
WHEN RECORDED RETURN TO:

Jeff Bauer
Levy Craig Law Firm, a professional corporation
4520 Main Street, Suite 1600
Kansas City, Missouri 64111

Title of Document: Declaration of Covenants, Restrictions and Easements

Date of Document: _____, 2024

Grantor(s): Oldham Investors, LLC,
a Missouri limited liability company

Grantee(s): Oldham Investors, LLC,
a Missouri limited liability company

Grantee(s) Mailing Address: c/o Drake Development, LLC
7200 W. 132nd Street, Ste. 150
Overland Park, Kansas 66213

Legal Description: See Exhibit A

Reference Book and Page(s): N/A

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS (this “Declaration”) is made, granted, and entered into by **Oldham Investors, LLC**, a Missouri limited liability company (as “Developer”), effective as of this ____ day of _____, 2024 (the “Effective Date”).

WHEREAS, Developer is the owner of certain real property located in the City of Lee’s Summit, County of Jackson, State of Missouri, legally described on **Exhibit A** attached hereto and depicted on **Exhibit C** attached hereto (the “Center”);

WHEREAS, pursuant to that certain Final Plat _____ Lots 1 Thru 18, and Tracts “A”, “B”, “C”, and “D” to be recorded contemporaneously herewith, a copy of which is attached as **Exhibit B** hereto (the “Plat”), the Center consists of lots designated as Lots 1 through 11 and 12 through 18 (excluding the parcel designated as Lot 11A) on the Plat (each, a “Lot” and collectively, the “Lots”); tracts designated as Tracts “A”, “B”, “C”, and “D” on the Plat and depicted in **Exhibit C-1** attached hereto (each a “Tract” and collectively the “Tracts”); and access drives dedicated as public common area easements on the Plat (each a “PCAE” and collectively the “PCAEs”) as depicted in **Exhibit C-2** attached hereto; and each fee owner of a Lot, or person who is an Occupant (as defined herein) and occupies a Lot pursuant to an assignment or sublease in connection with implementation of the Chapter 99 Plan (as defined herein) while the City owns fee title to such Lot pursuant to the Chapter 99 Plan, is hereafter referred to as an “Owner”;

WHEREAS, the Center will be developed for multi-family residential, commercial, retail, medical, or office uses, or other purposes permitted by applicable zoning and approved by the Developer, subject to the terms and conditions of this Declaration.

WHEREAS, the Developer desires to provide for the preservation of the values and amenities in the Center and for the maintenance of common use areas, and, to this end, desires to subject the Center to the covenants, restrictions, easements and other provisions set forth in this Declaration;

WHEREAS, the Developer has deemed it desirable, for the efficient preservation of the values and amenities of the Center, to create an association to which will be delegated and assigned certain powers related to maintaining, administering, and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges created in this Declaration; and

WHEREAS, the Association (as defined in **Section 2** below) has incorporated under the laws of the State of Missouri, a nonprofit corporation for the purpose of exercising the functions herein described.

NOW, THEREFORE, for and in consideration of the foregoing recitals, the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Developer hereby grants, covenants, and agrees as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated into and made a part of this Declaration, as if fully set forth herein.

2. **Oldham Village Owner’s Association, Inc.**

a. **Powers and Duties of the Association.** Oldham Village Owner’s Association, Inc. (the “Association”) is being organized to operate for the promotion of the common good and general welfare of the Developer, the Occupants (as defined in **Section 11** below) and consistent therewith, to maintain and preserve the Common Areas, to administer and to enforce all easements,

covenants, and restrictions, and charges contained in the Declaration and all liens created herein, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers (but not intended as affirmative obligations unless so stated) of the Association, including by way of illustration and not obligation, and in addition to the those express powers required in order for the Association to perform its other obligations hereunder:

i. Assessments. The Association may levy Assessments on the Owners and enforce payment of such assessments, all in accordance with the provisions of this Declaration set forth in **Section 3** and **Section 4**.

ii. Right of Enforcement. The Association shall have the power and authority from time to time in its own name, on its own behalf or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration and to enforce, by mandatory or prohibitive injunction or otherwise, all of the provisions hereof or to pursue its Right of Action as provided in **Section 16** herein.

iii. Common Areas. Subject to and in accordance with **Section 12** hereof, Developer hereby grants a non-exclusive easement for the term of this Declaration over, across, under and through the Common Areas in favor of Developer and the Association to: plan, design, improve and construct on the Common Areas (by way of example and not limitation or affirmative obligation) the Common Signs, Development identification signs and other signage, parks and other open space, trees, flowers, other landscaping, fountains, benches, shelters, public sculpture, pedestrian pathways, ornamental walls, lighting systems for such pathways, bridges or underpasses for such pathways, the PCAE's, private roadways, driveways, sidewalks, streetlights, storm water management and detention facilities and features associated therewith, shared utility spaces and facilities, the Detention Basin, and other facilities deemed necessary or desirable by the Association Board, as defined herein (collectively, the "Common Area Improvements") which may be referred to herein with the Common Areas as the "Common Areas"). The Association shall maintain and insure the Common Areas as set forth herein, repair and replace the Common Area Improvements as necessary, provide adequate comprehensive insurance for the Common Areas owned by the Association and provide adequate liability insurance for any maintenance activities performed or caused to be performed by the Association on the Common Areas.

iv. Insurance. The Association shall obtain and keep in force such policies of insurance, as are necessary to adequately insure and protect the Common Areas and the operations thereon, and the Association, as deemed by the Association Board to be necessary and appropriate, provided that such insurance shall include adequate comprehensive insurance for the Common Areas owned by the Association and adequate liability insurance for any maintenance activities performed or caused to be performed by the Association on the Common Areas.

v. Acquisition of Real Estate. The Association may acquire and own interests in the Tracts, as may be reasonably necessary to carry out the purpose of the Association, pay taxes on real estate and facilities owned by it and pay such taxes as may be assessed against the Common Areas, if any. Either the Developer, or the Association, may in their sole discretion, and at their sole cost and expense place the Tracts in a conservation easement.

vi. Contracts. The Association may contract with third-party service providers for the performance of the obligations of the Association hereunder.

vii. Easements. The Association may grant easements across the Common Areas for access and use of Tract A, Tract B and the Common Signs, for the benefit of property not encumbered by this Declaration (in any such circumstance "Unencumbered Property"), for the intended purpose of such Tract or Tracts, *provided that* in the event that the Association grants such easements (i.e for stormwater drainage and/or detention or the use of the Common Signs), the Association shall: (i) ensure that the use of the Tract by the owner of the Unencumbered Property shall be subject to the same terms and conditions as the Owners' use of the Tract pursuant to the terms hereof, and (ii) charge to and collect from the owner of any such Unencumbered Property an assessment commensurate with the terms hereof.

Consistent with the foregoing, the Association is authorized to exercise all powers which a not-for-profit corporation may exercise under the laws of the State of Missouri.

b. Membership in the Association.

i. Each Owner (notwithstanding the size of the Lot owned) shall be required to be a member of the Association ("Member", collectively the "Members") and each Owner shall hold one (1) membership in the Association ("Membership"). Each Member of the Association shall be entitled to one (1) vote for each full one tenth (1/10th) acre of each Lot or Lots owned by such Member. Owners of Unencumbered Property shall not hold Membership in the Association or be entitled to vote. The Member must be an individual who is either an Owner or their designee. Anything in this subsection to the contrary notwithstanding, where a Lot is owned of record in any manner of joint or common ownership, the joint or common Owners thereof shall share among them the rights (including voting rights) given to an Owner pursuant to this Declaration, which they shall be entitled to exercise as a whole, but not in part, in whatever manner they shall jointly determine.

ii. Subject to the provisions of this **Section 2(b)(ii)**, once a Member has been specified by an Owner as such Owner's representative, a successor Member may be specified by such Owner at any time upon at least fifteen (15) days' prior notice to the President of the Association; provided, however, the foregoing shall not impair the provisions of **Section 2(b)(iii)**.

iii. A Membership shall not be transferred, pledged or alienated in any way, except as herein expressly provided. Subject to the provisions of **Section 2(b)(i)**, a Membership shall automatically be transferred to a new Owner upon the transfer of the Lot to which it appertains (and then only to such transferee), whether by sale, intestate succession, testamentary disposition, foreclosure of a mortgage or other legal process transferring fee simple title to such Lot.

c. Association Powers. The powers of the Association shall be vested in, exercised by, and under the authority of the Members, and the affairs of the Association shall be governed in accordance with the Association's Articles of Incorporation and by-laws. The members of the Association shall elect the board of directors (the "Association Board"), in which Association Board there shall be vested all of the power and authority to supervise, control, direct and manage the property, affairs and activities of this Association. The rights, powers and privileges of the

directors shall be fixed in the by-laws. The number of members of the Association Board at any time shall not be less than three (3) and shall be fixed by, or in the manner prescribed in, the by-laws, as amended from time to time. Directors shall be elected, removed or appointed in the manner and for the terms as provided in the by-laws.

d. Suspension of Membership and Rights of Enjoyment. The Association may suspend the voting rights of a Member who:

i. is subject to a Right of Action (as hereinafter defined) by reason of having failed to take reasonable steps to remedy a violation or breach of this Declaration within the number of days specified in a written notice given by the Association after such violation or breach and such failure continues beyond any applicable cure period; or

ii. has allowed any Assessment levied by the Association pursuant to this Declaration to become delinquent beyond any applicable cure period; or

iii. has violated any reasonable rules and regulations adopted by the Association governing the use and enjoyment of the Common Areas or services thereon, and such violation continues beyond any applicable cure period.

iv. Such suspension shall be for the balance of the period in which the conditions set forth in **subsections (i) and (ii) or (iii)** of this **Section 2(d)** exist.

e. Termination of Membership. No Owner shall continue to be a Member after he ceases to hold a qualifying interest in any Lot. No Member may avoid his obligations under this Declaration by declining to use the Common Area, abandoning his Lot, or by any other act of abandonment or renunciation.

f. Limitation of Liability. Neither the Developer, nor any Member of the Association, officer or director of the Association, or member of any committee of the Association, whether such committee is specifically described in this Declaration or hereafter created by the Association, shall be personally liable to any Owner, Member thereof or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of such Developer, Member, officer of the Association, committee member, any other representative or employee of the Association or of the local municipality, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

g. Developer's Control of the Association. Notwithstanding anything in this Section 2 or elsewhere in this Declaration to the contrary, but subject to the terms of this Declaration, Developer shall have exclusive control over the Association, and the DRC (as hereinafter defined), including appointment and removal of any and all directors and officers of the Association, and all members of the DRC, during the period of time commencing upon the execution date of this Declaration, and terminating upon the later of (i) receipt by Oldham Investors, LLC of all Incentives payable thereto; or (ii) the transfer of the last remaining portion of the Property owned of Oldham Investors, LLC's to a successor Owner (the "Development Period"), subject to **Section 25** hereof. Developer's exercise of control over the Association pursuant to this **Section 2**, shall in no way obviate any Owner's obligations under this Declaration, including without limitation the obligation to pay Assessments.

3. **Imposition of Assessments, Liens Upon Property and Reporting**

a. **Covenants for Assessments and Creation of Liens.** Each Owner, jointly and severally, for its successors and assigns, by acceptance of a deed or other conveyance for any Lot, whether or not the covenants contained herein shall be expressed in any such deed or other conveyance, hereby covenants and agrees that:

i. it will pay to the Association all Assessments which are due and payable pursuant to the terms of this Declaration against the Lot owned by it in each year or any part thereof;

ii. it shall be liable for all such Assessments which become due while it is the Owner of each Lot being assessed;

iii. all Assessments, together with the continuing obligation to pay each Assessment assessed in all future years, together with all costs, expenses, interest and reasonable attorneys' fees incurred in the collection of delinquencies, shall become, upon the filing of this Declaration, and thereafter remain, a charge against and be secured by a continuing lien upon the Lot of such Owner; and

iv. said charge and lien shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon the Lot whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instruments, excepting only:

(1) purchase money mortgages or deeds of trust given to finance the purchase of the Lot and mortgages or deeds of trust to finance construction of improvements on the Lot and mortgages or deeds of trust otherwise encumbering the Lot; provided, however, that this subordination to such mortgages shall apply only to Assessments which have become due and payable prior to a sale or transfer of any Lot on account of the foreclosure of any such mortgage or on account of any other proceeding in lieu of foreclosure; such foreclosure sale or transfer in lieu of foreclosure shall not release such Lot from the lien of or relieve the new Owner, its successors and assigns from liability for any Assessments thereafter becoming due; and

(2) such liens for taxes or other public charges as are made superior by applicable law; provided, however, that this subordination to such liens shall apply only to Assessments which have become due and payable prior to a sale or transfer of any Lot on account of the foreclosure of any such lien or on account of any other proceeding in lieu of foreclosure; such foreclosure sale or transfer in lieu of foreclosure shall not release such Lot from the lien of or relieve the new Owner, its successors and assigns from any liability for any Assessments thereafter becoming due.

Nothing contained in this **Section 3(a)(iv)** shall be construed so as to constrain or impair the payment of funds realized from a foreclosure sale, to the extent of any funds remaining after satisfaction of prior liens, in order of priority to holders of subordinated liens.

b. Rate of Assessment. For the purpose of providing funds for the uses specified in **Section 4** hereof, the Association shall assess against the Lot in each year, beginning with the year in which it is necessary for the Association to maintain any Common Areas, a charge (referred to herein as “Assessment” or “Annual Assessment”), which shall be apportioned with respect to the Lots as set forth in **Section 3(c)**, below. Assessments shall be levied in such amounts as determined by the Association to provide funds sufficient to support the Association Budget for each fiscal year of the Association.

c. Billing of Annual Assessments. Within ninety (90) days after the calendar year, the Association shall levy the Annual Assessment against each Lot on a pro rata basis determined by dividing the acreage of such Lot by the total acreage of all Lots contained in the Center. Notwithstanding the foregoing: (i) the costs incurred by the Association in connection with the maintenance, insurance, utilities, repair, and replacement of each Common Sign pursuant to **Section 9** hereof shall be calculated for purposes of the Annual Assessment based on the size of the sign panel space of each Occupant of such Lot compared to all sign panel space on such Common Sign(s); and (ii) the costs incurred by the Association in connection with the maintenance, insurance, utilities, repair, and replacement of the PCAE’s shall be borne solely by the Owners of Lots 1 through 11 (no portion of such costs shall be included in the Annual Assessment for Lots 12 through 18). Within ninety (90) days after the calendar year, the Association shall send a written bill to each Owner stating the amount of the Annual Assessment imposed against each Lot owned by the Owner. Each Annual Assessment shall be due and payable within thirty (30) days after receipt of the bill setting forth the Annual Assessment. The Association may establish payment procedures to allow payment of the Annual Assessment in equal quarterly installments during the calendar year the Assessment is made, provided that this privilege is extended to all Owners on an equal basis, and provided that reasonable notice is given.

d. Late Payments.

i. The Association may from time to time establish or change the rate of interest which shall be charged for the payment not made within thirty (30) days after the due date of any portion of an Assessment, provided that such interest rate shall not exceed the lesser of the “Wall Street Journal Prime Rates” (or reasonable successor rate) plus ten percent (10%), or the maximum interest rate permitted under the laws of the State of Missouri and provided that reasonable notice of such charge is given to the Members.

ii. In the event of default that remains uncured beyond any applicable cure period in the payment of any one (1) or more installments of the Annual Assessment established hereunder, the Association may declare any remaining balance of said Annual Assessment at once due and payable.

iii. In the event that an Owner shall fail to fully pay the Assessment by the due date thereof, and such failure shall continue for thirty (30) days beyond the due date, such unpaid amount shall become a binding obligation of such Owner, and the Association shall have the right, pursuant to the provisions of **Section 16(c)** hereof, to enforce the lien for Assessments imposed by **Section 3(a)**. The Association shall have the right and duty to take all appropriate actions and steps to collect any such unpaid Assessments. Each delinquency that extends beyond thirty (30) days shall constitute a separate basis for a demand or claim of lien or liens, but any number of defaults may be included within a single demand or claim of lien or liens on account of prior delinquencies and shall be deemed to include subsequent delinquencies and amounts due on account thereof. The

Association may institute a suit to recover a money judgment for the same, together with interest thereon and reasonable expenses of collection, including attorneys' fees, without foreclosing or waiving the lien hereinbefore provided.

e. Certificate of Payment. Within fourteen (14) days after written demand by an Owner, the Association shall issue and furnish to such Owner a written certificate stating that all Assessments, including interest and costs (if any), have been paid with respect to any Lot owned by said Owner as of the date of such certificate, or if all Assessments have not been paid, setting forth the amount then due and payable. The Association may be reimbursed for its actual and reasonable costs incurred in connection with the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser or encumbrancer of the Lot in question.

f. Special Assessments.

i. In addition to the Annual Assessments authorized by **Section 3(a)** hereof, the Association may levy in any year a special assessment ("Special Assessment") for the purpose of defraying, in whole or in part, the cost of any necessary construction or reconstruction, repair or replacement of Common Area Improvements and any other capital improvement upon the Common Areas, or the cost of any utility deemed necessary by the Association to serve the Center including the necessary fixtures and personal property related thereto, or any unexpected cost or expense of the Association, as the Association Board may determine in its sole discretion. The Association shall levy any Special Assessments against each Lot on a pro rata basis determined by dividing the acreage of such Lot by the total acreage of all Lots contained on the Center.

ii. A Special Assessment shall become effective upon written notice by the Association. Billing of Special Assessments shall be handled according to the procedures set out in **Section 3(c)** hereof.

iii. The Special Assessment shall be deemed to be approved by the Members unless the Members vote not to approve such Special Assessment, by a vote of seventy-five percent (75%) of the votes entitled to be cast by the Members. The term "Assessments" for purposes hereof shall include Special Assessments.

iv. Notwithstanding the foregoing, Special Assessments for the PCEA's may be levied solely against the Owners of Lots 1 through 11, and such Special Assessment shall be deemed approved unless the Members entitled to vote by virtue of the their ownership of Lots 1-11 vote not to approve such Special Assessment by a vote of seventy-five percent (75%) of the votes entitled to be cast pursuant to this **Section 3(f)(iv)**.

