FOR REGISTRATION JUDITH A. GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
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2005115507

# DECLARATION OF RESTRICTIONS AND EASEMENTS REGARDING OUTLOTS

This DECLARATION OF RESTRICTIONS AND EASEMENTS REGARDING OUTLOTS is made and executed as of June 21, 2005 (this "Declaration"), by STREETS OF TORINGDON, LLC, an Ohio limited liability company ("Developer").

WITNESSETH:

WHEREAS, Developer is the owner of certain tracts of land depicted on Exhibit A attached hereto (the "Site Plan") a portion of which is described on Exhibit B attached hereto and identified as the "Developer Parcel" on the Site Plan (the "Developer Parcel") and portions of which are described on Exhibit C attached hereto and identified as "Outlot B", "Outlot E", "Outlot F", "Outlot G" and Outlot H on the Site Plan (individually "Outlot" and collectively "Outlots"); and

WHEREAS, Developer intends to develop or cause to be developed the Developer Parcel and the Outlots in conjunction with each other as integral parts of a mixed-use project, and in order to effectuate the common use and operation thereof, desires to impose certain covenants, conditions and restrictions and to grant and retain certain easements, in, to, over and across the Developer Parcel and the Outlots as hereinafter set forth.

NOW THEREFORE, Developer hereby declares that the Developer Parcel and the Outlots are and shall be owned, used, held, transferred, sold, conveyed, encumbered, leased, improved and occupied subject to the covenants, conditions, restrictions, easements and other provisions hereinafter set forth in this Declaration, as this Declaration may be amended from time to time as more particularly set forth herein.

## ARTICLE I

## DEFINITIONS; USE

Section 1.1 Definitions. The following terms shall have the meanings ascribed below:

"*Approving Party*" shall mean the Person designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this Declaration. The Approving Party shall have absolute discretion to make the decisions and/or give the approvals expressly designated to be made and/or given on behalf of the Developer Parcel regardless of whether the Approving Party then owns all or less than all of the Developer Parcel. The Approving Party shall have the right to assign such status to any other Person owning a parcel within the Developer Parcel; provided, however, if such assignment is not made in writing, then the status of Approving Party shall automatically be deemed assigned to the Person acquiring the last remaining parcel of the Developer Parcel owned by the Person then holding the status of Approving Party. Developer shall be the initial Approving Party.

"*Building*" shall mean any permanently enclosed structure placed, constructed or located on an Outlot, which for the purpose of this Declaration shall include any building appurtenances such as stairs leading to or from a door, transformers, trash containers or compactors, canopies, supports, loading docks, truck ramps, and other outward extensions of such structure.

"*Common Area*" shall mean all areas within the exterior boundaries of an Outlot, exclusive of any Building (and, with respect to Outlot E only, exclusive of the Screen Wall and MRI Pad, as such terms are defined in Section 2.3(g) hereof), and the Developer Parcel exclusive of any building thereon.

"*Constant Dollars*" shall mean the value of the U.S. dollar to which such phrase refers, as adjusted from time to time. An adjustment shall occur on the 1st day of June of the sixth full calendar year following the date of this Declaration, and thereafter at five year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The "Base Index Number" shall be the level of the Index for the year this Declaration commences; the "Current Index Number" shall be the level of the Index for the year preceding the adjustment year; the "Index" shall be the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Approving Party shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

"*Floor Area*" shall mean the aggregate of the actual number of square feet of space contained on each floor within a Building, including any mezzanine or basement space access to which is open to customers, as measured from the exterior faces of the exterior walls or store front and/or the center line of any common walls; provided, however, that the following areas shall not be included in such calculation: space attributable to any multi-deck, platform, rack or other multi-level system used solely for the storage of merchandise which is located above ground floor. Within 30 days after receipt of a request, a User shall certify to the Approving Party the amount of Floor Area contained on such User's Outlot.

During any period of rebuilding, repairing, replacement or reconstruction of a Building, the Floor Area previously attributable to that Outlot shall be deemed to be the same as existed immediately prior to such period. Upon completion of such rebuilding, repairing, replacement or reconstruction, the User owning such Outlot shall cause a new determination of Floor Area for such Outlot to be made in the manner described above, and such determination shall be sent to the Approving Party.

"*Governmental Authorities*" shall mean any federal, state, county, city or local governmental or quasi-governmental authority, entity or body (or any department or agency thereof) exercising jurisdiction over a particular subject matter.

"*Governmental Requirements*" shall mean all applicable laws, statutes, ordinances, codes, rules, regulations, orders, and applicable judicial decisions or decrees, as presently existing and hereafter amended, of any Governmental Authorities.

"*Owner*" shall mean each owner, and their respective successors and assigns who become owners of an Outlot. Each Owner shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the Outlot owned by it which accrue during the period of such ownership, and such liability shall continue with respect to such Outlot transferred until the later of the recording of a deed or other instrument of conveyance from the

Owner to its successor or the delivery by the transferring Owner to the Approving Party of a notice of transfer. Such a notice of transfer shall give notice to the Approving Party that the transferring Owner has transferred all or a portion of its interest in an Outlot and shall include the name and address of the transferee.

"*Permittee*" shall mean all Users and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Users insofar as their activities relate to the intended development, use and occupancy of the Outlot. Persons engaged in civic, public, charitable or political activities within an Outlot, including but not limited to the activities set forth below, shall not be considered Permittees:

(i) Exhibiting any placard, sign or notice.

(ii) Distributing any circular, handbill, placard or booklet.

(iii) Soliciting memberships or contributions for private, civic, public, charitable or political purposes.

(iv) Parading, picketing or demonstrating.

"*Person*" shall mean any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or Governmental Authority.

"*Restaurant*" shall mean any operation or business which requires a governmental permit, license and/or authorization to prepare and/or serve food for either on or off-site consumption; provided, however, notwithstanding anything contained herein to the contrary, a supermarket, grocery store or similar operation shall not be deemed a Restaurant.

"*User*" shall mean the Owner and any other Person from time to time entitled to the use and occupancy of any portion of a Building on an Outlot under an ownership right or under any lease, sublease, license, concession or other similar agreement.

"*Utility Facilities*" means those facilities and systems for the transmission of utility services, including but not limited to: sanitary sewer, water (fire and domestic), gas, electrical, telephone, communication lines and storm water. "Common Utility Lines" shall mean those Utility Lines that are installed to provide the applicable service to more than one Outlot or to one or more Outlots and the Developer Parcel. "Separate Utility Lines" shall mean those Utility Lines that are installed to provide the applicable service to one Outlot or to the Developer Parcel. For the purpose of this Declaration, the portion of a Utility Line extending between a Common Utility Line and a building shall be considered a Separate Utility Line.

Section 1.2 Permitted Use. (a) Subject to Sections 1.2(b) and 1.3 and unless otherwise agreed to in writing by the Approving Party, all Buildings constructed on the Outlots shall be used for retail sales, offices (general and medical), restaurants or other permitted commercial purposes.

(b) The following uses shall not be permitted on the Outlots unless otherwise agreed to in writing by the Approving Party:

(1) Any use which emits an obnoxious odor, noise or sound that can be heard or smelled outside of any Building.

(2) An operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation.

(3) Any "surplus" or second hand store, pawn shop or flea market.

(4) Any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.

(5) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any Building.

(6) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.

(7) Any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Outlot is located.

(8) Any automobile, truck, trailer or recreational vehicle sales, leasing, maintenance, repair, display or body shop repair operation, gas station or car wash.

(9) Any bowling alley or skating rink.

(10) Any movie theater or live performance theater.

(11) Any hotel, motel, short or long term residential use, including but not limited to: single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments or lodging rooms.

