
Title of Document: Reciprocal Easement and Operating Agreement

Date of Document: _____, 2019

Grantor: Townsend Summit, LLC, a Delaware limited liability company

Address: 11311 McCormick Road, Suite 470, Hunt Valley, MD 21031, Attention:
Mr. David Townsend

Grantee: Townsend Summit, LLC, a Delaware limited liability company

Address: 11311 McCormick Road, Suite 470, Hunt Valley, MD 21031, Attention:
Mr. David Townsend

Legal Description: See Exhibit A

References: N/A

After Recording Please Return to:

Dentons US LLP
4520 Main Street, Suite 1100
Kansas City, MO 64111
Attn: Marty Rice

**RECIPROCAL EASEMENT AND OPERATING
AGREEMENT
FOR
SUMMIT ORCHARDS**

This RECIPROCAL EASEMENT AND OPERATING AGREEMENT (“REA”) is made this _____ day of _____, 2019, by Townsend Summit, LLC, a Delaware limited liability company (“Declarant”), with reference to the facts set forth below.

RECITALS

A. Declarant is the owner of that certain real property consisting of approximately 16.064 acres, located directly North of and adjacent to NW Chipman Road, and South of the intersection of NW Donovan Road and NW Ward Road, all in the City of Lee’s Summit, County of Jackson, State of Missouri, as more particularly described on Exhibit A attached hereto (the “Project”).

B. The real property to which this REA is applicable is the Project. Declarant desires to further subdivide, develop, improve, lease, ground lease, sell and convey parcels within the Project subject to certain uniform covenants, conditions, restrictions, limitations, reservations, easements, rights-of-way, liens, charges and other protective and beneficial provisions set forth herein in order to implement a uniform, general and common plan, which is designed to preserve, protect and enhance the value, desirability, safety and attractiveness of the Project for the mutual benefit and protection of each portion thereof, along with Declarant and all subsequent Owners and Occupants of the Project and any portion thereof. All lots hereafter created from the Project pursuant to any plat or subdivision map, lot merger, lot split, lot line adjustment or similar subdivision, land reorganization or approval, or amendment thereto, are referred to individually as a “Lot” or collectively as the “Lots.”

C. Declarant acknowledges that the Project is subject to the Summit Orchards Community Improvement District (“CID”) created pursuant to Mo. Rev. Stat. 67.1401 *et seq.* (“CID Law”) to provide a source of financing for certain property, improvements, infrastructure and services in connection with the Project. The CID has the power to take such actions, including imposing a sales tax within the Project, as permitted by the CID Law, the petition to the City of Lee’s Summit (“City”) for the creation of the CID and the associated Cooperative Agreement between the City of Lee’s Summit, the CID and Townsend Summit, LLC dated March 5, 2019 (the “Cooperative Agreement”), and upon acceptance of ownership or possession of the Project or any portion thereof, the Owners and Occupants of the Project shall be deemed to have approved and accepted the CID and the imposition of the CID sales tax..

D. Declarant intends to develop the Project as a retail shopping center project comprised of various parcels known as “Summit Orchards” to be developed generally in accordance with site plan on Exhibit B attached hereto.

E. Because the development of a substantial portion of the Project is, as of the date of this REA, as yet unfinished, Declarant has crafted this REA with the express purpose of retaining flexibility with respect to future planning and development, including by reserving rights to modify the land uses in the Project in furtherance of such future development.

F. Declarant desires and intends that this REA (a) provide for the Common Elements and the maintenance and preservation thereof; (b) provide for the establishment and maintenance of common services and amenities for the Project; (c) prevent the construction of haphazard, improperly designed or inharmonious improvements and (d) in general provide for high quality improvements within the Project in accordance with a general plan of improvement and development.

G. To further Declarant's desires and intentions for the preservation of the values and amenities in the Project, and in fulfillment of the conditions for approval of the subdivision maps that are or may be recorded to subdivide the Project, Declarant has reserved the right to create in the future, a corporation to which may be delegated and assigned some or all of the powers of maintaining and administering the Common Elements for the common use and enjoyment of the Owners and Occupants, administering and enforcing the covenants, conditions and restrictions set forth herein, collecting and disbursing the assessments and charges hereinafter created and performing such other acts as shall generally benefit the Project. If Declarant elects to create a corporation to assume some or all of Declarant's rights and responsibilities hereunder, Declarant may establish a property owners' association (the "Association") as a nonprofit corporation pursuant to the Missouri Nonprofit Corporation Act. The members of the Association will be the respective Owners of Lots subject to Assessment. Unless and until creation of the Association and recordation of an express assignment and delegation of powers and responsibilities to the Association, Declarant and its designated successors and assigns will retain all such rights and powers.

NOW THEREFORE, Declarant does hereby establish various easements as provided herein and declare that the Project, and every portion thereof, shall be owned, held, conveyed, transferred, divided, sold, leased, rented, encumbered, developed, improved, graded, landscaped, operated, maintained, repaired, occupied and used subject to the uniform covenants, conditions, restrictions, easements, rights, rights-of-way, liens, charges, assessments and other provisions set forth in this REA, each of which are hereby (i) expressly imposed upon the Project, and each portion thereof, as mutual, beneficial and equitable servitudes in favor of and for the mutual use and benefit of the Project, and each portion thereof, Declarant, and its respective successors and assigns, and all subsequent Owners of any portion of the Project and their respective heirs, successors, representatives and assigns, in order to implement the uniform, general and common plan described above; and (ii) expressly declared to be binding upon the Project and each portion thereof and shall run with the land and each and every part thereof, shall inure to the benefit of and be a burden upon the Project and each portion thereof, and shall bind the respective heirs, successors and assigns of the Owners of the Project and each portion thereof. Upon recordation of this REA, any conveyance, transfer, sale, hypothecation, assignment, lease or sublease made by any present or future Owner of any portion of the Project, shall be and hereby is deemed to incorporate by reference the provisions of this REA, as the same may be amended from time to time.

ARTICLE I

DEFINITIONS AND INTERPRETATION

The following terms have the stated meanings in this REA:

- 1.1** “Architectural Standards” has the meaning given it in Section 2.1.
- 1.2** “Articles” means the Articles of Incorporation of the Association (if it is formed), as they may from time to time be amended, modified or supplemented.
- 1.3** “Assessments” means Regular Assessments, Special Assessments and any other dues, fees, penalties, fines, charges, interest and other amounts (including each installment thereof) payable by any Owner to the Association or Declarant as provided herein.
- 1.4** “Association” means a property owners’ association organized as a Missouri nonprofit corporation, its successors and assigns, which corporation may hereafter be formed by Declarant.
- 1.5** “Building” means any structure which can be occupied and is constructed on any Lot in the Project.
- 1.6** “Bylaws” means the Bylaws of the Association (if it is formed) as they may from time to time be amended, modified or supplemented.
- 1.7** “City” has the meaning given this term in Recital C.
- 1.8** “Common Elements” has the meaning given this term in Article IX.
- 1.9** “Common Expenses” means the actual and estimated costs of the following in connection with the administration and enforcement of this REA and the operation, maintenance, repair or replacement of some or all of the Common Elements hereunder:
- (a) Maintenance, management, operation, repair and replacement of the Common Elements, including the cost of parts and supplies, utilities, landscaping, cleaning, pest control, and hiring of any outside contractor services;
 - (b) Unpaid Assessments;
 - (c) Compensation paid to managers, accountants, outside auditors, attorneys, consultants and employees by or on behalf of the Declarant in connection with its discharge of its responsibilities hereunder;
 - (d) Casualty and liability insurance and any other insurance obtained with respect to the Common Elements and workers’ compensation, fidelity insurance, directors’ and officers’ liability insurance and any other insurance obtained with respect to the administration of this REA;

(e) Reasonable reserves as provided herein or as deemed appropriate by the Declarant, including, without limitation, all reserves required in connection with the CID to the extent allocable to the Project in Declarant's reasonable discretion;

(f) Taxes paid with respect to the Common Elements;

(g) The discharge of any lien or encumbrance levied against the Common Elements or any portion thereof, but only to the extent that such lien or encumbrance is secured by or applies to the Common Elements or any portion thereof;

(h) Any licenses or permits needed for the Common Elements;

(i) Costs incurred with respect to, or paid to an outside agency or organization for, the provision of a security force to patrol and protect the Common Elements and such other portions of the Project as the Declarant may designate;

(j) Costs incurred by committees established by the Declarant;

(k) Costs incurred for snow and ice removal for all roads, drive lanes, sidewalks, paths and walkways included within the Common Elements; and

(l) Other expenses (i) incurred in connection with the enforcement of this REA, (ii) incurred for any reason whatsoever in connection with the Common Elements or to or for the common benefit of the Owners or in connection with any other item or items designated by the Governing Documents or (iii) incurred in the discharge of any duties or powers of the Declarant hereunder.

1.10 "County" means the County of Jackson County, Missouri.

1.11 "Declarant" means Townsend Summit, LLC, a Delaware limited liability company, its successors and such of Declarant's successors and assigns to whom it assigns any of its rights, powers, privileges and responsibilities by express assignment set forth in a recorded instrument executed by Declarant.

1.12 "Default Rate" has the meaning given it in Section 7.7.

1.13 "Design Criteria" has the meaning given it in Section 2.2.

1.14 "Design Review Committee" has the meaning given it in Section 2.5.

1.15 "Entitlements" means all governmental, special district and public utility approvals, decisions, resolutions, ordinances, permits, agreements, conditions, requirements, exactions, entitlements, reports, maps, plans and orders, heretofore or hereafter from time to time adopted, amended, modified or supplemented, expressly governing, affecting or relating to the organization, zoning, use, development, improvement, operation or ownership of the Project, or any portion thereof.

1.16 “Fiscal Year” means the fiscal year determined by the Declarant for purposes of determining and collecting Assessments; provided, however, that the Fiscal Year shall be subject to change from time to time as the Declarant may determine.

1.17 “Floor Area” has the meaning given it in Section 2.4.

1.18 “Governing Documents” means this REA, the Rules and any other documents governing the use of the Lots or the Common Elements, or the maintenance and repair of the Lots and Improvements, the petition for the creation of the CID filed with the Office of the City Clerk for the City of Lee’s Summit, Missouri on January 31, 2019, the Cooperative Agreement and all other operative documents in connection with the CID, all as from time to time may be amended, modified or supplemented. If the Association is formed, Governing Documents will include the Articles and Bylaws, all as from time to time may be amended, modified or supplemented.

1.19 “Governmental Requirements” means all applicable laws, rules, regulations, orders, ordinances, subdivision requirements, zoning restrictions, map conditions, and all other requirements (including all requirements to have or to obtain permits) of any governmental agency or body with jurisdiction over the Project, including the City, the County, the State, and the U.S. Federal Government.

1.20 “Hazardous Materials” means any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials, is: (i) injurious to public health & safety or the environment; (ii) a basis for liability of an Owner to any governmental agency or third party under any applicable statute or common law theory, including flammable, explosive or radioactive materials, asbestos, polychlorinated biphenyls, petroleum products and byproducts, chemicals or substances known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances and similar materials; and (iii) any other substance regulated by Hazardous Materials Laws.

