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## STATE OF NORTH CAROLINA

## COUNTY OF CABARRUS

### MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KELLSWATER COMMONS

**THIS MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KELLSWATER COMMONS (“Declaration”)** is made as of the 23rd day of October, 2024, by **MPV KELLSWATER, LLC**, a North Carolina limited liability company (“**Declarant**”).

### PRELIMINARY STATEMENT

Declarant is the owner of the real property described on **Exhibit A**, which real property is being developed, as permitted under local zoning ordinances, as a mixed-use development composed of (i) commercial, (ii) retail, (iii) office, (iv) medical and (v) such other uses as may be determined from time to time in accordance with this Declaration, all to be known collectively as “Kellswater Commons.” A site plan of the Property is attached hereto as **Exhibit B** and made a part hereof, and the same shall be subject to change, in accordance with the provisions of this Declaration and from time to time, as Kellswater Commons is developed (such plan attached hereto, the “**Site Plan**”).

Declarant desires to insure the attractiveness of the development and to preserve the values and amenities of the Property, to provide for a method for the maintenance, repair, replacement, administration, operation, and insuring of certain improvements at Kellswater Commons, including, but not limited to, landscaping, lighting, sprinkler and irrigation systems, detention ponds, entrances, signage, sidewalks, driveways, walkways, benches and common areas located on or within the Property, or adjacent to the rights-of-way of the public streets within Kellswater

Commons; and, to this end desires to subject the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Property and each owner thereof.

Declarant, in order to further the objectives set forth herein, has deemed it desirable to create an organization to which will be delegated and assigned the power of maintaining, repairing, replacing, administering, operating and insuring certain improvements at Kellswater Commons, including, but not limited to, landscaping, lighting, sprinkler and irrigation systems, detention ponds, entrances, signage, sidewalks, driveways, walkways, benches and common areas located on or within the Property, or adjacent to the rights-of-way of the public streets within Kellswater Commons, and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created.

Declarant has incorporated or will incorporate under North Carolina law Kellswater Commons Master Association Inc. as a non-profit membership corporation for the purpose of exercising and performing the aforesaid functions.

## **DECLARATION**

**NOW THEREFORE**, Declarant by this Declaration, does declare that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the rights, covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration which shall run with the Property and be binding on all parties owning any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner (as hereinafter defined) thereof.

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.** “Annual Assessments” shall have the meaning ascribed thereto in Article IV, Section 1 hereof.

**Section 2.** “Assessments” shall mean, collectively, the Annual Assessments, the Special Assessments, and any other assessments charged by or on behalf of the Master Association.

**Section 3.** “Board of Directors” shall have the meaning ascribed thereto in Article II, Section 3 hereof.

**Section 4.** “Bylaws” shall have the meaning ascribed thereto in Article II, Section 3 hereof.

**Section 5.** “Declarant” shall mean and refer to MPV Kellswater, LLC, and its successors and assigns, if any, to whom the rights of Declarant hereunder are specifically transferred by written instrument, subject to such terms and conditions as the Declarant may

impose. In no event shall a member, manager, partner, shareholder, director, officer or employee of Declarant be personally liable for the performance of the obligations of Declarant hereunder.

**Section 6.** “**Design Guidelines**” shall have the meaning ascribed thereto in Article VII, Section 20 hereof.

**Section 7.** “**Design Review Board**” shall mean a committee of not less than three (3) nor more than five (5) individuals appointed as hereinafter set forth to review plans and specifications as provided in Article VII hereof and to make the determinations provided in said Article VII. So long as Declarant owns any portion of the Property, the members of the Design Review Board shall be appointed by Declarant, unless Declarant by written recorded document has assigned its rights under this paragraph to the Master Association, in which case the Board of Directors shall select the members of the Design Review Board. If and when the Declarant no longer owns any portion of the Property, the members of the Design Review Board shall be appointed by the Board of Directors.

**Section 8.** “**Designated Maintenance Items**” shall mean the following items which are (or shall be) located within the Master Association Common Area and within the rights-of-way of public streets within Kellswater Commons (including property in medians and entrances, but excluding any improvements maintained by the appropriate governmental authority, unless the Master Association has otherwise agreed to maintain the same):

- (i) Private streets, driveways, roads and alleys, bridges and public streets and roads, if any, to the extent such public streets and roads are not maintained by the appropriate governmental authority in a manner deemed reasonably appropriate by the Board of Directors.
- (ii) Plants (including, but not limited to, trees, “tree save” areas, shrubs, flowers, ground cover and grass).
- (iii) Light poles, fixtures, bulbs, traffic signals, wiring and all equipment related to the use thereof, including, without limitation, street lighting and pedestrian lighting.
- (iv) Traffic signs, parking signs, directional/wayfinding signs, warning signs, and other guide/informational signs.
- (v) Sprinkler and irrigation systems (including water meter vaults, backflow preventers and water meters used in connection with such systems).
- (vi) Fences, decorative walls, retaining walls, sitting walls, sidewalks, steps and walking paths.
- (vii) Outdoor furniture and benches.
- (viii) Pavers, pylons, sculpture, works of art, and decorative plaza areas.

