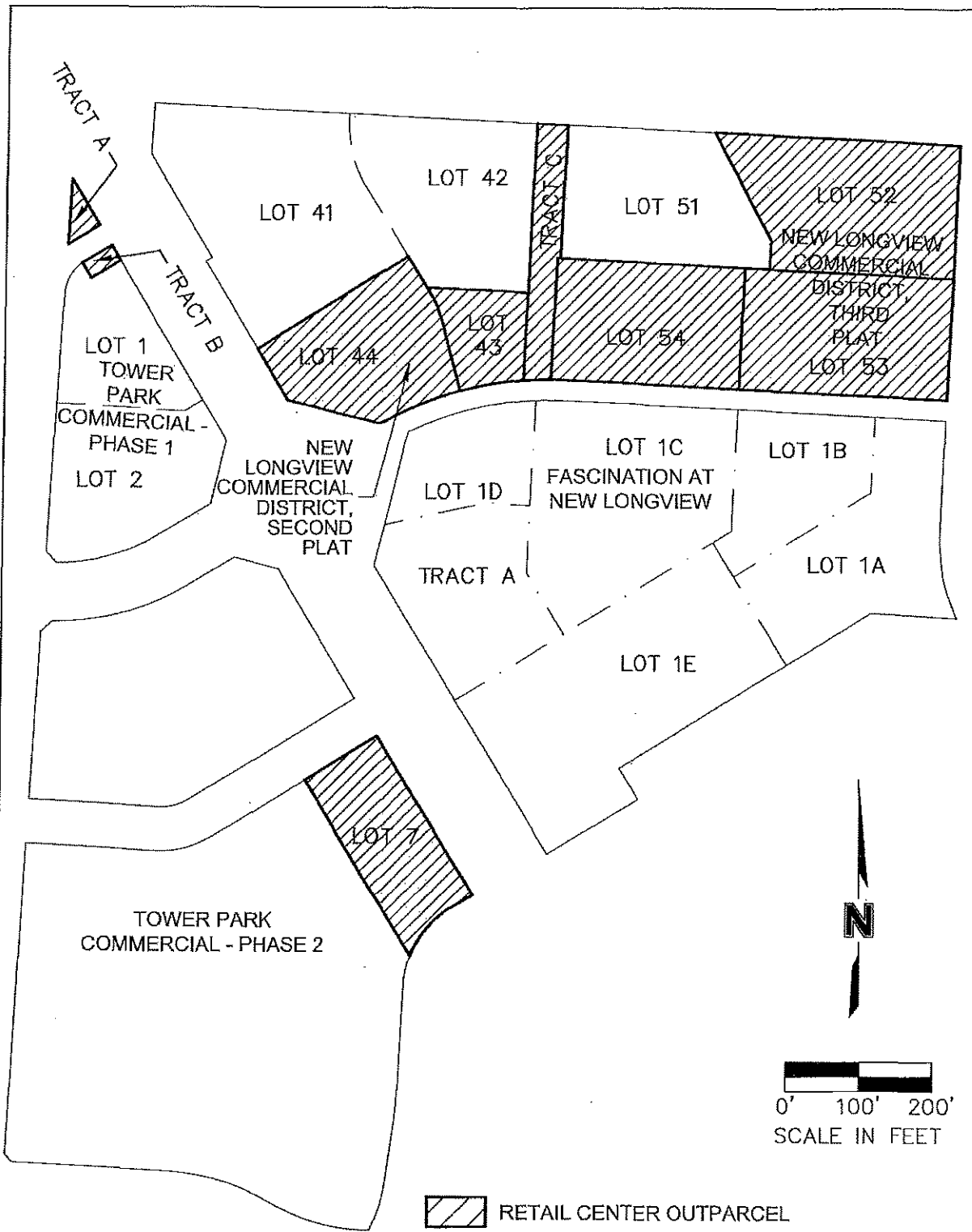
Lot 44, New Longview Commercial District, Second Plat, Lot 44 and Tracts A and B, a subdivision in Lee's Summit, Jackson County, Missouri.

Lots 43, 52, 53, 54 and Tract C, New Longview Commercial District, Third Plat, Lots 42, 43, 51-54, Tracts C, D and E, a subdivision in Lee's Summit, Jackson County, Missouri.

Tract A and Tract B, Tower Park Commercial – Phase 1, Lots 1 and 2 and Tracts A thru H and J, a subdivision in Lee's Summit, Jackson County, Missouri.

Lot 7, Tower Park Commercial - Phase 2, Lots 5, 6, 7, Tracts A and B, a subdivision in Lee's Summit, Jackson County, Missouri.