1.21 “Hazardous Materials Laws” means any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions (including the common law) now or hereafter in effect relating to Hazardous Materials on, under or about the Project, or soil and groundwater conditions, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), as amended, 42 U.S.C. § 9601, et seq.; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901, et seq.; the Hazardous Materials Transportation Act, 49, U.S.C. § 1801, et seq.; and amendments to the foregoing, and any similar federal, state or local laws, ordinances, rules decrees, orders or regulations.

1.22 “Improvements” means all structures and construction of any kind on any Lot, whether above or below the land surface, whether permanent or temporary, including, without limitation, Buildings, utility lines and facilities, driveways, paved parking areas, sidewalks, walkways and pathways, fences, screening walls, retaining walls, landscaping, plantings, planted trees and shrubs, irrigation and drainage pipes and fixtures, stormwater catch basins and detention basins, lighting fixtures and signs.

1.23 “Lot(s)” has the meaning given this term in Recital paragraph B.

1.24 “Majority of the Owners” means more than fifty percent (50%) of the Total Voting Entitlement of all the Owners (minus any vote forfeited in accordance with Section 6.3 hereof or suspended in accordance with Section 8.7 hereof) who are then subject to this REA.

1.25 “Mortgage” means a deed of trust, mortgage or other security instrument recorded against any Lot or Lots by a *bona fide* mortgagee for value.

1.26 “Mortgagee” means a beneficiary under or holder of a deed of trust or mortgagee under a Mortgage recorded against any Lot or Lots.

1.27 “Occupant” means, collectively, (i) any Owner, (ii) any other Person or Persons entitled, by ownership, leasehold interest or other legal relationship, to the exclusive right to occupy all or any portion of any Lot or Building, and (iii) the Association if it is formed.

1.28 “Owner” means the Person or Persons, holding record fee title to a Lot in the Project (but excluding any Person holding such interest merely as security for the performance of an obligation, and excluding the Association if it is formed), and their respective heirs, successors and assigns. In the event that the ownership of a Building on any Lot is ever severed from the ownership of such Lot, then only the Person holding title to the Lot shall have the rights of an Owner hereunder; provided, however, that both the Person holding title to the Lot and the Person holding title to the Building shall be jointly and severally liable for the performance of all duties and obligations of an “Owner” under the Governing Documents.

1.29 “Permittees” means all Occupants and all customers, patrons, guests, employees, licensees, concessionaires, contractors and other invitees of such Occupants.

1.30 “Person” means any individual, partnership, limited liability company, corporation, trust, estate or other legal entity.

1.31 “Plans” means the detailed plans and specifications to be submitted to Declarant, as required by Article II, which shall be delivered in such form and shall contain such information as may be required by Declarant, and shall include, without limitation:

- (a) A description of the proposed use and operations;
- (b) Site plans to a scale of not less than one inch equal to fifty feet;
- (c) The location, nature, shape, size, color, design and materials of all structures and improvements and siding materials contemplated for the Building;
- (d) Access ways, parking, service areas, lighting, signage, landscaping, paving and grading;
- (e) All building elevations;

(f) Description of accessory uses such as chimneys, antennas, HVAC and other mechanical equipment;

(g) Drainage plans;

(h) Utility plans;

(i) Improvements to be made to the Lot; and

(j) Such other information requested by Declarant.

1.32 “Project Architect” has the meaning given it in Section 2.3.

1.33 “Proportionate Share” means, with respect to each Owner, a fractional portion, the numerator of which is the Square Footage of the Owner’s Lot(s), and the denominator of which is the total Square Footage of all Lots within the Project; provided, however, that neither the numerator nor the denominator shall include: (i) Lots owned by the Declarant comprised entirely of Common Elements, if any, or (ii) Lots owned by Declarant upon which construction of Improvements has not yet begun, excluding construction of Common Elements.

1.34 “REA” means this Reciprocal Easement and Operating Agreement for Summit Orchards, as it may from time to time be amended, modified or supplemented. Such amendments, modifications and supplements are hereby incorporated herein and made a part hereof.

1.35 “Regular Assessments” has the meaning given it in Section 7.3.

1.36 “Rules” means the rules and regulations adopted by the Declarant or the Association for the operation and use of the Project, including the Common Elements, as amended, modified or supplemented from time to time in Declarant’s sole discretion. Such Rules are hereby incorporated herein and made a part hereof. The initial Rules adopted by Declarant are attached hereto as Exhibit E.

1.37 “Special Assessments” has the meaning given it in Section 7.4.

1.38 “Square Foot” or “Square Footage” means square footage of land area based on plats, surveys and/or site plans for the Project. In the event of a discrepancy between such items, plats shall control over surveys and surveys shall control over site plans. Declarant shall determine the controlling document in its reasonable discretion as between conflicting plats, conflicting surveys or conflicting site plans.

1.39 “State” means the State of Missouri.

1.40 “Supplemental Declaration” means an instrument which imposes conditions, covenants, or restrictions; reserves easements; designates Common Elements; or adjusts the Proportionate Share among Lot(s). A Supplemental Declaration may affect one or more Lots. Declarant may record a Supplemental Declaration so long as Declarant owns all of the Lots to be encumbered by the Supplemental Declaration or if Declarant does not own all of the Lots to be

encumbered, provided the Owner(s) of all of such Lots have also executed such Supplemental Declaration. A Supplemental Declaration may modify this Declaration only as it applies to the Lots encumbered by the Supplemental Declaration.

1.41 Interpretation

The following provisions apply to the interpretation of this REA:

All periods of time referred to in this REA include all Saturdays, Sundays, and Missouri or federal holidays, provided that if the date or last date to perform any act or give a notice falls on a Saturday, Sunday or a Missouri or federal holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or a Missouri or federal holiday. Whenever the context of this REA reasonably requires, all words used in the singular shall be deemed to have been used in the plural, and the neuter gender shall be deemed to include the masculine and feminine gender, and vice versa. References to numbered or lettered sections, paragraphs or articles are references to sections, paragraphs or articles of this REA unless otherwise expressly stated. References to exhibits are references to exhibits to this REA unless otherwise expressly stated and all such exhibits are incorporated into, and are a part of, this REA. For purposes of this REA, (a) the term “including” has the same meaning as “including without limitation” and “including, but not limited to” and does not limit in any manner the scope or definition of the precedent term or word to which it applies whether or not used consistently to apply to such precedent term or word; (b) except as otherwise expressly provided herein, the term “discretion” means sole discretion; and (c) the terms “shall” and “will” have the same meaning and are used interchangeably herein. References to laws, ordinances, regulations, or various agreements are references to such items in effect and as amended from time to time, provided that such references shall not be construed to cause non-compliance or non-conformance with such items as a result of any change or amendment to such items if compliance or conformance would otherwise be “grandfathered” under the terms of any such laws, ordinances, regulations or agreement by existing compliance, conformance, conditions or approvals. Upon any such laws, ordinances or regulations being superseded or amended, such references will be deemed to be references to the law, ordinance or regulation replacing, superseding or amending the referenced law, ordinance or regulations. Headings are for convenience and should not be read to affect the interpretation of any provision of this REA.

ARTICLE II

ARCHITECTURAL STANDARDS & MAINTENANCE

2.1 Architectural Standards. All Buildings, other Improvements or landscaping within the Project, and all alterations or modifications to any Buildings, other Improvements or landscaping within the Project, shall be designed, constructed, planted, maintained and otherwise implemented in accordance with the restrictions and requirements set forth in this Article II (collectively, the “Architectural Standards”).

2.2 Design Criteria. The Declarant may, in its sole discretion, from time to time, promulgate criteria for the design, engineering, development, construction and/or landscaping of the Lots and the Buildings and other Improvements within the Project (the “Design Criteria”).

2.3 Design and Plans Approval. No Building or other Improvements shall be commenced, installed, constructed, erected, placed, assembled, expanded, renovated, or altered on any Lot until the Plans for such Building or Improvements have been approved by Declarant in writing. Except as detailed in this REA or as otherwise approved by Declarant, the Buildings and other Improvements shall be designed so that the exterior elevation of all sides of each Building shall be architecturally and aesthetically compatible with the architectural theme of the other Buildings within the Project (as set forth in the Design Criteria), including without limitation, all materials, massing features, wall articulation, glass openings and colors. The design and construction on all Lots shall be first-class quality and in accordance with the Plans approved by Declarant and in complete and full compliance with (i) any and all Governmental Requirements, including zoning, (ii) all restrictive covenants of record encumbering the respective Lot, and (iii) the Design Criteria. In order to produce an architecturally compatible and unified development contemplated by this REA and the Design Criteria, each Person agrees to consult with the Declarant's designated architect for the Project (the "Project Architect") for a reasonable period of time concerning the exterior design, color treatment and exterior materials to be used in the construction, alteration and reconstruction of all Buildings and Improvements on its respective Lot(s), and to consider the development of the other Lots with respect thereto prior to selecting the specific materials and colors for its exterior Improvements. Each Person agrees to cause its respective architect to work in good faith with the Project Architect and Declarant so that the Buildings and other Improvements to be erected and constructed on such Lot(s) will have an overall cohesive and related architectural continuity and will be in harmony with the Design Criteria. Written approval of Plans by Declarant shall be conclusive as to each Person's compliance with this Section. Each Person, in the performance of their construction, shall not (i) cause any unnecessary or unreasonable increase in the cost of construction of the other Lots, (ii) unreasonably interfere with any other construction being performed on the other Lots; (iii) unreasonably impair the use, occupancy or enjoyment of the Lots or any part thereof as permitted or contemplated by this REA, or (iv) change the proposed finished floor elevations or other conditions of the Building(s) to be erected and constructed on the Lots from that detailed on the Declarant's grading plans unless approved by Declarant.

2.4 Development of the Lots. In addition to any other restrictions provided herein, in the Design Criteria or in the Rules, the Lots shall be developed only under the following guidelines:

(a) Single Building. Unless approved by Declarant, no Lot shall contain more than one (1) Building.

(b) No Encroachment. Unless approved by Declarant, no Building shall encroach from one Lot onto another Lot.

(c) No Metal Exteriors. Unless approved by Declarant, no Building shall have an exterior or roof principally fabricated or constructed of metal; provided, however, that the limited use of metal materials incorporated into the exterior and roof of a Building shall be permitted if they do not make up greater than ten percent (10%) of the façade, or are incorporated into exterior improvements such as trim and canopies in a reasonable manner consistent with the aesthetic design of the Project.

(d) Height and Floor Area of Buildings. Unless approved by Declarant, no Building constructed on any Lot shall exceed twenty-eight feet (28') in height, as measured from the finished floor elevation of any Building constructed on such Lot, including roof extensions, architectural features and screening. Additionally, all Buildings on all Lots shall be single one story structures unless otherwise approved by Declarant. Prior to construction of any Building on any Lot, the Floor Area of any Buildings to be constructed on any of the Lots must be approved by Declarant. The term "Floor Area" for the purpose of determining the permissible number of square feet of Buildings which may be constructed on a Lot or required minimum parking shall be equal to the actual number of square feet of area on the first floor of any Building or structure on such Lot intended for the exclusive use of the occupant thereof and lying within the exterior faces of the exterior walls thereof (except party walls, as to which the center line, not the exterior faces, shall be used), whether or not such space is occupied. The determination of the Floor Area of the Buildings located on a Lot for purposes of the foregoing calculation shall be made by Declarant.

