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**Declaration of Easements and Protective Covenants**

By

Derita Concord NC, LLC

Prepared out of state by Steven M. Pecar, Esq.

When recorded, return to:  
Thompson Thrift Development, Inc.  
901 Wabash Ave.  
Suite 300  
Terre Haute, IN 47807  
Attention: Timothy J. Fears, Esq.

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## **DECLARATION OF EASEMENTS AND PROTECTIVE COVENANTS**

**THIS DECLARATION OF EASEMENTS AND PROTECTIVE COVENANTS** (this "**Declaration**") is made and entered into as of 30<sup>th</sup> day of January, 2019, by **DERITA CONCORD NC, LLC**, a Delaware limited liability company, having an office at 901 Wabash Avenue, Suite 300, Terre Haute, IN 47807 (hereinafter referred to as the "**Declarant**").

### **WITNESSETH:**

**WHEREAS**, Declarant is the fee owner of a certain tract of land located in the City of Concord, Counties of Cabarrus and Mecklenburg, State of North Carolina and legally described in Exhibit A attached hereto and made a part hereof, and depicted on Exhibit B (the "**Property**"); and

**WHEREAS**, Declarant has agreed to execute and record this Declaration to establish certain easements, restrictions and protective covenants for the benefit of the Property.

**NOW, THEREFORE**, Declarant hereby further declares that the following covenants, restrictions, conditions, burdens, easements, uses, privileges, charges and liens shall (i) exist at all times hereafter amongst all parties having or acquiring any right, title or interest in any portion of the Property, (ii) be binding upon each owner of all or part of the Property and inure to the benefit of each owner of all or part of the Property, and (iii) run with the land subjected to this Declaration, to be held, sold and conveyed subject thereto.

### **ARTICLE 1**

#### **DEFINITIONS**

- 1.1 **Access Easement Areas**. "Access Easement Areas" shall mean those portions of the Property from time to time intended to be reserved for an easement for the passage of pedestrians and vehicles for the purpose of gaining access from Odell School Road and Carolina Lily Lane. Initially, the Access Easement Areas are the areas currently shown on the Site Plan as the "Initial Access Easement Areas". In no event shall Access Easement Areas include the drive-thru area on a Tract.

- 1.2 **Applicable Laws.** “Applicable Laws” shall mean and include all laws, rules, regulations, orders, ordinances, statutes and other requirements of all federal, state, county and municipal authorities having jurisdiction over the Property.
- 1.3 **Benefitted Parties.** “Benefitted Parties” shall mean, from time to time, the Parties and Occupants and their respective lessees, occupants, subtenants, assignees, mortgagees and licensees of all or any portion of the Property; personnel of utility companies in connection with providing any utility service to any part of the Property; and personnel of any public or quasi-public body in connection with providing service to the Property or any person in the Property, including, but not limited to, police and fire protection, ambulance and other emergency traffic, trash and garbage collection, postal service and delivery service.
- 1.4 **Buildable Area.** “Buildable Area” shall mean only areas within the boundaries of the Property in which Buildings may be constructed. All areas within the Property shall be deemed to be Buildable Area except to the extent that this Declaration provides that an area is reserved for a shared access drive or a sign easement or a utility easement which would be inconsistent with allowing a Building to be constructed thereon, and in the event of any permissible relocation of such non-buildable access drive or easement areas, the relocated drive and/or easement area shall become non-buildable and the vacated non-buildable area shall become Buildable Area if it is not otherwise restricted by the provisions of this Declaration.
- 1.5 **Building.** “Building” shall mean any enclosed structure placed, constructed or located within the Property, which for the purpose of this Declaration shall include any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions.
- 1.6 **Claims.** “Claims” shall mean claims, losses, liabilities, actions, proceedings, costs and expenses (including reasonable attorneys’ fees and costs of suit).
- 1.7 **Developer.** “Developer” shall mean DERITA CONCORD NC, LLC or the then current owner of Lot 3.
- 1.8 **Development Guidelines or Guidelines.** “Development Guidelines” or “Guidelines” shall mean the design and development guidelines and standards and the review and approval procedures prepared and issued from time to time by the Developer for the purposes of assisting Parties and Occupants in preparing, building, landscaping, site and Property plans for the Property. Upon adoption, the Guidelines shall have the same force and effect as if set forth in this Declaration.
- 1.9 **Indemnify.** “Indemnify” shall mean indemnify, protect, hold harmless and defend with counsel designated by the insurer charged with the obligation to defend (or if no insurer is involved, with counsel reasonably acceptable to the Person being defended).
- 1.10 **Interest Rate.** “Interest Rate” shall mean the lesser of (i) three percent (3%) per annum plus the prime rate of interest from time to time published by *The Wall Street Journal* (or that of another publication or of financial institution selected by the Parties if *The Wall Street Journal* shall cease to publish a prime rate) or (ii) the highest rate permitted by law to be paid on such type of obligation.

- 1.11 **Landscape Area**. “Landscape Area” shall mean the portion of the Property shown on the Site Plan as “Lot 5”, which Landscape Area shall not be developed with Buildings and shall be landscaped and maintained in accordance with all Applicable Laws and Development Guidelines.
- 1.12 **Lot(s)**. “Lot(s)” shall mean those portions of the Property intended to be developed with buildings, which Lots are currently shown on the Site Plan as Lots 1 – 5 and identified as “Lot”. Developer shall have the right to further subdivide Lot 3 provided that Lot 3 as so subdivided shall meet the requirements set forth herein and all Applicable Laws regulating subdivision of land and/or lot splits, and each of the lots thus created shall be deemed to be included within the definition of Lot. Developer’s right to further subdivide the Property or any Lots shall not require the consent or approval of any party except only the fee owners of any portion of the Property which is proposed to be further subdivided by Developer’s actions.
- 1.13 **Lot 3**. “Lot 3” shall mean those portions of the Property intended to be developed with a multi-tenant building or multi-tenant buildings, as is currently shown on the Site Plan attached hereto and made a part hereof, and identified as “Lot 3”, and located in the City of Concord, Counties of Cabarrus and Mecklenburg, State of North Carolina.
- 1.14 **Occupant**. “Occupant” shall mean any Person from time to time entitled to the use and occupancy of any portion of the Property under an ownership right or any lease, sublease, license, concession or other similar agreement.
- 1.15 **Party**. “Party” and “Parties” shall mean individually and jointly, respectively, the signatories hereto and their respective successors and assigns who become fee owners of any portion of the Property.
- 1.16 **Period of Developer Control**. The “Period of Developer Control” shall commence with the recording of this Declaration and shall continue as long as Developer owns any portion of developable land in the Property or has a monetary lien or encumbrance on any Tract in the Property, unless and until Developer elects, in its discretion, to transfer, relinquish and/or surrender all of its rights and obligations in this Declaration in the manner set forth in **Section 11.1**.
- 1.17 **Permittee**. “Permittee” shall mean all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Occupants insofar as their activities relate to the use and occupancy of the Property; provided, however, persons engaged in civic, public or political activities, including but not limited to the following activities, shall not be considered to be 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 or charitable purposes; and

- (iv) parading, picketing or demonstrating.
- 1.18 **Person.** “Person” shall mean any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or government entity.
- 1.19 **Property.** “Property” shall mean the property initially shown on the Site Plan, and any improvements situated thereon, as such Property may be expanded from time to time by annexation or reduced pursuant to the provisions of this Declaration. Additionally, Developer may, in accordance with **Section 10.1** below, change or modify the size and dimensions of the Property.
- 1.20 **Signage Criteria.** “Signage Criteria” shall mean the guidelines and standards and the review and approval procedures for signage in the Property attached hereto as **Exhibit C**, as such may be amended from time to time by the Developer.
- 1.21 **Site Plan.** “Site Plan” shall mean that certain site plan for the Property, the current version of which is attached hereto as **Exhibit B**, as such may be amended from time to time by Developer. Developer’s right to amend the Site Plan shall not require the consent or approval of any Party except (i) the fee owners of any Tract which is proposed to be further subdivided by Developer’s actions, or (ii) any Party which may be materially and adversely affected by the Developer’s amendment of the Site Plan.
- 1.22 **Shared Areas.** “Shared Areas” shall mean, collectively, the Storm Drainage System, if any, the Access Easement Areas, and the Landscape Area.
- 1.23 **Shared Areas Expenses.** “Shared Areas Expenses” shall mean the expenses described in **Section 6.2(A)** below.
- 1.24 **Storm Drainage System.** “Storm Drainage System” (if any) shall mean those portions of the Property from time to time intended to be developed with a storm water drainage system, detention and retention ponds, and related facilities.
- 1.25 **Tract.** “Tract” shall mean that portion of the Property owned by a Party.