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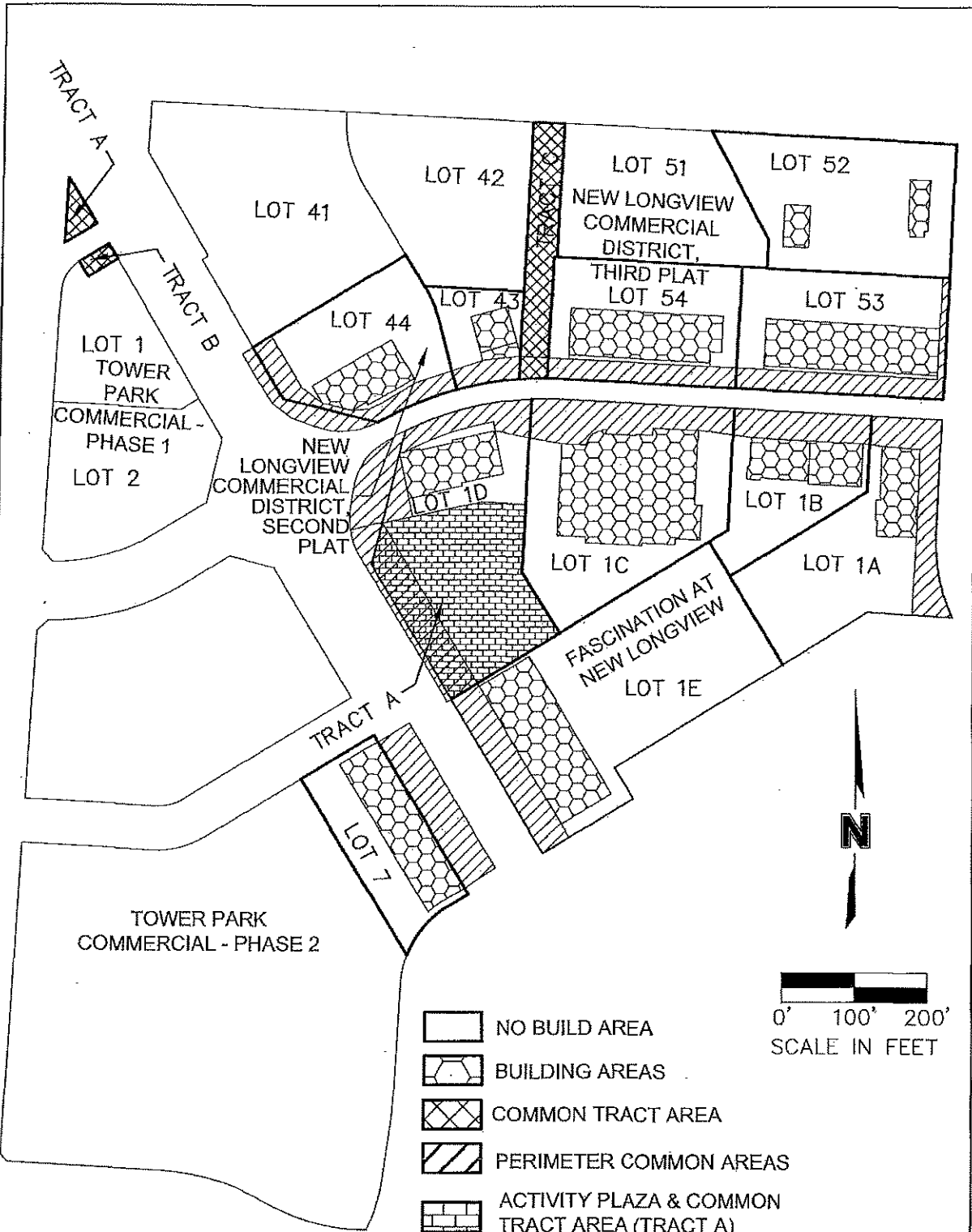







 RETAIL CENTER OUTPARCEL

PROJECT NO: 018-1363	EXHIBIT A-2	 1301 BURLINGTON, SUITE 100 NORTH KANSAS CITY, MO 64116 TEL 816.587.4320 FAX 816.587.1393 www.olssonassociates.com	SHEET
DRAWN BY: NRW	RETAIL CENTER OUTPARCEL		1
DATE: 2018.05.02	M-III LONGVIEW, LLC		

EXHIBIT B
SITE PLAN OF THE PROPERTY

DWG: F:\2018\1001-1500\018-1363\40-Design\Survey\SRV\Sheets\CCR Exhibits\Exhibit B-1.dwg
 DATE: May 18, 2018 1:24pm
 USER: nwilloughby