- (ix) Arbors, trellises, gazebos, pergolas, rose arches and similar structures.
- (x) Flag poles, flags, banners and seasonal decorations.
- (xi) Signage relating to the operation and identification of the entire project (excluding signs relating only to particular buildings or particular areas within Kellswater Commons, except as approved by the Board of Directors), and, to the extent approved by the Board of Directors, signage shared by Owners and/or Tenants within Kellswater Commons and any other signage so designated by the Board of Directors.
- (xii) Sidewalks.
- (xiii) Bicycle paths and jogging or nature trails.
- (xiv) Above ground and underground stormwater detention ponds, drainage easements, water lines, sewer lines and stormwater drainage lines and all fixtures related thereto to the extent such ponds, easements, lines and fixtures are not maintained by any governmental authority.
- (xv) Lakes, ponds, streams, fountains and other water amenities, including, but not limited to, pumps, pipes, drains, drainage, water and electrical lines, fountain parts, fountain lights or other decorative lighting within a water amenity, water jets, filters, chlorinators, nozzles, weirs, switches and related equipment, easements or housings, gravel, stone or concrete beds, walls, dams and other structural housing for water containment or detention and directional control.
- (xvi) Entry Features.
- (xvii) Eventing areas and other areas for events for the general public and/or Kellswater Commons community.
- (xviii) Other items as approved by the Board of Directors of the Master Association as provided in this Declaration.

Notwithstanding the foregoing, this Declaration imposes no obligation on Declarant to construct or install any of the Designated Maintenance Items.

**Section 9.** “Entry Features” shall mean and refer to the entry features for Kellswater Commons in the approximate locations shown as “Entry Features” on any plat of the Property heretofore or hereafter duly recorded in the Cabarrus County, North Carolina Public Registry, or any entry features located within the Master Association Common Area otherwise so designated heretofore or hereafter by Declarant, including, without limitation, “Proposed Signs” as shown on the site plan of the Property attached hereto as **Exhibit B**, other monument signs, ponds, fountains and landscaping.

**Section 10.** “**Grocery Store Anchor**” shall mean Lowes Foods, LLC, a North Carolina limited liability company, and its successors and assigns as tenant under that certain Lease Agreement dated October 13, 2022 between Declarant, as landlord, and Lowes Foods, LLC, as tenant (such lease, as such lease may be amended, modified, extended or renewed from time to time, the “**Grocery Store Lease**”), for the lease of the Grocery Store Parcel (herein defined). Upon the expiration or sooner termination of the Grocery Store Lease, the rights, privileges and interests reserved unto the Grocery Store Anchor as expressly set forth herein, including, without limitation, those set forth in Sections 12, 13 and 14 of Article VI herein, shall terminate and expire and be of no further force and effect.

**Section 11.** “**Grocery Store Parcel**” shall mean and refer to that certain portion of the Retail Center, including any Improvements constructed or to be constructed thereon, leased by the Grocery Store Anchor from Declarant under the Grocery Store Lease.

**Section 12.** “**Kellswater Commons**” shall mean and refer to the Property (including, without limitation, any additional property annexed thereto pursuant to Article X, Section 3 below) and any Improvements constructed or to be constructed thereon.

**Section 13.** “**Improvements**” shall mean and include all buildings, storage sheds or areas, other freestanding storage areas and roofed structures; parking areas and loading areas; trackage, fences, walls, hedges, mass plantings, arbors, trellises, gazebos and poles; driveways; ponds and lakes; utilities serving a building or a Tract (as opposed to the Property in general); changes in grade or slope and site preparation; signs; exterior illumination; exterior antennae, earth satellite stations, microwave dishes, solar panels or other similar receiving, transmission or energy generating equipment; changes in any exterior color or shape, roofing materials or siding; and any new exterior constructed or exterior improvement. The definition of Improvements includes both original Improvements and all later changes and repairs to Improvements.

**Section 14.** “**Institutional Lender**” shall mean any life insurance company, bank, savings and loan association, trust, real estate investment trust, pension fund or other organization or entity which regularly makes loans secured by real estate which holds a first mortgage, deed of trust or other security instrument having first and paramount priority as among mortgagees and lenders under applicable law on the entirety of a Tract.