**ARTICLE 2**

**REAL ESTATE SUBJECT TO THIS DECLARATION**

The Property, each portion thereof, and all improvements thereon shall be held, transferred, sold, conveyed, leased, mortgaged and occupied subject to the terms, provisions, covenants and conditions of this Declaration

**ARTICLE 3**

**EASEMENTS**

**3.1 Ingress and Egress.**

- (A) Declarant hereby declares and reserves for the benefit of the Benefitted Parties, in common with others entitled to use the same, a perpetual, non-exclusive easement for the passage of pedestrians and vehicles and, subject to the restrictions set forth in **Section 5.1**, the parking of vehicles, over and across the Access Easement Areas.
- (B) The easement rights granted under this **Section 3.1** shall be subject to the following reservations:
- (i) Each Party reserves the right to close off the driveways of its Tract for such reasonable periods of time as may be advised by such Party's counsel to prevent the acquisition of prescriptive rights by anyone; and
  - (ii) Each 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 driveway areas of its Tract.
- (C) Notwithstanding the provision of **Section 3.4** below, Declarant hereby declares and reserves for the benefit of the Benefitted Parties, in common with others entitled to use the same, a perpetual, non-exclusive easement for the passage of pedestrians and vehicles over and across the paved driveway portions of any Outot for access from one Lot to the Lots immediately adjacent thereto as depicted on the Site Plan.

3.2 **Utility Easements and Setback Restrictions.** Declarant hereby confirms that each of the Tracts are subject to all utility easements and setback restrictions of record on the date hereof. Declarant hereby declares and reserves for the benefit of each Tract in the Property a perpetual right and easement to install, maintain, repair, replace and operate above and underground utility lines for any necessary utility services over, upon and across any of the other Tracts in the Property (except the portion thereof on which Buildings have or will be constructed) from time to time in connection with the development, redevelopment and/or operation of the Property and Buildings to be constructed therein. Subject to the requirements of this **Section 3.2**, Developer reserves the right to grant appropriate utility easements to the governmental authority or utility company providing service in connection with such Developer's development of its Tract or Tracts making up a portion of the Property. The fee owner or Occupants of each of the Tracts performing or authorizing utility work will promptly repair all damages caused by their employees, agents, contractors or utility companies engaged by them in connection with the construction, reconstruction, maintenance, repair, replacement or removal of any of the utility lines situated within the utility easement areas upon any of the other Tracts. No buildings or other structures shall be permanently erected over or under any of the utility easement areas without the prior written consent of the fee owner of the Tract in question, such consent not to be unreasonably withheld or delayed. All construction activities associated with the installation, maintenance, repair or replacement of utility lines performed by a Party in the utility easement areas shall be performed in accordance with the general requirements set forth in **Section 4.1** of this Declaration.**Stormwater Detention.** Declarant hereby declares and reserves for the benefit of the Benefitted Parties, in common with others entitled to use the same, a perpetual, non-exclusive easement to discharge surface storm drainage and/or runoff from each Tract in the Property (except the

portion thereof on which any Building or other permanent structures have been constructed), and to use the Storm Drainage System constructed in the Property (if any); provided, however, a Party shall not, other than as necessary to construct their improvements, alter or permit to be altered the surface of such Party's Tract or the portion of the Storm Drainage System constructed thereon if such alteration would materially increase the flow of surface water onto any of the Tracts, either in the aggregate or by directing the flow of surface water to a limited area. **Barriers and Traffic Controls.** Except as otherwise set forth in this **Article 3**, and except in the case of emergency or for routine repairs and maintenance, no walls, fences or barriers of any sort or kind shall be constructed or maintained in the Property, or any portion thereof, which shall prevent or impair the use or exercise of any of the easements granted herein, or the free access and movement including, without limitation, pedestrian and vehicular traffic, between the various Tracts; provided, however, reasonable traffic controls as may be necessary to guide and control the orderly flow of traffic may be installed so long as access driveways to the parking areas in the Property or any of the Tracts are not closed or blocked and the traffic circulation pattern of the Property, as depicted on the Site Plan, is not materially changed or affected in any way, unless the prior written approval of the Parties is first obtained.

#### **ARTICLE 4**

### **IMPROVEMENTS IN THE PROPERTY**

- 4.1 **General Requirements.** All construction activities performed within the Property shall be performed in compliance with all Applicable Laws. All construction shall use new materials, and shall be performed in a good, safe, workmanlike manner. No construction activities performed by a Party shall (i) cause any unreasonable increase in the cost of constructing improvements within the balance of the Property; (ii) unreasonably interfere with construction work being performed within the balance of the Property; (iii) unreasonably interfere with the use, occupancy or enjoyment of any part of the Property by any Occupant of the Property or its Permittees; or (iv) cause any Building located within the Property to be in violation of any Applicable Law.
- 4.2 **Buildings.**
- (A) **Design and Construction.** Any Buildings now or hereafter located by a Party or Occupant on the Tracts shall be designed, constructed, and maintained so that the exterior elevation of all four sides shall be architecturally and aesthetically compatible with the other Buildings within the Property and so that building wall footings shall not encroach from one Tract onto another Tract. The design and construction of any new Buildings or improvements to existing Buildings shall be of first-class quality and in compliance with all Applicable Laws and the Development Guidelines established from time to time by the Developer. Any contractor engaged to build improvements within the Property shall be subject to the approval of Developer, in the exercise of its sole and absolute discretion. Prior to construction of any Buildings in the Property, a Party (or Occupant) shall cause to be prepared and shall submit to Developer detailed plans and specifications for a Party's (or Occupant's) work (including all site improvements and landscaping) and such plans and specifications shall be prepared in compliance with all

Applicable Laws. Such plans shall be delivered to Developer (i) with a cover letter with the following statement in large red letters: “FOR DEVELOPER APPROVAL WITHIN TWENTY (20) DAYS,” and (ii) with a notice of any deviations or variances from the Development Guidelines. Developer shall have twenty (20) days after receipt of a Party’s (or Occupant’s) plans and specifications to approve the same, and if Developer fails to object in writing to any portion of a Party’s (or Occupant’s) plans and specifications within such time period, Developer shall be deemed to have approved all such plans and specifications to which Developer did not timely object. Any deviations or variances from the Development Guidelines which were not expressly noted to Developer shall be deemed to be denied. If Developer timely objects in writing to a portion of a Party’s (or Occupant’s) plans and specifications and expressly and specifically identifies the nature of its objections, Developer and a Party (or Occupant) shall endeavor in good faith to revise the plans and specifications to satisfy Developer’s concerns.

- (B) Location. Except as otherwise expressly provided herein, no Building shall be constructed in the Property except within the Buildable Areas.
- (C) Utilities. Each Party (or Occupant, if required under a lease or other occupancy agreement) shall pay the costs of and be responsible for constructing, maintaining and providing the necessary facilities for water, gas, electrical, telephone, sewer services, both sanitary and storm water, and drainage on its Tract. No Party shall be responsible to another for any interruption in utility services or the inability to provide satisfactory service. Each Party shall pay all regular charges for such utility services; provided, however, in the event a Party uses such facilities located on another Party’s Tract to provide such services to its Tract, such Party shall pay for all charges based upon actual use of such facilities. Such Party shall also arrange and pay for a separate meter, if available or required.
- (D) Landscaping. Each Tract shall be landscaped in accordance with all Applicable Laws and Development Guidelines. All landscaping shall be maintained to a standard of maintenance followed in other first-class commercial developments in the Concord, North Carolina area. All landscaping shall be installed in accordance with the plans approved by Developer under Section 4.2(A) above.
- (E) Irrigation Systems. If required by Developer or by applicable rules, regulations and ordinances of the governmental authority having jurisdiction over the Property, each Party, with regard to the Tract owned by such Party, will install in all lawn and landscaped areas an underground sprinkler system for the watering of such lawn and landscaped areas located on the Tract. Each Party agrees that it shall activate the sprinklers for watering of the lawn and landscaped areas on the Party’s Tract at such times as Developer reasonably requests, subject to any limitation set by any applicable governmental agency or utility.
- (F) Mechanics’ Liens. In the event any mechanics’ liens are filed against the Tract of any Party who did not contract for the work, the Party for whom the work was performed, or otherwise causing the lien to be filed, hereby covenants to indemnify



and hold harmless Declarant and all other Parties and Occupants from such liens and further covenants to either pay the same and have it discharged of record, within thirty (30) days of filing, or to take such action to cause it to be bonded and discharged of record from the Tract of such other Party, and in all events agrees to have such lien discharged prior to the foreclosure of such lien.