(12) Any veterinary hospital or animal raising or boarding facility; provided, however, this prohibition shall not be applicable to pet shops. Notwithstanding the forgoing exception, any veterinary or boarding services provided in connection with the operation of a pet shop shall only be incidental to such operation; the boarding of pets as a separate customer service shall be prohibited; all kennels, runs and pens shall be located inside the Building; and the combined incidental veterinary and boarding facilities shall occupy no more than 15 percent of the Floor Area of the pet shop.

(13) Any mortuary or funeral home.

(14) Any establishment selling or exhibiting pornographic materials or which sells drug-related paraphernalia or which exhibits either live or by other means to any

degree, nude or partially clothed dancers or wait staff and/or any massage parlors or similar establishments.

(15) Any amusement or video arcade (except incidental to a Restaurant use), pool or billiard hall, car wash or dance hall.

(16) Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms (other than incidental to a bookstore), places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by a User incidental to the conduct of its business at the Outlot and shall not be applicable to the incidental use to a retail use (e.g., computer training incidental to a store selling computers).

(17) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not be applicable to government sponsored gambling activities or charitable gambling activities, so long as such activities are incidental to the business operation being conducted by the User.

(c) No merchandise, equipment or services, including but not limited to vending machines, promotional devices and similar items, shall be displayed, offered for sale or lease, or stored by any User within the Common Area.

(d) This Declaration is not intended to, and does not, create or impose any obligation on a User to operate, continuously operate, or cause to be operated a business or any particular business at the Outlot.

(e) No User shall use, or permit the use of, Hazardous Materials on, about, under or in its Outlot, 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 Environmental Laws. Each User agrees to defend, protect, indemnify and hold harmless Developer and each other User from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including but not limited to costs of investigation, remedial or removal response, and reasonable attorneys' fees and cost of suit, arising out of or resulting from any Hazardous Material used or permitted to be used by such User, whether or not in the ordinary course of business. The term (i) "Hazardous Materials" shall mean and refer to the following: petroleum products and fractions thereof, asbestos, asbestos containing materials, urea formaldehyde, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials, substances and wastes listed or identified in, or regulated by, any Environmental Law, and (ii) "Environmental Laws" shall mean and refer to the following: all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

Section 1.3 Prohibited Uses Particular to Outlot E and Outlot H. Notwithstanding anything to the contrary set forth herein, neither Outlot E nor Outlot H may be used for any retail or residential purpose unless otherwise agreed to in writing by the Approving Party.

Section 1.4 Compliance with Laws. Each User shall comply with all Governmental Requirements relating to the business conducted on its Outlot which is made pursuant to law by any Governmental Authority.

## ARTICLE II

## CONSTRUCTION AND IMPROVEMENTS

Section 2.1 Building Area. All Buildings constructed on the Outlots shall be constructed in the locations marked "Building Area", if any, as depicted on the Site Plan unless otherwise agreed in writing by the Approving Party. If no Building Area is depicted for a particular Outlot on the Site Plan, then the permitted Building Area shall be as agreed to by the Approving Party. No more than one Building, plus any necessary outbuildings for refuse storage may be constructed on any Outlot.

Section 2.2 Plan Approval. Except as specifically set forth in Article VI hereof, prior to constructing, reconstructing, remodeling or improving any buildings, landscaping, lighting, signage or other improvements on an Outlot (collectively, the "Work"), the Owner of such Outlot shall submit to the Approving Party for approval, detailed exterior elevations, including materials and colors, footprint and site plan, rooftop and trash screening and landscaping for all aspects of the Work ("Plans") depicting the Work in detail at least 30 days prior to the commencement of the Work. The Approving Party shall review the Plans for compatibility and harmony of the Work with the improvements constructed or to be constructed on the Developer Parcel and the other Outlots and may not unreasonably withhold its approval. No Work shall be performed except in strict accordance with the Plans that have been approved by the Approving Party. The Approving Party shall either approve the Plans or give its objections thereto along with a reasonably detailed explanation of such objections in writing within 15 days after receipt thereof. If the submission of the Plans expressly calls attention to the automatic approval provisions of this section, then if no approval or objection is given in writing within said 15-day period, the Plans shall be deemed approved as submitted. If the Approving Party should reject the Plans, the Owner submitting the Plans and the Approving Party may mutually consult and the person submitting the Plans shall revise the same in accordance with the requirements of the Approving Party. Approval of Plans by the Approving Party shall not constitute assumption of responsibility for the accuracy, sufficiency, or propriety thereof nor shall such approval constitute a representation or warranty that the Plans comply with Governmental Requirements.

Section 2.3 Outlot Improvements. The Outlots shall be improved strictly in compliance with the following standards unless otherwise agreed in writing by the Approving Party:

(a) All Buildings shall contain a maximum Floor Area as follows: (i) 7,000 square feet on each of Outlot F and Outlot G; (ii) 14,000 square feet on each of Outlot E and Outlot H; and (iii) 24,000 square feet on Outlot B. No Building on Outlot F or Outlot G may contain more than one story; no Building on Outlot B, Outlot E or Outlot H may contain more than two stories. With the exception of Outlot B, the total height of the base roof line of any Building shall not exceed 28 feet (not including roof-mounted equipment and related screening and architectural features such as chimneys or entrance parapets, provided such features do not exceed an additional seven feet from such roof line); for Outlot B, the total height of the base roof line of any Building shall not exceed 35 feet. The height of any Building shall be measured perpendicular from the finished floor elevation to the top of the roof structure, excluding any

architectural feature, screening, parapet, penthouse, mechanical equipment or similar appurtenance located on the roof of such Building. Any User shall have the right to install, maintain, repair, replace and remove Communications Equipment (as hereinafter defined) on the top of the Building on its Outlot which may extend above the height limits established above; provided, however, such Communication Equipment shall be set back from the front of the Building or screened in order to reduce visibility thereof by customers. As used herein, the phrase "Communications Equipment" means such things as satellite and microwave dishes, antennas and laser heads, together with associated equipment and cable.

(b) All rooftop equipment and trash storage and service areas shall be screened in a manner reasonably satisfactory to the Approving Party.

(c) No sign on an Outlot shall be:

(1) 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.

(2) 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 feet above the sidewalk.

(3) Painted on the surface of any Building.

(4) Flashing, moving or audible.

(5) Made utilizing exposed raceways, exposed neon tubes, exposed ballast boxes, or exposed transformers.

(6) 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 User's space of a small sticker or decal indicating hours of business, emergency telephone numbers, acceptance of credit cards and other similar items of information, temporary display of leasing information and the temporary erection of one sign identifying each contractor working on the construction job.

(d) Each of Outlot F and Outlot G shall be entitled to one monument-type sign identifying only such businesses as are operated on the Outlot. The location, design and dimensions of such sign shall be subject to approval by the Approving Party pursuant to Section 2.2. No pylon or pole signs are permitted on an Outlot. If the area approved for location of a monument sign is on the Developer Parcel, then the User shall have a non-exclusive easement over that portion of the Developer Parcel for the construction, installation, use, operation, maintenance, repair, replacement and removal of one monument-type identification sign serving such Outlot. Current zoning of the property does not permit monument signage on either Outlot E or Outlot H. Developer shall permit one monument sign for each of said Outlots, subject to the terms and conditions of this paragraph (d), provided all necessary variances and other governmental approvals are obtained by the party wishing to install the sign, the terms of such variances and approvals to be subject to the prior written consent of the Approving Party.