4. Use of Funds / Audit Rights.

a. Purposes for which Funds May Be Used. The Association shall apply all funds received by it pursuant to this Declaration and all other funds and property received by the Association, and the accumulated funds referred to in **Section 4(b)**, to the following:

i. The reasonable operating costs and expenses of the Association;

- ii. a management fee payable annually to the Developer (or any other entity or entities engaged to manage the Center) in the maximum aggregate amount of ten percent (10%) of the amount of the Association Budget.
- iii. maintenance, repair, replacement, and insurance of Common Areas and Common Area Improvements pursuant to **Section 2(a)**, **Section 9**, and **Section 12** hereof;
- iv. payment of all real and personal property taxes and assessments, if any, separately levied upon or assessed against the Association or any property owned by the Association;
- v. payment of all premiums and charges for all policies of insurance or surety bonds, as deemed by the Association to be necessary and appropriate, including but not limited to workmen's compensation insurance, to the extent necessary to comply with any applicable law and then current insurance practices, and indemnity, faithful performance, fidelity and other bonds as the Association shall deem necessary, appropriate or required to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonesty of any employee or other person charged with the management or possession of any Association funds or property;
- vi. the maintenance, operation, repair, and replacement of any utility servicing the Common Areas or any utility deemed reasonably necessary by the Association to service the Common Areas;
- vii. the maintenance, insurance, utilities, repair, and replacement costs of each Common Sign pursuant to **Section 9** hereof;
- viii. all reasonable costs incurred under that certain Development Agreement by and between Developer and the City, _____ ("Development Agreement") a copy of which is attached hereto as **Exhibit F**.

Notwithstanding anything to the contrary herein, Association funds shall not be used for, and Assessments shall not be levied for, the costs of forming the Association and the original costs of planning, designing, acquiring, improving, constructing and equipping the Common Areas, Common Area Improvements, utilities related thereto and/or Common Signs (or the costs of curing defects to the original improvements and construction), all of which shall be paid by the Developer at its sole cost and expense.

b. Accumulation of Funds Permitted. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of Annual Assessments, or otherwise, and may carry forward, as surplus, any balances remaining. The Association may, in addition to and together with the foregoing, as a part of Annual Assessments, create and maintain a capital reserve account (the "Capital Reserve Account") for capital improvements and repairs to the Common Areas. The total amount charged by the Association to the Owners for contribution to the Capital Reserve Account for the calendar year 20____ may not exceed Five Thousand and 00/100 Dollars (\$5,000.00) (the "Maximum Yearly Capital Reserve Account Contribution"). The Maximum Yearly Capital Reserve Account Contribution shall increase each year by an amount equal to the greater of: (i) 2% of the amount charged for the prior year or (ii) the average increase, if any, in the CPI (as defined below) in effect for the two, immediately preceding years. The term "CPI" shall mean the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City

Average for All Items (1984=100) published by the United States Department of Labor, Bureau of Labor Statistics.

c. Posting of Bond. The Association may require that all persons or entities who handle the Association funds or monies, which funds and monies shall be deposited in federally insured banks or savings and loans, post bonds sufficient in amount to indemnify the Association from any loss.

d. Annual Budget and Reconciliation.

i. Within one hundred twenty (120) days prior to the end of each fiscal year for the Association (or as soon thereafter as reasonably practicable), the Association Board shall prepare an annual cash budget projecting anticipated expenses, cash receipts, and any other costs for the ensuing fiscal year (the "Association Budget") which shall be submitted to the Members for review and approval. The proposed Association Budget will automatically be approved unless the Members vote not to approve such Association Budget within thirty (30) days after the Association Budget is delivered to the Members, by a vote of seventy-five percent (75%) of the votes entitled to be cast by the Members. The fiscal year for the Association shall be the calendar year. In the event the Association has failed to adopt a budget by the thirtieth (30th) day of each fiscal year, the Association shall be deemed to have adopted a budget for such fiscal year in accordance with the budget for the prior fiscal year.

ii. Within one hundred twenty (120) days after the end of each fiscal year for the association (or as soon thereafter as reasonably practicable, the Association will determine the actual amount of the Assessment payable by each Owner and give written notice thereof to each Owner, together with reasonable supporting data (the "Annual Notice"). An appropriate adjustment shall be made from the Association to each Owner, or from each Owner to the Association, as the case may be, with respect to any overpayments or underpayments by each Owner during the previous year. Any additional payment therefor due from a Owner to the Association shall be made within thirty (30) days of delivery of the Annual Notice and any overpayment shall be refunded by the Association to the applicable Owner(s) within thirty (30) days after delivery of the Annual Notice, or credited towards such Owner(s) next applicable Assessment payment.

e. Audit Rights

i. Each Owner shall have the right, at its sole cost and expense, to audit the Association's books and records pertaining to Assessments, Special Assessments, and Association Budget for the time period covered by any particular Assessment or Special Assessment levied not more than one (1) time in any calendar year. The Owner shall notify the Association of its intent to audit at least fifteen (15) business days prior to the designated audit date. In the event that such audit shall disclose any error in the determination of the costs incurred by the Association or in the Owner's proportionate share, an appropriate adjustment shall be made forthwith.

5. Permissible, Restricted, and Prohibited Uses.

a. Developer Right to Replat. Developer shall have the right, in Developer's sole discretion, at Developer's sole cost and expense, and with approval of the City of Lee's Summit, Missouri (the "City"), to combine or subdivide any Lot or Lots into one or more separate parcels.

In the event Developer so combines or subdivides one or more Lot or Lots, this Declaration shall be automatically amended to reflect the newly created Lot or Lots upon the recording of the plat or other instrument affecting such combination or subdivision, and the Owner or Owners of the combined or subdivided Lot or Lots shall each have all the rights and obligations of an Owner hereunder based on the total square footage of the combined or subdivided Lot or Lots.

b. Permissible Uses and Maintenance Obligations. The Center may be used only for multi-family residential, commercial, retail, medical, or office uses, or other purposes permitted by applicable zoning and approved by the Developer. In addition, so long as the “TIF Contract” (as that term is defined in **Section 11(b)** of this Declaration) is in effect, the portion of the Center located within the “Redevelopment Project Area” (as that term is defined in the TIF Contract) may initially only be used for the uses permitted by **Sections 2.06(A), 2.08, and Exhibit I of the TIF Contract**. No building shall be initially erected, altered, placed or permitted to remain on any portion of the Center unless it is approved by the DRC, as defined herein, and unless such building is in full and complete compliance with the final development plan for such Lot approved by the City, as defined herein, and the TIF Contract. For any future rebuilding or remodeling, the DRC shall be deemed to have approved any nationally branded prototypical restaurant or retail store approved by the City which is otherwise in compliance with this Declaration.

c. Without limitation to the foregoing, the following uses are restricted and/or prohibited uses for all portions of the Center:

i. A carnival or circus; meeting hall; mortuary or funeral parlor; or any establishment selling cars or other motor vehicles, motor vehicle body shop, or any establishment selling trailers (including mobile homes); billiard parlor, massage parlor, provided, however that upscale or national spa concepts (e.g., Massage Envy) shall be allowed with Developer’s written approval; pawn shop; amusement center; flea market; “disco” or other dance hall; tattoo or body piercing parlor; casino, gaming room, or “off track betting” operation; for the sale of paraphernalia for use with illicit drugs or for the sale of marijuana; vape shop; for the sale, rental or display of pornographic materials, or for any use which materially increases fire, explosion, or radioactive hazards on adjacent Lots. The restrictions set forth in this **Section 5(c)(i)** are not intended to, nor shall they, prohibit or exclude the leasing, rental, sale or occupation of the Center (or any portion thereof) by a gas station facility that offers automobile repair services, or a car wash facility.

ii. Any other business which, in the sole and complete discretion of Developer (or the Association as the case may be), will degrade or damage the operation of the Center an upscale, first-class retail real estate development.

d. Without limitation to the foregoing, for so long as Chik-Fil-A, its successors, or assigns are operating on Lot 8 of the Center, the following uses are restricted and/or prohibited uses for Lots 1-7, 9 and 10, provided that the Owner of Lot 8 shall, without joinder of Declarant, Developer, the Association, or any other Owner, be entitled to record an amendment to this Declaration stating that such restrictions and prohibitions are of no further force and effect, and upon the recording of such amendment, such restrictions and prohibitions shall no longer encumber Lots [REDACTED]:

i. a restaurant selling or serving chicken as a principal menu item. For the purposes of this Lease, “a restaurant selling or serving chicken as a principal menu item” means a restaurant deriving twenty-five percent (25%) or more of its gross food sales from

the sale of chicken. A “restaurant” includes any business establishment, including, without limitation, a kiosk, stand, booth, food truck or area located inside another business facility;

ii. a McDonald’s, Wendy’s, Arby’s, Boston Market, Kentucky Fried Chicken, Popeye’s, Church’s, Bojangle’s, Mrs. Winner’s, Carl’s Jr., Hardee’s, Chicken Out, Zaxby’s, Ranch One, El Pollo Loco, Pollo Campero, Pollo Tropical, Raising Cane’s, Chester’s, Bush’s Chicken, Biscuitville, Chicken Now, PDQ, ChikWich, Ezell’s Famous Chicken, Roy Rogers, Fuku, Shake Shack, Habit Burger or Slim Chickens (collectively the “CFA Exclusive”); provided, however, that: (a) kiosks or concessions located inside a retailer that occupies less than 10,000 square feet of the Center; (b) sit-down table service restaurants; (c) Starbucks on Lot 7; (d) Whataburger; and (e) restaurants primarily featuring a single ethnic food menu such as Asian (ex: Panda Express) or Hispanic (ex: Chipotle), will not be subject to the CFA Exclusive.

e. In addition to the foregoing restrictions, no portion of Lot 5, Lot 5A, Lot 6, or Lot 9 shall be leased, rented, sold or occupied, or permitted to be leased, rented, sold or occupied, for any of the following: a gas station (excepting Casey’s, QuikTrip, or any other gas station brand that includes a convenience store that has not less than fifty (50) locations and operating in not less than five (5) states), motor vehicle oil change facility, tire, maintenance or repair shop; tavern, pub, or bar (provided such tavern, pub or bar derives more than forty percent (40%) of its revenue from the sale of alcohol); a place of instruction; a sporting event or other sports facility, auditorium or any other like place of public assembly; a gym or fitness center which occupies more than five thousand (5,000) square feet of Lot 5, Lot 5A, Lot 6, or Lot 9; a theater of any kind; or a bowling alley, skating rink, or amusement park.

f. In addition to the foregoing restrictions, unless approved in writing by the Declarant, no portion of Lot 1 shall be used for any purpose other than as a parking lot and such related and incidental uses thereto.

g. Maintenance of Lots. Excluding the Common Areas which are the responsibility of the Association under **Section 12** below, the Owner of each Lot shall maintain such Lot and the following items in a first-class, sightly, and attractive manner, in conformance with all applicable laws, so as to ensure that the Center and each portion of the Center retains at all times the appearance of a first-class commercial development: buildings; improvements; parking areas; aisles; driveways; entrances; exits; walkways; sidewalks; roadways; loading areas; service roads; lighting facilities located within such Lot; surface drainage facilities; traffic control signs; lawns, landscaping, and berms on the Lot and adjoining right-of-way to the point of commencement of governmental maintenance, detention basins; medians and; monument signs (if permitted hereunder) and fences. Such maintenance shall include, but not by way of limitation: repairing and replacing paving; security lighting; keeping such areas properly drained, free of snow, ice, water, rubbish and other obstructions, and in neat, clean, orderly and sanitary condition; keeping such areas suitably lighted during, and for appropriate periods before and after, normal operating hours; maintaining signs, markers, painted lines and other means and methods of pedestrian and vehicular traffic control; maintaining adequate roadways, entrances and exits; the seeding, watering and mowing of all lawns; the pruning and cutting of all trees and shrubbery; wildlife mitigation and pest control; the painting (or other appropriate external care) of all buildings and other improvements; and all other maintenance otherwise required by the City pursuant the Development Agreement, **as defined herein and attached hereto as Exhibit F**, all in a manner and with such frequency as is consistent with safety and good property management. Each Lot, once developed, shall have an underground watering system for the watering of all landscaping. Each Lot, once developed shall have a sidewalk contiguous to the sidewalk on the adjacent Lot(s) to permit the walkability of the Center. Each Owner shall at its sole expense make all structural repairs to the

improvements located on its Lot and maintain or cause to be maintained all other portions of its Lot, including all utility connections and water detention improvements, in good order, condition and repair. In the event an Owner fails to maintain its Lot as required herein, the Association shall have the right, after fifteen (15) days' written notice to the Owner of the affected Lot as hereinafter provided, and provided that such Owner does not take corrective action within such fifteen (15) day period, to: (i) remove trash or rubbish and to cut grass, weeds, and vegetation and to trim or prune any hedge or other planting that, in the opinion of the DRC, by reason of its' location or height or the manner in which it is permitted to grow, is detrimental to adjoining property or is unattractive in appearance; and (ii) care for vacant and unimproved property and to remove grass, weeds and rubbish therefrom and to do any and all things necessary or desirable in the reasonable opinion of the DRC to keep such property in neat and good order, all at the cost and expense of the Owner. Such cost and expenses incurred by the Association shall be paid to the Association upon demand and, if not paid within thirty (30) days thereof, shall become a lien upon the Lot affected. Nothing in this Declaration shall obviate or relieve Developer from maintaining any Lot owned by Developer within the Center, which cost shall be borne solely by Developer.

h. Lot 2-11 Shared Drive.

i. The Owner of Lot 2 shall be solely responsible for maintaining, replacing, and repairing the access point and drive isle located on Lot 2 and identified on **Exhibit C-3** attached hereto, (the "Lot 2-11 Shared Drive") or causing the Lot 2-11 Shared Drive to be maintained, replaced, or repaired, including, without limitation, repair, replacement, or restoration in the event of damage or destruction by casualty, periodic resurfacing, sealing, patching, restriping, sweeping, and snow and ice removal ("Lot 2-11 Shared Drive Maintenance").

ii. If the Owner of Lot 2 shall fail to perform or cause the performance of the Lot 2-11 Shared Drive Maintenance on the Lot 2-11 Shared Drive, and such failure continues for a period of thirty (30) days, following written notice delivered to the Owner of Lot 2 by the Owner of Lot 11 (or such longer period if such maintenance obligations cannot, with due diligence, be reasonably performed within thirty (30) days; provided that the Owner of Lot 2 commences performance of such maintenance within said thirty (30) day period and thereafter prosecutes the performance thereof as quickly as reasonably practicable), then the Owner of Lot 11 may, but is not obligated to perform such Lot 2-11 Shared Drive Maintenance. Notwithstanding anything to the contrary in this Section 5(h)(ii), the Owner of Lot 11 is not required to provide written notice prior to performing or causing the performance of Emergency Maintenance. For purposes of this **Section 5**, "Emergency Maintenance" means maintenance performed to repair, mitigate, or remove a condition that: (i) otherwise restricts, impedes, or prevents access to a Lot, or (ii) poses an immediate or imminently potential danger or hazard likely to cause damage to property or person, including but not limited to failure to remove snow, ice, or debris from a Shared Drive as necessary so that the Owners or applicable tenants on Lots sharing the Shared Drive, can open for business during its regular business hours.