- (G) Sidewalks, Bike Paths, Walking Trails. In the event that a governmental entity requires sidewalks, bike paths, walking trails, or any other municipally required convenience to be located on a Lot, then the fee owner of the Lot shall be responsible to install the required convenience at such Party's sole cost and expense, not later than thirty (30) days after completion of any Building constructed on the Lot (unless required sooner by local government).
- (H) Development Guidelines. Each Party and Lot shall comply with all additional architectural and development standards adopted and set forth in the Development Guidelines from time to time. In the event of a conflict between this Declaration and the Development Guidelines, the more restrictive provision shall control.
- (I) Each Party shall, and shall require its Occupants to, report to Developer the cost of any and all Buildings and other improvements constructed by such Party and/or an Occupant upon such Party's Tract as is necessary for Developer's reporting and compliance requirement for any incentives, grants, incremental financing, or other awards made in favor of the Property.

#### 4.3 Building Height and Floor Area Restrictions.

- (A) No Building constructed on an Lot shall exceed twenty-six (26) feet in height measured from the finished floor elevation of such store plus an additional three (3) feet in height measured from the finished floor elevation of such store for architectural features and rooftop equipment not to exceed twenty-five percent (25%) of any façade of such building.
- (B) At all times there shall be no more than one (1) Building per Lot without Developer's prior written consent, which may be withheld in Developer's sole and absolute discretion. Such Building shall be a Building designed for a use permitted under Article 7 below.

#### 4.4 Expansions. A Party or Occupant of a Tract may expand its Building on its Tract, provided that:

- (i) Such Party or Occupant provides Developer with copies of its plans and specifications at least thirty (30) days prior to the start of construction and receives Developer's written approval of same prior to construction; and
- (ii) The expansion is architecturally harmonious with the other Buildings in the Property; and

(iii) The Building, as expanded by the proposed expansion, will be in compliance with this Declaration and all Applicable Laws, and will not violate or contravene any other instrument of record which would restrict such expansion in any way.

4.5 **Zoning.** Except as otherwise expressly provided herein, building lines, setbacks, use and other matters related to construction of improvements in the Property shall be subject to the applicable zoning ordinances and building codes, and such other applicable rules, regulations and ordinances of the governmental authority having jurisdiction over the Property.

## ARTICLE 5

### PARKING AND SIGN REQUIREMENTS

5.1 **Parking Area.** The parking area on each Tract shall contain sufficient ground-level, parking spaces in order to meet the reasonably foreseeable parking needs of such Tract and to comply with all Applicable Laws. Unless expressly permitted or provided for by Developer, there shall be no cross-parking permitted between the Tracts.

5.2 **Center Monument Signs.** Subject to obtaining the necessary approvals of all governmental agencies, and in accordance with all Applicable Laws, (i) Developer shall construct and erect one (1) internally illuminated freestanding monument sign on Lot 3 (the "Lot 3 Monument Sign"), and (ii) the owner of each other Lot may construct one (1) internally illuminated freestanding monument sign on such Lot (the Lot 3 Monument Sign and the monument signs on any other Lot shall collectively be referred to as the "**Monument Signs**") at the approximate locations set forth on the Site Plan, and identified as the "Monument Signs" on such Site Plan. The panel positions of the Monument Sign on Lot 3 shall be used to identify Occupants of the Property, as spaces are available, and as designated in Developer's sole discretion. The fee owners of each Lot shall cause the Monument Sign on such Lot to be operated, maintained and repaired on a first-class basis. Each Occupant of Lot 3 who has a sign panel located thereon shall be responsible for its Pro Rata Share of the costs of such operation, maintenance and repair of any sign on which they have a panel. For purposes of this **Section 5.2**, an Occupant's "Pro Rata Share" shall be determined by dividing the sign area of the Occupant's sign panels by the sign area of all sign panels that may be affixed to the Monument Signs. Each Occupant shall otherwise be responsible for the maintenance and repair of its sign panel on the Lot 3 Monument Sign. An easement is hereby declared and reserved over the sign easement area for the placement, operation, maintenance and repair of the Monument Signs. All parties shall comply with the Development Guidelines and the Signage Criteria with regard to any and all signage for the Property, including building signage, banners, and monument/pylon signs.

## ARTICLE 6

## MAINTENANCE

- 6.1 **Maintenance of Tracts.** Developer (or any Party obligated by a purchase agreement, lease or other document providing ownership or occupancy to such Party, with respect to its Tract), shall maintain its Tract, or cause its Tract to be maintained in a safe and attractive condition and in a good state of repair, including, without limitation, all regular landscaping, any stormwater, pipes, catch basins and stormwater detention facilities for the benefit of all of the Tracts in the Property. The unimproved portions of the Tracts shall be mowed regularly and kept litter-free. The minimum standard of maintenance for the improved portions of the Tracts shall be comparable to the standard of maintenance followed in other first-class commercial developments of comparable size in Concord, North Carolina; notwithstanding the foregoing, however, the Tracts shall be operated, maintained and repaired in compliance with all Applicable Laws. Without limiting the generality of the foregoing, the operation, maintenance and repair obligation shall include, without limitation, the following:
- (a) maintaining all paved surfaces and curbs in a smooth and evenly covered condition, including, without limitation, replacing base, skin patching, resealing and resurfacing;
  - (b) periodic removal of all papers, debris, sand, filth and refuse, including periodic vacuuming and broom sweeping to the extent necessary to keep the Tract in a first-class, clean and orderly condition (sweeping shall be performed at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Tract);
  - (c) removal of snow and ice from all driveway areas, parking areas and sidewalks (snow shall be plowed as soon as a two-inch accumulation occurs and replowed as necessary to maintain less than a two-inch accumulation at all times; upon cessation of the snowfall, all paved surfaces shall be plowed to the paved surface);
  - (d) maintaining, cleaning, repairing and replacing (as necessary) directional, stop and handicapped parking signs and markers; restriping parking lots and drive lanes as necessary to maintain parking space designation and traffic direction; and keeping clearly marked fire lanes, loading zones, no parking areas and pedestrian crosswalks;
  - (e) maintaining, cleaning, repairing and replacing (as necessary) exterior lighting facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers;
  - (f) maintaining and replacing (as necessary) all landscape plantings, trees and shrubs, including those adjacent to the exterior walls of Buildings, in an attractive and thriving condition, trimmed and weed free; maintaining and replacing (as necessary) landscape planters, including those adjacent to exterior walls of Buildings; and

- (g) maintaining, cleaning, repairing and replacing (as necessary) any and all utility lines situated in the utility easement areas upon a Tract. Each Party shall be responsible for notifying the appropriate utility provider of any failure of utility provider's equipment resident upon or utility services provided to said Party's Tract.

## 6.2 Shared Areas.

- (A) Expenses. The Shared Areas shall be maintained by the Developer in a manner consistent with the standards of maintenance set forth in **Section 6.1** above. Subject to the paragraphs below, Parties shall pay their proportionate share of the expenses incurred in connection with the maintenance of the Shared Areas, including any capital expenditures that become necessary with respect to the Shared Areas, any real estate taxes paid with respect to the Shared Areas and any premiums on insurance maintained with respect to the Shared Areas (collectively, the "**Shared Areas Expenses**"). The Developer may appoint a third party as an agent to maintain the Shared Areas of the Property in the manner as described above. The Developer or said third party may receive a fee not to exceed fifteen percent (15%) of the Shared Areas Expenses incurred in connection with the maintenance of the Shared Areas to cover supervision, management, accounting and similar fees, which sums are to be included in the general maintenance expense to be paid on a proportionate basis by the Parties.
- (B) Proportionate Share. Each Party's respective proportionate share of Shared Areas Expenses shall be determined by dividing the number of square footage of such Party's Tract by the total number of square footage of the Property. All expenses shall be due and payable as provided below in **Section 6.2(C)**.
- (C) Estimated payments. Each Party shall pay to the Developer an estimated payment toward the proportionate share of the Shared Areas Expenses that such owner is obligated to pay under the terms of this Declaration. As a newly constructed Property, the initial estimated monthly amount for calendar year 2018, for all Parties shall be based on Developer's reasonably estimated budget based on fees paid in similar sized and structured retail developments. After the first full calendar year of Shared Areas Expenses being incurred for the Property, the Developer shall make a determination of whether the amount of estimated payments accurately reflects the actual cost experience and advise the Party's accordingly. The first payment shall be due the first month after a Party acquires title to the Tract and it shall on the first day of each month thereafter pay the fee as estimated by Developer. At the end of each calendar year Developer shall determine the actual share that the Party is obligated to pay. If the amount is more than the estimated amounts paid, then the Developer shall send a statement to the Party for such amount and the Party shall within 30 days thereafter pay such amount. Any failure to make any payment on a timely basis shall constitute a default hereunder, as set forth in **Section 9.1** below. If the Party has paid more than what it should have paid, then Developer shall send a statement to the Party setting forth the credit to be applied against future payments.