(e) While it is acknowledged and agreed that no User shall have an obligation to commence construction of any Building on its Outlot, each User agrees that once it has commenced construction of a Building, such Building shall be completed within 210 days after such commencement; for the purpose of the foregoing provision, "commencement of construction" shall be deemed to have occurred once steel begins to be erected for the Building. All construction and storage and staging activities with respect to an Outlot shall be confined to the Outlot or in the staging areas, if any, designated as such on the Site Plan. In the event any such staging areas are located on the Developer Parcel, then the User shall have a nonexclusive easement over such portions of the Common Area as are reasonably necessary to use such staging area, subject to reasonable restrictions imposed by the Approving Party.

(f) In the event any mechanic's lien is recorded against the Developer Parcel or an Outlot as a result of services performed or materials furnished for use by Developer or a User, upon request of the owner whose parcel is subject to such lien, the Person permitting or causing such lien to be recorded agrees to promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge. Nothing herein shall prevent the Person permitting or causing such lien to be recorded from contesting the validity thereof in any manner such Person chooses so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such Person shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien of record. The Person permitting or causing such lien agrees to defend, protect, indemnify and hold harmless each other owner and its parcel from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from such lien.

(g) The Owner of Outlot E shall be permitted to construct and maintain a masonry screen wall ("Screen Wall") and a concrete pad (the "MRI Pad") for purposes of the temporary placement thereon of a mobile MRI unit, both on a portion of Outlot E that would otherwise constitute Common Area, subject to the following: the location, configuration and design of the Screen Wall and MRI Pad shall be subject to the prior written approval of Developer; (ii) the Owner of Outlot E shall be solely responsible for meeting any and all Governmental Requirements with respect to the construction and maintenance of the Screen Wall and the MRI Pad; and (iii) if requested by Developer, the Owner of Outlot E shall promptly remove, at its sole cost and expense, so much of the Screen Wall and/or the MRI Pad as may be necessary for Developer to reasonably access and repair any underground improvements (including, without limitation, any storm sewer pipe). Notwithstanding the foregoing, if permitted by Governmental Authorities the Owner of Outlot E may effect the screening by means of landscaping approved by Seller rather than a masonry screen wall. Further, and notwithstanding anything to the contrary contained in this Declaration, the Screen Wall and MRI Pad shall not be deemed "Common Areas", but rather shall be for the exclusive use of the Permittees of Outlot E.

Section 2.4 Parking Requirements. The parking area on the Developer Parcel shall contain sufficient ground level parking spaces in order to comply with Governmental Requirements for all Buildings erected on the Developer Parcel and Outlots E, F, G and H. The parking area on Outlot B shall contain sufficient ground level parking spaces in order to comply with Governmental Requirements for any Building erected on Outlot B. In the event of a condemnation of part of the Developer Parcel or a sale or transfer in lieu thereof that reduces the number of usable parking spaces on the Developer Parcel below that which is required herein, Developer shall use its commercially reasonable efforts to restore and/or substitute parking spaces

in order to comply with the parking requirements set forth in this Declaration. If such compliance is not reasonably possible, Developer shall not be deemed in default hereunder, but Developer shall not be permitted to expand the amount of Floor Area located on the Developer Parcel. If any Floor Area on an Outlot or the Developer Parcel is thereafter reduced other than by casualty, then the Floor Area on such Outlot or the Developer Parcel, as the case may be, may not subsequently be increased unless the parking requirements set forth above are satisfied.

## ARTICLE III

## UTILITY EASEMENTS

Section 3.1 Utility and Service Easements.

(a) Grant. Developer hereby grants to each Owner non-exclusive, appurtenant easements in, over and through that portion of the Developer Parcel, in locations reasonably acceptable to Developer, for the installation, use, operation, maintenance, repair, replacement, relocation and removal of Utility Facilities serving the Outlot.

Developer hereby reserves for the benefit of each Outlot and the Developer Parcel non-exclusive, appurtenant easements in, over and through that portion of the Outlots and the Developer Parcel, in locations reasonably acceptable to the owner of the burdened Outlot, for the installation, use, operation, maintenance, repair, replacement, relocation and removal of Utility Facilities serving the benefited parcel.

(b) Location. The initial locations of the easements granted in Section 3.1(a) shall be in the locations shown on Exhibit D. All Utility Facilities shall be underground; provided, however, light standards, manholes and manhole covers (which shall be flush with adjacent grades), fire hydrants, telephone junction boxes and electric transformers may be installed on grade. Except as otherwise provided herein, the location of the Utility Facilities shall be subject to the reasonable approval of the owner across whose parcel the same are to be located. The centerline of all utility easements reserved hereunder shall be centered over the Utility Facility as actually installed and shall be of the minimum size and width necessary to install and service such Utility Facility. No Utility Facilities shall be located within any Building Area or within any area occupied by any building that was constructed prior to such Utility Facilities.

(c) Maintenance. Any grantee electing to install a Separate Utility Line shall obtain all permits and approvals and shall pay all costs and expenses with respect to the initial construction and all subsequent maintenance, relocation or abandonment of the Separate Utility Line. The Separate Utility Line shall be maintained in a safe, clean and good state of repair and condition by such grantee. The grantee shall perform such work in compliance with all Governmental Requirements, as quickly as possible and after normal business hours whenever possible, and shall back fill the disturbed area to prevent voids and restore the surface to a condition equal to or better than that existing before such work was commenced. Except in the case of a maintenance emergency where such work may be initiated after reasonable notice, the grantee shall provide the grantor with at least 15 days prior notice before commencement of any work. The grantee of any Separate Utility Line agrees to defend, protect, indemnify and hold harmless the grantor 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 reasonable attorneys' fees and cost of suit, arising out of or resulting from the exercise of the right to install, maintain and operate the Separate Utility Line; provided, however, the

foregoing obligation shall not apply to claims or demands based on the negligence or the willful act or omission of the grantor.

Grantees electing to install any additional Common Utility Line shall cause to be obtained all necessary permits and approvals and shall pay all costs and expenses with respect to the initial construction of such Common Utility Line. Any owner of a parcel served by a Common Utility Line is referred to as a "Cooperating Party". Once constructed, the Approving Party shall maintain, replace and/or relocate the Common Utility Line in a safe, clean and good state of repair and condition, and in compliance with all Governmental Requirements, as quickly as possible and after normal business hours whenever possible. After any costs for maintaining, repairing or replacing a Common Utility Line have been incurred by the Approving Party, it may send a statement of such costs, increased by an amount equal to seven percent of such costs, together with a copy of any invoice reflecting a charge exceeding $500.00, to each Cooperating Party benefiting from such Common Utility Line. Within 30 days after receipt of the statement of costs, each Cooperating Party shall pay its allocable share of such costs as agreed upon when the Common Utility Line was installed, or if such share was not then determined, then on an equitable basis taking into account the usage by each Cooperating Party. Except in the case of a maintenance emergency where such work may be initiated after reasonable notice, the grantor shall be provided with at least 15 days prior notice before commencement of any work.

(d) Notice; Non-interference. After the initial completion of any Utility Facilities, any subsequent installation, maintenance, repair, replacement, relocation or removal of such Utility Facilities shall be performed only after two weeks' advance notice to the Owner of the parcel burdened by such Utility Facilities. However, in the case of any emergency or in the case of the Owner's failure to perform any of the foregoing, any such work may be immediately performed after such advance notice to such owner as is practicable under the circumstances. In addition, all installation, maintenance, repair, replacement, relocation and removal of Utility Facilities shall be performed in a manner that causes as little disturbance to the parcel upon which such work is being performed and the Users thereof and in the use of the Common Areas as may be practicable under the circumstances. The Person performing such work shall, at its sole cost and expense, (i) restore any area damaged, excavated or otherwise disturbed to essentially the same condition which existed prior to the commencement of the work; (ii) indemnify and hold harmless the Users of the affected parcel from all claims, costs or damages arising out of the performance of the work; and (iii) maintain the insurance coverages set forth in Section 7.2 for the benefit of the Users of the affected parcels.