-  NO BUILD AREA
-  BUILDING AREAS
-  COMMON TRACT AREA
-  PERIMETER COMMON AREAS
-  ACTIVITY PLAZA & COMMON TRACT AREA (TRACT A)

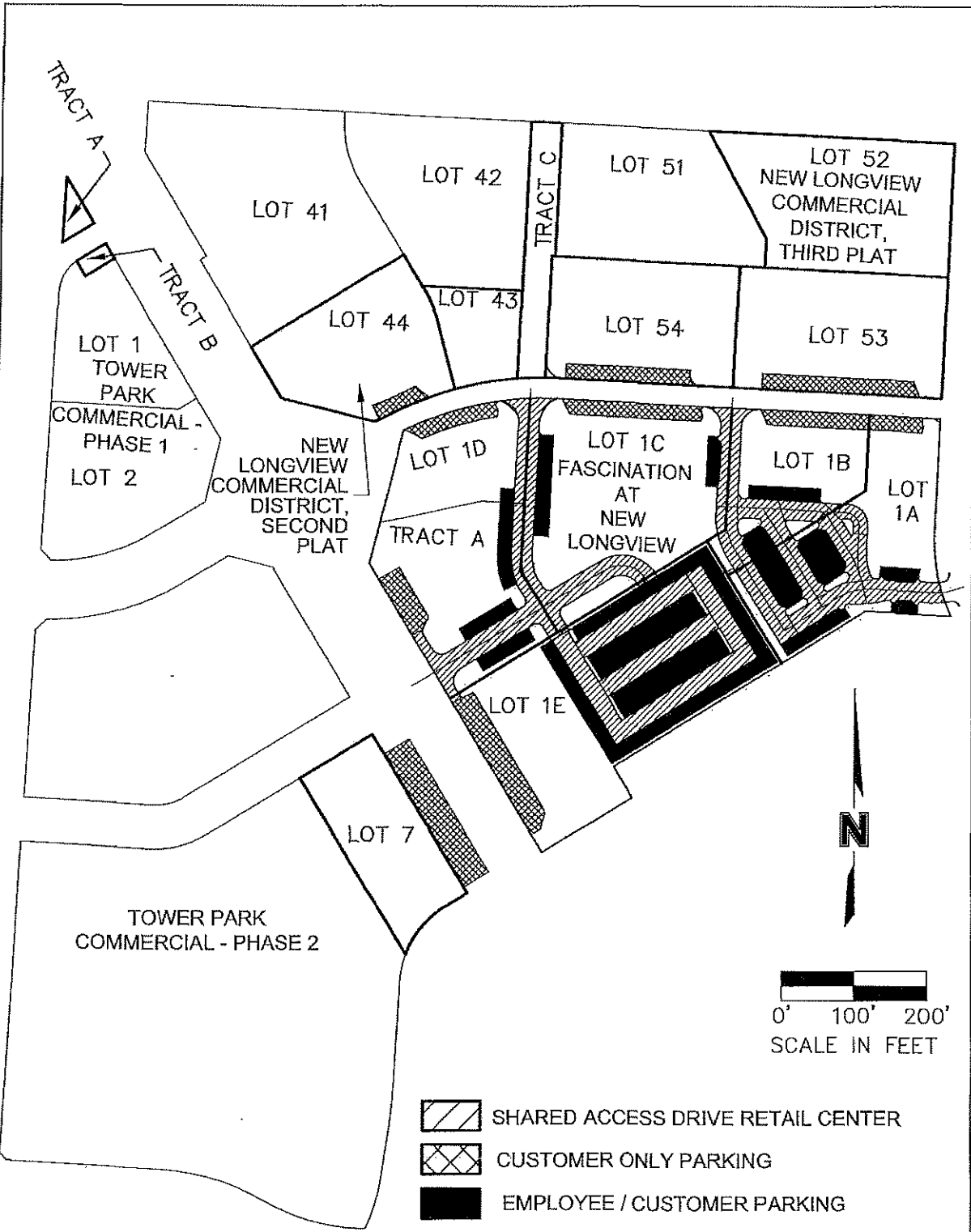
PROJECT NO: 018-1363
DRAWN BY: NRW
DATE: 2018.05.16