- (D) **Audit.** A Party shall have the right, at its sole cost and expense, through its agents and representatives, upon prior written notice to Developer to audit and inspect the books and records of Developer (the “**Shared Areas Expense Audit**”) with respect to the Shared Areas Expenses for up to six (6) months after the year in which the Shared Areas Expenses were incurred. The failure of a Party to conduct a Shared Areas Expense Audit shall not, during the time an audit may be requested, constitute a waiver of any rights a Party may have at law or in equity to an accounting or otherwise, provided that any such right that may exist shall cease six (6) months after the close of each such year. The Shared Areas Expense Audit shall take place at such time and locations as may be reasonably determined by Developer, and a Party shall have such audit right only once with respect to the Shared Areas Expenses charged in any calendar year. The Shared Areas Expense Audit shall be completed and the results delivered to Developer within sixty (60) days after notice to Developer regarding a Party’s request for a Shared Areas Expense Audit. If the parties agree that an error in the amount of Shared Areas Expenses billed to Party has been made, there shall be a recalculation of such Party’s Shared Areas Expenses, and the appropriate readjustment between Developer and the Party shall be made within thirty (30) days after delivery of the results of such audit to Developer. If the parties cannot agree, the matter shall be resolved pursuant to binding arbitration.

- 6.3 **Buildings.** Each Party covenants and agrees to maintain and keep the exterior portion of the buildings located on its Tract in first-class condition and state of repair in accordance with standards observed by first-class commercial developments in Concord, North Carolina, in compliance with all governmental requirements, and in compliance with the provisions of this Declaration. Each Party further agrees to store all trash and garbage on its Tract in adequate containers, to locate such containers so that they are not readily visible from the parking area, and to arrange for regular removal of such trash or garbage. Trash containers and dumpsters shall be enclosed with opaque gates. If trash enclosures are shared by more than one Tract, the users of such trash enclosure shall share of the costs of trash and recycling service based on the gross leasable area of the users premises compared to the total gross leasable area of all users sharing the services. Design of all enclosures shall be included in design drawings submitted to Developer for its approval. All improvements in the Property shall be repaired or replaced with materials of a quality which is at least equal to the quality of the materials being repaired or replaced.

- 6.4 **Repair of Casualty Damage.** If a Building is damaged by fire or other casualty (whether insured or not), the fee owner of the Building shall, subject to governmental regulations and/or insurance adjustment delay, promptly remove the debris resulting from such event and provide a sightly barrier, and within a reasonable time thereafter shall perform one of the following alternatives:

- (A) the fee owner of the Building shall repair or restore the Building to a complete unit, such repair or restoration to be performed in accordance with all applicable provisions of this Declaration;

- (B) the fee owner of the Building shall erect another Building in such location, such construction to be performed in accordance with all applicable provisions of this Declaration; or
- (C) the fee owner of the Building shall demolish the damaged portion and/or the balance of the Building and restore the cleared area to either a hard surface condition or a landscaped condition.

## ARTICLE 7

### USE RESTRICTIONS

- 7.1 **Permitted Uses.** No portion of the Property shall be used for purposes other than retail sales, offices, restaurants, entertainment or other commercial purposes. No use shall be permitted in the Property which is inconsistent with the operation of a first-class commercial development. Notwithstanding that any proposed use might otherwise be in compliance with this Declaration and all Applicable Laws, the uses of all Tracts, including all activities carried out thereon, and any changes in use shall in each instance be subject to the advance written approval of the approval of Developer during the Period of Developer's Control, and the subsequent Declarant, thereafter.
- 7.2 **Prohibited Uses.** Without limiting the generality of the foregoing, the following uses shall not be permitted in the Property.
- (A) So long as Earth Fare continues to operate its store at 8885 Christenbury Pkwy, Concord, NC 28027, any grocery store, natural foods store, natural pharmacy, vitamin store, health food store, delicatessen selling meats or cheese by the pound, or a store with a department selling groceries, meats, fish, fruits, vegetables, produce, dairy products, health and beauty aids, health care products, cosmetics, beer, wine and/or deli items. Notwithstanding the foregoing, these restrictions shall not be deemed to prohibit (i) a small format store with a primary use of health and beauty products, such as, without limitation, Sally Beauty, health care, cosmetics (such as, without limitation, Sephora, MAC or similar concepts) or (ii) a deli (such as, without limitation, Jersey Mike's, Jimmy John's, Subway or similar concepts), provided, however, in no event shall any such deli offer or sell meat and/or cheese by the pound.
  - (B) Warehouse, storage or for any assembling, manufacturing, refining, smelting, agricultural or mining operation.
  - (C) "Second-hand" store whose principal business is selling used merchandise, thrift shops, salvation army type stores, and similar businesses; provided, however, the foregoing restriction shall not prohibit national or regional chains such as Goodwill, Play It Again Sport, Play N Trade, Plato's Closet and Once Upon a Child;
  - (D) Mobile home park, trailer court, labor camp, junk yard, or stock yard (except that this provision shall not prohibit the temporary use of construction trailers during any periods of construction, reconstruction or maintenance);

- (E) Dumping, disposing, incinerating, or reducing of garbage (exclusive of dumpsters for the temporary storage of garbage and any garbage compactors, in each case which are regularly emptied so as to minimize offensive odors);
- (F) Fire, going out of business, relocation, bankruptcy or similar sales (unless pursuant to court order);
- (G) Central laundry, dry cleaning plant or processing facility, or Laundromat; provided, however, this restriction shall not apply to (i) any dry cleaning facility providing on-site service oriented to pickup and delivery by the ultimate consumer, including, nominal supporting facilities, or (ii) laundry facilities for any Occupant of the Property for such Occupant's own towels, lines and uniforms;
- (H) Selling or leasing new or used automobiles or trucks trailers;
- (I) Any bar (unless part of a sit down restaurant or multi-use entertainment facility, such as Dave & Busters, Main Event, etc.) dance hall, discotheque, nightclub, amusement gallery, gymnasium or video game room (except for a family-friendly video game room as an incidental use to a use otherwise permitted under this Declaration), gambling or off-track betting parlor; provided, however, the foregoing restriction shall not prohibit the operation of family-oriented restaurants with ancillary amusement facilities such as "Chuck E. Cheese", or prohibit a gymnasium in connection with a health club or athletic facility, or prohibit an arcade in connection with a multi-use entertainment facility.
- (J) Animal raising or boarding facilities; provided, however, this restriction shall not prohibit pet shop retailers with a portion of their space dedicated for such purposes such as PetSmart and Petco, or veterinary offices which board animals overnight;
- (K) Funeral home or mortuary;
- (L) Any establishment which stocks, displays, sells, rents or offers for sale or rent any (i) pornographic material [except that (a) this restriction shall not prohibit the operation of a bookstore or a video store which carries a broad inventory of books or videos and other materials directed towards the interest of the general public, as opposed to a specific segment thereof and, (b) provided there are no other restrictions in place prohibiting such use, this restriction shall not prohibit the ancillary sale of pornographic materials sold in a convenience store, provided necessary precautions are taken to assure that such pornographic materials are sealed and are not accessible to or visible to underage customers]; or (ii) any merchandise or material commonly used or intended for use with or in consumption of any narcotic, dangerous drug or other controlled substance, including without limitation, any hashish pipe, water pipe, bong, cilium, pipe screens, rolling papers, rolling devices, coke spoons or roach clips;
- (M) Flea market;

- (N) Operation whose principal use is a massage parlor; provided this shall not prohibit "Massage Envy" or similar therapeutic massage retailer operating in a first-class manner, or massages in connection with a health club, an athletic facility or a professional salon or spa that offers massages by a licensed masseuse as a service in addition to other traditional salon and spa services;
- (O) Living quarters; sleeping apartments or lodging rooms, other than market rate luxury apartments as approved by Developer in its sole discretion;
- (P) Church, school, or religious reading room; provided, however, the foregoing restriction shall not prohibit businesses similar to Sylvan Learning Center, Kumon Learning Centers, driver's education, day cares and driving schools, or charter schools;
- (Q) Automotive service and repair provided this shall not prohibit the retail sale of automobile or other vehicular tires, wheels and related accessories, and the removal, replacement and installation thereof, or the sale of automotive parts and supplies and the repair, service and maintenance of automobiles, or oil change or quick lube facilities, as long as all such work to be performed is done so within the Building. Further, no parking or storage of vehicles outside of the Building shall be permitted for more than 48 hours; and no undrivable vehicles with work in progress shall be permitted to be stored or placed outside of the Building after normal business hours; provided, however, the foregoing restriction shall not prohibit national or regional car care chains such as Meineke or Firestone;
- (R) Any business or operation which creates a public or private nuisance, noise, or causes emission of dust, odor, smoke or gases (except that this restriction shall not prohibit the operation of a restaurant, gas station, or convenience store that is otherwise operated in compliance with all Applicable Laws); and
- (S) Any building, improvement or use which violates any applicable zoning ordinance or any other Applicable Laws.