(e) Relocation. Except as otherwise provided herein, the owner of any parcel affected by an easement under this Section 3.1 may relocate on its parcel any Utility Facilities installed thereon, provided such relocation:

(1) may be performed only after such owner has given the grantees 30 days' notice of its intention to relocate the Utility Facilities;

(2) shall not interfere with or diminish the utility services to the Users thereof, however, temporary interferences with and diminutions in utility services shall be permitted if:

(i) the owner promptly reimburses the User for all cost, expense and loss incurred by user as a result of such interferences or diminutions, or both;

(ii) the relocation does not materially reduce or unreasonably impair the usefulness or function of the affected Utility Facilities;

(iii) the utilities are not relocated other than underground except for Utility Facilities permitted to be installed above-ground pursuant to this section; and

(iv) the relocation is performed at the sole cost of the owner.

Notwithstanding such relocation, all maintenance of Utility Facilities shall remain as set forth in Section 3.1(c), provided that if there shall be any material increase in the cost of such maintenance on account of such relocation, the owner shall bear such increased cost and reimburse the User for such increased costs promptly on demand.

Section 3.2 Grant to Applicable Third Parties. The non-exclusive easements reserved herein for any type of utilities to be installed under Section 3.1 hereunder may be dedicated to the city, township or other governing body in which the property is located or granted to the appropriate utility company by the grantor of such easement. This Declaration shall not and does not constitute a grant to the city or any utility company. Such grant or grants shall be made by separate instrument. The Owner of an Outlot agrees to cooperate with the grantee of such easement and execute and deliver such documents as the grantee may reasonably request to effectuate such grant.

## ARTICLE IV

## ACCESS AND PARKING EASEMENTS

Section 4.1 Access and Parking Easements. (a) Developer hereby grants to each Owner non-exclusive, appurtenant easements in, over and through the Common Area on the Developer Parcel for its use and for the use of its Permittees, in common with others entitled to use the same, for the passage and parking of vehicles over and across the parking and driveway areas of the Developer Parcel, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways and sidewalk areas of the Developer Parcel, as the same may from time to time be constructed and maintained for such use. Such easement rights shall be subject to the following reservations as well as the other applicable provisions contained in this Declaration:

(ii) The Approving Party reserves the right at any time and from time to time to exclude and restrain any Person who is not a Permittee from using the Common Area on the Developer Parcel.

(iii) The Approving Party reserves the right to temporarily erect or place barriers in and around areas in the Common Area on the Developer Parcel that are being constructed and/or repaired in order to insure either safety of Persons or protection of property.

(iv) The Approving Party shall have the right to impose reasonable rules and regulations with respect to construction traffic as may be established by the Approving Party.

(v) In no event shall any User or its Permittees park any vehicles in or otherwise obstruct any access roads on the Developer Parcel.

(vi) The Approving Party shall have the right to dedicate all or portions of the Common Area on the Developer Parcel to the public at any time and from time to time. In the event the Approving Party dedicates all or portions of the Common Area to the public, the Approving Party shall be released from all obligations with respect to the dedicated portions that accrue from and after the date of such dedication.

(b) Each Owner hereby grants to Developer and each other Owner non-exclusive, appurtenant easements in, over and through the Common Area on its Outlot for its use and for the use of its Permittees, in common with others entitled to use the same, for the passage and parking of vehicles over and across the parking and driveway areas of such Common Area, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways and sidewalk areas of such Common Area, as the same may from time to time be constructed and maintained for such use. Such easement rights shall be subject to the following reservations as well as the other applicable provisions contained in this Declaration:

(i) The grantor reserves the right at any time and from time to time to exclude and restrain any Person who is not a Permittee from using the Common Area on its Outlot.

(ii) The grantor reserves the right to temporarily erect or place barriers in and around areas in the Common Area on its Outlot that are being constructed and/or repaired in order to insure either safety of Persons or protection of property.

(iii) In no event shall any grantee or its Permittees park any vehicles in or otherwise obstruct any access roads on the Outlot.

## ARTICLE V

## OUTLOT DEVELOPMENT, COMMON AREA MAINTENANCE AND TAXES

Section 5.1 Development. (a) As of the date of this Declaration, the Outlots are legally described on Exhibit C as five (5) parcels of land. Before an Outlot is conveyed to a User, the Approving Party may subdivide from time to time such Outlot as described on Exhibit C into multiple Outlots or reconfigure such Outlot and will do so by unilaterally executing and recording an amendment to this Declaration amending the Site Plan and Exhibit C to reflect such subdivided Outlot or Outlots. Once an Outlot is conveyed by Developer to a User, such Outlot may not be subdivided or split into more than one parcel without the written consent of the Approving Party, which consent shall not be unreasonably withheld.

(b) The configuration and layout of the Common Area on an Outlot may not be changed from the configuration and layout approved by the Approving Party under Section 2.2, without the written approval of the Approving Party, which approval shall not be unreasonably withheld.

Section 5.2 Common Area Maintenance. (a) The Approving Party shall operate and maintain the Common Area in accordance with this Section 5.2. All costs incurred in connection with the operation, maintenance, repair and replacement of the Common Area, including

premiums for insurance required under this Declaration are referred to herein as the "Common Area Maintenance Costs". Such operation, maintenance, repair and replacement shall include the following:

(1) maintaining all parking and sidewalk surfaces in a level, smooth and evenly-colored condition with the type of surfacing material originally installed or such substitute as shall be equal in quality, use and durability;

(2) from time to time removing all papers, ice, snow, mud, sand, debris, filth and refuse and sweeping the area as reasonably necessary to keep the area in a clean and orderly condition;

(3) placing, keeping in good repair and replacing all appropriate directional signs, makers and traffic and parking lines;

(4) operating, keeping in good repair and replacing, where necessary, all lighting facilities; and

(5) maintaining, mowing, fertilizing, mulching, weeding, trimming and watering all landscaped areas and replacing shrubs and other landscaping features as is necessary to maintain the Common Areas in a manner in keeping with a first-class mixed-use project.

(b) Promptly following the commencement of such maintenance and operation, the Approving Party shall provide each User (a "Participating Party") an estimated budget for the balance of the current calendar year for Common Area Maintenance Costs, and each Participating Party agrees to pay its share of Common Area Maintenance Costs incurred for the balance of such year, plus the Administration Fee (as hereinafter defined), in accordance with this Section 5.2. The Approving Party may hire companies affiliated with it to perform the maintenance and operation of the Common Area, but only if the rates charged by such companies are competitive with those of other companies furnishing similar services in the metropolitan area in which the project is located. Each Participating Party hereby grants to such Approving Party, its agents, contractors and employees, a license to enter upon its Outlot to discharge its duties to operate, maintain and repair the Common Area. The Approving Party shall be permitted to charge an amount (the "Administration Fee") computed by multiplying the Common Area Maintenance Costs by fifteen percent (15%). If any of the Approving Party's personnel at the project perform services, functions or tasks in addition to Common Area duties, then the cost of such personnel shall be equitably allocated according to time spent performing such duties. The cost of work performed by the Approving Party's personnel that is includable in Common Area Maintenance Costs shall be charged at such individual's normal (no mark-up) hourly basis, including benefits; provided, however, that the total rate charged for such individual shall not exceed the rate charged for such work by competitive companies furnishing similar work in the metropolitan area in which the project is located.