**Section 15.** “**Master Association**” shall mean and refer to Kellswater Commons Master Association Inc., a North Carolina non-profit corporation, its successors and assigns.

**Section 16.** “**Master Association Common Area**” shall mean (i) all portions of the Property, if any, now or hereafter owned by the Master Association for the common use and enjoyment of all Owners and Tenants, (ii) those areas designated “Master Association Common Area” on any plat of the Property heretofore or hereafter duly recorded in the Cabarrus County, North Carolina Public Registry, (iii) private streets, driveways, roads, alleys and bridges, and any sidewalks or walkways constructed or installed in connection with and/or adjoining any of the same, currently or hereafter located on the Property, (iv) stormwater detention ponds, drainage easements, water lines, sewer lines and stormwater drainage lines and all fixtures related thereto constructed or installed within any Master Association Common Area and serving portions of the

Property and (v) any other portions of the Property now or hereafter owned by Declarant, or to which Declarant or the Master Association has been granted access thereto for construction, installation, maintenance, repair, replacement, operation, inspection, use or administration purposes, by easement reserved as set forth in this Declaration or otherwise, that is designated by Declarant, from time to time, for the common use and enjoyment of all Owners and Tenants. A general indication of the current layout and configuration of the initial Master Association Common Area, which includes the private portion of the right-of-way of Dogwood Boulevard and the detention pond and related apparatus providing storm water drainage for the Property, is depicted on the site plan of the Property attached hereto as **Exhibit B**, and the current layout and configuration of the initial Master Association Common Area shall be subject to change, in accordance with the provisions of this Declaration and from time to time, as Kellswater Commons is developed.

For purposes of this Section 16, the Master Association Common Area as defined herein shall not be deemed to include the drive-thru, designated parking areas, loading zones and related facilities and trash corrals located on Outparcel 10 (1.598 acres; 69,616 square feet) of the Property as the same is shown on a subdivision plat entitled "Recombination Survey for MPV Kellswater, LLC" recorded in Book 97 at Page 72 in the Cabarrus County Public Registry and dated July 18, 2023 (such plat, the "**Subdivision Plat**").

Declarant reserves the right to relocate the boundary of any Master Association Common Area, provided that (A) the total acreage of the Master Association Common Area shall not be reduced by Declarant without an amendment of this Declaration in accordance with the provisions of Article X, Section 6 hereof, (B) such relocation shall require the consent, not to be unreasonably withheld, conditioned or delayed, of the Owner of any Tract which is materially and adversely affected by such relocation, and if such relocation affects the Retail Center, the written consent of Grocery Store Anchor, and (C) such relocation shall not leave a Tract in a non-conforming status with regard to setbacks, zoning or other governmental regulations. Declarant shall effect such boundary change by recordation of a Supplemental Declaration settling forth the revised boundaries of any such areas.

**Section 17.** "**Member**" shall mean and refer to every Person holding membership in the Master Association in accordance with Article II, Section 1 hereof. The plural form of this term as used in this Declaration is "**Members**."

**Section 18.** "**Outparcel**" and "**Outparcels**" shall have the meanings ascribed to such terms in Article VI, Section 13 hereof.

**Section 19.** "**Owner**" shall mean any record owner (including the Declarant, but excluding the Master Association), whether one or more persons or entities, of the fee simple title to any Tract or any portion of the Property not part of any Tract, including contract sellers, but excluding contract purchasers or those having such interests merely as security for the performance of an obligation. The plural form of this term as used in this Declaration is "**Owners**."

**Section 20.** "**Person**" shall mean any natural person, corporation, partnership, limited liability company, trust, or other legal entity.

**Section 21.** “**Property**” shall mean and refer to the property which is the subject of this Declaration and which is described on attached **Exhibit A**; provided, however, that subject to the terms of this Declaration, including, without limitation, Article X, Section 3 herein, Declarant shall be entitled to add other property to the Property by executing and recording a supplement to this Declaration in the Cabarrus County, North Carolina Public Registry, as applicable.

**Section 22.** “**REA**” shall mean and refer to that certain Reciprocal Easement Agreement between Declarant and Meritage Homes of the Carolinas, Inc. (“**Meritage**”), dated as of May 26, 2021 and recorded in Book 15204 at Page 213 in the Cabarrus County Public Registry, which REA provides for the payment of certain maintenance and repair costs by Meritage to reimburse Declarant for the use of driveways within the Property for vehicular ingress and egress and for the use of a stormwater BMP/pond and related facilities within the Property for the collection, retention and discharge of stormwater drainage from a townhome project located adjacent to the Property.