7.3 **Hazardous Materials.** No Party shall use or permit the use of Hazardous Materials (as hereinafter defined) on, about, under or in the Property, except in the ordinary course of its usual and ordinary business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws (as hereinafter defined). Each Party shall Indemnify the other Parties from and against all Claims, including, but not limited to, costs of investigation, litigation and remedial response arising out of any hazardous Materials used or permitted to be used by such Party, whether or not in the ordinary course of business. "Hazardous Materials" shall mean petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law. "Environmental Laws" shall mean all laws which relate to or deal with human health or the environment, all as may be amended from time to time.



## ARTICLE 8

### INSURANCE REQUIREMENTS

#### 8.1 Commercial General Liability Insurance.

(A) Each Party shall maintain or cause to be maintained in full force and effect commercial general liability insurance with a combined single limit of liability of not less than Two Million Dollars (\$2,000,000.00) for bodily injury, personal injury and property damage arising out of any one occurrence and a commercial umbrella policy with a minimum additional coverage of One Million Dollars. (\$1,000,000).

(B) Each Party shall Indemnify each of the other Parties from and against all Claims asserted or incurred in connection with or arising from or as a result of the death or injury of any Person or damage to the property of any Person which shall occur on the Tract of such Party, except to the extent such claims are caused by the negligence or the willful act or omission of the indemnified Person or its agents or employees.

#### 8.2 Insurance During Construction. Each Party, prior to commencing any construction activities within the Property, shall obtain or require its contractor to obtain, thereafter maintain so long as such construction activity is occurring and provide Developer with certificates of insurance naming Developer as an additional insured on a policy or policies of insurance providing at least the minimum insurance coverages set forth below:

(i) Workers' compensation and employer's liability insurance:

(a) Workers' compensation insurance as required by any applicable Law.

(b) Employer's liability insurance in the amount of \$300,000 each accident for bodily injury, \$500,000 policy limit for bodily injury by disease and \$300,000 each employee for bodily injury by disease.

(ii) Commercial general liability insurance covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability and coverages:

(a) Required coverages:

(1) Premises and Operations;

(2) Contractual Liability, insuring the indemnity obligations assumed by the contractor under the contract documents;

(3) Broad Form Property Damage (including Completed Operations);

(4) Explosion, Collapse and Underground (“XCU”) Hazards;  
and

(5) Personal Injury Liability.

(b) Minimum limits of liability:

(1) \$1,000,000 each occurrence (for bodily injury and property damage);

(2) \$1,000,000 for Personal Injury Liability

(3) \$1,000,000 aggregate for Products and Completed Operations; and

(4) \$2,000,000 general aggregate.

(c) Automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired, and non-owned automobiles with limits of liability which shall be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage combined.

### 8.3 Casualty Loss Insurance.

(A) Effective upon the commencement of construction of any Building on its Tract and so long as such Building exists, a Party shall carry, or cause to be carried, property insurance providing insurance against loss or damage by fire, lightning, and such other risks as are from time-to-time included in “extended coverage” endorsements in the State of North Carolina, in an amount and form so that the proceeds thereof are sufficient to provide for actual replacement in full of the Building and improvements (said amount may exclude foundation and excavation costs and costs of underground flues, pipes and drains).

(B) Each Party hereby releases and waives for itself, and each Person claiming by, through or under it, each other Party from any liability for any loss or damage to all property of such Party located upon any portion of the Property, which loss or damage is of the type generally covered by the insurance required to be maintained under Section 8.3(A).

## ARTICLE 9

### DEFAULT

9.1 Default. A Party shall have committed a default under this Declaration if such Party fails to observe or perform any of the covenants, conditions or obligations of this Declaration within thirty (30) days after issuance of a notice by the fee owner of any other Tract specifying the nature of the default claimed (or if such default is a failure to pay an amount

due hereunder, ten (10) days) after issuance of a notice by the fee owner of any other Tract specifying the nature of the default claimed); provided, however, that if the failure set forth in such notice is other than a failure to pay fees due, and is such that it requires more than thirty (30) days to correct, such Party shall not be deemed to be in default hereunder if such Party (i) promptly and diligently commences curing the failure within thirty (30) days after receipt of notice thereof and (ii) diligently prosecutes the cure to completion following the expiration of the original thirty (30) day period set forth herein. In the event any payment default is not cured within the time provided, the delinquent party shall pay an interest charge to the party owed such amount in the amount of five percent (5%) of such overdue amount. If such amount is still unpaid thirty (30) days after the expiration of the cure period, such unpaid amount shall bear interest from the due date thereof to the date of payment at the rate of twelve percent (12%) per annum.

## 9.2 **Right to Cure.**

- (A) With respect to any default under **Section 9.1** that continues beyond the cure period provided for in **Section 9.1**, a Party shall have the right, 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 if the default shall constitute an emergency condition, a 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.
- (B) If a Party shall cure a default, the defaulting Party shall reimburse the curing Party, as the case may be, for all costs and expenses incurred in connection with such curative action, plus interest at the Interest Rate within thirty (30) days after receipt of demand therefore, together with reasonable documentation supporting the expenditures made.
- (C) To effectuate any such cure, a Party shall have the right to enter upon the Tract of the defaulting Party to perform any necessary work or furnish any necessary materials or services to cure the default of the defaulting Party.

## 9.3 **Lien Rights.**

- (A) Costs and expenses accruing and/or assessed pursuant to **Section 9.2** shall be secured by and constitute a lien against the Tract of the defaulting Party. The lien shall attach and take effect only upon recordation of a claim of lien in the official real estate records of the County of the State in which the Property is located. 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;

- (iii) A description of the work performed and the amount of unpaid fees and expenses which have given rise to the claim of lien and a statement itemizing the amount thereof; and
  - (iv) A statement that the lien is claimed pursuant to the provisions of this Declaration, reciting the date of recordation and the recorded document number (or book and page) hereof.
- (B) The claim of lien shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the defaulting Party. The lien so claimed 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 or mechanic's lien under the applicable provisions of the law of the State in which the Property is located. The lien shall be subject and subordinate to any mortgages or deeds of trust which are of record on or before the date on which the claim of lien is placed of record.
- 9.4 **Costs of Enforcement.** If a Party brings an action at law or in equity to enforce or interpret this Declaration, the prevailing party in such action shall be entitled to recover reasonable attorney's fees and court costs and expert witness fees for all stages of litigation, including, but not limited to appellate proceedings, in addition to any other remedy granted.
- 9.5 **No Waiver.** The failure of a 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 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 of any default under this Declaration shall be effective or binding unless made in writing and no such waiver shall be implied from any omission 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 or any default under any provision of this Declaration shall not be deemed to be a waiver of any subsequent default in the performance or the same provision or any other term or provision contained in this Declaration.

## **ARTICLE 10**

### **RESERVED RIGHTS OF DEVELOPER**

- 10.1 **Right to Complete Development of the Property.** During the Period of Developer Control, Developer shall have, and hereby reserves, the right (i) to change or modify and add to or subtract from the size and dimensions of the Property and the size, shape, location and arrangement of the Access Easement Areas and/or Storm Drainage System, except that the size and location of the Initial Access Easement Area will not be materially adversely changed without the consent of the Parties, which consent shall not be unreasonably withheld; (ii) to subdivide or resubdivide or otherwise split or combine any portion of the Property or otherwise to complete development of Tracts; (iii) to construct or alter improvements on any Tract owned by Developer; (iv) to maintain an office for

construction, sales, promotion or leasing purposes or other similar facilities on any Tract owned by Developer; and (v) to excavate, cut, fill or grade any Tract owned by Developer, or to construct, alter, demolish or replace or renovate any improvements owned by Developer or to alter its construction plans or design or to rezone or amend the Site Plan or any development documents agreed to by Developer and the City of Concord, and to permit any activity, use or improvement by Developer on any Tract owned by Developer.