(c) The Approving Party shall, at least 30 days prior to the beginning of each calendar year during the term of this Declaration, submit to each Participating Party an estimated budget ("Budget") for the Common Area Maintenance Costs and the Administration Fee for operating and maintaining the Common Area for the ensuing calendar year. If an item of maintenance or replacement is to be accomplished in phases over a period of calendar years during the term of this Declaration, such as resurfacing of the drive and/or parking areas, then the Budget shall separately identify the cost attributable to the applicable calendar year and shall note

the anticipated cost and timing of such phased work during succeeding calendar years. The Participating Parties acknowledge that each Budget represents the Approving Party's good faith estimate of the anticipated Common Area Maintenance Costs for the applicable year. The Approving Party shall use its diligent, good faith efforts to operate and maintain the Common Area in accordance with the Budget. The foregoing, however, does not limit the Approving Party's right to perform maintenance, repairs or replacements that were not included in a Budget.

(d) The Common Area Maintenance Costs and the Administration Fee shall be allocated as follows:

| | | |
|---|---|---|
| (i) | Outlot B | 17.5% |
| (ii) | Outlot E | 10.0% |
| (iii) | Outlot F | 10.0% |
| (iv) | Outlot G | 10.0% |
| (v) | Outlot H | 10.0% |

Each Participating Party shall pay to the Approving Party in equal monthly payments, in advance, the share of the Common Area Maintenance Costs and the Administration Fee attributable to such Participating Party's Outlot based upon the amount set forth in the Budget or, if a Budget has not yet been provided for the applicable calendar year, the monthly payment established for such Participating Party for the prior year.

(e) Within 120 days after the end of each calendar year, the Approving Party shall provide each Participating Party with a statement certified by an officer of the Approving Party, together with other reasonable supporting information, of the Common Area Maintenance Costs incurred for the preceding calendar year (such statement is hereinafter called the "Reconciliation"), the Administration Fee and the share of the aggregate thereof that is attributable to each Participating Party's Outlot. If the amount paid with respect to an Outlot for such calendar year shall have exceeded the share allocable to such Outlot, the Approving Party shall refund the excess to the Participating Party owning such Outlot at the time the Reconciliation is delivered, or if the amount paid with respect to an Outlot for such calendar year shall be less than the share allocable to such Outlot, the Participating Party owning such Outlot at the time such Reconciliation is delivered shall pay the balance of such Participating Party's share to the Approving Party within 30 days after receipt of such Reconciliation. If the applicable party does not refund or pay the amounts shown by the Reconciliation to be owed to or by a Participating Party, then (x) in the case of a refund, such Participating Party may offset the refund owed, plus Interest, against payments for Common Area Maintenance Costs and Administration Fee due for any future period and (y) in the case of a payment from a Participating Party, such payment shall bear Interest from the date due until the date paid.

(f) Within two years after the date the Reconciliation is received, each Participating Party shall have the right to audit the Approving Party's books and records pertaining to the operation and maintenance of the Common Area for the calendar year covered by such Reconciliation. A Participating Party shall notify the Approving Party of such Participating Party's intent to audit at least 15 days prior to the designated audit date. If such audit shall disclose any error in the determination of the Common Area Maintenance Costs, the Administration Fee or any allocation thereof to a particular Outlot, the auditing Participating Party shall provide the Approving Party with a copy of the audit, and an appropriate adjustment shall be made forthwith. The cost of any audit shall be assumed by the auditing Participating Party unless such Participating Party shall be entitled to a refund in excess of three percent of the

amount calculated by the Approving Party as such Participating Party's share for the applicable calendar year, in which case the Approving Party shall pay the reasonable cost of such audit.

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

Section 5.3 Outlot Maintenance. Each User shall maintain the Buildings located on its Outlot in a neat and orderly condition, in a manner in keeping with a first-class mixed-use project. Except as otherwise provided herein, each Participating Party shall pay all costs and expenses associated with the maintenance of the Building on its Outlot.

Section 5.4 Taxes. Each User shall pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real and personal property taxes and assessments levied against its Outlot and the improvements located thereon. In addition, each User shall pay to the Approving Party its allocable share (without markup, and based on the percentages set forth in Section 5.2(d)) of all real property taxes and assessments levied against the land within the Developer Parcel and, if separately assessed or otherwise discernable from the tax assessors records or worksheets, the improvements (i.e., paving, curbing, lighting and landscaping) on the Common Area on the Developer Parcel. Each User shall pay to the Approving Party in equal monthly payments, in advance, its allocable share of such taxes and assessments based upon the most recent available tax bills therefor. If at any time such payments are estimated based on a prior year's tax bill, then after the Approving Party's receipt of the actual tax bills for the applicable year, the Approving Party shall notify each User of the actual amounts payable by such User for such year. If the amount paid by a User for such year shall have exceeded its allocable share, then the Approving Party shall refund the excess to the User within 30 days after delivery of such notice, or if the amount paid shall be less than its allocable share, then the User shall pay the shortfall to the Approving Party within 30 days after its receipt of such notice.

Section 5.4 Water Service. It is anticipated that water service to the some or all of the Outlots will be metered by means of a master meter and billed to the Owner of the Developer Parcel. In such event, and upon request of the Developer, the Owner of an Outlot will at its expense install and at all times maintain in good working condition a deduct meter to measure water usage on such Outlot. At Developer's election Developer may install the deduct meter at the cost and expense of the Outlot Owner. Developer and Developer's agents and employees shall have access to the Outlot at all times for purposes of taking readings from the deduct meter. Each Owner of an Outlot covenants to pay, not later than thirty (30) days after receipt of invoice from Developer or Developer's agent or employee, for water service used, consumed or wasted on the Outlot, as reasonably calculated by Developer based upon the reading of the deduct meter.

## ARTICLE VI

## DAMAGE AND DESTRUCTION

In the event of damage or destruction of any improvements constructed on the Outlots, the owner of such improvements may restore such improvements. Prior to commencing any such restoration, such party shall comply with the requirements herein set forth with respect to initial construction as set forth in Article II; provided that Work constructed in accordance with Plans

previously approved by the Approving Party under Article II may be restored in substantial conformance with such Plans without the approval of the Approving Party. In all events the owner of an improvement which is damaged or destroyed by a casualty shall, as soon as practicable after the occurrence of such damage or destruction, clear away all debris and take all other action (including landscaping) required by good construction practice and so as to not adversely impact any other Outlot or the Developer Parcel such that the area which had been occupied by the razed building or portions thereof will be placed and thereafter maintained in a clean, safe and attractive condition, free of debris.

## ARTICLE VII

## INDEMNIFICATION/INSURANCE

Section 7.1 Indemnification. Each Owner shall indemnify and save Developer and each other Owner and their respective officers, directors, agents, partners, employees and tenants harmless from any and all liabilities, damages, expenses, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage (collectively, "Claims"), including reasonable attorneys' fees, costs of investigation, and court costs, arising (i) from or out of the Outlot and any activities on the Outlot, except to the extent due to the actions of the indemnified party; or (ii) from or out of the negligence or willful misconduct of such Owner, its officers, directors, agents, partners, employees and contractors, occurring on or affecting the Developer Parcel.

Section 7.2 Insurance.

(a) Each Owner shall procure and maintain in full force and effect throughout the term of this Declaration general public liability and property damage insurance against all claims for bodily or personal injury, death or property damage occurring upon, in or about its Outlot. Such insurance shall have a limit of not less than $2,000,000.00 (in Constant Dollars) combined single limit. All such insurance may be written by additional premises endorsement on any master policy of insurance which may cover other property in addition to such Outlot; provided that the carrier shall provide a schedule to the Approving Party showing that the coverage provided by such policy shall (1) meet the requirements of this Declaration, (2) not be reduced by any claims made with respect to other properties and (3) be in such amount as will prevent any claim against the insureds for co-insurance.