iii. The Owner of Lot 11 shall reimburse the Owner of Lot 2 for its Proportionate Share of the costs incurred by the Owner of Lot 2 in performing (or causing to be performed) the Lot 2-11 Shared Drive Maintenance (the "Lot 2-11 Shared Drive Maintenance Costs"). Such reimbursement shall be made quarterly and shall be equal to 1/4th of the Proportionate Share of the Lot 2-11 Shared Drive Maintenance Costs attributable to each respective Lot. The Proportionate Share attributable to each Lot shall be a fraction, the denominator of which shall be the combined square footage of Lot 2 and

Lot 11, the numerator of which shall be the square footage of each respective Lot. For clarity's sake, until a temporary occupancy permit has been issued for the improvements on Lot 2 or Lot 11, as the case may be, said Lot shall not be considered in the determination of Proportionate Share hereunder, and the Owner of said Lot shall not be responsible for any Lot 2-11 Shared Drive Maintenance Costs hereunder.

i. Lot 6-7 Shared Drive.

i. The Owner of Lot 6 shall be solely responsible for maintaining, replacing, and repairing the access point and drive isle located on Lot 6 and identified on **Exhibit C-4**, attached hereto, (the "Lot 6-7 Shared Drive") or causing the Lot 6-7 Shared Drive to be maintained, replaced, or repaired, including, without limitation, repair, replacement, or restoration in the event of damage or destruction by casualty, periodic resurfacing, sealing, patching, restriping, sweeping, and snow and ice removal ("Lot 6-7 Shared Drive Maintenance").

ii. If the Owner of Lot 6 shall fail to perform or cause the performance of the Lot 6-7 Shared Drive Maintenance on the Lot 6-7 Shared Drive, and such failure continues for a period of thirty (30) days, following written notice delivered to the Owner of Lot 6 by the Owner of Lot 7 (or such longer period if such maintenance obligations cannot, with due diligence, be reasonably performed within thirty (30) days; provided that the Owner of Lot 6 commences performance of such maintenance within said thirty (30) day period and thereafter prosecutes the performance thereof as quickly as reasonably practicable), then the Owner of Lot 7 may, but is not obligated to perform such Lot 6-7 Shared Drive Maintenance. Notwithstanding anything to the contrary in this **Section 5(i)(ii)**, the Owner of Lot 7 is not required to provide written notice prior to performing or causing the performance of Emergency Maintenance (as defined in **Section 5(h)(ii)**).

iii. The Owner of Lot 7 shall reimburse the Owner of Lot 6 for its Proportionate Share of the costs incurred by the Owner of Lot 6 in performing (or causing to be performed) the Lot 6-7 Shared Drive Maintenance (the "Lot 6-7 Shared Drive Maintenance Costs"). Such reimbursement shall be made quarterly and shall be equal to 1/4th of the Proportionate Share of the Lot 6-7 Shared Drive Maintenance Costs attributable to each respective Lot. The Proportionate Share attributable to each Lot shall initially be a fraction, the denominator of which shall be the combined square footage of the buildings(s) constructed on Lot 6 and Lot 7 (i.e. for which a temporary certificate of occupancy has been issued), the numerator of which shall be the square footage of the constructed buildings on each Lot. For clarity's sake, until a temporary occupancy permit has been issued for the improvements on Lot 6 or Lot 7, as the case may be, said Lot shall not be considered in the determination of Proportionate Share hereunder, and the Owner of said Lot shall not be responsible for any Lot 6-7 Shared Drive Maintenance Costs hereunder. Once both Lot 6 and Lot 7 have been improved, the Proportionate Share attributable to each Lot shall be calculated as a fraction, the denominator of which shall be the combined square footage of the building(s) constructed on Lot 6 and Lot 7, the numerator of which shall be the respective square footage of the building(s) constructed on Lot 6 and Lot 7, without regard for whether an Owner or tenant or subtenant of a Lot subsequently removes the improvements or buildings located on its Lot.

j. Lot 9-10 Shared Drive.

i. The Owner of Lot 9 shall be solely responsible for maintaining, replacing, and repairing the access point and drive isle located on Lot 9 and identified on **Exhibit C-4**, attached hereto, (the "Lot 9-10 Shared Drive") or causing the Lot 9-10 Shared Drive to be maintained, replaced, or repaired, including, without limitation, repair, replacement, or restoration in the event of damage or destruction by casualty, periodic resurfacing, sealing, patching, restriping, sweeping, and snow and ice removal ("Lot 9-10 Shared Drive Maintenance").

ii. If the Owner of Lot 9 shall fail to perform or cause the performance of the Lot 9-10 Shared Drive Maintenance on the Lot 9-10 Shared Drive, and such failure continues for a period of thirty (30) days, following written notice delivered to the Owner of Lot 9 by the Owner of Lot 10 (or such longer period if such maintenance obligations cannot, with due diligence, be reasonably performed within thirty (30) days; provided that the Owner of Lot 9 commences performance of such maintenance within said thirty (30) day period and thereafter prosecutes the performance thereof as quickly as reasonably practicable), then the Owner of Lot 10 may, but is not obligated to perform such Lot 9-10 Shared Drive Maintenance. Notwithstanding anything to the contrary in this **Section 5(j)(ii)** the Owner of Lot 10 is not required to provide written notice prior to performing or causing the performance of Emergency Maintenance (as defined in **Section 5(h)(ii)**).

iii. The Owner of Lot 10 shall reimburse the Owner of Lot 9 for its Proportionate Share of the costs incurred by the Owner of Lot 9 in performing (or causing to be performed) the Lot 9-10 Shared Drive Maintenance (the "Lot 9-10 Shared Drive Maintenance Costs"). Such reimbursement shall be made quarterly and shall be equal to 1/4th of the Proportionate Share of the Lot 9-10 Shared Drive Maintenance Costs attributable to each respective Lot. The Proportionate Share attributable to each Lot shall initially be a fraction, the denominator of which shall be the combined square footage the building(s) constructed on Lot 9 and Lot 10 (i.e. for which a temporary certificate of occupancy has been issued), the numerator of which shall be the square footage of the constructed buildings on each Lot. For clarity's sake, until a temporary occupancy permit has been issued for the improvements on Lot 9 or Lot 10, as the case may be, said Lot shall not be considered in the determination of Proportionate Share hereunder, and the Owner of said Lot shall not be responsible for any Lot 9-10 Shared Drive Maintenance Costs hereunder. Once both Lot 9 and Lot 10 have been improved, the Proportionate Share attributable to each Lot shall be calculated as a fraction, the denominator of which shall be the combined square footage of the building(s) constructed on Lot 9 and Lot 10, the numerator of which shall be the respective square footage of the building(s) constructed on Lot 9 and Lot 10, without regard for whether an Owner or tenant or subtenant of a Lot subsequently removes the improvements or buildings located on its Lot.

k. Lot 12-13 Shared Drive.

i. The Owner of Lot 13 shall be solely responsible for maintaining, replacing, and repairing the access point and drive isle located on Lots 12 and 13 and identified on **Exhibit C-5**, attached hereto, (the "Lot 12-13 Shared Drive") or causing the Lot 12-13 Shared Drive to be maintained, replaced, or repaired, including, without limitation, repair, replacement, or restoration in the event of damage or destruction by casualty, periodic resurfacing, sealing, patching, restriping, sweeping, and snow and ice removal ("Lot 12-13 Shared Drive Maintenance").

ii. If the Owner of Lot 13 shall fail to perform or cause the performance of the Lot 12-13 Shared Drive Maintenance on the Lot 12-13 Shared Drive, and such failure continues for a period of thirty (30) days, following written notice delivered to the Owner of Lot 13 by the Owner of Lot 12 (or such longer period if such maintenance obligations cannot, with due diligence, be reasonably performed within thirty (30) days; provided that the Owner of Lot 13 commences performance of such maintenance within said thirty (30) day period and thereafter prosecutes the performance thereof as quickly as reasonably practicable), then the Owner of Lot 12 may, but is not obligated to perform such Lot 12-13 Shared Drive Maintenance. Notwithstanding anything to the contrary in this **Section 5(k)(ii)**, the Owner of Lot 12 is not required to provide written notice prior to performing or causing the performance of Emergency Maintenance (as defined in **Section 5(h)(ii)**).

iii. The Owner of Lot 12 shall reimburse the Owner of Lot 13 for its Proportionate Share of the costs incurred by the Owner of Lot 13 in performing (or causing to be performed) the Lot 12-13 Shared Drive Maintenance (the "Lot 12-13 Shared Drive Maintenance Costs"). Such reimbursement shall be made quarterly and shall be equal to 1/4th of the Proportionate Share of the Lot 12-13 Shared Drive Maintenance Costs attributable to each respective Lot. The Proportionate Share attributable to each Lot shall initially be a fraction, the denominator of which shall be the combined square footage of the building(s) constructed on Lot 12 and Lot 13 (i.e. for which a temporary certificate of occupancy has been issued), the numerator of which shall be the square footage of the constructed buildings on each Lot. For clarity's sake, until a temporary occupancy permit has been issued for the improvements on Lot 12 or Lot 13, as the case may be, said Lot shall not be considered in the determination of Proportionate Share hereunder, and the Owner of said Lot shall not be responsible for any Lot 12-13 Shared Drive Maintenance Costs hereunder. Once both Lot 12 and Lot 13 have been improved, the Proportionate Share attributable to each Lot shall be calculated as a fraction, the denominator of which shall be the combined square footage of the building(s) constructed on Lot 12 and Lot 13, the numerator of which shall be the respective square footage of the building(s) constructed on Lot 12 and Lot 13, without regard for whether an Owner or tenant or subtenant of a Lot subsequently removes the improvements or buildings located on its Lot.

I. Lot 14-15 Shared Drive.

i. The Owner of Lot 15 shall be solely responsible for maintaining, replacing, and repairing the access point and drive isle located on Lots 14 and 15 and identified on **Exhibit C-5**, attached hereto, (the "Lot 14-15 Shared Drive") or causing the Lot 14-15 Shared Drive to be maintained, replaced, or repaired, including, without limitation, repair, replacement, or restoration in the event of damage or destruction by casualty, periodic resurfacing, sealing, patching, restriping, sweeping, and snow and ice removal ("Lot 14-15 Shared Drive Maintenance").

ii. If the Owner of Lot 15 shall fail to perform or cause the performance of the Lot 12-13 Shared Drive Maintenance on the Lot 14-15 Shared Drive, and such failure continues for a period of thirty (30) days, following written notice delivered to the Owner of Lot 15 by the Owner of Lot 14 (or such longer period if such maintenance obligations cannot, with due diligence, be reasonably performed within thirty (30) days; provided that the Owner of Lot 15 commences performance of such maintenance within said thirty (30) day period and thereafter prosecutes the performance thereof as quickly as reasonably practicable), then the Owner of Lot 14 may, but is not obligated to perform such Lot 14-15 Shared Drive Maintenance. Notwithstanding anything to the contrary in this **Section**

5(l)(ii), the Owner of Lot 14 is not required to provide written notice prior to performing or causing the performance of Emergency Maintenance (as defined in **Section 5(h)(ii)**).

iii. The Owner of Lot 14 shall reimburse the Owner of Lot 15 for its Proportionate Share of the costs incurred by the Owner of Lot 15 in performing (or causing to be performed) the Lot 14-15 Shared Drive Maintenance (the "Lot 14-15 Shared Drive Maintenance Costs"). Such reimbursement shall be made quarterly and shall be equal to 1/4th of the Proportionate Share of the Lot 14-15 Shared Drive Maintenance Costs attributable to each respective Lot. The Proportionate Share attributable to each Lot shall initially be a fraction, the denominator of which shall be the combined square footage of the building(s) constructed on Lot 14 and Lot 15 (i.e. for which a temporary certificate of occupancy has been issued), the numerator of which shall be the square footage of the constructed buildings on each Lot. For clarity's sake, until a temporary occupancy permit has been issued for the improvements on Lot 14 or Lot 15, as the case may be, said Lot shall not be considered in the determination of Proportionate Share hereunder, and the Owner of said Lot shall not be responsible for any Lot 14-15 Shared Drive Maintenance Costs hereunder. Once both Lot 14 and Lot 15 have been improved, the Proportionate Share attributable to each Lot shall be calculated as a fraction, the denominator of which shall be the combined square footage of the buildings constructed on Lot 14 and Lot 15, the numerator of which shall be the respective square footage of the buildings constructed on Lot 14 and Lot 15, without regard for whether an Owner or tenant or subtenant of a Lot subsequently removes the improvements or buildings located on its Lot.

m. Lot 16-17 Shared Drive.

i. The Owner of Lot 17 shall be solely responsible for maintaining, replacing, and repairing the access point and drive isle located on Lots 16 and 17 and identified on **Exhibit C-5**, attached hereto, (the "Lot 16-17 Shared Drive") or causing the Lot 16-17 Shared Drive to be maintained, replaced, or repaired, including, without limitation, repair, replacement, or restoration in the event of damage or destruction by casualty, periodic resurfacing, sealing, patching, restriping, sweeping, and snow and ice removal ("Lot 16-17 Shared Drive Maintenance").

ii. If the Owner of Lot 17 shall fail to perform or cause the performance of the Lot 16-17 Shared Drive Maintenance on the Lot 16-17 Shared Drive, and such failure continues for a period of thirty (30) days, following written notice delivered to the Owner of Lot 17 by the Owner of Lot 16 (or such longer period if such maintenance obligations cannot, with due diligence, be reasonably performed within thirty (30) days; provided that the Owner of Lot 17 commences performance of such maintenance within said thirty (30) day period and thereafter prosecutes the performance thereof as quickly as reasonably practicable), then the Owner of Lot 16 may, but is not obligated to perform such Lot 16-17 Shared Drive Maintenance. Notwithstanding anything to the contrary in this **Section 5(m)(ii)**, the Owner of Lot 16 is not required to provide written notice prior to performing or causing the performance of Emergency Maintenance (as defined in **Section 5(h)(ii)**).

iii. The Owner of Lot 16 shall reimburse the Owner of Lot 17 for its Proportionate Share of the costs incurred by the Owner of Lot 17 in performing (or causing to be performed) the Lot 16-17 Shared Drive Maintenance (the "Lot 16-17 Shared Drive Maintenance Costs"). Such reimbursement shall be made quarterly and shall be equal to 1/4th of the Proportionate Share of the Lot 16-17 Shared Drive Maintenance Costs attributable to each respective Lot. The Proportionate Share attributable to each Lot shall

initially be a fraction, the denominator of which shall be the combined square footage of the building(s) constructed on Lot 16 and Lot 17 (i.e. for which a temporary certificate of occupancy has been issued), the numerator of which shall be the square footage of the building(s) constructed on each respective Lot. For clarity's sake, until a temporary occupancy permit has been issued for the improvements on Lot 16 or Lot 17, as the case may be, said Lot shall not be considered in the determination of Proportionate Share hereunder, and the Owner of said Lot shall not be responsible for any Lot 16-17 Shared Drive Maintenance Costs hereunder. Once both Lot 16 and Lot 17 have been improved, the Proportionate Share attributable to each Lot shall be calculated as a fraction, the denominator of which shall be the combined square footage of the buildings constructed on Lot 16 and Lot 17, the numerator of which shall be the respective square footage of the buildings constructed on Lot 16 and Lot 17, without regard for whether an Owner or tenant or subtenant of a Lot subsequently removes the improvements or buildings located on its Lot.

n. Construction of Shared Drives. The Lot 2-11 Shared Drive, the Lot 6-7 Shared Drive, the Lot 9-10 Shared Drive, the Lot 12-13 Shared Drive, the Lot 14-15 Shared Drive, and the Lot 16-17 Shared Drive are each referred to herein as a "Shared Drive" and are collectively referred to as the "Shared Drives". In the event that the Owner of a Lot utilizing or requiring a Shared Drive commences construction on its Lot prior to the commencement of the other Lot requiring utilizing a Shared Drive, the Owner commencing construction on its Lot (the "Constructing Owner"): (i) shall construct the portion of any such Shared Drive located on the Constructing Owner's Lot, and (ii) may construct any portion of such Shared Drive not located on the Constructing Owner's Lot if such construction is necessary for the Constructing Owner to utilize the Shared Drive. Following the Constructing Owner's completion of construction of the Shared Drive as provided in this **Section 5(n)**, the Constructing Owner shall submit to the Owner of the other Lot requiring or utilizing the Shared Drive (the "Non-Constructing Owner") the Constructing Owner's actual, documented, competitively bid, out-of-pocket costs associated with the Constructing Owner's construction of the Shared Drive (in any instance "Shared Drive Construction Costs"). The Non-Constructing Owner shall reimburse the Constructing Owner for its share of the Shared Drive Construction Costs as follows:

- (1) fifty percent (50%) of the Shared Drive Construction Costs attributable to portions of the Shared Drive utilized by both the Constructing Owner and the Non-Constructing Owner for access to the Lots;
- (2) one hundred percent (100%) of the Shared Drive Construction Costs attributable to portions of the Shared Drive utilized solely by the Non-Constructing Owner for access to its Lot;
- (3) no reimbursement shall be made by the Non-Constructing Owner for Shared Drive Construction Costs attributable to portions of the Shared Drive utilized solely by the Constructing Owner for access to its Lot.