- 10.2 **Developer's Right to Grant Additional Easements.** During the Period of Developer Control, Developer shall have, and hereby reserves the right to grant or create, temporary or permanent easements from time to time for construction, access, utilities, signs, drainage and other purposes for the development and sale of the Property in, on, under, over and across any Tracts or other portions of the Property owned by Developer.
- 10.3 **Reserved Rights Do Not Create Obligations.** Anything in this **Article 10** to the contrary notwithstanding, the foregoing rights in favor of Developer shall not in any way be construed as creating any obligation on the part of Developer to exercise any such rights or to perform any of the activities, construct any improvements, convey any property or grant any easements referred to in this **Article 10**.
- 10.4 **Limitation on Reserved Rights.** Anything in this **Article 10** to the contrary notwithstanding, Developer's exercise of the foregoing rights referred to in this **Article 10** shall not: (i) eliminate or materially limit ingress and egress to and from any Tract; (ii) eliminate or materially limit utility access to any Tract; (iii) materially and negatively decrease visibility to any Building upon a Party's Tract; (iv) otherwise materially increase the obligations or decrease the rights of a Party to use of its Tract which is otherwise permitted hereunder.

## **ARTICLE 11**

### **MISCELLANEOUS**

- 11.1 **Assignment of Developer's Rights and Duties.** Any and all of the rights, powers and reservations of Developer herein contained may be assigned by Developer from time to time, in its discretion, to any Person who will assume the duties of Developer pertaining to the particular rights, powers and reservations assigned. Upon such assignment, any such Person assuming such duties (and its heirs, successors and assigns) shall have, to the extent of such assignment, the same rights and powers and shall be subject to the same obligations and duties as are given to and assumed by Developer in this Declaration. Any assignment made under this **Section 11.1** shall be in recordable form and shall be recorded in the real estate records of the County in which the Property is located. So long as the rights, powers and reservations of Developer have been assigned as provided for herein, Developer may temporarily or permanently relieve itself of all or a portion of its rights and obligations under this Declaration by filing in the real estate records of the County in which the Property is located a notice stating that Developer has surrendered the rights and obligations specified therein.

- 11.2 **Notices.** All notices, demands, requests (collectively, “**notices**”) required or permitted to be given under this Declaration must be in writing and shall be deemed to have been given as of the date such notice is (i) delivered to the party intended, (ii) delivered to the last known address of the party intended, or (iii) rejected at the last known address of the party intended, provided such notice was sent by a nationally recognized overnight delivery service or by United States certified or registered mail, postage prepaid.
- 11.3 **Covenants Run with the Land.** The terms of this Declaration shall constitute covenants running with the land and shall inure to the benefit of all Parties, and their respective successors and assigns. The terms of this Declaration shall be binding on all Parties and all persons claiming under them until ninety-nine (99) years from the date hereof, at which time said covenants or restrictions shall be automatically extended for successive periods of ten (10) years unless changed by written agreement of all then owners of all Tracts. This Declaration is not intended to supersede, modify, amend or otherwise change the provisions of any prior instrument affecting the land burdened hereby.
- 11.4 **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.
- 11.5 **Amendments, Termination or Modification.** Prior to the expiration of the Period of Developer Control, Developer may, without the consent or approval of any Party, terminate, modify, or amend this Declaration with respect to all or any portion of the Property by the terms of a written instrument recorded in the real estate records of the County in which the Property is located; provided, however, if such amendment, termination or modification shall materially adversely affect the use, operation or visibility of any Party’s business within the Property, such Party’s reasonable consent, not to be unreasonably withheld or delayed, shall be required. Thereafter, this Declaration may be amended by, and only by, a written agreement signed by the then fee owners of the Tracts, and shall be effective only when recorded in the real estate records of the County in which the Property is located.
- 11.6 **Captions.** The captions preceding the text of each article and section are included only for convenience of reference. 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 this Declaration.
- 11.7 **Perpetuities.** If and to the extent that any of the covenants herein would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provisions concerned shall continue and endure only until the expiration of a period of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants of Barack Obama, the forty-fourth President of the United State of America, living at the date of this Declaration.

- 11.8 **Governing Law.** This Declaration shall be construed and applied in accordance with the laws of the State of North Carolina.
- 11.9 **Term of this Declaration.** This Declaration shall be effective as of the date first above written and shall continue in full force and effect for the term set forth in **Section 11.3**; provided, however, that the easements referred to in **Article 2** which are specified as being perpetual shall continue in full force and effect as provided therein. Upon termination of this Declaration, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Declaration, except as the same relate to the easements mentioned above, shall terminate and have no further force or effect; provided, however, that the termination of this Declaration shall not limit or affect any remedy at law or in equity with respect to any liability or obligation arising or to be performed under this Declaration prior to the date of such termination.
- 11.10 **No Dedication to Public.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property or the Tract to the general public or for any public use or purpose whatsoever; it being the intent of the Declarant that this Declaration is for the exclusive benefit of the Benefitted Parties and their respective Permittees, and that nothing in this Declaration, express or implied, shall confer upon any Person, other than the Benefitted Parties, any rights or remedies under or by reason of this Declaration.
- 11.11 **Taxes.** Each Party shall pay, or cause to be paid, prior to delinquency, all taxes and assessments with respect to its Tract, the Building and other improvements located thereon, and any personal property owned or leased by such Party in the Property; provided, however, if the taxes or assessments or any part thereof may be paid in installments, the Party responsible therefore may pay each such installment as and when the same becomes due and payable. Nothing contained in this section shall prevent any party from contesting at its cost and expense any such taxes and assessments with respect to its Tract in any manner such Party elects, so long as such contest is maintained with reasonable diligence and in good faith. At the time as such contest is concluded (allowing for appeal to the highest appellate court), the contesting Party shall promptly pay all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.
- 11.12 **Estoppel Certificates.** Any Party may request, within thirty (30) days from the receipt of written notice given to another Party, that such Party certify that the Declaration is unmodified and in full force and effect (or, if there have been any modifications, stating the modifications); that there are no defaults (or if any defaults, whether or not there are any then existing offsets or defenses against the enforcement of such defaults); and such other matters as may be reasonably requested by the requesting Party.

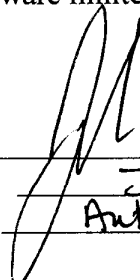
[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGES TO

DECLARATION OF EASEMENTS AND PROTECTIVE COVENANTS

IN WITNESS WHEREOF, the Parties have caused this Declaration to be executed effective as of the day and year first above written.

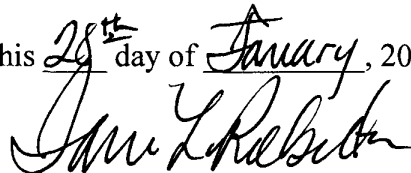
DERITA CONCORD NC, LLC,  
a Delaware limited liability company

By:   
Name: John G Thompson  
Title: Authorized Representative

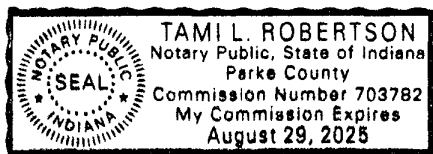
STATE OF INDIANA        )  
  ) SS  
COUNTY OF VIGO        )

Before me the undersigned, a Notary Public for Vigo County, State of Indiana, personally appeared John G Thompson, to me known to be the Authorized Representative of **DERITA CONCORD NC, LLC**, a Delaware limited liability company to me known to be the person who executed the foregoing instrument and acknowledged the same

WITNESS my hand and Notarial Seal this 29<sup>th</sup> day of January, 2019.



Notary Public



I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Timothy E. Fears, Attorney

This instrument prepared by Timothy E. Fears, SVP, Legal Affairs, Thompson Thrift, 901 Wabash Avenue, Suite 300, Terre Haute, IN 47807, (812) 235-5959.