(b) Each Owner shall maintain insurance on all improvements constructed on its Outlot, covering against loss or damage by fire and other perils and such other events as may be insured against under the broad form of Uniform Extended Coverage Clause in effect from time to time in the State of North Carolina. Such insurance shall be in an amount equal to at least 80 percent of replacement value of the insured improvements, with a reasonable deductible.

(c) Policies of insurance provided for in this section shall (i) in the case of the liability insurance under Section 7.2(a), name the Approving Party as an insured as its interests may appear; (ii) be provided to the Approving Party with evidence that such insurance is in effect; and (iii) provide that such policy may not be canceled without 30 days written notice to the Approving Party.

(d) Each Owner shall, for itself and its property insurer, release the Approving Party and its tenants, partners, officers, directors, employees and agents, from and against any and all claims, demands, liabilities or obligations whatsoever for damage to property or loss of rents or

profits resulting from or in any way connected with any fire or other casualty except for such fire or other casualty that shall have been caused by the gross negligence or willful misconduct of the person being released or by any partner, officer, director, agent or employee of the person being released, to the extent that such damage or loss is covered by the property insurance which the releasing person is obligated hereunder to carry, or, if the releasing person is not carrying the required insurance, then to the extent such damage or loss would be covered if the releasing person were carrying the required insurance. All leases for any portion of the Outlots shall contain similar releases on the part of the tenant for the benefit of the Approving Party.

## ARTICLE VIII

## INTENTIONALLY OMITTED

## ARTICLE IX

## RIGHTS AND OBLIGATIONS OF LENDERS

If by virtue of any right or obligation set forth herein a lien shall be placed upon any portion of the Developer Parcel or the Outlots pursuant to the terms of this Declaration, such lien shall expressly be subordinate and inferior to the lien of any first mortgage now or hereafter placed on such portion of the Developer Parcel or Outlots. Except as set forth in the preceding sentence, however, any holder of a first mortgage lien on any portion of the Developer Parcel or Outlots, and any assignee or successor in interest of such first mortgage lienholder, shall be subject to the terms and conditions of this Declaration.

## ARTICLE X

## RELEASE FROM LIABILITY

Any Person acquiring fee title to any Outlot or the Developer Parcel or portion thereof shall be bound by this Declaration only as to the portion thereof acquired by such Person. In addition, such Person shall be bound by this Declaration only during the period such Person is the fee owner of such portion, except as to obligations, liabilities or responsibilities that accrue during such person's period of ownership. The easements, covenants, conditions and restrictions in this Declaration shall continue to be benefits to and servitudes upon Outlots and shall run with the land for the benefit of Developer, the Developer Parcel and, where applicable, the other Outlots notwithstanding the release of any Person.

## ARTICLE XI

## ENFORCEMENT

Section 11.1 Default.

(a) The occurrence of any one or more of the following events shall constitute a material default and breach of this Declaration by the non-performing party (the "Defaulting Party"):

(i) The failure to make any payment required to be made hereunder within ten days after written notice of such failure by the party to whom payment is owed.

(ii) The failure to observe or perform (or undertake to perform) any of the covenants, conditions or obligations of this Declaration, other than as described in (i) above, within 30 days after the issuance of a notice by another party who is the beneficiary of such covenant, condition or obligation (the "Non-Defaulting Party") specifying the nature of the default claimed.

(b) With respect to any default under Section 11.1(a)(ii), any Non-Defaulting Party shall have the right following the expiration of any applicable cure period, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party; provided, however, that in the event such default shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Non-Defaulting Party shall have the right to enter upon the parcel of the Defaulting Party (but not into any building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. Each party shall be responsible for the default of its tenants or occupants of its parcel. In the event any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses incurred in connection with such curative action, plus Interest as provided herein, within ten days after receipt of demand therefor, together with reasonable documentation supporting the expenditures made; provided, however, that a Non-Defaulting Party shall take no action under this section so long as the Defaulting Party has commenced to cure the default and is continuing to use commercially reasonable efforts to complete the cure of the default.

The right to cure the default of another party shall not be deemed to:

(i) Impose any obligation on a Non-Defaulting Party to do so.

(ii) Render the Non-Defaulting Party liable to the Defaulting Party or any third party for an election not to do so.

(iii) Relieve the Defaulting Party from any performance obligation hereunder.

(iv) Relieve the Defaulting Party from any indemnity obligation as provided in this Declaration.

(c) Notwithstanding the foregoing or anything contrary in this Declaration, no Owner shall have the right to enforce or cause any other party to enforce any covenant, condition or restriction in this Declaration against another Owner, except for any covenant that is made expressly and directly between such Owners (*e.g.*, the indemnities in Section 7.1). The foregoing limitation shall not limit or otherwise affect an Owner's rights against Developer in the event Developer or the Approving Party is a Defaulting Party.

Section 11.2 Lien. Costs, expenses and Interest accruing and/or assessed pursuant to Section 11.1(a)(i) and/or Section 11.1(b) above shall constitute a lien against the Defaulting Party's parcel. Such lien shall attach and take effect only upon recordation of a claim of lien in the

office of the Recorder of the County in which the property is located by the party making such claim. The claim of lien shall include the following:

(i) The name of the lien claimant.

(ii) A statement concerning the basis for the claim of lien and identifying the lien claimant as a Non-Defaulting Party.

(iii) An identification of the owner or reputed owner of the parcel or interest therein against which the lien is claimed.

(iv) A description of the parcel against which the lien is claimed.

(v) A description of the work performed which has given rise to the claim of lien and a statement itemizing the amount thereof.

(vi) A statement that the lien is claimed pursuant to the provisions of this Declaration, reciting the date and document number of recordation hereof.

The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the party against whom the lien is claimed, by personal service or by mailing pursuant to Section 14.2. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law, including without limitation, a suit in the nature of a suit to foreclose a mortgage/deed of trust or mechanic's lien under the applicable provisions of the law of the state in which the property is located.

Section 11.3 Legal/Equitable Remedies. Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other Person, violating or attempting to violate or defaulting upon any of the provisions contained in this Declaration, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another party or Person of any of the terms, covenants or conditions of this Declaration, or to obtain a decree to compel performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to a party under this Declaration or at law or in equity shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy. If a party brings an action of law or in equity to enforce the terms and provisions of this Declaration, the prevailing party as determined by the court in such action shall be entitled to recover reasonable attorneys' fees and court costs for all stages of litigation, including but not limited to, appellate proceedings, in addition to any remedy granted.

Section 11.4 Interest. Any time a party, if any, shall not pay any sum payable hereunder to another party within five days of the due date, such delinquent party shall pay interest ("Interest") on such amount from the due date to and including the date such payment is received by the party entitled thereto, at the lesser of:

(i) The highest rate permitted by law to be either paid on such type of obligation by the party obligated to make such payment or charged by the party to whom such payment is due, whichever is less.

(ii) The prime rate, plus three percent. As used herein, "prime rate" shall mean the rate of interest published from time to time as the "Prime Rate" in the Wall Street Journal under the heading "Money Rates"; provided, however, that (i) if more than one such rate is published therein the prime rate shall be the highest such rate and (ii) if such rate is no longer published in the Wall Street Journal or is otherwise unavailable, the prime rate shall be a substantially comparable index of short term loan interest rates charged by U.S. banks to corporate borrowers selected by the Approving Party.

## ARTICLE XII

## RIGHTS OF SUCCESSORS

The easements, covenants, conditions and restrictions hereunder shall create mutual benefits and servitudes running with the land. This Declaration shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns.