The Non-Constructing Owner's reimbursement to the Constructing Owner pursuant to this **Section 5(n)** shall be made on the later of: (i) sixty (60) days following the Constructing Owner's delivery of the Shared Drive Construction Costs, or (ii) the date on which the Non-Constructing Owner commences construction on its Lot. For purposes of this **Section 5(n)**, the Non-Constructing Owner shall be deemed to have commenced construction on its Lot on the date on which the Non-Constructing Owner commences any flat work, concrete work, or foundation work for a structure on its Lot.

o. Competitive Bidding. All construction and maintenance of the Shared Drives provided for in this **Section 5** shall be competitively bid (except in the case of emergency) and performed in such a manner as to minimize interference with the business operations of the Owners, their tenant(s), or permittee(s).

p. Hazardous Materials. No Owner of any portion of any Lot may use or permit the use of hazardous materials on, about, under, or in its portion of the Center except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all applicable environmental laws. Each Owner of each portion of any Lot agrees to defend, protect, indemnify and hold harmless the Owners of all other portions of the Center from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including but not limited to costs of investigation, remediation, and removal, and reasonable attorneys' fees and cost of suit, arising out of or resulting from any hazardous material used or permitted to be used by such owner, its agents, contractors, tenants, permittees or invitees, whether or not in the ordinary course of business.

q. Legal Requirements. Each Lot Owner shall comply with all applicable laws, ordinances and regulations of all federal, state, county and municipal authorities, including any changes thereto, relating to the physical condition of their Lot including, without limitation, code enforcement, zoning compliance, parking ratios, setback requirements, lot coverage, elevations, site plan approvals, and all other obligations and requirements of this Declaration, including but not limited to reporting requirements under the Special Benefits and Incentives as set forth in **Section 11** hereof.

r. Parking.

i. In addition to any other obligations set forth hereunder, each Lot shall maintain parking ratios in accordance at all times, with all laws, regulations, codes and ordinances without relying upon any cross parking easement, and without variance from the City to the parking approved for such Lot by the City, unless such variance is approved in writing by Developer. Notwithstanding the foregoing: (i) so long as Lot 2 is owned by the City, Lot 2 shall be permitted to rely on a cross parking easement and/or variance; and (ii) so long as Lot 11 is used for multi-family residential purposes, Lot 11 shall be permitted to rely on a cross parking easement and/or variance, so long as such easement and/or variance is approved by the City.

ii. Each Occupant will require its' employees to park solely on such Occupant's respective Lot. Parking within the Center will be limited to the Developer, the Association, the Occupants, and their respective employees and invitees. Notwithstanding anything in this Declaration to the contrary, the Developer and the Association shall have no responsibility to enforce the provisions of this **Section 5(r)** and shall have no liability therefor. Each Occupant shall be solely responsible for towing, or taking such other reasonable actions as are permitted by law, to enforce the provisions of this **Section 5(r)** on such Occupant's Lot, at such Occupant's sole cost and expense.

s. Delivery of Declarations. Each Owner, upon acquiring title to a Lot, shall be furnished with a copy of these Declarations by the Association after the Association has been notified of such transfer pursuant to **Section 25** hereof.

6. Easements. Developer hereby grants the following easements with respect to the Center:

a. Cross-Access and Cross-Parking Easements.

i. Cross-Access-Easement. A perpetual, non-exclusive easement over, across, and for the benefit of the Center for pedestrian and vehicular cross-access, ingress, and egress upon, over, and across the driveways, drive aisles, and access points in the Common Areas, including but not limited to automobile, delivery truck, trash truck, and service truck uses thereof where necessary to access such Owner(s) Lot(s), and a perpetual, non-exclusive easement over, across, and for the benefit of the Center for pedestrian cross-access, ingress, and egress upon, over, and across the sidewalks and pedestrian walkways in the Common Areas.

ii. Cross-Parking Easement. A perpetual, non-exclusive easement over, across, and for the benefit of the Owners of Lots 1, 2, 3, 4, 5, 5A, 6, 7, and 11, for vehicular parking upon the parking areas located on Lots 1, 2, 3, 4, 5, 5A, 6, 7, and 11, to the extent same are not designated for the exclusive use of an Occupant pursuant to hereto. Each Owner subject to this Section 6(a) may designate up to six (6) parking stalls, or such greater number approved by the City and by Developer, for the exclusive use of each Occupant occupying space on such Lot, located on such Owner's respective Lot.

iii. Primary Purpose. The Owners shall use the PCAE's, and the driveways, drive aisles, parking areas, and sidewalks on their respective Lot(s) in such manner as will not unreasonably interfere with the primary purpose of such areas which is to provide access for the Owners and their customers, invitees, employees, agents and licensees and for the servicing and supplying of such parties.

b. Utility Easement. An appurtenant, perpetual, non-exclusive utility easement over, under, through, and across the drives, parking areas, and other non-improved areas of the Center for the benefit of the Lots, the Owners, and the Occupants(exclusive of any portion located within ten (10) feet of a building), for the installation, operation, maintenance, repair, removal, and/or replacement of underground water mains, sewers, drainage lines, electrical lines, gas lines, telephone lines, cable and internet lines, and other public and private utilities, all of which must be located beneath the ground surface of the Center, at locations platted for the same or otherwise reasonably approved in writing by the Owner of the applicable portion of the Center; provided that in all cases, in the performance of such work: (i) adequate provision shall be made for the safety and convenience of all persons using the surface of such areas, which may include the need to perform work during non-business hours if so requested by the Owner of the affected portion of the Center; (ii) the areas and facilities shall be replaced or restored to the condition in which they were prior to the performance of such work; (iii) the Owner (including its affiliates and subsidiaries, and their respective officers, employees, and agents) of the applicable portion of the Center, shall be indemnified and held harmless against claims, damages, and losses, including costs and attorneys' fees arising from the performance of such work or use of such easements; (iv) the Owner shall be notified in writing by the party for whose benefit such work is performed or such use is made not less than fourteen (14) days prior to commencement of such work, and (v) the Owner shall be consulted reasonably in advance and any proposed installation, maintenance, or location changes shall require prior written approval by the affected Owner, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, consent shall not be unreasonably withheld, conditioned, or delayed; *so long as* (i) the Owner or party completing any non-emergency work shall coordinate with the Owner of any affected Lot concerning the performance of said non-emergency work, and shall keep such Owner informed of the progress on

the completion of such work; (ii) in no event shall any non-emergency work shut down or substantially impair any of the construction or business operations and activities on the affected Owner's Lot, including, but not limited to, such Owner's construction of its improvements or ability to operate any drive-thru lane(s); and (iii) the Owner or party conducting work shall promptly repair to its original condition any damage to an affected Owner's Lot as a result of any work pursuant to this **Section 6(b)**. As a matter of clarification, for any emergency work, no prior written notice shall be required, but the Owner or party completing work pursuant to this **Section 6(b)** shall promptly notify the Owner of the affected Lot on such timing as is reasonable under the circumstances.

c. **Drainage Easement.** A perpetual, non-exclusive drainage easement for the free flow and drainage of storm water upon, across, and for the benefit of the Center, as the same may hereinafter be improved, into and through the storm water drainage improvements, lines, and facilities as may be from time to time located thereon or therein, and the right to use and impound storm water within the storm water detention basin (the "**Detention Basin**") and in any other storm water retention facility located on the Center; provided, however, such drainage shall not cause any damage to the portion of the Center across which such storm water is drained or any improvements thereon.

d. **Temporary Construction Easement.** Upon written approval of Developer, each Owner, Occupant, and anyone else while engaged in constructing any building or other improvement within the Center shall have the right during such construction, and during any total or partial reconstruction of such building or improvement or expansion thereof, to use all reasonably necessary or appropriate means of access, ingress and egress to and from the site of said improvement over and across any part of the Center (other than those parts on which streets, corridors, and aisleways are not located) not occupied by building structures, but such use shall not unreasonably interfere with the performance of other construction work being lawfully undertaken within the Center, the operation of business by any other Owners within the Center, or with the orderly flow of traffic or access to any building thereon. Following the completion of any such construction, the Owner completing such construction or causing the same to be completed, agrees to promptly and diligently repair and restore, or cause to be repaired and restored, any damage to the Center to substantially the same condition as exists prior to the commencement of construction. As a matter of clarification, the Temporary Construction Easement contemplated by this **Section 6(d)** shall expire and terminate upon completion of the construction activities contemplated hereunder, and in no circumstance shall such Temporary Construction Easement afford the storage or construction materials, or the parking of construction equipment or vehicles on any Lot other than the Lot upon which the construction contemplated hereunder is completed.

7. **Payment of Taxes, PILOTS and Assessments.** Each Owner, if applicable, shall pay promptly when they are due all real property taxes, payments in lieu of taxes as required for implementation of the TIF District and the Chapter 99 Plan, both as defined herein, and assessments relating to any Lot owned by such Owner.

8. **Detention Basin.** The Center shall be served by the Detention Basin to be constructed by Developer on Tract "A" in the location depicted in **Exhibit C-6** attached hereto, constructed by the Developer for the benefit of the Center, as provided herein.

a. **Construction and Maintenance.** Developer shall arrange for the construction of the Detention Basin. The Association shall insure, maintain, and provide power to the Detention Basin consistent with the operation of a first-class property in the Kansas City, Missouri metropolitan area. Any future modification, change, or alteration of the Detention Basin shall be subject to approval by the Association.

b. Additional Storm Water Detention. Developer reserves for the benefit of the Association the right to grant easements for the purpose of stormwater drainage and stormwater detention within the Detention Basin to third parties other than the Owners, in the Association's sole discretion, provided that: (a) any such third party shall be responsible for its proportionate share of all maintenance, insurance, utilities, repair, and replacement costs related to the Detention Basin, based on the acreage of such third party's property from which stormwater is collected for detention in the Detention Basin so as not to increase the cost reimbursements of the Lot Owners pursuant to this **Section 8(b)**; and (b) such drainage and detention by such third party shall not overburden the Detention Basin, and shall be subject to the same terms and conditions as are applicable to the Owner's related to the Detention Basin and their use thereof.

9. Common Signs and General Signage. The Center shall be served by two (2) shared monument sign(s) (the "Common Signs," each a "Common Sign") in the location depicted in **Exhibit C-7** attached hereto, constructed by the Developer for the benefit of the Center, as provided herein.

a. Construction and Maintenance. Developer shall arrange for the construction of the Common Signs. The Association shall insure, maintain, and provide power to the Common Signs consistent with the operation of a first-class property in the Kansas City, Missouri metropolitan area. Individual sign panels shall be installed, provided, insured, and maintained by the applicable Occupant making use of said panels, consistent with the operation of a first-class property in the Kansas City metropolitan area. Any future modification, change, or alteration of any Common Sign shall be subject to approval by the Association, which shall not be unreasonably delayed, conditioned, or withheld.

b. Grant of Sign Panel Space. The Owner(s), tenant(s) and/or occupant(s) of the Lots shall have access to the Common Signs on the panel locations designated by Developer. The appearance of the panel of such Owner(s), tenant(s) and or occupant(s) shall be subject to Developer approval, not to be unreasonably withheld, conditioned or delayed. Each Lot Owner's right to use the panels as provided above shall run with and for the benefit of the benefitted Lot, for use by the Owners, tenants, or occupants located on the respective Lot as provided herein.

c. Construction and Maintenance. Developer shall arrange for the construction of the Common Signs. The Association shall insure, maintain, and provide power to the Common Signs consistent with the operation of a first-class property in the Kansas City, Missouri metropolitan area. Individual sign panels shall be installed, provided, insured, and maintained by the applicable Occupant making use of said panels, consistent with the operation of a first-class property in the Kansas City metropolitan area. Any future modification, change, or alteration of any Common Sign shall be subject to approval by the Association, which shall not be unreasonably delayed, conditioned, or withheld.

d. Common Sign Access Easement. Developer hereby grants a non-exclusive access easement to itself, the Association and to all other Owners and Occupants in, to, under, over, and across the exterior portions of the Center as reasonably necessary for the construction, installation, maintenance, repair and replacement of each of the Common Signs and the panels located thereon.

e. Additional Common Sign Panel Assignments. Developer reserves for the benefit of the Association the right to grant access to the Common Signs and to assign panel locations to third parties other than the Owners, in the Association's sole discretion, provided that: (a) any such third party shall be responsible for its proportionate share of all maintenance, insurance, utilities, repair, and replacement costs related to each Common Sign, based on the size of such third party's

sign panel space so as not to increase the cost reimbursements of the Lot Owners pursuant to this **Section 9(e)**.

f. General Rules – All Signage. Except as set forth below, no Owner or tenant shall install or maintain any sign on the exterior of any building located any Lot, or which may be viewed from the outside of any building located on the Center (each, a “Restricted Sign” and collectively, “Restricted Signs”), without first obtaining Developer’s written consent. Developer will not unreasonably withhold, condition, or delay its consent, provided such signage complies with the sign criteria set forth in **Exhibit E** attached hereto, applicable zoning regulations, and all applicable laws and municipal requirements, as may be revised and amended from time to time. Each Owner or tenant authorized by Developer to install and maintain any Restricted Sign must obtain, and shall at all times comply with the terms of, any governmental permits required for such Restricted Sign. Each Owner or tenant shall be solely responsible for, at each such Owner’s or tenant’s sole cost and expense, insuring, maintaining, and providing power to, if applicable, its signage at the Center consistent with the operation of a first-class property in the Kansas City metropolitan area. Any modification, change, or alteration of any Restricted Sign shall be subject to Developer’s prior written consent. In the event that any Owner or such Owner’s tenant or occupant ceases to be open to the public for business on any Lot for a period exceeding sixty (60) days on any Lot, the Owner of such Lot, at such Owner’s sole cost and expense, shall cause the removal of any then-existing sign panel designated for use in connection with such Lot on any Common Signs and/or Restricted Signs, and install, in a neat and orderly fashion, upon such Common Sign and/or Restricted Sign a blank sign panel in such panel location. Notwithstanding the foregoing: (i) each Lot Owner shall be entitled, at its sole cost and expense, to construct and maintain a monument sign on each Lot owned by such Owner, subject to governmental approvals and to approval by the DRC; and (ii) Lot Owners shall be entitled to install and maintain directional signage on their respective Lot(s), subject to governmental approval, and approval by the DRC.