EXHIBIT B-1 COMMON & BUILDING AREAS, & ACTIVITY PLAZA EXHIBIT
M-III LONGVIEW, LLC

OLSSON
ASSOCIATES

1301 BURLINGTON, SUITE 100
 NORTH KANSAS CITY, MO 64116
 TEL 816.587.4320
 FAX 816.587.1393
 www.olssonassociates.com

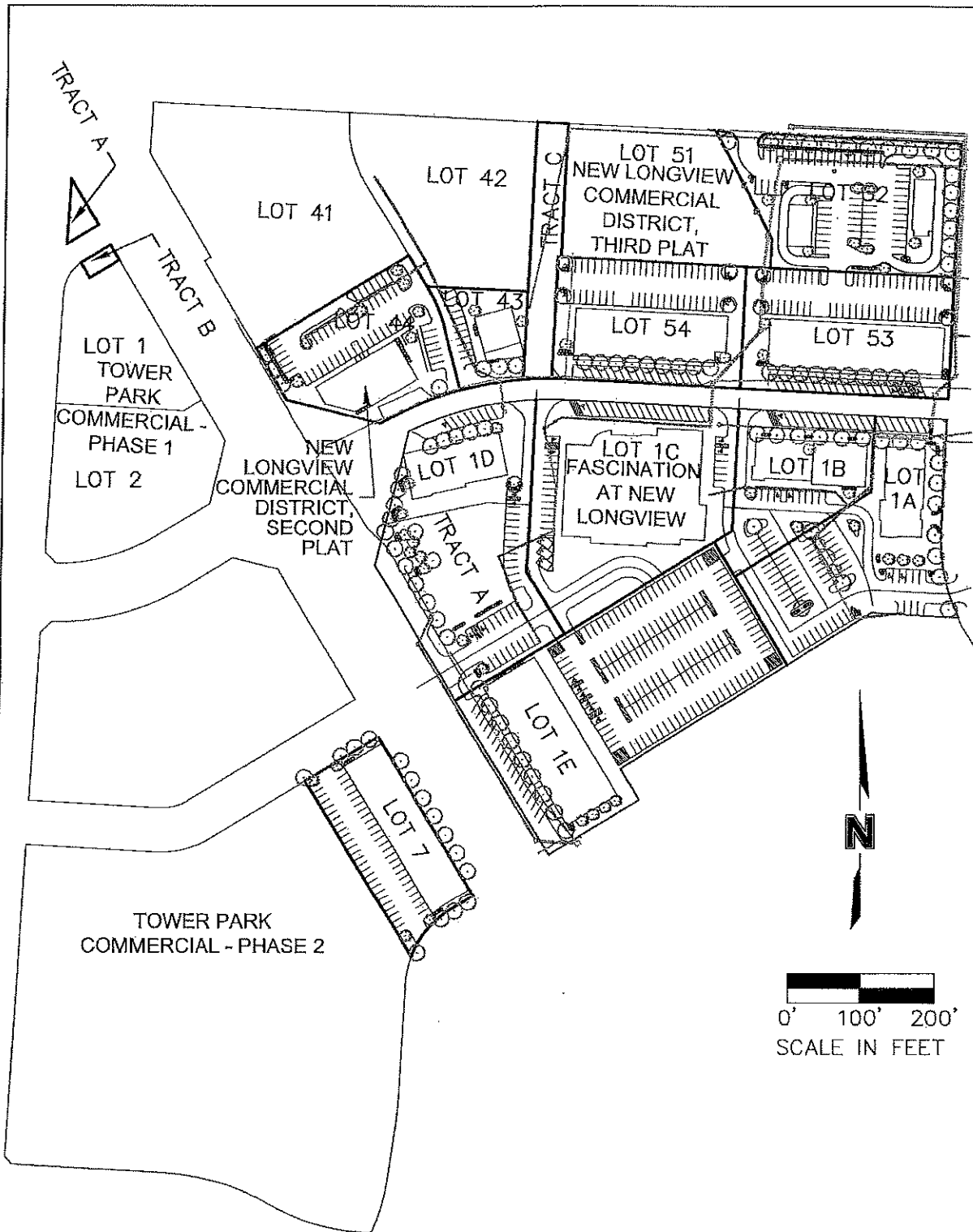
SHEET
1



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 DATE: May 16, 2018 11:57am
 USER: nwilloughby

PROJECT NO: 018-1363	EXHIBIT B-2	 OLSSON ASSOCIATES®	1301 BURLINGTON, SUITE 100 NORTH KANSAS CITY, MO 64116 TEL 816.587.4320 FAX 816.587.1393 www.olssonassociates.com	SHEET
DRAWN BY: NRW	PARKING & ACCESS EXHIBIT		1	
DATE: 2018.05.16	M-JH LONGVIEW, LLC			

D:\2018\1001-1500\016-1353\40-Design\Survey\SRV\Sheets\CCR Exhibits\Exhibit B-3.dwg
 USER: naffloughby
 DATE: May 15, 2018 12:53pm