## ARTICLE XIII

## LIABILITY OF DEVELOPER

The covenants, conditions restrictions and easements contained in this Declaration shall not be deemed the personal obligations of the partners, members, officers, directors or affiliates of Developer (in its capacity as Developer or Approving Party) or its successors or assigns and this Declaration is entered into solely for the purpose of binding Developer's interest in the Developer Parcel. If Developer shall fail to perform any covenant, term or condition of this Declaration and, as a consequence of such default, a money judgment is recovered against Developer, such judgment shall be satisfied solely out of the proceeds of sale received upon execution of such judgment and levy thereon against the right, title and interest of Developer in the Developer Parcel. In no event shall the personal assets of the partners, members, officers, shareholders or employees of Developer be exposed or subject to judgment, levy or execution. In the event of the sale or other transfer of Developer's right, title and interest in the Developer Parcel or any portion thereof, Developer shall be released from all liability and obligations hereunder in respect of such portion which accrue on the date of closing of the sale or other transfer and thereafter and the new owner, subject to the provisions of this Article XIII, shall be responsible for all liabilities and obligations accruing on the date of closing and thereafter with respect to such portion.

## ARTICLE XIV

## GENERAL PROVISIONS

Section 14.1 Duration. The covenants, conditions, restrictions and easements contained in this Declaration shall run with the Developer Parcel and the Outlots and shall bind and inure to the benefit of the owners thereof and their successors and assigns and be enforceable

as provided herein for an initial term of 75 years from the date this Declaration is recorded and automatically extend for consecutive renewal terms of ten years each unless the Approving Party and the owners of all the Outlots elect in writing to terminate this Declaration; provided, however, that the easements set forth in Article III and Article IV are perpetual and shall survive the expiration and termination of the other provisions of this Declaration. Additionally, without the consent or approval of the owner of any Outlot, the Approving Party shall have the right from time to time to release from the provisions of this Declaration any property or property interest conveyed (by fee, easement or otherwise) to a Governmental Authority or public utility for a public purpose.

Section 14.2 Notice. Any notice required to be delivered to any User under the provisions of this Declaration shall be in writing and shall be deemed to have been properly delivered when either delivered personally or mailed by certified U.S. Mail, return receipt requested, postpaid, in either event, to the last known address of the owner of such applicable property as it appears on the records of the Recorder of Mecklenburg County, North Carolina at the time of such delivery or mailing.

Any notice delivered to Developer under the provisions of this Declaration shall be in writing and shall be deemed to have been properly delivered when either delivered personally or mailed by certified U.S. Mail, return receipt requested, postpaid, addressed to Developer at the following addresses or at such other addresses as Developer may hereafter designate by notice:

Streets of Toringdon, LLC
c/o Continental Real Estate Companies
150 East Broad Street, Suite 800
Columbus, Ohio 43215
Attention: Property Management

Section 14.3 Severability. Invalidation 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.

Section 14.4 Choice of Law; Venue. This instrument shall be governed by and construed in accordance with the laws of the State of North Carolina. The sole venue for any action filed in appropriate courts regarding this Declaration shall be Mecklenburg County, North Carolina, or the appropriate Federal Court having jurisdiction over the parcel.

Section 14.5 Usage. Whenever required by the context of this Declaration, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa, and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter.

Section 14.6 Effective Date. This Declaration shall become effective upon its recordation in the Office of the Recorder of Mecklenberg County, North Carolina.

Section 14.7 No Merger. It is the intention of Developer and this Declaration to permit the possibility that some or all of the Developer Parcel and/or the Outlots may be conveyed and reacquired by Developer or its successors or assigns after the time of recording this Declaration. Such conveyance and reacquisition shall not result in a merger of interest and shall not serve to extinguish all or any portion of this Declaration.

Section 14.8 Non-Exclusive Remedies. All remedies set forth herein are cumulative and not exclusive.

Section 14.9 Headings. The captions preceding the text of each article and section of this Declaration are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Declaration. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Declaration.

Section 14.10 Intentionally Omitted.

Section 14.11 Intentionally Omitted.

Section 14.12 Amendments; Variances. In addition to the right to amend this Declaration as provided in Section 5.1, the Approving Party may amend or supplement the provisions of this Declaration without the joinder or consent of any User, provided that any such amendment, supplement or variance shall not increase the obligations imposed hereby on, or reduce the rights granted herein to, any User without such User's prior written consent. In addition, the Approving Party may, from time to time, without the joinder or consent of any User (i) grant waivers or variances to the provisions of this Declaration for the benefit of one or more Outlots so long as such provision does not expressly run to the benefit of another User; or (ii) prior to the conveyance of an Outlot by Developer to a User, eliminate one or more of such Outlots from the provisions of this Declaration by declaring such Outlot(s) to be part of the Developer Parcel from and after the date such declaration is recorded in the applicable real property records, provided that, if an Outlot is benefited by any easement that is granted hereunder and burdens such eliminated Outlot, then such easement shall survive and burden the Developer Parcel to the same extent and the same terms and conditions as it burdened the eliminated Outlot.

Section 14.13 Estoppel Certificate. Upon written request by the Owner of any Outlot (which shall not be more frequent than two times during any calendar year), Developer shall deliver, in writing, within 30 days after receipt of such request, to such Owner, or its prospective mortgagee or successor an estoppel certificate stating to the best of the its knowledge as of such date:

(i) Whether it knows of any default under this Declaration by the requesting Owner or any of its Permittees, and if there are known defaults, specifying the nature thereof in reasonable detail.

(ii) Whether this Declaration has been assigned, modified or amended in any way by it and if so, then stating the nature thereof in reasonable detail.

(iii) Whether this Declaration is in full force and effect.

(iv) Such estoppel certificate shall act to estop the issuer from asserting a claim or defense against a bona fide encumbrancer or purchaser for value to the extent that such claim or defense is based upon facts known to the issuer as of the date of the estoppel certificate which are contrary to the facts contained therein, and such bona fide purchaser or encumbrancer has acted in reasonable reliance upon such estoppel certificate without knowledge of facts to the contrary. The issuance of an estoppel certificate shall in no event subject the issuer to any liability for the negligent or inadvertent failure of the issuer to disclose correct and/or relevant information.

Section 14.14 Counterparts. This Declaration may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Declaration may be executed and notarized on separate pages, and when attached to this Declaration shall constitute one complete document.

Section 14.15 Negation of Partnership. None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Developer and any Users in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each party shall be considered a separate owner, and no party shall have the right to act as an agent for another party, unless expressly authorized to do so herein or by separate written instrument signed by the party to be charged.

Section 14.16 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Developer Parcel or of any Outlot or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any party hereto shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

Section 14.17 Excusable Delays. Whenever performance is required of any party hereunder, such party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such party, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this section shall not operate to excuse any party from the prompt payment of any monies required by this Declaration.

Section 14.18 Mitigation of Damages. In all situations arising out of this Declaration, each party shall attempt to avoid and mitigate the damages resulting from the conduct of any other party. Each party shall take all reasonable measures to effectuate the provisions of this Declaration.

Section 14.19 Continuation Notwithstanding Breach. No breach of this Declaration shall entitle any party to cancel, rescind, or otherwise terminate this Declaration. However, such limitation shall not affect in any manner any other rights or remedies which a party may have hereunder by reason of any such breach.

Section 14.20 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 hereunder, 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. No waiver by any party of any default under this Declaration shall be effective or binding on such party unless made in writing by such party and no such waiver shall be implied from any omission by a party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Declaration.

Section 14.21 Approval Rights.