(e) Required Minimum Parking. Unless otherwise Approved by Declarant, the required minimum parking ratio for each Lot in the Project shall not be less than fourteen (14) parking spaces for each one thousand (1,000) square feet of Floor Area constructed on such Lot if such Lot is used for restaurant use, or four and one-half (4.5) parking spaces for each one thousand (1,000) square feet of Floor Area constructed on such Lot if such Lot is used for any other commercial or retail use. All parking spaces shall be of a size and nature in compliance with all Governmental Requirements.

(f) Screening. Any rooftop equipment shall be screened from public view from adjacent public streets and highways and in a manner approved by Declarant. Any trash or recycling facility shall be screened from public view from adjacent public streets and highways on all four sides with masonry and high-quality, low-maintenance materials compatible with the proposed Building in a manner approved by Declarant.

(g) Signs. All signs shall be in compliance with the signage criteria set forth in the Design Criteria, and in all events shall comply with any and all Governmental Requirements and zoning and other ordinances. Notwithstanding the foregoing, no exterior identification signs attached to any Building in the Project shall be (i) flashing, moving or audible signs, or (ii) signs employing exposed neon tubes, exposed ballast boxes or exposed transformers.

(h) Unimpeded Access Between Lots; Obstructions. The Owners covenant that at all times free access between each Lot and the adjacent contiguous Lots, the Common Elements and public rights of way will, in each instance, be nonexclusive, and for the use and benefit of all Owners and their respective Permittees, subject to the limitations contained herein. Except as specifically approved by Declarant, no fence, division, partition, rail, or obstruction of any type or kind shall ever be placed, kept, permitted, or maintained between the Lots or between any subsequent division thereof or in or upon or along any of the common property lines of the Lots or the common property line of the Project, or of any portion thereof, except as may be required at any time and from time to time in connection with the control, construction, maintenance, and repair of Project in accordance with the terms of this REA.

2.5 Formation of Design Review Committee. The Declarant, in its sole discretion, from time to time, has the right (but not the obligation) to delegate some or all of its responsibilities under this Article to a committee formed for that purpose (the “Design Review Committee”). After such a delegation, the Design Review Committee shall have the authority to carry out and perform such of the Declarant’s responsibilities as have been so delegated. Any authorized act or approval of the Design Review Committee shall have the force and effect of an act of the Declarant for purposes of this Article, including, without limitation, the review and approval of Plans and the promulgation of Design Criteria. If the Declarant elects to form the Design Review Committee, it will be structured by the Declarant in its discretion, subject only to the provisions of this REA.

2.6 Maintenance of Lots by Owners.

(a) Undeveloped Lots. Until such time as the construction of Improvements commences on a Lot, the Owner thereof shall maintain the same in a clean and neat condition and shall take such measures as are necessary to control grass, weeds, blowing dust, dirt, litter or debris and shall maintain the Lot in an attractively landscaped condition to the regulations and standards for similarly situated property in the City.

(b) Developed Lots. Each Owner of a Lot covenants at all times during the term of this REA to maintain, repair or replace (as necessary), or cause to be maintained, repaired or replaced (as necessary), at its sole cost and expense, in compliance with this REA, the Rules, the Architectural Standards, Governmental Requirements and otherwise in good order and repair and in a clean, sightly, and safe condition, all areas within the boundaries on its Lot including all Improvements and landscaping (but excluding Common Elements that are the responsibility of Declarant or the Association). Each Owner’s obligations under this Section to maintain, repair and replace Improvements and landscaping on their Lot(s) shall be applicable to and include, without limitation (i) any exterior shipping/receiving dock area, (ii) any truck ramp or parking area, (iii) any “recycling center” (i.e., a recycling center for the collection of items intended for recycling, such as (but not limited to) newspapers, bottles and aluminum cans) located on its Lot, (iv) any refuse, compactor or dumpster area located on its Lot, (v) any sidewalks or landscaping located within the area between the curb surrounding the Building on such Lot and the exterior of the Building located on such Lot (including the inside and outside of all glass in the doors and windows of its Building), and (vi) any monument or ground sign structure(s) for the benefit of such Owner located on its Lot. All such maintenance, repair and replacement shall be performed by each Owner in a good, workmanlike, and diligent manner and, without limitation, shall include:

(i) maintaining, repairing and replacing of the exterior portions of all Improvements, except as otherwise permitted by Section 2.6(c);

(ii) maintaining, repairing and replacing all paved surfaces and curbs, including sidewalks, walkways, driveways, roadways, exits, entrances and parking areas, in a smooth and evenly covered condition, free of potholes, with the type of material as originally used or a substitute equal in quality and appearance, including, without limitation by: replacing base and fill, skin patching, resurfacing and resealing; re-striping parking lots and drive lanes as necessary to clearly identify parking space designations, traffic direction designations, fire lanes,

loading zones, no parking areas and pedestrian cross-walks; and removing of snow and ice from all such paved areas as needed, provided that no Owner shall not be permitted to push snow and ice from one Lot onto any other Lot, and to the extent an Owner needs to remove accumulated snow and ice from its Lot then such Owner shall be solely responsible for the removal thereof to a location outside of boundaries of the Project;

(iii) removing all papers, trash, filth, refuse, dust, debris and other substances, including by washing, vacuuming and sweeping to the extent necessary to keep the Lot in a clean and orderly condition, and having sidewalks and walkways steam-cleaned and pressure washed periodically. All such cleaning shall be at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Elements the Owners and Occupants and their respective Permittees;

(iv) maintaining, cleaning, painting, repairing and replacing as necessary, all signage located on the Lot, including, without limitation, all appropriate entrance, exit, directional, traffic control and handicapped parking signage;

(v) keeping all Improvements and surrounding grounds in a condition necessary to comply with all Governmental Requirements;

(vi) maintaining, cleaning, painting, replacing and relamping lighting facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers as necessary to keep curbing, driveways, exits, entrances, sidewalks, walkways, stairways and roadways illuminated;

(vii) maintaining, repairing and replacing all landscaping and landscaping elements using similar types of materials as originally used or a substitute equal in quality and appearance, including, without limitation, watering, maintaining and replacing all plantings, trees and shrubs in an attractive and thriving condition, trimmed and weed free, maintaining, painting and replacing landscape planters, and maintaining, repairing and replacing sprinkler and irrigation system(s), including performing any seasonal (start up and/or winterization) maintenance thereto, and any modifications to such system to satisfy Governmental Requirements;

(viii) keeping the Common Elements free from any obstructions, including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this REA; and

(ix) performing any and all such other duties as are necessary to maintain each Lot in good order and repair and in a clean, sightly, and safe condition.

(c) Casualty. Once constructed, in the event of any damage to or destruction of a Building or other Improvements on any Lot, the Owner of such Lot shall, at its sole cost and expense, with due diligence either (a) repair, restore and rebuild such Improvements to the condition existing immediately prior to such damage or destruction (or with such changes as shall not conflict with this REA and in accordance with the Architectural Standards), or (b) demolish and remove all portions of such damaged or destroyed Building then remaining,

including the debris resulting therefrom, and otherwise clean and restore the area affected by such casualty to a level and graded condition with landscaping in accordance with the Architectural Standards.

ARTICLE III

OPERATIONS AND USES

3.1 Permitted Uses.

(a) The Lots shall only be used for commercial, retail, service, medical, professional and/or office purposes, and no use or operation shall be permitted which is incompatible with a first-class shopping center, including but not limited to the following prohibited uses:

(i) Any public or private nuisance;

(ii) Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness; provided, however, such noise as typically originates from permitted uses and events shall be permitted, such as the noise as typically originating from patios and sidewalk seating areas serving restaurants and bars;

(iii) Any obnoxious odor; provided, however, ordinary cooking odors and ordinary scents from nail and hair salons shall be permitted;

(iv) Any noxious, toxic, caustic or corrosive fuel or gas; provided, however, a first-class convenience store and gas station shall be permitted with Declarant's written approval;

(v) Any dust, dirt or fly ash in excessive quantities (but excluding reasonable quantities in connection with initial construction);

(vi) Any fire, explosion or other damaging or dangerous hazard (including the storage, display or sale of explosives or fireworks);

(vii) Any warehousing, assembling, manufacturing, distilling for off-premises consumption, refining, smelting, agricultural, or mining operations; provided, however, that this shall not exclude any restaurant which may grow its own herbs and vegetables;

(viii) Any mobile home or trailer court, lot for sale of new or used motor vehicles (other than Tesla showrooms or similar sales models, which do not require significant surface parking) or manufactured homes (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction or remodeling), labor camp, stockyard, or animal raising establishment (other than Bar K or similar operations);

(ix) Any dumping, disposing, incineration or reduction of garbage (exclusive of garbage compactors located in the rear of any building so long as such are screened from view);

(x) Any fire sales, bankruptcy sale (unless pursuant to a court order) or auction house operation;

(xi) Any dry cleaning processing plant;

(xii) Any mortuary;

(xiii) Any “adult” type book store; provided, however, this shall not prohibit a Barnes & Noble or other book store where “adult” books and products are not the primary offerings or sales;

(xiv) Massage parlors that are not operated in a first-class manner similar to Massage Envy or Massage Heights;

(xv) Any establishment primarily selling or primarily exhibiting sexually explicit materials;

(xvi) Any storage yard or junk yard;

(xvii) Any tavern, bar, night club, discotheque or any establishment selling alcoholic beverages for on-premises consumption where alcohol sales are in excess of 60% of the sales, other than such uses incidental to the operation of sit-down restaurants, unless specifically permitted in writing by Declarant (Declarant expressly reserves the right to grant written permission for craft distilleries and/or breweries to operate at the Project in its sole discretion and in accordance with all Governmental Requirements);

(xviii) A bowling alley, unless specifically permitted in writing by Declarant;

(xix) An off-track betting facility, sportsbook, casino, gambling den or similar facility, unless incidental to a restaurant or sports bar use or specifically permitted in writing by Declarant and operated in accordance with all Governmental Requirements;

(xx) A bingo game facility;

(xxi) Any coin operated self-service laundry;

(xxii) Any outdoor sales or display of merchandise, other than ancillary to the operation of a business conducted on a Lot and in accordance with the Rules;

(xxiii) Any public health or welfare center;

(xxiv) Any storage trailers (accessory use), except that this provision shall not prohibit (A) the temporary use of construction trailers during periods of construction,

reconstruction or remodeling, or (B) the temporary use of a storage trailer located in the designated service areas and expressly approved by Declarant;

(xxv) A movie theater, unless specifically permitted in writing by Declarant;

(xxvi) Any drilling for and/or removal of sub-surface substances;

(xxvii) Any large-animal veterinary hospital, or any animal boarding facility; and

(xxviii) Any outdoor shooting gallery or target range.