PROJECT NO: 018-1363	EXHIBIT B-3		1301 BURLINGTON, SUITE 100 NORTH KANSAS CITY, MO 64116 TEL 816.587.4320 FAX 816.587.1393 www.olssonassociates.com	SHEET
DRAWN BY: NRW	PARCEL SITE PLAN EXHIBIT			1
DATE: 2018.05.16	M-III LONGVIEW, LLC			

EXHIBIT C
RULES AND REGULATIONS

All Parcels shall be governed by the following Rules and Regulations unless otherwise agreed by Declarant. Declarant shall not be responsible for the violation or nonperformance by any Permittee of the Parcels with regard to these Rules and Regulations; provided, however, that Declarant agrees to use its reasonable efforts to cause such Permittee to comply with these Rules and Regulations. Unless otherwise provided, all terms used in these Rules and Regulations shall have the same meaning as set forth in this Declaration.

1. Building Area

1.1. All Building areas, including entrances and returns, doors, fixtures, windows and plate glass shall be maintained by the party occupying such floor area in a safe, neat and clean condition.

1.2. All trash, refuse and waste materials shall be regularly removed from the premises of each Building, and until removal shall be stored (a) in adequate containers, which containers shall be covered with lids and shall be located in areas designated by Declarant so as not to be visible or emit noxious odors to the general public, and (b) so as not to constitute any health or fire hazard or nuisance to any party.

1.3. Neither sidewalks nor walkways shall be used to display, store or replace any merchandise, equipment or devices, without the express written consent of Declarant.

1.4. Except as otherwise approved by Declarant (without the joinder of any other Owner or party), no advertising medium shall be utilized which can be heard or experienced outside of any building, including, without limiting the generality of the foregoing, flashing lights, searchlights, loud speakers, phonographs, radios or television.

1.5. No use shall be made of the Parcels or any portion or portions thereof which would (a) violate any law, ordinance or regulation, (b) constitute a nuisance, (c) constitute an extra-hazardous use, or (d) violate, suspend or void any policy or policies of insurance on the stores located thereon.

1.6. All Owners and Occupants shall use their diligent efforts to require all trucks servicing their respective stores to load and unload such trucks (a) prior to the hours the Retail Center or adjacent Outparcel(s) is/are open for business to the general public, or (b) so as not to unreasonably interfere with the operation of the other stores within the Parcels.

1.7. All Owners and Occupants shall use their diligent efforts, promptly upon receiving notice thereof, to notify each Parcel Owner and Declarant or their respective designated representative, of any significant accident, loss, damage, destruction or any

other situation which arises in or about their respective stores or the Common Area which could potentially result in a claim or other action against Declarant or such Parcel Owner.

2. General Owner and Occupant Requirements

2.1 Each Owner and Occupant shall comply with and observe the following rules and regulations:

2.1.1 Each Owner and Occupant shall keep their Parcel or Building free and clear of rodents, bugs and vermin and maintain grease traps, trash bins and containers in accordance with Governmental Requirements and so as not to constitute a health risk or emit noxious odors.

2.1.2 Each Owner and Occupant shall keep the display windows of the their Building and the interior of the Building suitably illuminated during the applicable business hours as established by Declarant from time to time, but no Owner or Occupant shall have or permit any storefront lighting not approved by Declarant. If the Building has a recessed storefront, Declarant shall have the right to control the types of, or prohibit altogether, displays in front of the closure line and each Owner or Occupant shall promptly comply with any written directions of Declarant pertaining to such displays.

2.1.3 No Owner and Occupant Tenant shall place any obstruction on the sidewalks, entrances, passages, corridors or stairways or other Common Area and specifically, without limitation, shall not, without the prior consent of Declarant, use Common Area for the display of merchandise, vending machines or any other activity except ingress and egress.

2.2 Conduct of Persons. The following rules and regulations shall apply for the use of roadways, walkways, the parking areas, and other common facilities provided for the use of Permittees:

2.2.1 No person shall use any roadway or walkway, except as a means of egress from or ingress to any area within the Parcels or adjacent public streets or such other uses as reasonably approved by the Declarant and any affected Parcel Owner. Such use shall be in an orderly manner, in accordance with the directional or other signs or guides. Roadways within the Parcels shall not be used at a speed in excess of fifteen (15) miles per hour and shall not be used for parking or stopping, except for the immediate loading or unloading of passengers and/or purchases by customers. No walkway shall be used for other than pedestrian travel or such other uses as approved by the Declarant.