10. Insurance; Casualty.

a. **Insurance.** Each Owner, either directly or through coverage required of tenants, shall at all times maintain and keep in force the following minimum insurance coverages with respect to said Owner’s Lot (i) commercial general liability insurance and, if necessary, commercial umbrella and/or excess insurance issued by one or more insurance carriers, insuring against liability for injury to or death of persons and loss of or damage to property from events occurring in and on the Property with coverage limits for such liability insurance of at least One Million Dollars (\$1,000,000.00) combined single limits for bodily injury and property damage per occurrence and an aggregate limit for such insurance in the amount of Three Million Dollars (\$3,000,000.00); and (ii) special form property insurance with a special form cause of loss endorsement issued by one or more insurance carriers covering the Lot (including any and all improvements thereon) to the extent of their full replacement value exclusive of foundation and excavation costs. Each policy of insurance maintained pursuant to this **Section 10** shall name Developer and the Association as additional insureds. The requirements of this **Section 10** are not intended in any way to limit the obligations of any Owner or any tenant thereof to maintain Insurance pursuant to a separate written instrument. At Developer’s request the insurance required hereunder shall name Developer and/or the City as an additional insured.

b. **Casualty.** If any of the buildings or improvements located on any Lot are damaged, destroyed or taken through condemnation, the Lot Owner shall commence within two hundred seventy (270) days after such damage or destruction and diligently and in good faith continue thereafter to restore and repair such buildings or improvements so as to restore retail business operations within three hundred sixty-five (365) days from the damage or destruction. If the Lot

Owner does not commence within two hundred seventy (270) days after such damage or destruction and diligently and in good faith continue thereafter to restore and repair such buildings or improvements and resume retail business operations within three hundred sixty-five (365) days from the damage or destruction, then Developer shall be entitled, but not obligated, to purchase the Lot from the Lot Owner for a price equal to the fair market value of the land comprising the Lot (“FMV”) by giving written notice to the Lot Owner. Following which notice Developer and the applicable Lot Owner will have thirty (30) days to agree on the FMV of the Lot. In the event that Developer and the Lot Owner cannot agree, then the determination of the FMV will be made in accordance with the following procedure. Developer and the Lot Owner will each promptly appoint one (1) appraiser. Those two (2) appraisers will promptly appoint a third (3rd) appraiser. Each appraiser appointed will be a member of the American Institute of Real Estate Appraisers (or successor organization) having at least five (5) years’ experience in real estate appraisal for commercial retail use in the Kansas City Metropolitan Area. The three (3) appraisers so appointed will jointly make the required appraisals of the FMV of the Lot. If they cannot agree, the appraisals of the third (3rd) appraiser will be accepted by Developer and the Lot Owner. If the Lot Owner fails, within a period of ten (10) days after receiving notice, to appoint an appraiser, then the appraiser appointed by Developer will have the power to proceed as the sole appraiser. Developer will pay its appraiser, the Lot Owner will pay its appraiser, and Developer and the Lot Owner will each pay one-half (1/2) of the fees and expenses of the third (3rd) appraiser. In making the determination of the FMV, the appraisers will assume a reasonable time under the then-existing market conditions is allowed for exposure of the Lot on the open market, and the appraisers will deduct both the value of any improvements then-existing on the Lot, and any payments or obligations owed by the Owner of such Lot to a tenant or occupant of the Lot. Developer’s right to purchase pursuant to this **Section 10(b)** shall only apply to casualty or damage that occurs during the term of the Incentives (**as defined in Section 11**).

11. **Incentives.**

a. Developer discloses that as of the date hereof the Center or a portion thereof is subject to a Transportation Development District, Community Improvement District, a Tax Increment Financing District, and a Chapter 99 District (each an “Incentive”, collectively, the “Incentives”) and, as such, Developer mandates that the Owner(s), tenant(s), and occupant(s) of the Center (the “Occupants”, each an “Occupant”), to the extent an Owner may be required to under Missouri state law, submit all documentation, including sales tax information, to the City, the LCRA, or any other governmental entity as required under Missouri state law (in any instance an “Issuing Authority”). To the extent required under applicable Missouri state law, each Occupant shall: 1) comply with the foregoing reporting obligation; 2) collect the Incentives, if applicable, at the point of purchase similar to standard state sales tax and 3) comply with any and all other obligations imposed on the Lot by the Issuing Authority in connection with the approval and implementation of the Incentives, including without limitation, any requirement that an Owner include certain provisions in any lease of premises, or contract for the sale of premises, within the Center, all as more particularly set forth herein. If the City, or another issuer of debt as directed by the City pursuant to the TIF Contract, is required to disclose an Occupant’s sales tax information in connection with offering documents or continuing disclosure requirements related to “Obligations” (as that term is defined in the TIF Contract) in order to market and sell obligations or comply with applicable laws or requirements of any governmental authorities after Obligations have been issued, such Occupant consents to the disclosure of such sales tax information by the City or other issuer of debt pursuant to the TIF Contract and parties to which the City is required to provide such information.

b. Developer discloses that as of the date hereof the Center or a portion thereof is located within an area (the “TIF District”) designated by the City of Lee’s Summit, Missouri (the “City”), as a redevelopment area within the meaning of the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri, as amended (the “TIF Act”) and that the Center is subject to certain terms and provisions set forth in that certain Tax Increment Financing Contract (the “TIF Contract”) entered into between the City and the Developer (as the Developer under the TIF Contract) and dated _____, including, without limitation, the terms and provisions of (i) Section 5.02 that require an Owner to include certain lease provisions in any lease of premises located within the Redevelopment Project Area, and (ii) Section 5.03 that require, as a condition precedent to any transfer of property within the Redevelopment Project Area, that the transferee of such property (which includes any Owner) enter into either an “Assignment Agreement” or “Transferee Agreement” (as those terms are defined in the TIF Contract) with the City.

c. Upon written request from Developer, each Occupant shall provide Developer with documentation, including costs, regarding each such Occupant’s Lot(s) so that Developer may certify project costs in connection with the Incentives including, but not limited to the following:

i. Upon written request from Developer, each Occupant shall submit to the Developer in a form reasonably requested by Developer the amounts expended for the hard costs of sitework and vertical construction on the Center. Each Occupant shall certify to the Developer that the costs are true and correct in a “Certificate of Expenditure” in a form approved by the governing authorities and acceptable to the City;

ii. Each Certificate of Expenditure shall be accompanied by such bills, contracts, agreements, invoices, lien waivers and other evidence as the Developer and/or governing bodies shall reasonably require to document such costs as well as an overall cost summary for each division of work that ties to the individual cost detail provided (i.e., water, electric, sewer, parking lot, lighting, framing, roofing, HVAC, etc.);

iii. Each Certificate of Expenditure shall also include evidence of payment of such invoices; and

iv. The Developer reserves the right to have its staff or consultants examine, at Developer’s sole cost and expense, each Occupant’s records relating to project costs.

Each Occupant shall endeavor to submit Certificate of Expenditure for those expenditures made in connection with the Incentives no less often than quarterly.

d. Developer discloses that as of the date hereof the Center or a portion thereof is included within a community improvement district (the “CID District”) established pursuant to and in accordance with the Missouri Community Improvement District Act, Mo. Rev. Stat. §§67.1401 to 67.1571, as amended (the “CID Act”). The CID District imposes a community improvement district sales tax in the amount of up to 1% (the “CID Sales Tax”) pursuant to the CID Act. With respect to all sales originating from that portion of the Center within the CID District, each applicable Occupant within the CID District shall add the CID Sales Tax to its sales price and when so added, such CID Sales Tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law and in the same manner as the purchase price, all as provided for in §67.1545 of the CID Act. Each applicable Occupant located within the CID District shall report and remit to the Missouri Department of Revenue the amount of CID Sales Tax collected and shall report and remit the CID Sales Tax collected as an integral part of the collection

efforts and obligations of the Missouri Department of Revenue with respect to other state and local sales taxes.

e. Developer discloses that as of the date hereof the Center or a portion thereof is included within a Transportation Development District (the “TDD District”) established pursuant to and in accordance with the Missouri Transportation Development District Act, Mo. Rev. Stat. §§ 238.200 to 238.280 of the Revised Statutes of Missouri, as amended (the “TDD Act”). Developer further discloses that the TDD District may impose a transportation development district sales tax in an amount not to exceed 1% (the “TDD Sales Tax”) pursuant to the TDD Act to finance construction of projects which benefit the TDD District as permitted by the TDD Act. With respect to all sales originating from that portion of the Center within the TDD District, each Occupant located within the TDD District, if applicable, shall add the TDD Sales Tax to its sales price and when so added, such TDD Sales Tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law and in the same manner as the purchase price, all as provided for in the TDD Act. Each Occupant located within the TDD District shall report and remit to the Missouri Department of Revenue the amount of TDD Sales Tax collected and shall report and remit the TDD Sales Tax collected as an integral part of the collection efforts and obligations of the Missouri Department of Revenue with respect to other state and local sales taxes. Notwithstanding the foregoing, the CID Sales Tax and the TDD sales tax shall not cumulatively total more than one and one-half percent (1.5%).

f. If the CID District and/or TDD District are required to disclose an Occupant’s sales tax information in connection with offering documents or continuing disclosure requirements related to Obligations in order to market and sell Obligations or comply with applicable laws or requirements of governmental authorities when such Obligations are marketed and sold and after the issuance of such Obligations, such Occupant hereby consents to the disclosure of such sales tax information by the CID District and/or TDD District and parties to which the CID District and/or TDD District is required to provide such information. Occupant further consents to the use of such sales tax information to permit the budget officers of the CID District and TDD District to comply with the requirements of Missouri law to adopt a budget for each fiscal year that the CID District and TDD District are in operation.

g. Each Owner within the CID District and TDD District, respectively, hereby agrees that it will, from time-to-time and at such times as Developer may request, designate a representative selected by Developer to act as such Owner’s legally authorized representative for the sole and limited purpose of serving on the board directors of the CID District and/or TDD District, as applicable. In order to effectuate the provisions of this Section, each Owner shall, within ten (10) days after receipt of Developer’s written request, execute, notarize and deliver to Developer a Designation of Owner’s Representative in the form attached to this Declaration, designating the individual selected by Developer as such Owner’s legally authorized representative for purposes of serving on the CID District and/or TDD District board of directors, as applicable.

h. Developer discloses that as of the date hereof the Center or a portion thereof is included within a plan (the “Chapter 99 Plan”) for a development project pursuant to Mo. Rev. Stat. §§ 100.010 to 100.200 (“Chapter 99 Act”). At the Developer’s request, each Occupant shall, at no cost or expense to such Occupant, reasonably cooperate with Developer in connection with the Chapter 99 Plan and, at Developer’s request, timely sign any necessary applications or agreements reasonably requested by Developer in connection with the approval and implementation of the Chapter 99 Plan. Each Occupant may be required to make a payment in lieu of tax (“Chapter 99 PILOT”) to the applicable taxing jurisdictions as part of the Chapter 99 Plan and each Occupant shall make such Chapter 99 PILOT when the same is due.

i. Developer discloses that the Land Clearance for Redevelopment (“LCRA”) will own fee title to certain portions of the Center pursuant to the Chapter 99 Plan and the contracts which implement the Chapter 99 Plan, and that certain Occupants may occupy Lots either (i) pursuant to a lease agreement between such Occupant and the City in accordance with the Chapter 99 Plan and related Chapter 99 documents, or (ii) pursuant to a lease agreement between Developer and the City, which lease agreement is then subsequently assigned to the Occupant with respect to such Occupant’s Lot in accordance with the Chapter 99 Plan and related Chapter 99 documents, and, in each such instance, such Occupant holding such leasehold interest shall be deemed to be the Owner as such term is used in this Declaration. Developer further discloses that the covenants, conditions and restrictions contained in this Declaration shall apply to each Occupant as if such Occupant holds fee simple title to such Lot, notwithstanding that the City holds fee title to such Lot. In those cases where the City holds fee title to a Lot, none of the covenants, conditions, obligations and restrictions contained in this Declaration, and none of the costs, expenses, charges and assessments imposed by this Declaration, shall be satisfied by the City on behalf of the Occupant and all such covenants, conditions, obligations, restrictions, costs, expenses, charges and assessments shall be satisfied by the Occupant as the Owner.

j. If requested by Developer, each Occupant shall waive: (i) any right to protest the creation or implementation of any Incentive contemplated in this Section 11(j), provided such Incentive does not materially adversely restrict such Occupant, or its business from the Center, or adversely affect such Occupant’s rental obligations or tax obligations (provided that Developer shall be permitted to create and implement a Incentive District that includes an Incentive derived from an add-on sales tax not to exceed one and one-half percent (1.5%); (ii) any right to call an election on, or to file a protest of, the creation or implementation of any Incentive, the boundaries of any Incentive district, the authorization of any project to be wholly or partially funded by any Incentive, the estimated costs of any project to be wholly or partially funded by any Incentive, or the methods of financing any such project, provided such Incentive does not adversely affect such Occupant’s rental or tax obligations (excepting an add-on sales tax not to exceed one and one-half percent (1.5%); (iii) any right to appeal, or to file any suit or other proceeding in an attempt to set aside, any assessments, special assessments, or sales tax in connection with any Incentive, or to question the validity of any Incentive, or the authorization of any project to be wholly or partially funded thereby provided such Incentive does not adversely affect such Occupant’s rental or tax obligations ; and (iv) any right to vote on any matter relating to any Incentive, provided such Incentive does not adversely affect such Occupant’s rental or tax obligations (excepting an add-on sales tax not to exceed one and one-half percent (1.5%). If requested, each Occupant shall assign to Developer all of such Occupant’s rights to vote on any matter arising in connection with any Incentive, or any district relating thereto, provided such Incentive does not adversely affect such Occupant’s rental or tax obligations (excepting an add-on sales tax not to exceed one and one-half percent (1.5%), it being the intent of the parties that Developer shall have a perpetual proxy from each Occupant to vote on all such matters. Each Occupant shall submit all documentation, including sales tax information, to the Issuing Authority, as defined herein, or any other governmental entity as required under any Special Benefit District or Incentive. Each Owner shall itself, or cause the other Occupants of each Lot to: 1) comply with the foregoing reporting obligation; 2) collect the add-on sales tax(es), if applicable, at the point of purchase similar to standard state sales tax and 3) comply with any and all other obligations imposed on the Center by any Issuing Authority in connection with the approval and implementation of any Special Benefit District or Incentive, including without limitation, any requirement that an Owner include certain provisions in any lease of premises, or contract for the sale of premises, within the Center, all as more particularly set forth herein.

k. Developer's Right to Audit. Each Owner shall provide Developer with the EIN or Tax Identification number for any Occupant operating on a Lot within five (5) days following Developer's written request for same. Developer may, upon twenty (20) days prior notice to any Occupant, cause an audit to be made of such Occupant's books and records relating to its gross receipts for such reporting year so as to confirm such Occupant's satisfaction of its reporting obligations pursuant to this **Section 11(k)** and as required by law. If such audit discloses that such Occupant has understated gross receipts or under-collected any add-on sales tax referenced in this **Section 12**, the Occupant shall make such adjustment or shortfall payment to the appropriate party or taxing authority within thirty (30) days thereafter. If such audit discloses that such Occupant has understated gross receipts by three percent (3%) or more for any year, such Occupant shall upon demand, pay to Developer the cost of such audit. Developer agrees not to disclose the results of such audit to any party other than as reasonably necessary to comply with applicable laws

l. The benefits of the Incentives shall belong to the Developer and no Owner or Occupant shall have any rights thereto. Upon the sale of any Lot, each Owner shall provide Developer with a copy of the Certificate of Value submitted in connection with such sale or transfer. Developer shall have the right to submit the Certificate of Value, and any other reasonable information or documentation to Jackson County, Missouri, or any other applicable taxing authority to ensure that the Lots within the Center are accurately valued for purposes of real property taxes which impact sums payable to Developer under Developer's Tax Increment Financing Agreement.

Failure of any Occupant to comply with the provisions of this **Section 11** shall be an Event of Default hereunder and any defaulting Occupant shall be subject to the remedies set forth in **Section 16** hereof.

12. **Common Areas.** Notwithstanding anything herein to the contrary, the Association shall be responsible for the insurance, maintenance, repair, and replacement of Tracts "A", "B", "C", and "D", the Detention Basin, the PCAE's, the Common Signs, and the landscaped areas immediately surrounding the Common Signs, (collectively, the "Common Areas", inclusive of the Common Area Improvements), which maintenance and repair shall include without limitation, paving, asphalt and curb repair, mowing, landscaping, wildlife mitigation, water detention maintenance, snow and ice removal, and painting and other responsibilities of the Association required by the City or other applicable governmental authority in order to keep such areas in a first class condition. Subject to **Section 25** hereof, Developer shall transfer fee title to Tracts "A", "B", "C", and "D" to the Association upon termination of the Chapter 99 Plan. In the event the Common Areas or any portion thereof is damaged or destroyed by an Occupant or any of their guests, tenants, licensees, or agents, the Owner of such Occupant's Lot shall promptly repair or cause to be repaired such damaged areas in a good and workmanlike manner and in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Developer. Each Owner shall indemnify and hold Developer harmless from any and all costs incurred in connection with any damage or destruction of the Common Areas or any portion thereof caused by such Occupant or any of their guests, tenants, licensees, or agents.