3.2 Exclusive Use Restrictions.

Declarant has the right to impose exclusive use restrictions applicable to one or more Lots as set forth on Exhibit D hereto. Declarant may, from time to time, modify and update Exhibit D by recording Supplemental Declarations or amendments of this REA with the Jackson County, Missouri Recorder of Deeds; provided that any subsequent exclusive use restrictions will not restrict then-existing uses that would otherwise violate the restriction.

3.3 Operations.

(a) No sidewalk sales or parking lot sales shall be permitted without Declarant's prior written approval (which approval may be withheld by Declarant in its sole and absolute discretion). Any sidewalk sales or parking lot sales that are permitted by Declarant shall be conducted within the sidewalk area or parking area within the Lot(s) of the Occupant who is conducting such sale, and such sales shall not materially interfere with or obstruct (i) with respect to sidewalk sales, pedestrian access or circulation along the sidewalk or within the Project, or (ii) with respect to parking lot sales, pedestrian or vehicular access or circulation within the parking areas or the Project.

(b) Except as approved in writing by Declarant in its sole discretion, any Occupant that utilizes shopping carts in the operation of its business shall at all times keep all of its shopping carts within the interior of its store and undertake whatever measures may be reasonably necessary to prevent its customers and any other persons from storing or leaving its shopping carts in the parking areas or the exterior of its store.

(c) Parking areas shall only be used for the parking of passenger vehicles in connection with the businesses operating at the Project. Overnight parking of passenger vehicles shall be prohibited. No storage of passenger vehicles or other goods or materials shall be permitted in the parking areas unless approved by Declarant in its discretion.

3.4 Indemnification.

Each Owner, by accepting its deed, agrees personally and for all its Permittees, to indemnify each and every other Owner and Occupant, the Declarant and their respective heirs, successors and assigns, and to hold them harmless from and to defend them against any liability,

including any claim by any Person for personal injury or property damage, arising out of or connected with the Lot or Lots of that particular Owner or any activities conducted thereon; provided, however, that such liability shall have resulted from the acts or omissions of the Owner or Occupant of such Lot or Lots.

ARTICLE IV

TAXES AND INSURANCE

4.1 Taxes.

Each Owner shall be solely responsible for the payment of all, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against its Lot(s), or any portion thereof, or interest therein (including any interest created by this REA) or the real or personal property located thereon or used in connection therewith, and all other taxes, fees, charges or levies which become, or, may become, a lien upon such Owner's Lot, or any portion thereof or interest therein.

4.2 Insurance.

(a) Each Owner shall procure and maintain in full force and effect throughout the term of this REA general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its Lot(s), and each Owner's insurance shall afford protection to the limit of not less than One Million Dollars (\$1,000,000.00) for injury or death of a single person, and to the limit of not less than Two Million Dollars (\$2,000,000.00) for any one occurrence, and to the limit of not less than Two Million Dollars (\$2,000,000.00) for property damage.

(b) At all times during the term of this REA, each Owner shall keep improvements on its Lot(s) insured against loss or damage by fire and other perils and events as may be insured against under an all-risk property casualty insurance policy in form and substance customary for first-class commercial properties in the State, with such insurance to be for the full replacement cost of the insured Improvements, with a deductible no greater than \$20,000 unless approved by Declarant or the Association in writing.

(c) Each Owner shall maintain builders' risk insurance in effect throughout any period of construction on such Owner's Lot.

(d) Policies of insurance provided for in this Article IV and maintained by the Owners shall name the Declarant and the Association as additional insureds as their respective interests may appear, and each Owner shall provide to Declarant and the Association certificates, upon written request, evidencing the fact that such insurance has been obtained.

(e) Each policy of insurance described herein shall contain a waiver by said insurer of any and all rights of subrogation against each other Owner, the Declarant and the Association.

ARTICLE V

GRANT OF EASEMENTS

5.1 Easements for the Benefit of Governmental Agencies and Public Utilities.

Certain easements (in perpetuity or otherwise) have been and may in the future be granted by Declarant to certain local governmental agencies (including the City) and public utilities, including easements for open space, drainage, telephone, cable and fiber optic lines, gas, electric, sewer, and water lines, and the provision of public services such as law enforcement and fire protection, which easements may affect all or some of the Lots (including Common Elements). Declarant is entitled, without the consent of the Owner of a Lot, to grant any such future easements as it determines are in the best interests of the Project and to relocate and adjust existing easements, provided that: (i) such easements shall be limited only to the location, scope and size reasonably necessary to accomplish the stated purpose of such easements or to comply with any relevant Governmental Requirements, (ii) such easements do not interfere with the access to, and use of, then existing Improvements on a Lot or planned Improvements that have received Declarant approval, (iii) such easements will not be located under the footprint of any existing Building or planned Building that has been approved by the Declarant, (iv) such easements will not materially limit or interfere with future Improvements that could be made to a Lot within the constraints of the Architectural Standards, (v) the construction, use, maintenance and repair of such easements and restoration of any landscaping or Improvements in connection therewith, shall be at no cost or liability to any Owner or Occupant of a Lot except to the extent it may be paid from Assessments against all Lots generally or groups of Lots, and (vi) if the value of any Lot is materially adversely affected by the grant of such an easement, the consent of the Owner and any Mortgagee holding an interest in the Lot shall first be obtained. Each Owner shall fully and faithfully comply with all requirements of said governmental agencies in connection with the easements granted pursuant to this Section 5.1.

5.2 Easements for the Benefit of Owners and Occupants and their Permittees.

The following perpetual, non-exclusive, reciprocal easements are hereby granted and established, for the benefit of the Declarant and all Owners within the Project and their Permittees, to be appurtenant to the Lots of each Owner and held in gross by the Declarant:

(a) An easement for pedestrian ingress, egress and passage to and from all abutting streets or rights of way furnishing access to the Project and over all pedestrian walkways and parking areas constructed on any Lot and/or comprising a portion of the Common Elements; provided that such easement shall not prohibit any Owner, Occupant or the Declarant from relocating, eliminating or temporarily closing any such pedestrian walkways or parking areas for a reasonable period of time and in accordance with the terms of this REA;

(b) An easement for vehicular ingress, egress and passage to and from all abutting streets or rights of way furnishing access to the Project and over roads and drive lanes on any Lot and/or comprising a portion of the Common Elements that are generally open to invitees of an Owner or Occupant or the public generally; provided that such easement shall not

prohibit any Owner, Occupant or the Declarant from relocating, eliminating or temporarily closing any such roads or drive lanes in accordance with the terms of this REA;

(c) An easement for parking within the parking spaces located on each Lot and ingress, egress and passage for pedestrians, passenger, commercial and other vehicles, to and from the parking spaces located on each Lot and/or comprising a portion of the Common Elements;

(d) An easement over, under, through and across each Lot and the Common Elements for the installation, maintenance, repair and replacement of water mains, storm drains, sewers, water sprinkler system lines, telephone or electrical conduits or systems, cable, gas mains and other utility facilities necessary for the orderly development and operation of the Project and each Lot from time to time located within the Lots (the "Utility Facilities"); provided that (a) the rights granted pursuant to such easements shall at all times be exercised in such a manner as not to interfere materially with the normal operation of a Lot and the businesses conducted therein, (b) the location of any utilities shall be subject to the approval of the Owner(s) of the burdened Lots, and (c) except in an emergency, the right of any Owner to enter upon the Lot of another Owner for the exercise of any right pursuant to such easements shall be conditioned upon providing reasonable prior advance written notice to the other Owner as to the time and manner of entry. All such Utility Facilities shall be installed and maintained below the ground level or surface of the Lot (except for such parts thereof that cannot and are not intended to be placed below the surface, such as transformers and control panels, which shall be placed in such location as approved by the Owner of the affected Lot, except that if the placement above ground is required by any governmental authorities or the provider of such utility service no such approval shall be required;

(e) An easement upon, under, over, above and across each Lot and the Common Elements for the discharge, drainage, use, detention and retention of storm water runoff to any drainage facilities (temporary or permanent) installed for the benefit of the Project, whether existing as of the date of this REA or subsequently installed. The easements herein established shall include the use of any storm water drainage and detention facilities, and all lines, conduits, pipes and other apparatus for water drainage, and all storage systems necessary in connection therewith, which shall be hereinafter called the "Stormwater Facilities". The easement granted herein shall include the right of reasonable ingress and egress with respect to the Stormwater Facilities as may be required to maintain and operate the same. The Stormwater Facilities shall not be modified, altered, relocated or otherwise changed, without the prior written consent of Declarant and all of the Owners, which approval will not be unreasonably withheld, conditioned or delayed; and, (ii) each Owner shall operate and maintain, or cause to be operated and maintained, in good order, condition and repair, the Stormwater Facilities located upon its Lot and make any and all repairs and replacements that may from time to time be required with respect thereto; and

(f) An easement in, to, over, under and across each Lot and the Common Elements for reasonable drainage purposes, including the right to discharge surface storm water drainage and/or runoff from each Lot. No Owner shall alter or permit to be altered the surface of its Lot(s) or the Common Elements or the drainage/retention system constructed on its Lot if such alteration would materially increase the velocity, volume or flow of surface water onto any

other Lot or the Common Elements either in the aggregate or by directing the flow of surface water to a limited area without the approval of Declarant and all Owners whose Lot shall be affected.

5.3 Easements for the Benefit of the Declarant.

In addition to the rights of entry and any other rights given to the Declarant in this REA, there are hereby established the following perpetual, non-exclusive easements in gross for the benefit of the Declarant and for use by its agents, employees and contractors:

(a) An easement for access to, inspection of, and repair, maintenance and replacement of, any Improvements constructed by Declarant on any Lots or the Common Elements;

(b) Any easement shown or reserved on a recorded plat or similar document;

(c) An easement over, upon, across and under the Common Elements and adjacent portions of Lots as necessary for the purpose of completing the Common Elements and any construction thereon;

(d) An easement over, upon, across and under each of the Lots within the Project, to inspect any such Lot to ascertain whether such Lot, the Improvements thereon and the uses thereof are in compliance with the provisions of the Governing Documents; and to abate or remove any Improvement, thing or condition that may exist thereon contrary to the Governing Documents;

(e) An easement over, upon, across and under each of the Lots within the Project, to the extent reasonably necessary to carry out and enforce Declarant's rights and obligations in connection with this REA; and

Declarant agrees that all such easements will be located so as to reasonably minimize, consistent with appropriate Governmental Requirements, the impact on the access and use (including the ability to construct Improvements on the Lot) by any Owner of its particular Lot and the Improvements thereon and that no such easement will be located under any Building footprint. Declarant further agrees that no such easement may be granted without the consent of the Owner of such Lot and of any Mortgagee holding an interest in such Lot if it will materially adversely affect the value of such Owner's Lot.

5.4 No Public Dedication.

Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Project, of any Lot, of the Common Elements, or any portion thereof to the general public, or for any public use or purpose whatsoever, and any such dedication shall expressly provide that it is a public dedication. Except as herein specifically provided (including in Section 14.6), no rights, privileges or immunities of any Owner shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

5.5 No Merger.

Notwithstanding the union of (a) the fee simple title to any of the Lots in the Project, or any portion thereof, or any other real property of Declarant with (b) any right, title or interest in the easements granted by or reserved to Declarant pursuant to this REA, it is the intention of Declarant that the separation of such fee simple estate and such right, title or interest in such easements shall be maintained, and that a merger shall not take place without the express prior written consent of Declarant.