2.2.2 No person shall use the parking areas except for the parking of motor vehicles during the period of time such person or the occupants of such vehicles are

customers, employees or business invitees of the retail establishments within the Parcels. All motor vehicles shall be parked in an orderly manner within the painted lines defining the individual parking places. During peak periods of business activity, limitations may be imposed as to the length of time for parking use. Such limitations may be made in specified areas.

2.2.3 No person shall use any utility area, truck court or other area reserved for use in connection with the conduct of business, except for the specific purpose for which permission to use such area is given.

2.2.4 Subject to the governmental laws, rules and regulations, no person shall, in or on any part of the Common Area:

2.2.4.1 Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever, except as approved in writing by the Declarant.

2.2.4.2 Exhibit any sign, placard, banner, notice or other written material.

2.2.4.3 Distribute any circular, booklet, handbill, placard or other material.

2.2.4.4 Solicit membership in any organization, group or association or contribution for any purpose.

2.2.4.5 Parade, rally, patrol, picket, demonstrate or engage in any conduct that might tend to interfere with or impede the use of any of the Common Area by any Permittee, create a disturbance, attract attention or harass, annoy, disparage or be detrimental to the interest of any of the retail establishments within the Parcels.

2.2.4.6 Use any Common Area for any purpose when none of the retail establishments within the "Property" is open for business or employment.

2.2.4.7 Throw, discard or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind.

2.2.4.8 Use any sound-making device of any kind or create or produce in any manner noise or sound that is annoying, unpleasant, or distasteful to the other Parcel Owners or Permittees of the Parcels.

2.2.4.9 Deface, damage or demolish any sign, light standard or fixture, landscaping material or other improvement within the Parcels, or

the property of customers, business invitees or employees situated within the Parcels.

2.2.5 The listing of specific items as being prohibited is not intended to be exclusive, but to indicate in general the manner in which the right to use the Common Area solely as a means of access and convenience in shopping at the retail establishments located within the Parcels is limited and controlled by the Declarant.

2.2.6 Any party shall have the right to remove or exclude from or to restrain (or take legal action to do so) any unauthorized person from, or from coming upon, the Parcels or any portion thereof, and prohibit, abate and recover damages arising from any unauthorized act, whether or not such act is in express violation of the prohibitions listed above. In so acting such party is not the agent of the Declarant, other Parcel Owners or of tenants of the Parcels, unless expressly authorized or directed to do so by such party in writing.

3. Staging Areas for Construction

3.1 The construction staging area (“**Staging Area**”) for each Parcel Owner shall be as reasonably located from time to time by Declarant based on Declarant’s construction schedules and in accordance with reasonable rules and regulations which may be promulgated by Declarant from time to time. Such Parcel Owner shall move trailers, equipment, storage facilities including, but not limited to, containers or construction materials, or items as reasonably requested by Declarant to accommodate all construction or to reasonably keep the appearance of the Parcels in an orderly fashion.

3.2 Each Staging Area user shall, during the course of its construction, routinely remove all trash and debris caused by such Staging Area user to the Staging Area and any portion of the Parcels including, but not limited to, the Common Area and the adjacent streets and driveways. Each Staging Area user shall keep the Staging Area and any adjacent parking areas in a reasonably neat, clean and sightly condition. Each Staging Area user shall periodically sweep its Staging Area by use of a professional sweeping company.

3.3 Each Staging Area user shall cause its employees, or the employees of its contractors and subcontractors to park in areas reasonably designated by Declarant, and in the event of a failure to control such unauthorized parking, Declarant may tow violating vehicles at the vehicle owner’s expense.

3.4 After work is completed for a particular installation with respect to the Parcel Owner’s store, the Staging Area user shall promptly, within forty-eight (48) hours, remove any excess materials no longer necessary for the construction of such store.

3.5 All containers and trailers shall be removed from the Staging Area or parking area as soon as practicable, but in no event later than forty-eight hours (48) hours of emptying of same (provided that the container or trailer is not required for future use after notice and approval by Declarant). The Staging Area user shall move any containers

which can be safely moved or rearranged as directed by Declarant and is reasonably required to minimize inconvenience in connection with the construction or development of the Parcels and their respective Permittees so as to avoid obstructing visibility or access from adjacent roads.

3.6 In the event that a Staging Area user, or its contractors or subcontractors, damage any portions of the Parcels, such Staging Area user must, upon written notice from Declarant, repair such damage at such Staging Area user's expense. If such Staging Area user fails to make such repairs promptly, Declarant may cause repairs to be effected and the Staging Area user will be required to reimburse Declarant for any such repairs.