**EXHIBIT A****LEGAL DESCRIPTION OF PROPERTY**

ALL of those certain pieces, parcels or tracts of land lying, situate and being in both Mallard Creek Township, County of Mecklenburg, State of North Carolina and No. 2 Township, County of Cabarrus, State of North Carolina, and being more particularly described as follows, to wit:

COMMENCING at North Carolina Geodetic Survey monument "QUAY", having North Carolina State Plane Coordinates of  $X = 1,485,005.72$  and  $Y = 593,980.93$  US Survey Feet, NAD 83(2011) and thence running North  $69^{\circ} 13' 19''$  West, a ground distance of 1,803.60 feet (grid distance of 1,803.32 feet) to a  $5/8''$  iron rebar found at the intersection of the northwestern right-of-way of Odell School Road with the northeastern right-of-way of Carolina Lily Lane, said iron rebar being the point and place of BEGINNING;

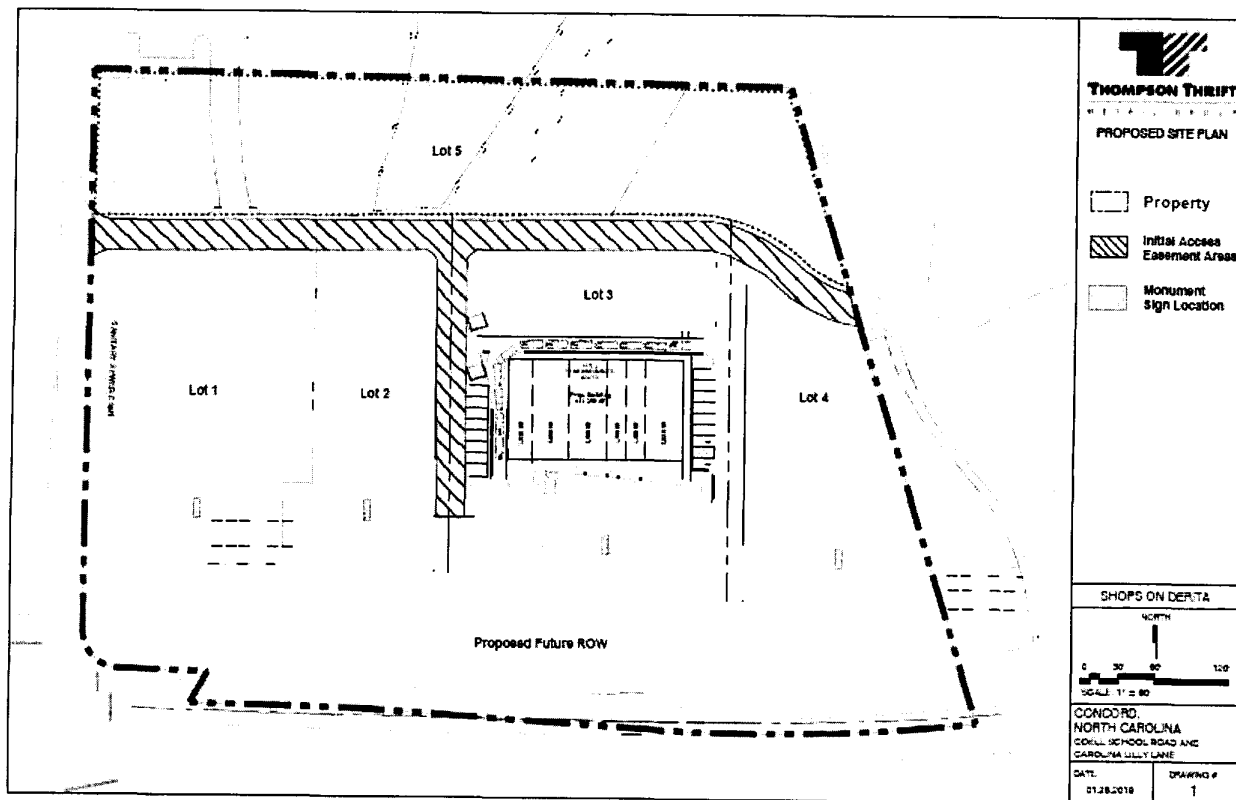
thence from said point of beginning and running along and with said intersection with the arc of a curve to the right, having a radius of 30.00 feet, an arc length of 47.43 feet, and being subtended by a chord bearing South  $78^{\circ} 57' 39''$  West for a distance of 42.64 feet to a  $5/8''$  iron rebar set; thence leaving said intersection and turning and running along and with the northeastern right-of-way of Carolina Lily Lane North  $55^{\circ} 43' 03''$  West, a distance of 448.81 feet to a  $1/2''$  iron rebar found, said iron rebar being a common corner between the parcel described herein and the property now or formerly owned by Mill Pond Charlotte, LLC, as described in Deed Book 27037, Page 535 of the Mecklenburg County Register of Deeds and Deed Book 9874, Page 336 of the Cabarrus County Register of Deeds; thence leaving said right-of-way and turning and running along with the common line between the parcel described herein and the said Mill Pond Charlotte, LLC property North  $34^{\circ} 51' 22''$  East, a distance of 561.66 feet to a  $5/8''$  iron rebar set on the southwestern line of the property now or formerly owned by Concord Mills NC, LLC, as described in Deed Book 32768, Page 168 of the Mecklenburg County Register of Deeds and Deed Book 13049, Page 179 of the Cabarrus County Register of Deeds, said iron rebar being a common corner between the parcel described herein and the said Mill Pond Charlotte, LLC property; thence leaving said common line and turning and running along and with the common line between the parcel described herein and the said Concord Mills NC, LLC property South  $73^{\circ} 05' 50''$  East, a distance of 484.27 feet, and passing a capped iron rebar found at 473.78 feet to a point on the northwestern right-of-way of Derita Road; thence leaving said common line and turning and running along and with the northwestern right-of-way of Derita Road with the arc of a curve to the right, having a radius of 2,968.00 feet, an arc length of 252.74 feet, and being subtended by a chord bearing South  $29^{\circ} 40' 01''$  West for a distance of 252.66 feet to a point; thence leaving said right-of-way and turning and running within the right-of-way of Derita Road (also known as Odell School Road) the following five (5) courses and distances: (1) South  $53^{\circ} 33' 07''$  East, a distance of 32.08 feet to a point; (2) South  $37^{\circ} 24' 52''$  West, a distance of 228.79 feet to a point; (3) with the arc of a curve to the left, having a radius of 2,206.62 feet, an arc length of 137.36 feet, and being subtended by a chord bearing South  $35^{\circ} 10' 35''$  West for a distance of 137.34 feet to a point; (4) North  $26^{\circ} 19' 05''$  West, a distance of 29.31 feet to a point; (5) South  $35^{\circ} 14' 50''$  West, a distance of 71.56 feet, and passing a mag nail found at 29.03 feet to a  $5/8''$  iron rebar found, said iron rebar being the point and place of BEGINNING; said parcels containing 7.209 acres combined, more or less.

AND TOGETHER WITH THE FOLLOWING REMAINDER PORTION:

COMMENCING at North Carolina Geodetic Survey monument "QUAY", having North Carolina State Plane Coordinates of  $X = 1,485,005.72$  and  $Y = 593,980.93$  US Survey Feet, NAD 83(2011) and thence running North  $69^{\circ} 13' 19''$  West, a ground distance of 1,803.60 feet (grid distance of 1,803.32 feet) to a 5/8" iron rebar found at the intersection of the northwestern right-of-way of Odell School Road with the northeastern right-of-way of Carolina Lily Lane; thence running the following four (4) courses and distances: (1) North  $35^{\circ} 14' 50''$  East, a distance of 71.56 feet to a point; (2) South  $26^{\circ} 19' 05''$  East, a distance of 29.31 feet to a point; (3) with the arc of a curve to the right, having a radius of 2,206.62 feet, an arc length of 137.36 feet, and being subtended by a chord bearing North  $35^{\circ} 10' 35''$  East for a distance of 137.34 feet to a point; (4) North  $37^{\circ} 24' 52''$  East, a distance of 228.79 feet to a point within the right-of-way of Derita Road, said point being the point and place of BEGINNING; thence from said point of beginning and running North  $53^{\circ} 33' 57''$  West, a distance of 30.00 feet to a point, said point being a common corner between the parcel described herein and the property now or formerly owned by PDG/Inland Concord Venture, LLC, as described in Deed Book 8502, Page 306 of the Cabarrus County Register of Deeds; thence turning and running along and with common lines between the parcel described herein and the said PDG/Inland Concord Venture, LLC property the following two (2) courses and distances: (1) North  $37^{\circ} 24' 52''$  East, a distance of 0.49 feet to a point; (2) with the arc of a curve to the left, having a radius of 1,512.28 feet, an arc length of 256.34 feet, and being subtended by a chord bearing North  $32^{\circ} 27' 48''$  East for a distance of 256.04 feet to a point; thence leaving said common line and running within the right-of-way of Derita Road the following two (2) courses and distances: (1) South  $73^{\circ} 05' 50''$  East, a distance of 30.52 feet to a point; (2) with the arc of a curve to the right, having a radius of 1,542.28 feet, an arc length of 267.12 feet, and being subtended by a chord bearing South  $32^{\circ} 21' 30''$  West for a distance of 266.79 feet to a point, the point and place of BEGINNING; said remainder portion resulting from that quitclaim deed recorded in Deed Book 8502, Page 306 of the Cabarrus County Register of Deeds, and containing 0.180 acres, more or less.