5.6 No Abandonment.

Notwithstanding the terms of any Governmental Requirements, it is the intent of Declarant that no easement granted or reserved hereunder shall be deemed extinguished, abandoned or terminated merely by disuse or incompatible acts; rather, except for easements that this REA expressly provides shall automatically terminate at such time as Declarant no longer owns any Lot in the Project, the easements granted hereunder or established hereby shall continue in full force and effect unless (a) terminated by a writing, duly acknowledged and recorded, executed by the Person or Persons entitled to the benefit thereof or (b) in the case of the Owners, terminated by approval of the Owners and certified in a document executed, acknowledged and recorded in the Office of the Recorder of Deeds of Jackson County, Missouri by an authorized officer of the Association.

ARTICLE VI

OWNER'S VOTING RIGHTS AND FORMATION OF THE ASSOCIATION

6.1 Qualification and Voting by Owners.

(a) Every Owner of a Lot which is subject to Assessment will have a right to vote on all matters that are to be voted upon by the Owners.

(b) Except as otherwise provided in this REA (including Section 11.1) or by Governmental Requirements, all matters requiring the approval of the Owners shall be deemed approved if (i) a Majority of the Owners assent to them by written consent or (ii) if approved at any duly called regular or special meeting of the Owners at which a quorum is present, either in person or by proxy, by Owners (or representatives of Owners as provided in Section 6.1(d)) holding a majority of the Total Voting Entitlement of all Owners (or representatives of Owners as provided in Section 6.1(d)) present at such meeting, either in person or by proxy. Except as otherwise provided in this REA or by Governmental Requirements, a Majority of the Owners shall constitute a quorum for any such regular or special meeting.

(c) Each Owner is entitled to cast one (1) vote per Square Foot, or portion thereof, of such Owner's Lot(s); provided that for so long as Declarant or any affiliate of Declarant (excluding for this purpose the Association if it is formed and is assigned any rights of Declarant) owns any Lot(s) in the Project, the Declarant or its affiliate shall be entitled to cast ten

(10) votes per Square Foot, or portion thereof, of such Owner's Lot(s), and the consent of Declarant shall be required for any action requiring a vote of the Owners.

(d) Each Owner's voting power shall be determined by dividing the total number of votes to which such Owner is entitled pursuant to Section 6.1(c) (the Owner's "Voting Entitlement") by the combined votes of all Owners (the "Total Voting Entitlement"). Any Owner may designate a representative for purposes of exercising such Owner's Voting Entitlement by delivering written notice of the same to the Declarant and the Association, if any.

(e) In the event that two (2) or more Persons comprise an Owner (or as the case may be, the designated representative of such Owner as provided in Section 6.1(d)) of any particular Lot, and such Persons are unable to agree among themselves as to how the votes to which they are entitled shall be cast, then they shall lose their right to vote on the matter in question. If any such Person casts votes representing a particular Lot, it will thereafter be conclusively presumed for all purposes that he, she or it was acting with the authority and consent of all the other Persons comprising the Owner of such Lot.

6.2 Formation of the Association. The Declarant has the right (but not the obligation) to form the Association at any time. If the Declarant elects to form the Association, the governing documents of the Association will be structured by the Declarant in its discretion, subject only to the provisions of this REA, including Section 6.4, and Governmental Requirements. Each Owner shall automatically be a member of the Association. Membership in the Association will be appurtenant to, and may not be separated from, ownership of any Lot which is subject to Assessment. Membership in the Association may not be transferred, pledged or alienated in any way, except upon the sale of the Lot to which such membership is appurtenant, and then only to the purchaser of such Lot, and, upon the sale of a Lot, the seller's membership in the Association will terminate as to such Lot. Any purported transfer of membership in the Association to any transferee not permitted under this Section 6.2 will be null and void and of no force and effect. No Owner of any Lot may fail or refuse to transfer its membership in the Association to the purchaser of its Lot and such transfer shall be deemed to automatically occur upon the transfer of ownership of a Lot and the Association shall have the right to enter such transfer upon its books and, upon such entry, the old membership in the name of the prior Owner shall automatically cease.

6.3 Transfers. The Owner of a Lot shall, as soon as practicable before transfer of title to such Lot or upon execution of a real property sales contract therefor, provide copies of the Governing Documents to the prospective transferee, including, without limitation, a copy of this REA. Concurrently with the consummation of the sale of any Lot, or within five (5) business days thereafter, the transferee shall notify the Declarant and the Association, if any, in writing of such sale. Such notification shall set forth the names of the transferee and its Mortgagees and the transferor, the legal description and address of the Lot purchased by the transferee, the transferee's and the Mortgagees' mailing addresses, and the date of sale. Before the receipt of such notification, any and all communications required or permitted to be given by the Declarant shall be deemed to be duly made and given to the transferee if duly and timely made and given to the transferee's transferor. Nothing in this Section 6.3 shall be construed as affecting the validity of title to any Lot transferred in violation of this Section 6.3.

6.4 The Association.

If and when the Association is formed by the Declarant, the Association shall have all the powers of a nonprofit corporation organized under the Missouri Nonprofit Corporation Act of the State (Section 355.001 et seq. of the Missouri Revised Statutes), subject only to such limitations on the exercise of its powers as are established by law or set forth in the Articles, the Bylaws or this REA. The Association shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under this REA, the Articles or the Bylaws, and to do and perform any act that may be necessary or proper for, or incidental to the exercise of any of the express powers of the Association. Subject to the limitations set forth in this REA, the Articles, the Bylaws or the laws of the State as to actions which must be authorized or approved by the members of the Association (*i.e.*, the Owners), all corporate powers shall be exercised by or under the authority of, and the business and affairs of the Association shall be controlled by, its board of directors.

ARTICLE VII

COVENANT FOR ASSESSMENTS

7.1 Covenant to Pay Assessments.

(a) Each Owner of a Lot or Lots in the Project, by acceptance of a deed thereto (whether or not it shall be so expressed in such deed), is hereby deemed to covenant and agree to pay Regular Assessments and Special Assessments.

(b) Assessments shall be established and collected as hereinafter provided. All Regular and Special Assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Lot against which each such Assessment is made. No Owner of a Lot may exempt itself from liability for the payment of Assessments by waiving the use or enjoyment of any part of the Common Elements or by abandoning its Lot.

7.2 Purpose of Assessments.

The Declarant will levy Regular Assessments and Special Assessments sufficient to perform its obligations under the Governing Documents and to pay for Common Expenses. Such Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and Occupants, for the improvement and maintenance of the Common Elements, and to further any other purpose that is for the common benefit of the Owners and Occupants in their use and enjoyment of the Project. The Declarant may create separate cost centers and operating funds that relate to only certain facilities and/or to only a certain Lot or Lots.

7.3 Regular Assessments.

“Regular Assessments” shall be levied for each Fiscal Year to fund the annual budget adopted by the Declarant as set forth in Section 8.14. Regular Assessments shall be in amounts determined by the Declarant based on its projected cash needs to fund such annual budget and in addition, shall include amounts determined by the Declarant to fund an adequate reserve for the periodic maintenance, repair, refurbishment and replacement of the Common

Elements and improvements included thereon or therein. Regular Assessments may be divided into various accounts to appropriately provide for allocation of costs relating to separate cost centers and costs that are not allocable to all Lots or Owners.

7.4 Special Assessments.

(a) In addition to the annual Regular Assessments authorized in this Article VII, the Declarant may levy, in any Fiscal Year, a “Special Assessment” for the purpose of defraying, in whole or in part, the cost of (i) any construction, reconstruction, alteration, repair or replacement of a capital improvement comprising a part of the Common Elements and/or fixtures and personal property related thereto and (ii) any other action or undertaking pursuant to this REA which exceeds the budgeted expenses for that Fiscal Year. Special Assessments may be paid in one or more installments as determined by the Declarant and shall be due and payable as determined by the Declarant, provided that no Special Assessment imposed under this paragraph (a) may be made due sooner than thirty (30) days following notice to the Owners of the imposition of such Special Assessment.

(b) In addition to the Special Assessments provided in paragraph (a) of this Section 7.4, the Declarant may also levy a special assessment (also, a “Special Assessment”) against an individual Lot or Owner as a fine under Section 8.7(b) or to reimburse the Declarant for costs incurred (including reasonable attorneys’ fees, interest, or any other miscellaneous costs) in bringing such Lot and/or the Owner or Occupant thereof into compliance with the Governing Documents (including, without limitation, under Sections 8.7 and 10.1), which Special Assessment may be levied after notice pursuant to the procedure set forth in Section 7.7(a). Any Special Assessment imposed under this paragraph (b) shall be due and payable fifteen (15) days following notice to the affected Owner or Occupant of the imposition of such Special Assessment.

7.5 Allocation of Assessments.

Both Regular and Special Assessments (except where Special Assessments are levied as a fine under Section 8.7(b) or are a remedy utilized against a particular Owner to reimburse the Declarant for costs incurred in bringing such Owner, its Lot and/or the Occupant of such Lot into compliance with the provisions of the Governing Documents) shall be divided among Owners based on such Owners’ Proportionate Shares, provided that for cost centers or expenses that are not ratably allocable to all Owners, the Proportionate Shares shall be determined with respect to the Square Footage of all Lots as to which such cost centers or expenses are appropriately allocable, but excluding the Square Footage of any Lots as to which such cost centers or expenses are not appropriately allocable.

7.6 Commencement of Assessments.

The Regular Assessments provided for herein shall commence as to all Lots on the first day of the month following the closing of the first sale by Declarant of a Lot to any other Owner. The first Regular Assessment shall be prorated according to the number of months remaining in the Fiscal Year in which such commencement occurs. Thereafter, the Declarant shall take commercially reasonable efforts to determine and fix the amount of the Regular

Assessment against each Lot at least thirty (30) days in advance of the commencement of each Fiscal Year, and shall establish the due date(s) for payment of such Assessments. The Declarant may increase or decrease the Regular Assessments from Fiscal Year to Fiscal Year.

7.7 Liens for Delinquent Assessments.

(a) Regular and Special Assessments shall be delinquent fifteen (15) days after they become due. Delinquent Assessments shall incur a late fee equal to the greater of ten percent (10%) of the delinquent Assessment or Ten Dollars (\$10), but in any event, not more than the maximum amount allowed by law. Delinquent Assessments shall also incur interest at the lesser of ten percent (10%) per annum and the maximum rate allowed by law (the “Default Rate”). At any time, and from time to time, after any Assessment affecting any Lot has become delinquent, the Declarant may file for recordation in the Office of the County Recorder of the County a notice of delinquent Assessment as to such Lot, which notice shall state (i) all amounts which have become delinquent with respect to such Lot, the costs of collection connected therewith (including attorneys’ fees), the amount of the late fees imposed and the interest which has accrued thereon, (ii) the amount of any Assessments relating to such Lot which are due and payable although not delinquent, (iii) a legal description of the Lot with respect to which the delinquent Assessments are owed and (iv) the name of the record Owner (according to the Declarant’s records) of such Lot. If the lien is to be enforced by nonjudicial foreclosure as provided in Section 7.8, such notice of delinquency shall also contain the name and address of the trustee authorized by the Declarant to enforce the lien by sale. Such notice may be executed by any officer of the Declarant. Immediately upon recording of any such notice of delinquent Assessment, the amounts delinquent as set forth in such notice, the reasonable costs (including attorneys’ fees) incurred in collecting the delinquent Assessment, the late charge imposed as provided herein and interest which has accrued or thereafter shall accrue thereon, shall together be and become a lien upon the Lot described therein, which lien shall also secure all other Assessments, costs of collection (including attorneys’ fees), late charges and interest accruing thereon which shall become due and payable with respect to said Lot following such recording. Upon full payment of the sums specified in the notice of delinquent Assessment, the Declarant shall cause to be recorded a further notice, similarly executed, stating that the lien has been satisfied and released.