3.7 Upon receipt of written notice from Declarant, the Staging Area user will promptly repair any damage caused to any portion of the Parcels by the Staging Area user's containers, trailers and operations and shall re-stripe the parking area as necessary in those areas of repair. If the Staging Area user fails to make such repairs promptly, Declarant may cause the damaged area to be reasonably repaired and restriped in the area of the repair and the Staging Area user will be required to reimburse Declarant for any such costs or expenses incurred by Declarant relating to such repair and re-striping.

3.8 Any temporary signs shall be approved by Declarant prior to installation, which approval shall not be unreasonably withheld, conditioned or delayed.

3.9 The Staging Area user shall, at its sole cost and expense, obtain and connect (and disconnect upon completion) all temporary utilities in a safe and sightly manner.

3.10 Promptly after completion of the portion of the construction requiring such Staging Area, the Staging Area user shall completely remove all items related in any way to the construction of its store from the Staging Area and shall return the Staging Area to the condition as hereinbefore provided.

3.11 If a Staging Area user fails to reasonably complete any items above, or fails to remove its containers and other items as required, Declarant may request in writing that the Staging Area user make such repairs, or perform such above-stated items and, upon the Staging Area user's failure or refusal to do so within twenty-four (24) hours, Declarant shall have the right (but shall not be obligated), either itself or through a third-party contractor, to perform all the foregoing items and thereupon the Staging Area user, within ten (10) days, after receipt of invoices and related documentation shall reimburse Declarant for any costs and expenses reasonably incurred by Declarant in connection therewith.

4. Maintenance During Construction

4.1 All construction shall be carried out in an orderly and timely manner;

4.2 All construction sites shall be enclosed with a lockable chain link fence, kept in a neat and good condition at all times and locked whenever construction is not

actually being performed. Stored building materials shall be appropriately hidden from view to the extent deemed reasonably necessary by the Declarant;

4.3 All construction sites shall be equipped with portable toilets and all portable toilets shall be located a minimum of twenty-five feet (25') from property lines, and shall be emptied as often as required to ensure the absence of any noxious odors;

4.4 Dust from all construction sites shall be controlled at all times by watering down the construction site. Any sandblasting activities shall be restricted to the water type application. If trucks entering and leaving the particular site track mud or dust on the interior or public streets, the Owner or Occupant on which or for whose benefit the construction is being performed shall be responsible for maintaining the streets (or causing the same to be maintained) in a clean and dust- and mud-free condition on a daily basis;

4.5 All broken sidewalks or cracked or potholed streets or other Common Areas which are damaged due to the construction process for the development of a Parcel, shall be repaired, to the reasonable satisfaction of the Declarant, at the sole expense of the Owner or Occupant of the Parcel on which or for whose benefit the construction is being performed. The damaged Common Areas shall be repaired within seven (7) days after the damage occurs. If any damaged Common Areas are not completely restored to their pre-damaged condition or replaced by substitutes acceptable to the Declarant within seven (7) days after the damage is detected, the Declarant may, after written notice to Owner or Occupant at its option, cause the damage to be repaired at the expense of the Owner of Occupant of the Parcel on which or for whose benefit the construction is being performed;

4.6 All utilities damaged as a result of any construction being undertaken on or for the benefit of a Parcel shall be repaired immediately and without delay, to the reasonable satisfaction of the Declarant at the sole expense of the Owner of Occupant of the Parcel on which or for whose benefit the construction is being performed. If any damaged utility is not completely repaired or replaced by substitutes acceptable to the Declarant within twenty-four (24) hours after the damage is detected, the Declarant may, at its option, after written notice to Owner or Occupant cause the damage to be repaired at the expense of the Owner of Occupant of the Parcel on which or for whose benefit the construction is being performed;

4.7 Any landscaping materials or sprinkler systems on an adjacent Parcel or on adjacent Common Areas abutting any particular construction project damaged in the course of such construction shall be replaced or repaired within two (2) days after damage is detected, to the reasonable satisfaction of the Declarant, at the sole expense of the Owner of Occupant of the Parcel on which or for whose benefit the construction is being performed. If any damaged landscaping materials or sprinkler systems are not completely repaired or replaced within two (2) days after the damage is detected, the Declarant may, at its option, after written notice to Owner or Occupant cause the damage to be repaired at the expense of the Owner of Occupant of the Parcel on which or for whose benefit the construction is being performed; and

4.8 No parking will be permitted on private or public streets. Construction, delivery and other vehicles operated or utilized in connection with construction activities upon a Parcel shall be parked only upon such Parcel or, with the prior written consent of the Declarant and the Owner of another Parcel, upon such other Parcel.