13. **Intentionally Deleted.**

14. **Design Review Committee ("DRC").** The purpose of the DRC is to assure that any construction or material alteration of any building which takes place on any Lot shall be performed in conformity with the objective of high-quality design and development. To carry out that purpose, the DRC shall have all of the rights, powers and duties conferred upon it pursuant to the provisions of this **Section 14**, including the right to approve any and all proposed site plans and material improvements to be constructed on the Center. The DRC shall also have the right to approve or disapprove any and all proposed material external alterations for any Lot or Common Areas.

a. *Composition and Appointment.*

i. The DRC shall be comprised of three (3) members, each appointed by the Developer.

ii. If any vacancy shall occur in the membership of the DRC by reason of death, resignation, removal or otherwise, the vacancy shall be filled by the Developer. Any DRC member may resign at any time by giving written notice of such resignation to the Chairman of the DRC and such resignation shall take effect on receipt thereof by the Chairman.

iii. The Developer shall appoint a Chairman from among the DRC members and may appoint from among the DRC members such other officers and subcommittees as Developer shall from time to time determine.

b. *Operations of the DRC.* The DRC shall adopt requirements for the development of the Lots within the Center (the “Development Guidelines”) and will, as required, make findings, determinations, rulings and orders with respect to the conformity with said Development Guidelines of plans and specifications to be submitted for approval to the DRC as provided herein. As required, the DRC shall issue permits, authorizations or approvals pursuant to the directions and authorizations contained herein.

c. *Submission of Plans and Specifications.* No improvements shall be commenced, erected, placed, moved onto or permitted to remain on any Lot, nor shall any existing improvements upon any Lot be altered in any way which materially changes the exterior appearance thereof, unless plans and specifications therefor comply with the Development Guidelines and this Declaration and shall have been submitted to and approved in writing by the DRC. Such plans and specifications submitted to the DRC shall be in such form and shall contain such information as may be required by the DRC in the Development Guidelines.

d. *Approval of Plans and Specifications.* Upon approval by the DRC of any plans and specifications submitted hereunder, a copy of such plans and specifications, as approved, shall be deposited as a permanent record with the DRC and a copy of such plans and specifications bearing such approval in writing shall be returned to the applicant submitting the same. Approval of any plans and specifications for use in connection with any Lot or improvement shall not be deemed a waiver of the DRC’s right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or improvement. The DRC, in its discretion, is permitted to approve deviations from the Development Guidelines and from this Declaration when, in its judgment, such deviations will result in a more beneficial use. No approved deviation shall be deemed to act as a precedent in respect of any other requests for approvals of deviations.

e. *Disapproval of Plans and Specifications.* The DRC shall have the right to disapprove any plans and specifications submitted hereunder as determined by the DRC in its reasonable judgment and discretion for failure of such plans or specifications to comply with this Declaration or the Development Guidelines, or for any other matter with respect to such submitted plans and specifications, if such matters, in the reasonable judgment and discretion of the DRC, would conflict with the Development Guidelines. In any case in which the DRC shall disapprove any plans and specifications submitted hereunder or shall approve the same only as modified or

upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the specific grounds upon which such action was based. In any such case the DRC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval. The approval or disapproval of plans and specifications by the DRC shall not be construed as approval or disapproval of engineering decisions or of compliance of such plans and specifications with zoning and building ordinances nor with any such industry or governmental standards, rules, regulations and codes. It is the responsibility of each Owner to employ properly qualified and, as applicable, licensed professionals to design and construct its improvements. By approving or disapproving the plans and specifications neither the DRC nor any member thereof assumes any liability or responsibility therefor or for any defect in any improvement or part thereof constructed from such plans and specifications.

f. *Failure to Act.* In the event that the DRC shall fail to take action on any plans and specifications as herein provided within thirty (30) business days after receipt of “preliminary” plans and specifications or within thirty (30) business days after receipt of “final” plans and specifications, together with the fees authorized by this **Section 14**, and such other requirements as called for by the Development Guidelines, the same shall be deemed to have been approved as submitted, and no further action by the DRC shall be required for the applicant to begin construction. Such approval shall be placed in writing on the plans and specifications and shall be returned to the applicant.

g. *Inspection Rights.* After reasonable notice and at any reasonable time or times during normal business hours, any agent of the DRC may enter upon any Lot for the purpose of ascertaining whether the use or maintenance of such Lot or the construction of any improvement thereon is in compliance with the provisions hereof; provided, however, that such inspection shall not unreasonably interfere with the day-to-day business operations occurring on the portion of the Center. Neither the DRC, nor any agent thereof shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this **Section 14**.

h. *Violations.* If any improvement shall be erected, placed, maintained or altered upon any Lot, or any new use commenced on any Lot, otherwise than in accordance with the plans and specifications approved by the DRC pursuant to this Declaration, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this **Section 14** and without the approval required herein. If in the opinion of the DRC, such violation shall have occurred, the DRC shall notify the Developer. If the Developer shall agree with the determination of the DRC with respect to the violation, then upon written notice of the violation to the Owner from the Developer (which shall be deemed to have been delivered if sent by certified or registered mail, return receipt requested, postage paid), any such improvement so erected, placed, maintained or altered upon any Lot in violation hereof shall be removed or altered, and any such use shall be terminated, so as to extinguish such violation. If the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same within the time specified in such notice, the Developer shall have the right to pursue its rights under the Declaration together with all remedies whether at law or in equity, and including but not limited to the remedy of injunctive relief and obtaining a monetary judgment for all costs, expenses, including reasonable attorney’s fees, and damages.

i. *Fees.* As a means of defraying its expenses, the DRC may charge and collect a reasonable and appropriate fee as established from time to time and published in the Development Guidelines. The fees shall be made payable to the Developer and shall be payable at the time plans

and specifications are submitted as a condition precedent for the review and approval of such plans and specifications; provided, however, that the DRC shall only charge a fee in connection with the actual and reasonable costs incurred by the DCR in connection with its review of the specific plans and specifications.

15. **Covenants Running with the Land; Successors and Assigns; Term Liability.** This Declaration shall run with the land and shall be binding upon the respective successors and assigns of the current and future owners of any portion of the Center encumbered hereby, from time to time of the Center and those claiming by, through, or under any of them until _____, 2034; after which time the Declaration shall be automatically renewed for successive periods of ten (10) years unless, prior to the commencement of any such renewal period, an instrument terminating this Declaration shall be executed by the Association and recorded in the appropriate Office of the Recorder, pursuant to a resolution to such effect approved in writing by seventy-five percent (75%) of the total number of Owners, which resolution shall have been approved within six (6) months prior to _____, 20____ or prior to the end of any such ten (10) year extension period. Notwithstanding the foregoing, this Declaration shall in any event remain in full force and effect for such period of time as the subdivision is in effect, and before the subdivision is terminated the Declaration may be terminated only with the prior written consent of the City. Notwithstanding anything to the contrary contained herein, in any action brought to enforce the obligations of the Owner of any portion of the Center, any money judgment or decree entered in any such action shall be enforced against and satisfied only out of such Owner's interest in such Owner's Lot(s) and the improvements thereon. Upon the conveyance of an Owner's entire interest in the fee simple title to its Lot, or upon conveyance of a leasehold interest pursuant to the Chapter 99 Plan and the contracts that implement the Chapter 99 Plan, such Owner shall thereupon be released and discharged from any and all further liabilities and obligations from this Declaration accruing after such conveyance and such liabilities and obligations thereafter accruing shall be binding upon the successor in title, or successor to the sub-leasehold interest pursuant to the Chapter 99 Plan, to such party.

16. **Enforcement**

a. **Right of Action.** In the event of a violation or breach of any restriction or obligation contained in this Declaration, the Association shall give written notice to the respective Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions which shall be taken by the Owner to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within the time limit specified in the written notice (provided, however, that such time period shall be no less than thirty (30) days), then the Association may pursue its Right of Action. The term "**Right of Action**" as used herein, shall mean the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot as to which a violation, breach or other condition to be remedied exists, and take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof. Such entry or action, or both, shall not be deemed to be a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this **Section 16**. All reasonable costs and expenses including reasonable attorneys' fees incurred by the Association or on its behalf in enforcing such Right of Action, shall be a binding obligation of such Owner enforceable at law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of **Section 16(c)** hereof. The lien provided under this Section shall not be valid against a bona fide purchaser (or bona fide lienholder) of the Lot in question unless a notice of such lien shall have been filed in the office of the Recorder prior to the recordation of the deed in the said office (or lien instrument) conveying the Lot in question to such purchaser (or subjecting the same to such lien). "Right of Action" shall also mean and

encompass the right to pursue all remedies herein specified and specified in **Sections 16(b) and 16(c)**, together with all remedies at law or in equity.

b. Enforcement and Specific Performance. Nothing contained herein shall be deemed to affect or limit the rights of Developer (during the Development Period), the Association, the Members, or the Owners, or any one of them, to enforce against any Owner any of the terms, covenants or conditions of this Declaration by appropriate judicial proceedings. Any Owner may, by written notice to the Association, assign to an Occupant of such Owner's Lot, the right to enforce the provisions contained herein by all available remedies herein. No assignment of an Owner's rights pursuant to the this **Section 16(b)** shall limit or diminish such Owner's obligations or liabilities hereunder. An assignment of an Owner's rights pursuant to this **Section 16(b)** shall be effective until either: (i) the assigning Owner delivers written notice to the Association that the assignment is of no further force and effect, or (ii) the Occupant to which the Owner assigned its rights ceases to be an Occupant of the Center. Developer hereby declares that it is impossible to measure in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform any of the obligations provided by this Declaration. Therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof. In any and all such actions, whether at law or in equity, any such beneficiary who is entitled to relief shall also be entitled to recover all reasonable costs and expenses, including reasonable attorneys' fees, incurred in enforcing such rights.

c. Enforcement of Liens.

i. The Association shall have a lien for Assessments as set forth in **Section 3(a)** hereof and shall have a lien for the reasonable costs of exercising the Right of Action as set forth in **Section 16(a)** hereof. The amount which may be recovered by the Association shall include the Assessment and costs, together with the cost of such enforcement proceedings, including reasonable attorney's fees and interest. Suits to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving the lien provided for in **Section 3(a)** hereof.

ii. If any demand for payment or claim of lien or liens is not paid when due as provided in **Section 3(d)** hereof, the Association or its duly authorized representative may thereafter elect to file and record a claim of lien on behalf of the Association against the Lot of the defaulting Owner in the office of the Recorder. Such claim of lien shall be executed and acknowledged by any officer of the Association and shall contain substantially the following information:

- (1) the name of the delinquent Owner;
- (2) the legal description and street address of the Lot against which the claim of lien is made;
- (3) the total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs and reasonable attorney's fees (with any proper offset allowed);
- (4) that the claim of lien is made by the Association pursuant to this Declaration; and

(5) that a lien is claimed against said Lot in an amount equal to the amount stated, together with all other amounts becoming due from time to time in accordance with this Declaration.

iii. Upon such recordation of the duly executed original or copy of such a claim of lien, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such Assessment or cost was levied.

iv. Any such lien may be foreclosed by appropriate action at law or in the manner provided by law for non-judicial foreclosure of mortgages and deeds of trusts or in any other manner permitted by the laws of Missouri. The Association is hereby authorized to appoint any attorney or any officer or director of the Association as trustee for the purpose of conducting any non-judicial sale in connection with non-judicial foreclosure of the Association's lien.

v. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Owners and shall secure payment of all sums set forth in the claim of lien, together with all sums becoming due and payable in accordance with this Declaration after the date of recordation of said claim of lien.

vi. Upon the timely curing of any default for which a notice of claim of lien was filed by the Association and the payment of all sums secured by the lien created by the recordation of such claim of lien, the Association shall (upon payment by such Owner of reasonable costs) cause an officer of the Association to file and record an appropriate release of such claim of lien in the office of the Recorder within ten (10) days after payment or curing of any default.

vii. Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose or otherwise realize on the lien created by recordation of the claim of lien, until the expiration of thirty (30) days after a copy of said claim of lien, showing the date of recordation thereof, has been mailed to the Owner of the Lot which is described in such claim of lien.

17. **Prevailing Party.** If any person or entity shall bring suit against an Owner (or in the case of a suit to enforce obligations under **Section 11**, against any Occupant) to enforce the terms of this Declaration or for damages arising out of the breach hereof, the non-prevailing party shall pay to the prevailing party the prevailing party's costs and expenses (including, without limitation, reasonable attorneys' fees and costs) incurred in connection therewith.

18. **No Waiver.** The failure of any party to insist upon strict performance of any of the terms, covenants, or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants, or conditions.

19. **Notice.** Any notice or other communication provided for or permitted by this Declaration must be in writing. Notice may, unless otherwise provided herein, be given or served by depositing the same in the United States mail, postage paid, certified, and addressed to the party to be notified, with return receipt requested or by depositing the same with a nationally-known overnight courier service. Notice deposited in the mail in the manner hereinabove described shall be effective two (2) business days after such deposit. Notice given in any other manner shall be effective only if and when received (or refused)

by the party to be notified between the hours of 8:00 A.M. and 5:00 P.M. of any business day with delivery made after such hours to be deemed received the following business day. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If intended for Oldham Investors, LLC, to:

c/o Drake Development, LLC
7200 W. 132nd Street, Ste. 150
Overland Park, Kansas 66213

With a copy to:

Jeff Bauer
Levy Craig Law Firm, a Professional Corporation
4520 Main Street, Suite 400
Kansas City, Missouri 64111

The parties hereto shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least five (5) days written notice to the other party.

20. **No Dedication to Public; No Implied Easements.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Center to the general public or for any public use or purpose whatsoever, it being the intention of the parties that this Declaration be for the exclusive benefit of the Occupants of the Center and that nothing herein, express or implied, shall confer upon any person, other than the Owners and their heirs, administrators, legal representatives, successors, and assigns, any rights or remedies under or by reason of this Declaration. No easements, except those expressly set forth herein, shall be implied by this Declaration.

21. **Estoppel Requests.** Within twenty-one (21) days following written request of any prospective purchaser, lender, Owner or Occupant of any portion of the Center, the Declarant shall review and execute a standard estoppel providing, if and to the extent accurate, the following: (a) that this Declaration has not been amended, assigned, or modified in any manner not of record in the official land records of Jackson County, Missouri; (b) that there are no defaults presently existing under this Declaration by the applicable Owner; (c) there are no amounts presently due and owing to or from the applicable Owner; and (d) to the knowledge and belief of the Declarant, that there are no defaults presently existing by any other Owner under the Declaration.

22. **Governing Law.** This Declaration shall be construed in accordance with and pursuant to the laws of the State of Missouri. Any action on this Declaration shall be commenced and prosecuted to completion in a state or federal court located in Jackson County, Missouri.

23. **Severability.** Invalidity of any of the provisions contained in this Declaration, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

24. **Entire Agreement; Amendment.** This Declaration constitutes the full and complete agreement between the parties hereto regarding the subject matter hereof and supersedes all prior written agreements and all prior and contemporaneous oral agreements and understandings between the parties. This Declaration may be modified or amended by a majority vote of the Owners, provided, however, this

Declaration may not be modified or amended in any way, nor may any of the provisions hereof be waived, without the written consent of Developer or its respective successors or assigns.

25. **Release from Liability; Designation of Developer.** Any person or entity acquiring fee simple or leasehold title to the Lots, or any portion of the Lots, or any expansion of the Center, or any portion thereof, shall be bound by this Declaration only as to the Lot or portion of the Lot acquired by such person or entity. In addition, except to the extent expressly stated in this Declaration to the contrary, such person or entity and Developer shall be bound by this Declaration only during the period such person or entity or Developer is the fee or leasehold owner, except as to obligations, liabilities, or responsibilities that accrue during said period of ownership. Although persons may be released under this paragraph, the covenants, restrictions and easements in this Declaration shall continue to be benefits to and servitudes upon the Center running with the land. Notwithstanding the foregoing, no such party shall be so released until notice of such Transfer (as defined below) has been given in the manner set forth below, at which time the transferring party's personal liability for unaccrued obligations shall terminate. A party transferring all or any portion of its interest in a Lot shall give notice to Developer and to the Association of such Transfer and shall include therein at least the following information: (i) the name and address of the new party; and (ii) a copy of the legal description of the Lot or portion of Lot so Transferred. Until notice of such Transfer is given, the transferring party shall (for purposes of this Declaration only) be the transferee's agent. For the purposes of this **Section 25**, "**Transfer**" means a conveyance by way of sale. Oldham Investors, LLC shall remain the Developer hereunder until the later of (i) receipt by Oldham Investors, LLC of all Incentives payable thereto; or (ii) the transfer of the last remaining portion of the Center owned of Oldham Investors, LLC's to a successor Owner, upon which event, Oldham Investors, LLC shall give notice of such event to all Owners, and: (i) all easements reserved to Developer shall cease; (ii) the Association shall thereafter perform all remaining obligations of Developer, including but not limited to maintenance and review and approval obligations; and (iii) the Association shall thereafter be entitled to exercise any other rights reserved to Developer hereunder.