(b) The lien of the Assessments provided in Section 7.1 hereof and the lien for delinquent Assessments, costs of collection, late charges and interest provided in paragraph (a) of this Section 7.7 shall be prior and superior to all other liens except taxes, bonds, governmental assessments and other levies which, by law, would be superior thereto. The sale or transfer of any Lot shall not affect or extinguish an Assessment lien against such Lot; provided, however, that the sale or transfer of any Lot through foreclosure, trustee’s sale or deed in lieu of foreclosure of any Mortgage shall extinguish the lien of such Assessment as to payments which became due prior to such transfer, as provided in Section 12.1 hereof. In no event shall any sale or transfer (whether by foreclosure or otherwise) relieve any Lot from lien rights for any Assessments thereafter becoming due.

7.8 Enforcement of Assessment Obligation.

The Declarant may enforce delinquent Assessments by suing the Owner directly on the debt established by the Assessment, or by recording a lien against the Owner's Lot as provided in Section 7.7 hereof and foreclosing the lien through either judicial or nonjudicial proceedings. The Declarant may commence and maintain a lawsuit directly on the debt without waiving its right to establish a lien against the Owner's Lot for the delinquent Assessment, and vice versa. Any lien created pursuant to Section 7.7 hereof may be enforced in any manner permitted by law, including sale by a court, sale by the trustee designated in the notice of delinquent Assessment, or sale by a successor trustee substituted by written appointment of the Declarant, and to that end a power of sale with respect to the Lots is hereby conferred upon the Declarant. Any sale by a trustee shall be conducted in accordance with the provisions of the Missouri Revised Statutes applicable to the exercise of powers of sale in deeds of trust. The Declarant may bid for and purchase any Lot(s) at a foreclosure sale. The Declarant may accept a deed in lieu of foreclosure of a lien created pursuant to Section 7.7. In any action instituted to collect delinquent Assessments, accompanying costs, late charges or interest, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees.

7.9 Assessments for Taxes.

In the event that any taxes of any nature are assessed against the Common Elements, then said taxes shall be added to the annual Regular Assessments to the extent not already included in the current budget adopted by the Declarant as set forth in Section 8.14, or, at the discretion of the Declarant, a Special Assessment may be levied in an amount equal to said taxes.

ARTICLE VIII

POWERS OF DECLARANT

In addition to all other powers and duties set forth in this REA and the Governing Documents, and without limiting the generality of the foregoing, the Declarant shall specifically have the following powers:

8.1 Management and Control.

To conduct, manage and control the operations, affairs and business of the Project, and to make such rules and regulations therefor as it deems appropriate from time to time.

8.2 Meetings of Owners.

To designate a place within the State for the holding of any meeting or meetings of Owners.

8.3 Encumbrance of Common Elements.

To encumber the Common Elements to secure indebtedness.

8.4 Insurance.

(a) To the extent the coverage described in this Section 8.4 is available at a reasonable cost (as determined by Declarant), to obtain and maintain in force the following policies of insurance with respect to the Project:

(i) Comprehensive public liability insurance with limits and deductibles determined by the Declarant in its discretion, insuring the Declarant, its officers, directors, employees, agents and contractors, against liability for bodily injury, death and property damage arising in connection with the ownership, use and maintenance of the Common Elements and any other Declarant-maintained real or personal property relating to the Common Elements and arising in connection with Declarant's exercise of its powers and duties under this REA and the Governing Documents;

(ii) Workers' Compensation Insurance, to the extent required by law, covering any employee of the Declarant performing services with respect to the Common Elements or the operation of the Project;

(iii) Property and hazard insurance with extended coverage and special form endorsements covering the full replacement cost of any Buildings and other insurable Improvements which may hereafter comprise a portion of the Common Elements. The proceeds from such insurance shall be paid as provided in any Mortgage encumbering the Common Elements, or, if there is no such Mortgage, to the Declarant to be applied toward the repair, reconstruction or replacement of the improvements so covered;

(iv) Directors' and Officers' insurance of not less than One Million Dollars (\$1,000,000) on behalf of any officers and directors of the CID or the Association; and

(v) Such other insurance as the Declarant deems necessary or desirable to carry out the functions as set forth in this REA and the Governing Documents, including in connection with the CID.

(b) The premiums for such insurance policies are a part of the Common Expenses to be included in the calculation of the Regular Assessments.

(c) The Declarant may periodically review the coverage provided by such insurance policies, and, to the extent that increased coverage is available and at the Declarant's discretion, may increase such coverage in light of inflation, increased risk and similar factors.

8.5 Utilities.

To pay all charges for utility services for the Common Elements.

8.6 Common Elements.

To manage, operate, maintain, repair, restore, add to and replace the Common Elements and all improvements located therein and thereon, and all other property (whether real or personal) used in connection with the powers of the Declarant under this REA and the Governing Documents, and to make capital expenditures therefor. The foregoing powers include

the power to acquire fee ownership of, or a leasehold interest in, off-site real property for the benefit of the Owners or the Project (*e.g.*, for off-site employee parking).

8.7 Enforcement.

To enforce the provisions of this REA and the Governing Documents, and in addition to the other powers of the Declarant provided herein and under Governmental Requirements, the Declarant's powers of enforcement shall include all of the following (the exercise of which shall be at Declarant's sole and absolute discretion):

(a) To suspend all voting rights and privileges of an Owner or Occupant for (i) a failure to pay any Regular Assessment or Special Assessment in full promptly when due (whether or not the Owner or Occupant is personally obligated to pay such Assessment) or (ii) any violation of any provision of the Governing Documents. Such suspension may continue until any Regular Assessment or Special Assessment is paid in full and any non-monetary violation is cured. Such suspension shall not take effect unless the Owner or Occupant is given at least fifteen (15) days' notice prior to the effective date of the suspension and given an opportunity to respond in writing. During any suspension of voting rights, an Owner's voting power and Voting Entitlements and the Total Voting Entitlements shall exclude the Lot(s) of any such Owner that has been suspended.

(b) To levy and assess fines against any Owner who violates, or whose Occupants or Permittees violate, the Governing Documents, pursuant to the same notice and opportunity to respond as provided for suspension in paragraph (a) of this Section 8.7, and such other procedures and/or schedules as the Declarant may establish. Upon notice to the Owners, the Declarant may establish a schedule of fines for individual offenses and/or continuing offenses which schedule shall thereafter govern the amount of the fines to be levied, until such schedule is modified by the Declarant. Fines may be levied for each offense, and, once levied, each such fine shall become an Assessment and lien against such Owner's Lot or Lots. Any Owner against whom such a fine is levied shall pay such fine within ten (10) business days after such levy. The Declarant shall be entitled to take any legal action or employ any remedies set forth hereunder or permitted by law to enforce the payment of such fines.

(c) Upon a finding that a violation of the Governing Documents exists following the notice and opportunity to respond requirements of paragraph (a) of this Section 8.7, to summarily abate and remove, at the expense of the Owner thereof, any structure, thing or condition that may exist thereon contrary to the provisions of the Governing Documents as provided in Section 10.1.

(d) If Declarant considers reasonably necessary any repairs, maintenance, renewals or replacements required by the provisions of this REA to be made or provided by an Owner, Declarant may request in writing that such Owner make such repairs or perform such maintenance or provide such renewal or replacements, and, in the event such Owner fails or refuses to do so within ten (10) days from the date of such written request (plus such additional reasonable time as is necessary if the Owner is exercising due diligence), Declarant shall have the right (but shall not be obligated), either itself or through a third-party contractor, to make such repair, perform such maintenance or, provide such renewal or replacement, the respective

Owner hereby waiving any damage caused thereby including, without limitation, any damage caused by any such third-party contractor engaged by Declarant to perform such work; thereupon, the Owner shall, at the Declarant's election, on demand pay (or reimburse the Declarant for) the reasonable costs thereby incurred by the Declarant and an administration fee equal to fifteen percent (15%) of the costs expended by Declarant hereunder; and in addition, if not paid within twenty (20) days of such demand, the Owner shall pay the Declarant, upon demand, interest at the Default Rate.

8.8 Square Footage Monitoring.

To track and monitor the Square Footage based on plats, surveys and/or site plans.

8.9 Contract and Make Payments.

To contract and pay for Common Expenses.

8.10 Employment of Agents.

To employ the services of any Person or Persons to manage and operate the Common Elements and to administer this REA and the Governing Documents, and to delegate to such Person or Persons any of its powers, duties and responsibilities hereunder.

8.11 Services.

(a) To institute any other facilities or services for the common benefit of the Owners and the Project deemed advisable by the Declarant.

8.12 Taxes.

To pay any taxes and governmental assessments which are or could become a lien on the Common Elements or any portion thereof.

8.13 Discipline.

To initiate and execute disciplinary proceedings against Owners and Occupants for violations of the provisions of the Governing Documents.

8.14 Budget.

To prepare annual budgets and financial statements and to distribute such budgets and financial statements to the Owners.

8.15 Litigation.

To prosecute or defend any action affecting or relating to the Common Elements or the Project and any action in which all or substantially all of the Owners have an interest.

8.16 Delegation of Powers.

To delegate any of its powers hereunder to other Persons, including committees, officers and employees.

8.17 Security.

To provide, through an outside agency, a security force to patrol and protect the Common Elements and/or the Project.

8.18 Rules.

(a) To adopt, amend, supplement and repeal the Rules, from time to time, in accordance with the terms of Section 11.2 hereof. The Rules may restrict, and govern the use of the Project and the Common Elements thereon by any Owner or Occupant; provided, however, that the Rules may not discriminate among various Owners and Occupants.

(b) A copy of any new Rules shall be given to each existing Owner not less than ten (10) business days before said Rules (or, as applicable, an amendment or supplement to or a repeal thereof) become effective. The Rules shall have the same force and effect as if set forth herein and made a part of this REA.

(c) Upon reasonable request from an Occupant, Declarant shall provide copies of the Rules in effect as of the receipt of such request.

8.19 Right to Grant Easements.

(a) To grant utility and other easements, through and over the Common Elements which are reasonably necessary or appropriate in connection with the operation or activities of the Project or to the ongoing development of lands held by Declarant or an affiliate of Declarant in the Project; provided, however, that such easements shall be limited only to the location, scope and size reasonably necessary to accomplish the stated purpose of such easement or to comply with any relevant Governmental Requirements. Declarant agrees that all such easements will be located so as to reasonably minimize, consistent with appropriate Governmental Requirements, the impact on the access and use of the Common Elements.