(a) With respect to any matter as to which a party has specifically been granted an approval right under this Declaration, unless a contrary intent is expressly provided for (by way of example only, a party agreeing "not to unreasonably withhold its consent or approval"), nothing contained in this Declaration shall limit the right of a party to exercise its business judgment, or act in a subjective manner, or act in its sole discretion or sole judgment, and any such decision shall not be deemed inconsistent with any covenant of good faith and fair dealing which may be implied by law to be part of this Declaration. The parties intend by this Declaration to set forth their entire understanding with respect to the terms, covenants, conditions and standards pursuant to which their obligations are to be judged and their performance measured.

(b) Unless provision is made for a specific time period, each response to a request for an approval or consent required to be considered pursuant to this Declaration shall be given by the party to whom directed within 30 days after receipt thereof. Each disapproval shall be in writing and, subject to Section 14.21(a), the reasons therefor shall be clearly stated. If a response is not given within the required time period, the requested party shall be deemed to have given its approval if the original notice stated in capitalized letters that failure to respond within the applicable time period will be deemed an approval. Notwithstanding anything contained herein to the contrary, the provisions of this section do not apply in any manner or fashion to any request that requires an amendment to this Declaration, such requests being governed solely by the provisions of Section 14.12.

IN WITNESS WHEREOF, Developer has caused this Declaration to be executed to be effective as provided in Section 14.6 hereof.

DEVELOPER:

STREETS OF TORINGDON, LLC

By: _____
Jonathan E. Kass, President

STATE OF OHIO )
) SS:
COUNTY OF FRANKLIN )

The foregoing instrument was acknowledged before me this 21st day of June, 2005, by Jonathan E. Kass, President of Streets of Toringdon, LLC, an Ohio limited liability company, on behalf of such company.

NOTARIAL SEAL STATE OF OHIO

DAVID SHEIDLOWER, Attorney At Law
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

_____
Notary Public

After recording, please return this instrument to:

prepared by

Continental Real Estate Companies
150 East Broad Street, Suite 800
Columbus, Ohio 43215
Attention: David Sheidlower

## SCHEDULE OF EXHIBITS

Exhibit A - Site Plan
Exhibit B - Legal Description of Developer Parcel
Exhibit C - Legal Description of Outlots
Exhibit D - Initial Location of Certain Utility Easements

Exhibit A

Site Plan

(see attachment)

# EXHIBIT A-SITE PLAN
# STREETS OF TORINGDON

"THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS"

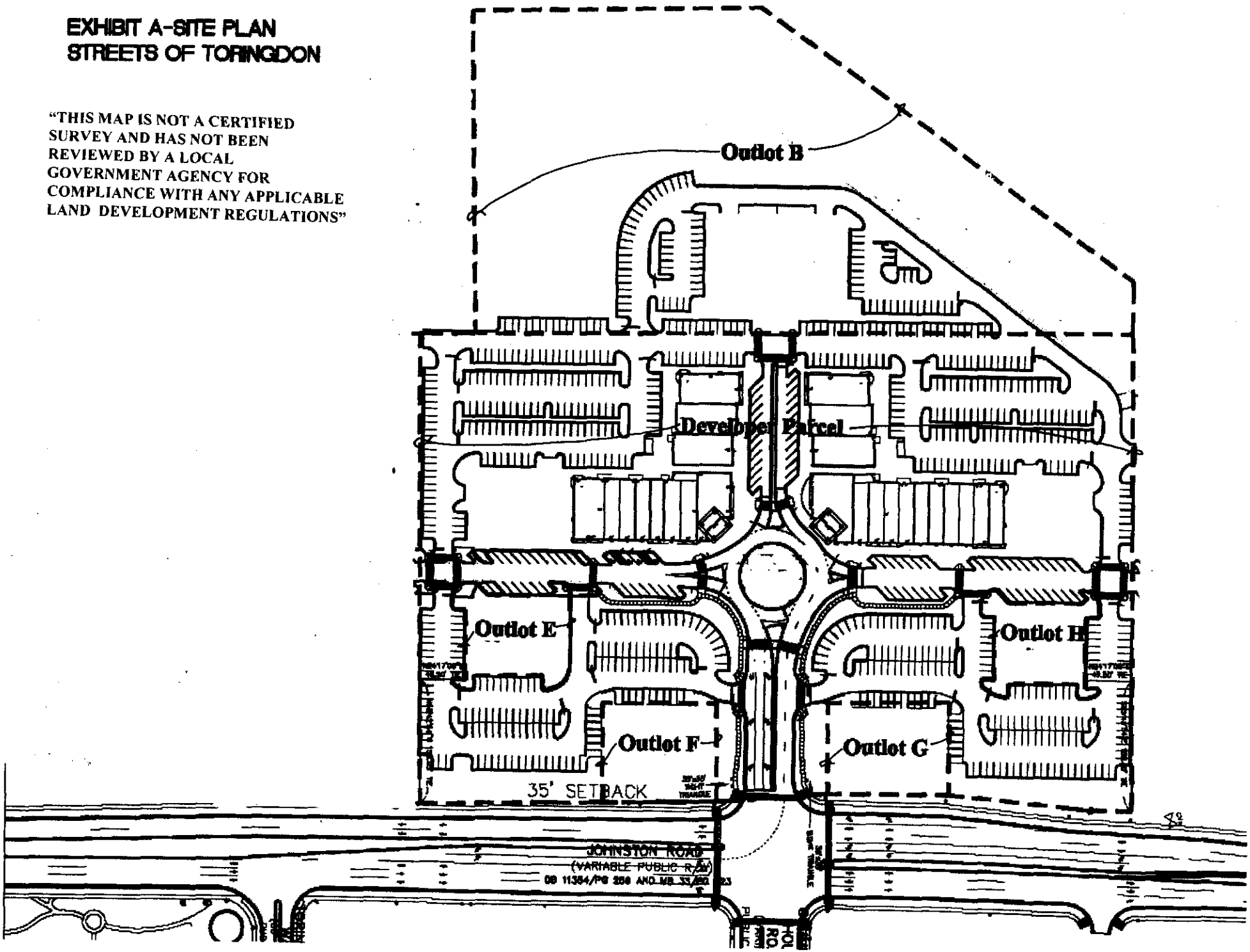

Exhibit B

Legal Description of Developer Parcel

Being all of Lot C, as such lot is delineated on that certain plat entitled "Subdivision of the Streets of Toringdon", of record in Map Book 43, Page 607, of record in the Office of Registrar of Deeds for Mecklenburg County, North Carolina.

Exhibit C

Legal Description of Outlots

Being all of Lots B, E. F, G and H, as such lots are delineated on that certain plat entitled "Subdivision of the Streets of Toringdon", of record in Map Book 43, Page 607, of record in the Office of Registrar of Deeds for Mecklenburg County, North Carolina.

Exhibit D

Initial Location of Certain Utility Easements

(see attachment)

JUDITH A. GIBSON
REGISTER OF DEEDS, MECKLENBURG
COUNTY & COURTS OFFICE BUILDING
720 EAST FOURTH STREET
CHARLOTTE, NC 28202

# PLEASE RETAIN YELLOW TRAILER PAGE

It is part of the recorded document, and must be submitted with original for re-recording and/or cancellation.

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| | |
|---|---|
| **Filed For Registration:** | **06/22/2005 04:07 PM** |
| **Book:** | **RE 18920 Page: 294-325** |
| **Document No.:** | **2005115507** |
| | **RESTR 32 PGS $104.00** |
| **NS:** | **$25.00** |
| **Recorder:** | **LYVANH PHETSARATH** |

**********

**State of North Carolina, County of Mecklenburg**

**The foregoing certificate of DAVID SHEIDLOWER Notary is certified to be correct. This 22 ND of June 2005**

**JUDITH A. GIBSON, REGISTER OF DEEDS By:** Valerie F. White

**A NS (non standard) fee is in accordance with NC G.S. 161-10 (a) (18b)**

**********

***2005115507***