26. **Lee's Summit Unified Development Ordinance Requirements.**

a. This Declaration has been prepared in accordance with Article 4, Division IV of the Unified Development Ordinance ("**UDO**") of the City of Lee's Summit, Missouri.

b. Notwithstanding anything herein to the contrary, in the event that any condition of the Common Areas is determined to be a nuisance or in disrepair in violation of any provision of the Lee's Summit Property Maintenance Code, and such disrepair or nuisance is abated pursuant to procedures otherwise provided in the Property Maintenance Code, the costs to abate the nuisance created by the failure to maintain any Common Areas shall be assessed proportionally against the Lots, in an equal amount per Lot, pursuant to the tax bill provisions of the Property Maintenance Code. The amount caused by the Finance Director to be assessed annually by tax bill shall not exceed five percent (5%) of the assessed valuation per Lot or Owner.

c. In the event it is determined that the maintenance of any storm water conveyance, retention or detention facility located on the Common Areas fails to meet any standard set forth in the final development plan, or Plat if no final development plan is required, and such failure is abated by the City pursuant to the procedures of Article 4, Division IV of the UDO, then, upon completion of the work and certification by the Director of Public Works that the deficiency has been abated, the Director of Public Works shall certify all costs of such abatement, including enforcement costs and expenses of staff time incurred in the remediation of the deficiency, to the City's Director of Finance who shall cause a special tax bill therefore, or add the costs thereof to the annual real estate tax bill, at the Finance Director's option, proportionally against the Lots and Owners, in an equal amount per Lot or Owner. The amount caused by the Finance Director to be

assessed annually by tax bill shall not exceed five percent (5%) of assessed valuation per Lot or Owner. The tax bill from the date of its issuance shall be a first lien on the Lot until paid and shall be prima facie evidence of the recitals therein and of its validity and no mere clerical error or informality in the same, or in the proceedings leading up to the issuance shall be a defense thereto. Each special tax bill shall be issued by the City Clerk and delivered to the City Finance Director on or before the first day of June of each year. Such tax bill, if not paid when due, shall bear interest at the rate of eight percent.

d. The City shall be a third-party beneficiary of all provisions of this Declaration pertaining to the assessment of costs for maintenance of storm water conveyance, retention, or detention facilities on the Common Areas. Such provisions shall not be modified or amended without the written consent of the City.

27. **Effect of Violation of Declaration on Mortgage.** No violation of this Declaration shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon any portion of the Center; provided, however, that any mortgagee in possession or any purchaser at any foreclosure sale or any person in a similar position shall be bound and subject to this Declaration as fully as any other Owner of any portion of the Center.

28. **Incorporation of Provisions in Deeds.** Each grantee, by accepting a deed to a Lot conveying fee simple interest in any Lot, whether or not such instrument incorporates or refers to this Declaration, covenants for itself, its successors and assigns to observe, perform and be bound by the Declaration and to incorporate this Declaration by reference in any Deed or other conveyance of all or any portion of its interest in any real property subject hereto.

29. **Assignability/Dissolution.**

a. The Association shall be empowered to assign its rights, or any part thereof, to any successor public body, authority, agency, district or not-for-profit corporation (hereinafter referred to as the “**Successor Entity**”), and upon such assignment the Successor Entity shall have those rights and be subject to those duties assigned thereby and shall be deemed to have agreed to be bound by the appropriate provisions hereof to the same extent as if the Successor Entity had been an original party to the Declaration. Any such assignment shall be accepted by the Successor Entity under a written agreement pursuant to which the Successor Entity expressly assumes the duties and obligations thereby assigned.

b. If for any reason the Association shall cease to exist without having first assigned its rights hereunder to a Successor Entity, the easements, covenants, restrictions, charges and liens imposed hereunder shall nevertheless continue and any Owner may petition a court of competent jurisdiction to have a trustee appointed for the purpose of organizing a not-for-profit corporation and assigning the rights hereunder with the same force and effect, and subject to the same conditions, as provided in this **Section 29(b)** with respect to an assignment and delegation to a Successor Entity.

c. Any assignment or delegation of rights shall be approved by three-fourths (3/4) of the Members voting in person or by proxy at an Association meeting at which a quorum is present or voting in a referendum called for such purpose after proper notice is given.

d. Developer may, at its option, assign any or all of its rights and obligations under this Declaration, in its sole discretion.

e. Notwithstanding anything herein to the contrary, the Association shall not be dissolved without the consent of the City, unless the maintenance responsibilities set forth in the final development plan are assigned, with the consent of the City, to a person or entity with the financial, legal, and administrative ability to perform such obligations.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned has executed this Declaration effective as of the Effective Date first above written.

OLDHAM INVESTORS, LLC,
a Missouri limited liability company

By: _____

Name: Matthew Pennington

Title: Manager

STATE OF _____)

COUNTY OF _____)

I, _____, a notary public in and for said County, in the aforesaid State, do hereby certify that Matthew Pennington, Manager of Oldham Investors, LLC, a Missouri limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument, pursuant to authority given to him by the governing body of said entity, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this _____ day of _____, 2024.

Notary Public

Commission Expires: _____

EXHIBIT A

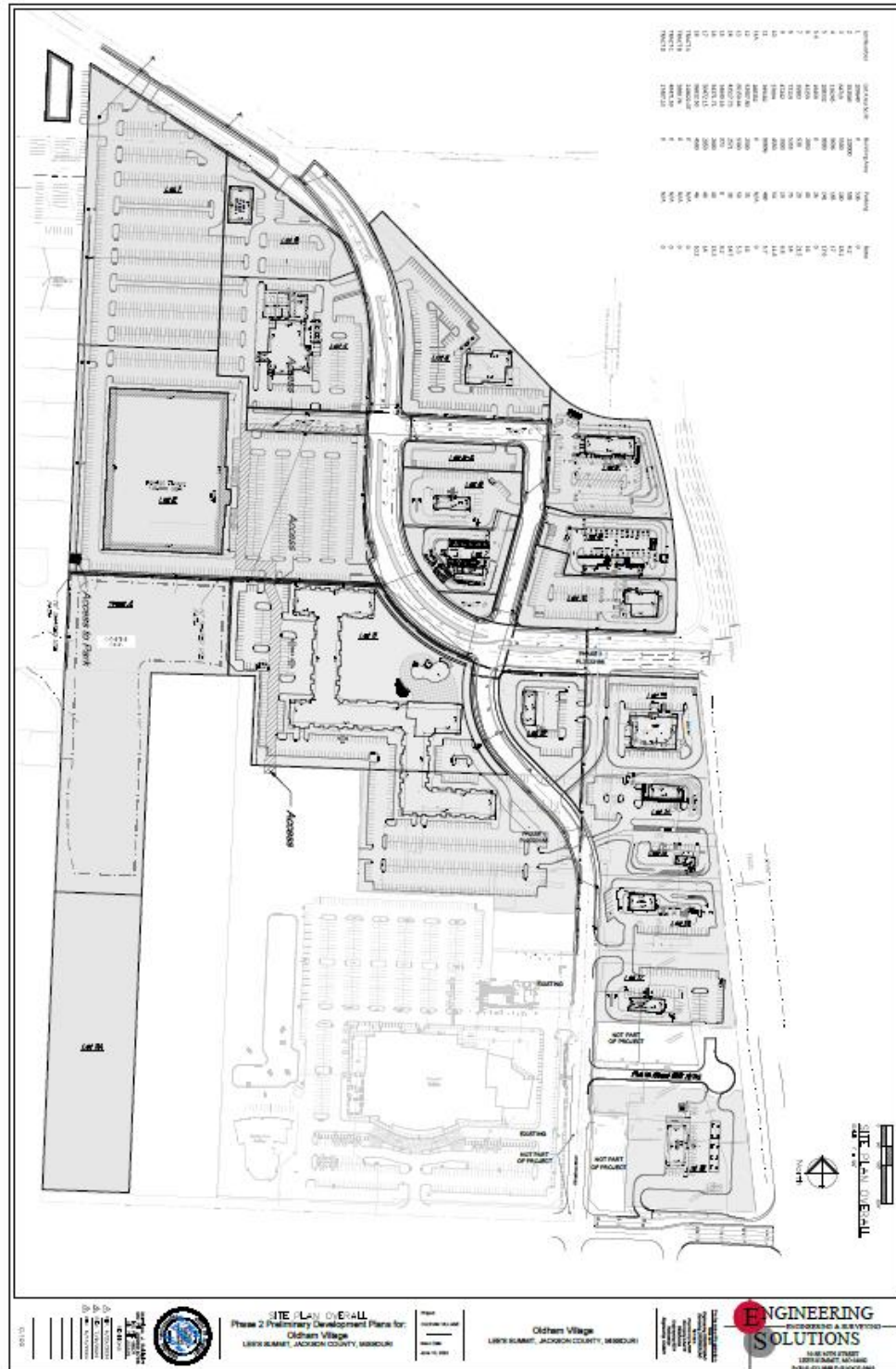
LEGAL DESCRIPTION OF THE CENTER

Update following Replat: Lots 1 through 11 (excluding Lot 11A), Lots 12 through 18 and Tracts “A”, “B”, “C”, and “D” Oldham Village [Add recording information]

EXHIBIT B

PLAT

Update following Replat:



The site plan illustrates the layout of the proposed development, divided into four tracts and 18 individual lots. Tract A is located on the left side of the plan, containing Lot 1 and Lot 2. Tract B is situated in the lower-left quadrant, containing Lot 11. Tract C is located in the upper-right quadrant, containing Lot 5, Lot 8, Lot 9, Lot 10, Lot 12, Lot 13, Lot 14, Lot 15, Lot 16, Lot 17, and Lot 18. Tract D is located in the upper-middle section, containing Lot 3, Lot 4, Lot 5-A, Lot 6, and Lot 7. The plan also shows various parking areas, access roads, and other site features. A north arrow is located in the top-left corner of the plan.

11

PUBLIC COMMON AREA EASEMENTS (PCAE's)