(b) To relocate easements for ingress and egress over and across the Common Elements.

8.20 Assignment by Declarant.

The Declarant may, in its sole discretion, from time to time, engage contractors and agents to perform any or all of its rights, duties and responsibilities under this REA and may delegate such powers and authority as it deems appropriate in connection therewith. Further, the Declarant may, in its sole discretion, from time to time, elect to assign and delegate any or all of its rights, powers and duties under this REA to one or more third parties, including another Owner. Any such assignment shall be evidenced by a recorded assignment. In connection with any such assignment, Declarant may (but shall not be required to, unless Declarant is assigning all of its remaining rights, powers and duties) designate such assignee as its successor and the Declarant under this REA. Upon any such assignment, Declarant shall have no further liability

or responsibility for any assigned rights, powers and duties and such assignee shall thereafter assume all such liability and responsibility.

8.21 Limitation on Liability of Officers and Directors; Indemnification.

(a) No director, officer, employee or agent of Declarant or committee member, (each, a “Declarant Agent”), shall be liable to any Owner or Occupant or any other Person, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error or negligence of any such Declarant Agent acting within the scope of powers granted hereunder, if such Declarant Agent has acted in good faith and in a manner such Declarant Agent reasonably believed to be in the best interests of the Project.

(b) Each Owner, by accepting its deed, and each Occupant, by accepting the right to occupy a Lot, agrees personally and for all its Permittees to indemnify each Declarant Agent, and to defend such Declarant Agent against any liability for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of such Declarant Agent if such Declarant Agent has acted in good faith and in a manner such Declarant Agent believed to be in the best interests of the Project.

ARTICLE IX

COMMON ELEMENTS

9.1 Common Elements.

The “Common Elements” shall mean: (a) all real and personal property owned or to be owned by the Declarant or the Association for the common use and enjoyment of the Owners at the Project (but expressly excluding property owned by Declarant in its capacity as an Owner for its personal use and enjoyment); (b) all real and personal property designated by the Declarant, from time to time, as Common Elements, provided that the Declarant owns the property being designated as a Common Element, or the Owner of such property consents to the designation; (c) all real property over which the Declarant or the Association owns or will own an easement or other rights for maintenance or other purposes for the benefit of the Owners; (d) all real property serving the Project which the Declarant or the Association is otherwise required to maintain as provided herein or pursuant to the CID, including the CID Public Improvements as defined in the Cooperative Agreement; and (e) all real property for the benefit of the Project over which any State agency, Jackson County, the City, or any public utility has granted or will grant an encroachment or similar permit to the Declarant or the Association for maintenance or other purposes. The Common Elements do not include any areas reserved for the exclusive use of any particular Owner or Occupant. Without limiting the foregoing, the following property and rights, whether real or personal may serve as Common Elements from time to time in accordance with the terms of this REA: any interior roads and drive lanes including medians, curbing, striping, lighting, and signage (including directional signage) associated therewith, landscape areas, irrigation systems, buffer areas and public art. The property and rights set forth on Exhibit C attached hereto shall constitute the initial Common Elements.

9.2 Easement of Enjoyment.

Every Owner and Occupant of a Lot shall have a right and easement of enjoyment in and to the Common Elements, which right and easement shall be appurtenant to and shall pass with the title to each such Lot; provided, however, that such right and easement shall be subject to the following:

(a) The right of the Declarant to transfer all or substantially all of its rights in the Common Elements, including to the Association;

(b) The right of the Declarant to borrow money for the purpose of improving, repairing and maintaining the Common Elements or otherwise and, in connection therewith, the right of the Declarant to encumber or hypothecate the Common Elements; and

(c) The power of the Declarant to adopt, amend, supplement and enforce the Rules.

9.3 Use.

The Common Elements shall be used by the Owners and Occupants in accordance with the Rules.

9.4 Maintenance.

Any costs for completing maintenance of the Common Elements shall be deemed Common Expenses. Any costs of temporary relocation suffered by the Owner or Occupant of any Lot as a result of the repair, maintenance or improvement of the Common Elements by the Declarant shall be borne entirely by such Owner or Occupant.

9.5 Damage to the Common Elements.

The Owner of each Lot shall be liable for all damage to the Common Elements or to any other real or personal property owned by the Declarant that may be sustained by reason of the negligence of such Owner or Occupant and its Permittees, including damage to curbs, sidewalks, paved surfaces, monuments, signs, trees and landscaping. No Owner shall do or permit any of its Permittees to do anything on or about the Common Elements that might increase the premium rates for, or cause the cancellation of, any policies of insurance obtained pursuant to this REA.

9.6 Expansion of Common Elements.

At any time, (a) Declarant may (but need not), by sale, lease, gift or other transaction, convey to any assignee of Declarant's rights and obligations with respect to the Common Elements or to the Association and/or (b) such assignee or the Association may (but need not), by purchase, lease, acceptance of gift or other transaction (and without the consent of the Owners), obtain or acquire, any Lot, other lands (including off-site real property) for the benefit of the Project, personal property or rights therein, and thereby increase and expand the Common Elements, whereupon the maintenance of such additional Common Elements shall become the responsibility of such assignee or the Association.

ARTICLE X

ENFORCEMENT

10.1 Abatement and Suit.

(a) Subject to the restrictions set forth in this REA and those imposed by law, in the event a violation or breach of any covenant, condition, restriction or provision contained in the Governing Documents is determined in accordance with the procedures of Section 8.7 to exist, the Declarant, through its officers, employees, agents, representatives and contractors, has the right to enter upon the portion of the Project upon or as to which said violation or breach exists and to summarily abate and remove, at the expense of the Owner thereof, any structure, thing or condition that may exist thereon contrary to the provisions of the Governing Documents.

(b) Declarant (acting on behalf of itself or as representative of the Owners) and any aggrieved Owner have the right to initiate a proceeding at law or in equity against any Owner or Occupant or any other Person or Persons who have violated or breached or are attempting to violate or breach any of the provisions, covenants, conditions and restrictions set forth in the Governing Documents, to enjoin or prevent them from doing so, to cause said violation or breach to be remedied; provided, however, that nothing herein contained shall be deemed to impose upon Declarant or any aggrieved Owner any liability for the failure to correct or seek recourse for a violation or breach of the Governing Documents.

(c) Each Owner, by acceptance of a deed, and each Occupant, by acceptance of a lease, acknowledges and agrees that the Owners and Occupants have bargained for specific performance of the covenants, conditions, restrictions, rights, easements, and rights-of-way contained in this REA and all other provisions hereof, and that each Owner and Declarant are entitled to enforcement of the terms hereof, which enforcement may include damages, declaratory judgments and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, both mandatory and prohibitory.

(d) Each Person comprising an Owner shall be jointly and severally liable with each other Person comprising such Owner for the violation or breach of any covenant, condition, restriction or provision contained in the Governing Documents (i) existing upon the Lot or Lots owned by such Owner or (ii) caused or committed by such Owner or any Occupant or Permittee of such Owner.

10.2 Inspection.

Declarant and its representatives, officers, employees and agents may, from time to time at any reasonable hour or hours and without notice to any Owner or Occupant, enter and inspect any Lot to ascertain whether such Lot, the Improvements thereon and the uses thereof are in compliance with the Governing Documents, and no such entering Person shall thereby be deemed guilty of, or become liable for, any manner of trespass or unlawful entrance in connection with such entry and inspection.

10.3 Failure to Enforce Not a Waiver of Rights.

The failure of Declarant or any aggrieved Owner to enforce any covenant, condition, restriction or provision herein contained shall in no event be deemed to be a waiver of the right to thereafter do so nor of the right to enforce any other covenant, condition, restriction or provision set forth in this REA.

10.4 Enforcing Violations.

The violation of any Entitlement or Governmental Requirement shall constitute a violation of this REA and shall be enforceable by the Declarant in accordance with the provisions of this Article X.

ARTICLE XI

TERMINATION AND AMENDMENT

11.1 Term.

The easements, covenants, conditions and restrictions contained in this REA run with and bind the Lots and the Project and inure to the benefit of and are enforceable by each Owner and its heirs, successors and assigns, for a term commencing as of the date this REA is recorded and terminating fifty (50) years from such date, after which the term of this REA shall be automatically extended for successive periods of ten (10) years unless, prior to commencement of any such ten (10) year period, an amendment to this REA approved by a vote of the Owners holding 75% of the Total Voting Entitlement has been recorded in accordance with Section 11.2 which terminates this REA or modifies the automatic extension provisions of this Section 11.1. Notwithstanding the termination of this REA, all easements granted under the terms of this REA shall survive termination of this REA and shall be perpetual unless and until terminated by the Person(s) who are expressly the benefited parties or who own a benefited Lot.

11.2 Amendments.

(a) Except as otherwise provided in this REA (including Section 11.1), neither this REA nor any provision hereof or any covenant, condition or restriction herein contained may be terminated, extended, modified or amended as to the whole of the Project or any portion thereof, except upon the approval of a Majority of the Owners; provided, however, that so long as Declarant or its successors and assigns owns any portion of the Project, no such termination, extension, modification or amendment shall be effective without the written approval of Declarant thereto. No such termination, extension, modification or amendment shall be effective until such termination, extension, modification or amendment has been certified in a document executed and acknowledged by a Majority of Owners (and Declarant if Declarant's approval is required) and has been recorded in the Recorder's Office of Jackson County.

(b) Notwithstanding the foregoing, and in addition to any other rights Declarant may have to amend this REA as provided elsewhere herein, (i) before the close of the first conveyance of a Lot to a purchaser, this REA may be amended in any respect or revoked, by the execution by Declarant of an instrument amending or revoking the REA, (ii) the Declarant

may, without the vote or consent of the Owners, make and record additions, deletions or amendments to this REA for the purpose of correcting ambiguities or technical errors or for the purpose of clarification, and (iii) so long as Declarant owns any portion of the Project, Declarant may, without the vote or consent of the Owners, but with the consent of the Owners and Mortgagees of all affected Lots, at any time and from time to time in its sole discretion, make and record such additions, deletions, amendments, modifications or supplements to this REA for the benefit of the Project as are not unfair or unreasonable, including those which add additional land to the Project.

(c) Any document recorded in accordance with this Section 11.2 shall be conclusive in favor of all Persons who rely upon it in good faith.

11.3 REA Shall Continue Notwithstanding Breach.

It is expressly agreed that no breach of this REA shall (i) entitle any party to cancel, rescind, or otherwise terminate this REA, or (ii) defeat or render invalid the lien of any mortgage, deed of trust or other security instrument made in good faith and for value as to any part of the Project. However, such limitations shall not affect in any manner any rights or remedies which any party may have under this REA by reason of such breach.

11.4 Termination of Declarant's Interest

Declarant's right to enforce the provisions of this REA shall continue for so long as Declarant owns any Lot; provided, however, that Declarant shall be entitled, at any earlier time, by an instrument in writing executed and acknowledged and recorded in the County, to terminate in whole or in part its right to enforce the provisions of this REA.