EXHIBIT D
EXISTING RESTRICTIONS

Except as otherwise approved in writing by Declarant in the exercise of its sole and absolute discretion (and without requiring the joinder of any other party or Owner or party), none of the Outparcels or Parcels in the Retail Center shall be used in violation of any of the following Existing Restrictions:

1. Any public or private nuisance.
2. Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness.
3. Any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any Building in the Property. The foregoing limitation shall not apply to customary cooking odors emitted from Restaurants, grocery stores, or convenience stores operating in the ordinary course of business that are in compliance with Governmental Requirements, but shall apply to any non-customary cooking odors or any odors, negligently, intentionally projected or released other than in the ordinary course of business.
4. Any use which emits excessive quantities of dust, dirt, or fly ash; provided however, this prohibition shall not preclude the sale of soils, fertilizers, or other garden materials or building materials in containers if incident to the operation of a home improvement or other similar store.
5. Any use which could result in, or cause, any fire, explosion or other damaging or dangerous hazard, including without limitation the storage, display or sale of explosives or fireworks.
6. Any operation primarily used for assembling, manufacturing, distillating, refining, smelting, agriculture or mining operations.
7. Any mobile home or trailer court, auction house, labor camp, junkyard, mortuary, funeral home, stock yard, animal raising facility (except that, notwithstanding the foregoing, the provisions of this paragraph shall not prohibit the temporary use of construction trailers as approved by Declarant during periods of construction, reconstruction, or maintenance). Notwithstanding the foregoing, the operation of a veterinary office (which may include, without limitation, boarding of animals), "PetSmart" or "Petco" (or any similar regional or national pet store) as such stores are operated from time to time (which may include, without limitation, veterinary, grooming and/or boarding services) shall be a permitted use within the Property.
8. Any drilling for and/or removal of subsurface substances (such as minerals, oil, etc.).
9. Any automobile, truck, trailer or recreational vehicle sales, rental, leasing or body and fender repair operation.

10. Any flea market and/or swap meet or second hand or surplus store; PROVIDED, HOWEVER, the operation of a consignment shop such as, by way of example only and not of limitation, "Terri's Consign & Design" or "2nd Swing" (or any similar business) shall not be prohibited hereunder.

11. Any adult book shop, movie house or other establishment selling or exhibiting pornographic materials or other pornographic use; provided, however, that such restrictions shall not preclude (i) the showing of films in any first rate motion picture theater operated in the Shopping Center, so long as such motion picture theater does not show any film that has received an "X-rating" from the Motion Picture Association of America or any successor to the Motion Picture Association of America which rates motion pictures, or any other pictures that are considered pornographic, and (ii) the sale or rental of adult books, magazines or videos as an incidental part of the business of a general purpose bookstore or video store which is normally found in a first class center.

12. Any tattoo parlor or any establishment selling drug related paraphernalia or any facility the use of which is unlawful, immoral, obscene, pornographic, or which tends to create or maintain a nuisance or do any act tending to injure the reputation of the Property.

13. Any bar, tavern, cocktail lounge or nightclub; provided, however, the foregoing shall not prohibit the operation of a bar, tavern, or nightclub as a part of any Restaurant being operated on any Parcel, provided that the sale of alcohol from such bar, tavern or nightclub does not exceed sixty percent (60%) of such Restaurant's gross sales.

14. Any abortion clinic, blood bank or drug rehabilitation clinic.

15. Any sales within an Outside Sales Area, unless approved by Developer (in its sole and absolute discretion).

16. Any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pick up and delivery by the ultimate consumer as the same may be found in a first class center.

17. Any discotheque or dance hall, provided, however, the foregoing shall not prohibit or restrict such operation as a part of any Restaurant being operated on the Property.

18. Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided however, this prohibition shall not be applicable to on-site employee training by a Permittee incidental to the conduct of its business on such Parcel or to pet-training in connection with a pet shop or pet supply store.

19. Any check cashing company, so-called "payday loan" operation or pawn shop.

20. Any carnival, circus or amusement park.

21. Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines, video poker/black-jack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities, or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the Permittee.

22. No auction, fire or going out of business sales shall be conducted in the Shopping Center except a going out of business sale conducted during the last thirty (30) days of an existing retail operation or as otherwise conducted pursuant to court order.

23. Any marijuana dispensary, head shop or so-called "hooka lounge" or similar use, irrespective of whether such use is legal.

24. The display or projection of a motion picture on a screen larger than 60" measured diagonally or the sale of buttered popcorn within the Common Areas in the Retail Center without the prior written approval of Declarant.

EXHIBIT E
FUTURE RESTRICTIONS