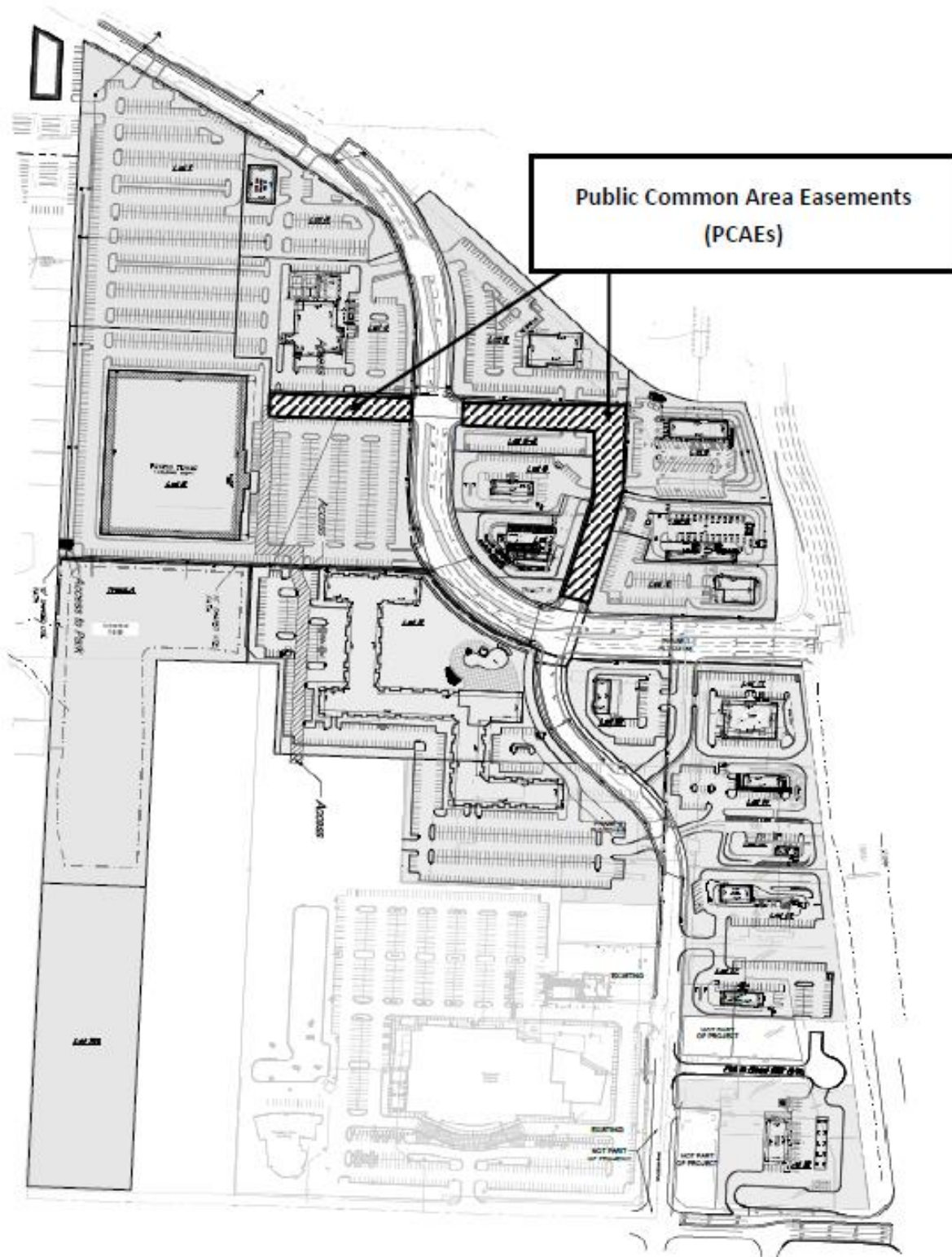


EXHIBIT C-3

LOT 2-11 SHARED DRIVE

EXHIBIT C-4
LOT 6-7 SHARED DRIVE; LOT 9-10 SHARED DRIVE

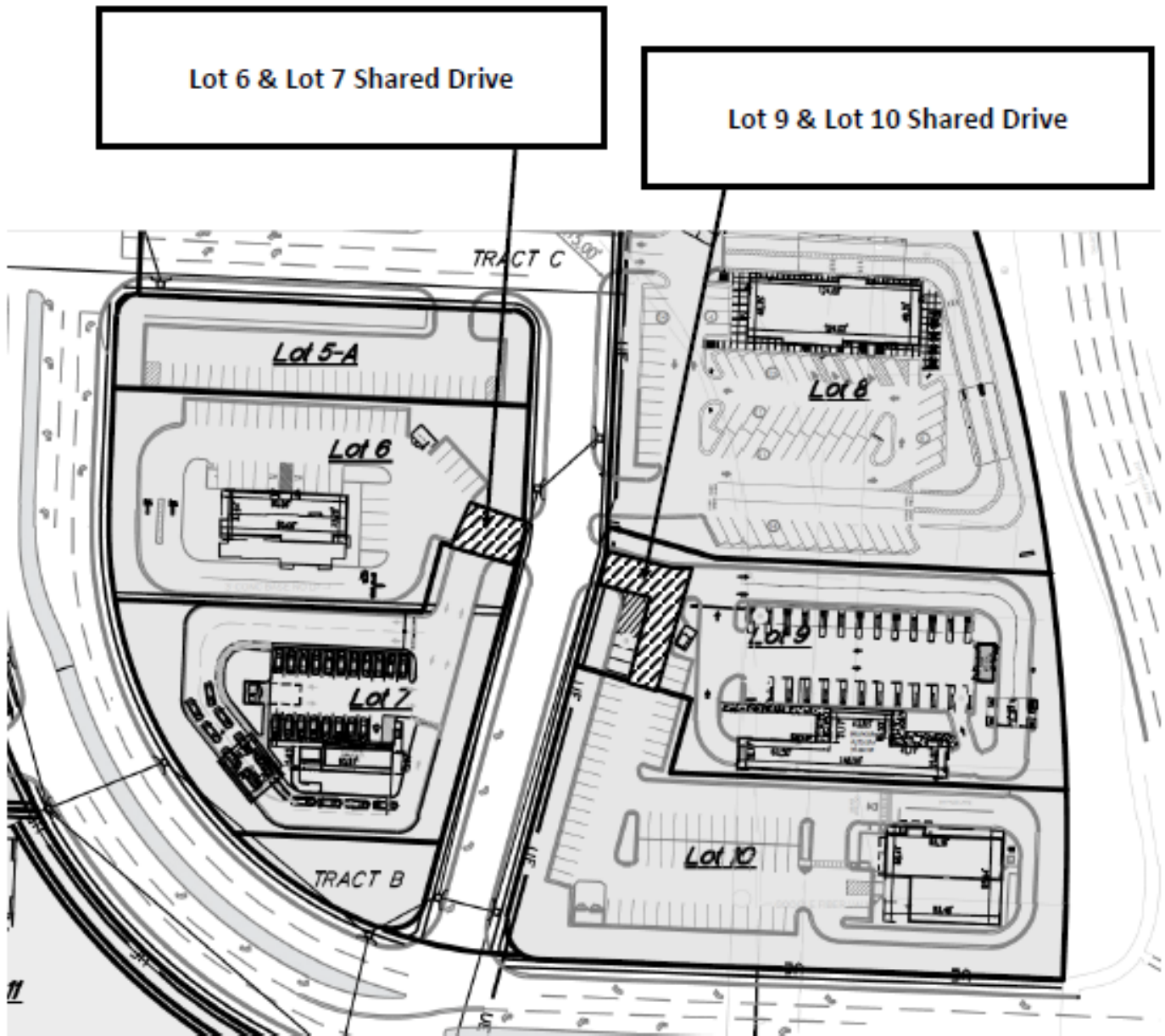


EXHIBIT C-5

LOT 12-13 SHARED DRIVE; LOT 14-15 SHARED DRIVE; LOT 16-17 SHARED DRIVE

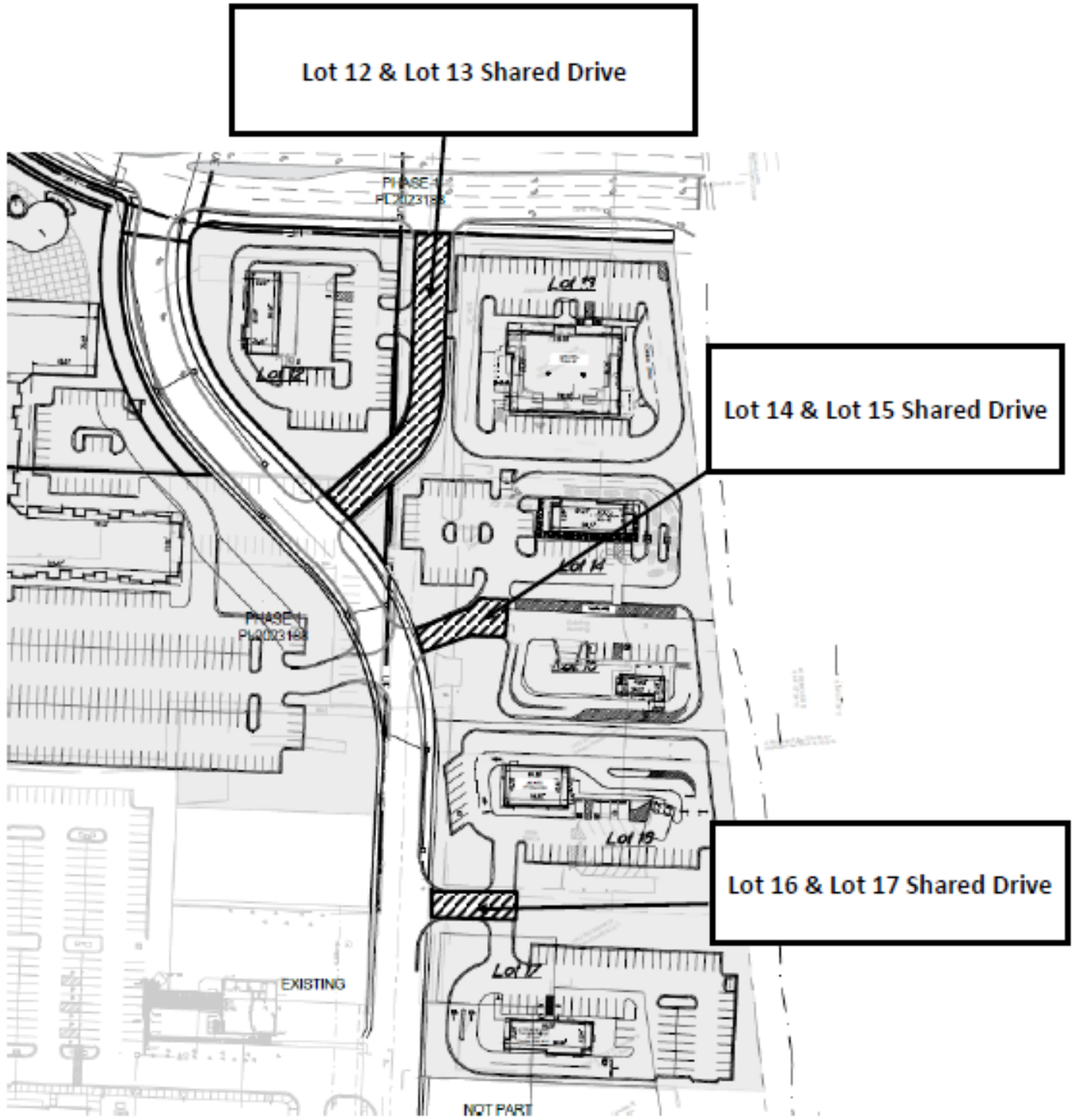


EXHIBIT C-6
DETENTION BASIN LOCATION

The site plan illustrates the layout of the University of Utah Health Center, including various building footprints, parking lots, and access points. A callout box labeled "Shared Development Signage Locations" points to specific areas on the plan, likely indicating where signage for the new development should be placed. The plan also shows existing infrastructure, such as roads and parking areas, and includes labels for various buildings and parking lots.

Shared Development Signage Locations

EXHIBIT D-1

APPLICANT'S AFFIDAVIT

STATE OF _____ §

COUNTY OF _____ §

1. BEFORE ME, the undersigned authority, did personally appear _____ (name) as _____ (title) of _____ (entity) (“Applicant”), who, being by me duly sworn, states as follows:

My name is _____ and I am the _____ of _____, who is the _____ of the property commonly known as _____, Lee’s Summit, Missouri, which is subject to that certain Declaration of Covenants, Restrictions and Easements dated _____, 202____ entered into by Oldham Investors, LLC, a Missouri limited liability company, as “Developer” (the “Declaration”).

2. Pursuant to the Declaration and the exhibits attached thereto and as required under the Declaration, I do hereby certify as follows:

(a) Applicant has completed the construction of Applicant’s Work, all in accordance with the plans and specifications approved by Developer and Applicant.

(b) Applicant’s actual Improvement Costs equals \$ _____, all as reasonably itemized on the Schedule attached hereto and made a part hereof.

(c) Applicant provided to Developer on _____, 20____ a complete set of the plans and specifications for all Applicant constructed improvements to the Center, together with a certification by Applicant’s architect or general contractor that the Project has been constructed in material conformance with such plans and specifications.

3. Further affiant saith not.

EXECUTED this ____ day of _____, 20____.

By: _____

COUNTY OF _____ §

This instrument was acknowledged before me on this the ____ day of _____, 20____, by _____, _____ of _____, _____ of _____, a _____, on behalf of such _____.

NOTARY PUBLIC, STATE OF KANSAS

EXHIBIT D-2

DESIGN CRITERIA FOR APPLICANT'S PROJECT

The design criteria for the Center is comprised of the "Design Criteria for Applicant's Project" and the Declaration. Each Applicant is advised to study and implement the requirements, details, and specifications of the Center. The criteria herein are intended to encourage individual expression within certain parameters that are set for the common benefit of all the Owners and Tenants.

GENERAL CRITERIA:

1. In no event shall the number of parking spaces on the Lot be less than: (i) the amount required by any governmental authority, law, or regulation, except as approved by Developer and subject to Section 3(g) of the Declaration.
2. The external appearance of the buildings and improvements located within the Center shall be that of a first-class shopping center.

STOREFRONT:

1. Changes in the tint of the storefront or window covering over glazing is not permitted after installation.
2. Partitions are prohibited within ten (10) feet of the storefront.
3. Storage shelves, unsightly equipment, and clutter are prohibited within the area of public view from the storefront.

LIGHTING:

1. Applicant will provide all exterior lighting including parking lot lighting and pedestrian lighting for the exterior face of the storefronts which will be controlled by a time clock. No Applicant lighting will be allowed outside any building located on any Lot, unless approved in writing by Developer.
2. Display or show window illumination shall be incandescent, controlled by a time clock, and subject to approval by Developer. The use of recessed down lights is recommended which may be adjustable or non-adjustable and installed with an alzak cone.
3. High intensity discharge lighting or fluorescent lighting is not permitted within six (6) feet of storefront.
4. All Applicant lighting visible from the exterior of the buildings located on any Lot must be reviewed and approved by Developer prior to the installation thereof.

MATERIALS:

1. All Applicant plans and exterior finishes, including the nature and installation of materials, must be first approved by Developer.

UTILITY SERVICE LOCATIONS:

1. No exposed conduits, wires, or telephone cables will be permitted on the exterior of the shell building within public view.

PLUMBING AND ELECTRICAL:

1. All plumbing and electrical work shall be performed only by licensed persons and by reputable firms. Plumbing and electrical contractors must obtain the necessary permits and all work must be inspected as required by the proper authorities. Codes and regulations must be adhered to fully, and any changes or alterations required by inspectors of the city, county, or other governmental authority must be performed at Applicant's expense.
2. The electrical panels and transformers shall be placed in locations approved by Developer. Any Applicant's electrical panel shall be painted a reasonable color specified by Developer at Applicant's expense. No exposed conduits, wires, or cables will be permitted inside or outside any building located on any Lot within public view.

OWNER AND TENANT SUBMISSION REQUIREMENTS:

1. Prior to commencement of work to construct any building located on any Lot, Applicant shall provide to Developer a site plan, exterior elevations and material board, proposed signage indicating elevation, spacing of letters, and section views, and any proposed variance or cross-parking agreement requested to meet minimum parking ratios on the Lot. Construction will not be allowed to commence until Applicant has Developer's written approval.
3. Applicant shall adhere to all Applicant Criteria Documents which may be submitted from Developer in connection with Applicant's Work.

Developer reserves the right to amend or allow specific variances in the Design Criteria for Applicant's Work any time at Developer's commercially reasonable discretion for the benefit of a specific Applicant.

EXHIBIT E

RULES AND REGULATIONS

A. General Occupancy Rules.

All occupants shall comply with the following general occupancy guidelines, except as expressly approved otherwise by the Associations in writing:

1. No use shall be made of the Center or any portion or portions thereof which would (a) violate any law, ordinance or regulation, (b) constitute a nuisance (except that any reasonable noises and sounds audible within a building located on a Lot only and the vibrations and odors typically associated with the operation of a health and fitness club and retail restaurant shall not be deemed to be a nuisance hereunder), (c) constitute a hazardous use, (d) violate, suspend, or void any policy or policies of insurance on the stores or common areas, or (e) endanger the lives or property of others.

2. All loading and unloading of goods shall be done only at the designated service entry for each space. Deliveries shall be made such that the PCAE's or any access point between Lots or between any Lot and the Private are not blocked.

3. Except as otherwise approved by the Association, no overnight parking shall be permitted in the Center.

4. Except with express written consent of Developer (which consent shall not be unreasonably withheld, conditioned or delayed), neither sidewalks, hallways, nor truck drives or turns shall be used to display, store or replace any merchandise, trash, equipment or devices.

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

6. All trash, refuse, waste, and recycling materials shall be regularly removed from the premises of each tenant or occupant of space in a building located on any Lot of the Center, and until removal shall be located so as not to be visible to the general public shopping in the Center, and so as not to constitute any health or fire hazard or nuisance to any tenant or occupant.

7. Each tenant or occupant of space in a building located on any Lot shall use at such tenant's or occupant's sole cost a program of pest control for their respective premises or otherwise keep their respective premises pest free.

8. No Lot Owner or their respective tenant(s) shall affix any sign, placard, banner, notice or other written material to the storefront, without in each instance, the written consent of the Association (which consent shall not be unreasonably withheld, conditioned or delayed).

9. No tenant or occupant shall utilize any advertising medium which is intended to be heard or experienced outside of any such tenant's or occupant's premises, including flashing lights, search lights, loud speakers, phonographs, radios, televisions, etc.

10. No radio or televisions, antenna, dish, or similar device shall be installed without the Association's consent in writing. Unless screened, no antenna, tower, or aerial shall be erected on the roof

or walls of any building located on any Lot or on the grounds without, in each instance, the written consent of the Association. Any such device so installed may be removed without notice at any time.

11. Any tenant or occupant with a dedicated patio area shall be allowed to play music on the outside patio area at a reasonable sound level for the enjoyment of customers on the outside patio area, consistent with a first-class Center in the greater Kansas City Metropolitan, area. Each tenant and occupant specifically agrees not to play music in a loud or blasting manner, or in such a way as to disturb other tenants or occupants of the Center, disturb customers on the patio space of such other tenants or occupants, or intentionally draw the attention of customers.

12. All tenant or occupant furniture and improvements shall be maintained in a safe, clean, and functional condition, and shall be promptly replaced if the same becomes tattered, broken, faded, worn, bubbled, or otherwise unsightly.

13. Tenants and occupants are prohibited from burning any trash or garbage of any kind on or about the premises or the Center.

14. All property kept, stored or maintained within the premises by a tenant or occupant shall be at such tenant's or occupant's sole risk.

15. No public or private auction or any "fire", "going out of business", bankruptcy or similar sales or auctions shall be conducted in or from any part of the Center.

B. Sign Criteria.

All occupants shall comply with the following sign criteria, except as expressly approved otherwise by the DRC in writing:

1. Each occupant may have only one (1) identification sign placed on each exterior premises wall of the building it occupies, provided however, that if the space occupied by any such occupant is located at the corner of a building or is the entire building, then such occupant may have one (1) exterior identification sign on each of three (3) sides of the occupied building, subject to local code. Each occupant may have a sign above the rear service door indicating occupant's trade name and suite number. The rear service door sign shall be no larger than ten inches (10") high and twenty-four inches (24") wide.

2. All building signage must be single channel letters affixed directly to the façade, without an exposed raceway.

3. No occupant shall have an exterior sign which identifies leased departments and/or concessionaires operating under such occupant's business or trade name, nor shall such sign identify specific brands or products for sale of services offered within a business establishment, unless such identification is used as part of the occupant's trade name.

4. No hand-made or paper signs shall be exhibited in any of the store windows or within entrances.

5. No identification sign attached to the exterior of a building shall be:

a. Placed on canopy roofs extending above the building roof, placed on penthouse walls, or placed so as to project above the parapet, canopy or top of the wall upon which it is mounted.

b. Placed at any angle to the building; provided, however, the foregoing shall not apply to any sign located under a sidewalk canopy if such sign is at least eight (8) feet above the sidewalk.

c. Painted on the surface of any building.

d. Flashing, scrolling text, moving or audible.

e. Made utilizing (i) exposed ballast boxes, (ii) exposed transformers, or (iii) exposed raceways.

f. Made of paper or cardboard, or be temporary in nature (exclusive of contractor signs), or be a sticker or decal; provided however, the foregoing shall not prohibit the placement at the entrance of each occupant's space of a small sticker or decal indicating hours of business, emergency telephone numbers, acceptance of credit cards, and other similar information.

g. With prior notice and approval by the Association, the temporary display of "grand opening" or "coming soon" or "now hiring" signs, may be permitted.

6. Exclusive of signs in this Exhibit, no other form of exterior expressions, including, but not limited to, streamers, lights, pennants, banners, pictures, hand bills, car handouts, notices, flags, seasonal decorations, writings, lettering, designs, or graphics, shall be placed on or attached to the exterior of any building or at any place on the Center.

EXHIBIT “F”

DEVELOPMENT AGREEMENT