**EXHIBIT B**

**SITE PLAN OF THE PROPERTY**



**EXHIBIT C****SIGN CRITERIA OF THE PROPERTY****DERITA ROAD**

This criterion is intended as a guideline for all signage for single tenant retail, retail service, bank, or restaurant buildings in the Derita Road shopping center development. The Tenant's sign(s) shall be limited to the Tenant's approved name as stated in the Lease or as otherwise approved in writing by Landlord. The use of a corporate logo or other established corporate insignia is permitted only if specifically approved in writing by the Landlord. Taglines or identifications of specific products or services are not permitted.

**Monument/Pylon Sign:**

Two pylon signs are located in the following locations: 1) at the entry drive off of Christenbury Parkway (Northwest corner of the shopping center), 2) at the northernmost entry drive off of Derita Road. There will also be three monument signs located in the following locations: 1) at or near the Christenbury Parkway entrance to the development, 2) directly in front of the proposed multi-tenant building, along Christenbury Parkway 3) at or near the northernmost entry drive from Derita Road to the development. Panel allocation is by consent of Landlord, and in agreement with local ordinance, is based on availability and square footage of Tenant's leased space. The Tenant will be responsible for providing and installing Tenant's own panel. This panel will be pan formed with a depth of 1.75". Sign panel dimensions vary depending on their location and must be verified by Landlord. The panel background will be #7328 white and the color of the letters is up to the Tenant's discretion, with Landlord's approval.

**Building Signage – Front Façade:**

- In all cases, the Tenant's signage shall be proportional to the scale of the overall building façade. Overall sign lengths shall not be greater than 75% of the lineal footage of the retailer's space as measured from the centerline of the adjacent tenant(s) demising wall(s).
- Overall tenant signage shall be limited to 96 inches from the bottom of the lowest letter to the top of the highest letter.
- If the signage is primarily (50% of letters or greater) or entirely composed of upper case letters, the maximum height of all letters shall be 78 inches.
- If the sign is composed of one upper case letter per word, with the remainder of the letters being lower case, then the size of the letters shall be as follows:
  - Upper case letters shall be a maximum of 90 inches tall.
  - Lower case letter "f", "g", "p", "q" and "y" shall extend a maximum of six (6) inches above or below than the overall 90 inches height, so that the total letter height shall be 96 inches. This includes signs written in script.

**Building Signage – Side and Rear Façade:**

Signage may be allowed on the side and/or rear façade of a Tenant's leased space at the discretion of the Landlord. A Tenant's total wall signage package must meet the stricter of this criterion, local governing ordinance, or subdivision/shopping center covenants, where applicable.

**Building Signage – General:**

No exterior identification sign shall be:

- placed on canopy roofs extending above the building roof or placed on penthouse walls;
- placed on any angle to the building unless required to conform to the prototype signage of a nationally recognized retailer; 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;
- painted on the surface of a building;
- flashing, moving or audible signs (except for time and temperature signs);
- signs employing exposed raceways, exposed neon tubes, exposed ballast boxes, or exposed transformers; or
- paper or cardboard signs, temporary signs (exclusive of contractor signs), stickers or decals; 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 bits of information.

**Logo Wall Signs:**

Permitted Tenant/Corporate logos shall be a maximum of 96 inches in height and shall be reviewed in conjunction with the adjacent architecture for massing and proportions. Conflicts in appearance or architectural intent may constitute an adjustment in the allowable height as deemed necessary by the Landlord. Maximum length of a logo excluding individual letters shall not exceed 50% of the overall lineal footage of the tenant space. Logo size shall be calculated into the total allowable length of signage. Box signs are not permitted for logo presentation. Logo signage construction must follow the outline of Tenant/Corporate logo.

**Signage General Requirements:**

- All signage is to be of the highest quality construction. Shop fabrication and painting is required. All signs must be of new construction. Reused, renovated and remodeled signs will not be permitted. All attachments, labels, fasteners, mounting brackets, wiring, clips, transformers, lamps and other mechanisms required for signage, will be non-corrosive and concealed from view. Light leaks are not permitted. Weep holes are permitted only on exterior signs. All signs must be composed of individually illuminated letters. Letters face to be colored translucent Plexiglas or equal. Letter return and trim shall be of a contrasting color from the letter face. Returns and trim are to be pre-finished aluminum. Exterior signs shall be watertight and comply with all governing code requirements regarding wiring and appropriate illumination equipment. Sign manufacturers' names will not be permitted to be displayed.
- Disconnect switches shall be painted to match background on which they are being mounted.
- All joints are to be sealed with caulk.
- All conduit/electrical feed to exit the back of letters.
- All mounting material shall have rust resistant plating.
- All letters to meet U.L. electrical requirements for electrical components and wiring.
- Seal all light leaks and drain holes with baffles.

**Mounting:**

All mounting is to be performed by the tenant's sign company. No raceways are permitted. Tenant's building signage must be individual channel letters mounted directly to the building façade. Façade penetrations should be kept to a minimum.

**Signs Not Permitted:**

Exposed neon signs.

Moving signs.

Blinking or flashing signs.

Signs that emit smells.

Signs that emit sounds.

Box signs

### **Window Signage:**

The use of illuminated and non-illuminated signage is prohibited except as permitted below. Prior to fabrication and installation, a professionally prepared "Proof" of all window signage must be submitted to Landlord, for approval, such approval to be at Landlord's sole discretion. Upon Landlord's approval, Tenant may install product photos/posters in the storefront windows of the Leased Premises so long as no more than 50% of not more than two storefront windows is covered at any one time. Tenant agrees that its window signage must comply with applicable governmental requirements, if any, and be in keeping with signage typically utilized in an upscale shopping center in the Concord area. Further, Landlord's approval of window signage does not imply that the window signage meets with local municipality guidelines, nor shall any approval by Landlord constitute any liability with respect to fees or penalties that may be otherwise imposed by the municipality for non-conforming signage. Any signage must not be of an undesirable content or quality (i.e. hand lettered/painted signage, stick on numbers, profanity, lewd pictures, etc. are strictly prohibited).

### **Repetitive Safety Symbols:**

Repetitive safety symbols (graphically designed) or logo lettering groups shall be applied to the storefront glass as necessary for identifying transparent storefront surfaces for customer safety purposes. Symbols are limited to one symbol or one three-lettered logo lettering group per tenant. Also permitted is a combination of one symbol and logo lettering group. Logo lettering groups must reflect the name of the tenant, i.e. 'Andy's Music Store' may be permitted to use 'AMS'. Logo lettering groups and symbols shall be a maximum of three (3) inches in height and three (3) inches in width. Repetitive safety symbols shall be vinyl applied or professionally painted to the inside face of the storefront glass. No more than two (2) symbols, two (2) logo letter groups, or one (1) symbol and one (1) logo-lettering group shall be permitted for each storefront window as defined by mullions. Symbols and logo lettering groups may be black and white or color.

### **Store Hour Signage:**

The overall store hour signage may be a maximum of fourteen (14) inches high and ten (10) inches wide. Letters and numbers shall be a maximum of one (1) inch high. The use of advertising logos other than the tenant's name shall not be permitted. Letters shall be vinyl applied or professionally painted to the inside face of the storefront glass.

### **Addresses:**

Landlord will be responsible for numbering each space so that it is in compliance with local E911 ordinances. One street address is permitted for each set of entry or exit doors. Addresses shall be limited to the street

number only. Addresses shall be applied to the interior face of glazing above main entry doors. Addresses on rear service doors shall be mounted at a height of approximately 5'-3" above finished floor.

**Sign Shop Drawings:**

Sign shop drawings submitted by the Tenant shall provide complete information for the Landlord to understand the signage design, installation and appearance. Sign shop drawings shall 1) provide an elevation, in scale, of the storefront façade illustrating each sign's location and size; 2) provide a section or sections through the sign; 3) identify the materials and construction; 4) provide complete information on installation.

**Approval:**

Approval of the Tenant's design or working drawings by the Landlord shall not constitute review and approval of the Tenant's signage. Tenant shall submit one set of reproducible drawings and three sets of bond drawings of the sign shop drawings for review and approval by the Landlord. Fabrication or installation of the Tenant's signage shall not commence before the Landlord's approval of the sign shop drawings. Shop drawings must also be submitted to the local governing authority for review and approval. The Tenant is responsible to obtain sign and/or electrical permits as the local governing authority may require. Further, Landlord's approval of Tenant signage does not imply that the signage meets with local municipality guidelines, nor shall any approval by Landlord constitute any liability with respect to fees or penalties that may be otherwise imposed by the municipality for non-conforming signage. Installation shall not commence until Tenant has provided Landlord with a copy of the Tenant's sign permit(s) and a certificate of insurance evidencing Contractor's commercial general liability insurance, issued by a company or companies and in form satisfactory to Landlord, naming Contractor as insured and Tenant and Landlord as additional insureds.