ARTICLE XII

RIGHTS OF LENDERS

12.1 Priority of Lien of Mortgage.

This REA shall be and remain senior in priority to all Mortgages hereafter encumbering the Project or any Lot. Any Mortgagee or other Owner whose title to a Lot is derived through foreclosure, trustee's sale or deed in lieu of foreclosure, shall take title to such Lot subject to, and shall be bound by, all the covenants, conditions and restrictions set forth in this REA, including the lien for both non-delinquent and delinquent Assessments (including costs of collection, late charges and interest connected therewith); provided, however, that no Mortgagee shall have any personal liability for payment of such Assessments.

12.2 Curing of Defaults.

Any Mortgagee who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach or violation of the provisions of this REA which is incurable or of a type which is not practical or feasible to cure. In the event that any Assessment on any Lot becomes delinquent or another default under this REA occurs, Declarant shall provide the Mortgagee with notice of such default, provided,

however that the Owner of such Lot must have furnished the Declarant with the current address of the Mortgagee. The Mortgagee shall thereafter have the right to cure such default within a reasonable time or to commence foreclosure proceedings. If any Mortgagee commences foreclosure proceedings or gives notice to the Declarant that it is commencing negotiations for a deed in lieu of foreclosure, the Declarant shall stay any foreclosure proceedings instituted by it until the conclusion of Mortgagee's proceedings or negotiations, provided that such proceedings or negotiations are diligently and reasonably prosecuted.

12.3 Availability of Documents.

The Declarant shall make available to Owners and Mortgagees current copies of the Governing Documents, as well as the books, records and financial statements of Common Expenses. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. Any such financial statement so requested shall be furnished within a reasonable time following Declarant's receipt of such request.

12.4 Conflicts.

In the event of any conflict between any of the provisions of this Article XII and any of the other provisions of this REA, the provisions of this Article XII shall control.

ARTICLE XIII

CONSTRUCTION

13.1 Construction Schedule.

A written schedule of construction and project events is required to be filed with Declarant seven (7) working days in advance of construction start so that field personnel may be notified. Before starting any operations on site, the Owner and such Owner's contractor must supply Declarant's personnel on site with the name and phone number of the field superintendent and copies of all required permits. Declarant will issue written verification upon receipt of this information, at which time the contractor may commence its activities. The Owner and such Owner's contractor shall be liable for any damage caused to the facilities of the Project or adjacent property owners and shall immediately repair any such damage.

13.2 Heavy Equipment.

Use of the Project Common Elements by heavy equipment is prohibited unless prior permission is granted. A request for use of Common Elements should be made a minimum of two (2) business days in advance of the intended use, and approval of such use, if granted, shall be along the route directed by Declarant.

13.3 Construction Hazard Areas.

Construction hazard areas of and around the site must be clearly marked and barricaded from non-construction pedestrian and vehicular traffic.

13.4 Maintenance.

Temporary structures, signs, barricades, and construction equipment must be clean, neat and uniform in appearance, maintained regularly and removed immediately when their use is no longer required.

13.5 Construction Signage.

Signage at the construction site shall be limited to the necessary hazard, warning and directional information. Any development signage must be approved by the Declarant and must conform to any criteria for temporary signs. Separate contractor, architect or other advertising signage is not allowed.

13.6 Non-Interference.

Construction materials, equipment, temporary shelters, signs and operations are to be confined to the Lot on which the construction is being completed and shall not present a hazard or infringe on any adjoining Lot or Common Element, or the operations or use thereof.

13.7 Dirt and Debris.

Any on-site construction dirt and debris must be stored and screened from view or removed from the Lot, all on a daily basis. Construction dirt and debris are not allowed to accumulate on any adjoining Lots or Common Areas and shall be broom cleaned immediately.

13.8 Completion of Construction.

Once development of a Lot has begun, construction should be diligently pursued to its finish. No Building or other Improvements on a Lot shall be left incomplete. All construction shall be completed within a reasonable time period.

13.9 Permits.

All required permits must be clearly posted.

13.10 Change Orders.

Copies of all construction change orders are required to be filed with Declarant.

13.11 Utility Interruption.

Declarant must be notified of any planned interruption to any utility service (water, gas, electric, etc.) 7 days in advance. Declarant must be notified immediately of any accidental interruption to any utility service.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

14.1 Constructive Notice and Acceptance.

Every Person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or any Lot is and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction and provision contained in this REA, whether or not any reference to this REA is contained in the instrument by which such Person acquired an interest in the Project.

14.2 Declarant's Rights Under Other Documents.

Nothing herein contained shall prejudice or diminish in any way Declarant's rights under any other documents which may be subsequently recorded against all or any portion of the Project.

14.3 Estoppel Certificate.

Upon request of an Owner or Declarant ("Requester") to another Owner or Declarant ("Certifying Party"), the Certifying Party shall, execute, acknowledge and deliver to the Requester within twenty (20) days after receipt of the request, an instrument stating (if the same be true) that as of such date, no default has been declared hereunder by the Certifying Party and that such Certifying Party has no knowledge of any facts or circumstances which it reasonably believes would give rise to a default by the Requester under this REA, and such other information as the Requester may reasonably request

14.4 Land Use Matters.

Declarant shall retain the right, in its sole discretion, for the benefit of the Lots of which Declarant or an affiliate of Declarant then retains ownership, or for the benefit of all or any other portion of the Project, to apply for, obtain, prepare, change, amend, supplement, modify or terminate any governmental land use ordinance, development entitlement or approval, organization or change of organization, environmental analysis or mitigation plan or other Entitlement including or affecting the Project or otherwise, including (a) any municipal incorporation, annexation or deannexation, district formation or dissolution or any other change of organization contemplated by Governmental Requirements, (b) any general plan, specific plan, zoning ordinance or conditional use permit, (d) any tentative plat or any other approval (including lot mergers, lot splits, lot line adjustments and similar approvals) available or required under Governmental Requirements or otherwise, (d) any requirements of Hazardous Materials Laws and related agreements, and (e) any wetlands, geological, archaeological, or environmental mitigation plans; provided, however, that such land use modification shall not materially adversely affect any Owner's or any other's right to develop its Lot or Lots in accordance with the Entitlements and the Governing Documents.

14.5 Completion of Construction by Declarant.

Declarant and its agents, representatives, and independent contractors are entitled to complete the construction of on-site and off-site improvements on or in the vicinity of the Project, including grading, trenching, preparation of streets and curbs and installation of utilities and sewers, and neither any Owner nor any Occupant shall interfere with or impede such completion of construction. In the event that, prior to completion of such construction, Declarant or Declarant's independent contractor reasonably determines that the activities of any Owner or Occupant upon the Common Elements or upon such Owner's or Occupant's Lot may interfere with such construction, then Declarant or Declarant's independent contractor shall be entitled to impose such reasonable conditions and limitations upon such activities as Declarant or such independent contractor, in its reasonable discretion, determines to be necessary or appropriate to avoid such interference; provided, however, that Declarant shall incur no liability arising out of either the imposition of, nor the failure to impose, such conditions.

14.6 Community Improvement District.

(a) All Owners and Occupants of the Project acknowledge and agree, for themselves and their successors and assigns, that the CID has the power to take such actions, including imposing and assessing taxes against the Project, as permitted by the CID Law, the petition to the City for creation of the CID and the associated Cooperative Agreement, and upon acceptance of ownership or possession of the Project or any portion thereof, the Owners and Occupants of the Project shall be deemed to have approved and accepted the CID and the imposition and assessment of taxes resulting therefrom.

(b) All Owners of the Project acknowledge and agree, for themselves and their successors and assigns, that in the event Declarant and the CID fail to maintain the CID Public Improvements, each Owner shall be liable for its Proportionate Share of the maintenance costs of the CID Public Improvements.

(c) Each Owner and Occupant hereby consents that within ten (10) days following a request by Declarant, each Owner and Occupant shall execute and deliver such documentation as may be reasonably requested by Declarant in connection with the operation or administration of the CID.

(d) The City shall be deemed a third-party beneficiary of this REA solely with respect to the requirements of Section 3.2.C.4 of the Cooperative Agreement incorporated herein. Any amendment or modification to the provisions in this REA with respect to such requirements shall require the City's written consent.

14.7 Notices.

(a) Except as otherwise required by law, all notices, consents, requests, demands, approvals, authorizations and other communications provided for herein shall be in writing and shall be deemed to have been duly given if and when personally served or seventy-two (72) hours after being sent by United States first class mail, postage prepaid, to the intended party at its last known address. For purposes of this Section 14.7, "last known address" with respect to any Owner shall mean such Owner's address appearing in the records of Declarant or

supplied by such Owner to the Declarant. If no address is supplied, then such Owner's address shall be deemed to be the address of any Lot owned by such Owner.

(b) With respect to (i) any such notice, consent, request, demand, approval, authorization or communication and (ii) any document or instrument (whether a Governing Document or otherwise) given or made available to any Owner hereunder or under any of the other Governing Documents and which might concern an Occupant to such Owner's Lot, it is the sole responsibility of such Owner (but in no event the responsibility of the Declarant) to make a copy thereof available in a timely manner to such Occupant.

14.8 Liberal Construction.

The provisions of this REA shall be liberally construed to effectuate its purpose. The failure to enforce any provision of this REA shall not constitute a waiver of the right to thereafter enforce such provision or the right to enforce any other provision hereof.

14.9 Effect of Invalidation.

Each covenant, condition and restriction of this REA is intended to be, and shall be construed as, independent and severable from each other covenant, condition and restriction. If any covenant, condition or restriction of this REA is held to be invalid by any court, the invalidity of such covenant, condition or restriction shall not affect the validity of the remaining covenants, conditions and restrictions in this REA.

14.10 Cumulative Remedies.

Each remedy provided for in this REA and/or in the Governing Documents is cumulative and not exclusive. The failure to exercise any remedy provided for in this REA or any other Governing Document shall not constitute a waiver of such remedy or of any other remedy provided herein or therein.

14.11 Attorneys' Fees and Costs.

If any Person that is bound by this REA commences arbitration or litigation for the judicial interpretation or enforcement hereof or of any of the other Governing Documents, or for damages for the breach hereof or of any of the other Governing Documents, the prevailing party shall be entitled to its reasonable attorneys' fees, arbitration costs and court and other costs incurred.

14.12 Binding Effect.

This REA and the easements, rights, obligations and liabilities created hereby shall run with the land and bind all successors and assigns of the Owners of the Lots.

14.13 Conflicting Provisions.

In the case of any conflict between this REA and the Articles or the Bylaws, this REA shall control.

[Signature page follows.]

IN WITNESS WHEREOF, Declarant has hereunto affixed the following signature as of the date first above written.

TOWNSEND SUMMIT, LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

STATE OF _____)
) ss
COUNTY OF _____)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, the _____ of TOWNSEND SUMMIT, LLC, a Delaware limited liability company, personally known to me to be the person holding such office in said limited liability company, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this day of , 2019.

Notary Public

EXHIBIT A

Project

EXHIBIT B

Site Plan

EXHIBIT C

Common Elements

EXHIBIT D

Exclusive Use Restrictions

EXHIBIT E

Rules and Regulations