**Section 23.** “**Retail Center**” shall mean and refer to the portion of the Property described on **Exhibit D** attached hereto and incorporated herein by this reference.

**Section 24.** “**Special Assessments**” shall have the meaning ascribed thereto in Article IV, Section 1 hereof.

**Section 25.** “**Sub-Association**” shall mean and refer to any residential, retail, commercial or office property owners associations, formed (or to be formed) to oversee and administer the development and maintenance of any Tract or other delineated portion of the Property, and each such Sub-Association shall enforce and administer separate declarations of covenants, conditions and restrictions to be recorded in the Cabarrus County, North Carolina Public Registry, as applicable, which shall set forth covenants, conditions, restrictions, architectural review and control more particularly drafted to reflect the particular type and form of development of the Tract or other particular portion of the Property subject thereto. The plural form of this term as used in this Declaration is “**Sub-Associations.**”

**Section 26.** “**Tenant**” shall mean a tenant occupying any portion of the Property under a lease with an Owner. The plural form of this term as used in this Declaration is “**Tenants.**”

**Section 27.** “**Tract**” shall refer initially to any of **Outparcel 1** (10.137 acres; 441,566 square feet), **Outparcel 3** (1.868 acres; 81,363 square feet), **Outparcel 4** (1.572 acres; 68,498 square feet), **Outparcel 5** (2.956 acres; 128,783 square feet), **Outparcel 6** (1.467 acres; 63,915 square feet), **Outparcel 7** (1.662 acres; 72,399 square feet), **Outparcel 8** (1.429 acres; 62,259 square feet), **Outparcel 9** (1.097 acres; 47,765 square feet); **Outparcel 10** (1.598 acres; 69,616 square feet) and the **Retail Center** (9.878 acres; 430,290 square feet) as depicted on the Subdivision Plat. In the event of the further subdivision of any Tract after the original Tract has been conveyed by Declarant to a third-party Owner, provided that such subdivision has been approved by Declarant, each subdivided parcel shall also be considered a Tract unless Declarant, in its sole discretion, designates such subdivided parcel to remain or be included as a part of the original Tract or, if consented to by the Owner(s) of the subject Tract, to become a part of another

Tract; provided, however, that in the event the subdivided parcel becomes part of another Tract, such subdivided parcel that becomes part of another Tract as permitted herein shall not be released from, and shall continue to be bound by, the terms of Sections 12, 13 and 14 of Article VI and corresponding Exhibit C. For the avoidance of doubt, the subdivision of a Tract shall not be used as a means to circumvent the restrictions imposed on the Property pursuant to this Declaration. Further, notwithstanding the foregoing, any separate condominium units created in the subdivision of a Tract shall not be considered a separate Tract for the purposes of this Declaration and shall remain a part of the Tract containing the condominium development (or such other Tract approved by Declarant of which such unit is then a part) unless otherwise approved by Declarant in its sole discretion. The plural form of this term as used in this Declaration is “**Tracts**.”

## **ARTICLE II**

### **MASTER ASSOCIATION**

#### **Section 1. Members.**

(a) Each Owner shall be a Member of the Master Association; provided, however, that with respect to any Owner(s) of a Tract, such Owner(s) shall cease to be a Member(s) of the Master Association at such time as a Sub-Association is formed pursuant to a separate instrument recorded in the Cabarrus County, North Carolina Public Registry encumbering the applicable Tract, at which time the applicable Owner(s) shall be replaced as Member by such Sub-Association. The board of directors of any such Sub-Association shall act on behalf of all members of such Sub-Association and shall exercise all votes in the Master Association attributable to the Tract(s) encumbered by such Sub-Association. In the event a Sub-Association is subsequently dissolved, the Owner(s) of the Tract(s) formerly governed by such dissolved Sub-Association shall become a Member(s) of the Master Association.

(b) Notwithstanding anything in this Declaration to the contrary, the Owner of any separate lots created in the subdivision of any other Tract where Declarant has designated such subdivided parcel to remain a part of the original Tract or be included as a part of any other Tract, provided the Owner(s) of the subject Tract have consented to the subdivided parcel being included as part of the subject Tract, shall not be a Member of the Master Association, except in its capacity as a member of any applicable Sub-Association.

#### **Section 2. Voting.**

(a) There shall be a total of 23.52 votes in the Master Association (equal to the aggregate acreage contained within the Property) which shall initially be allocated to Members based on their ownership or representation of ownership of aggregate acreage owned within any Tract located within or derived from the Property on the basis of one (1) vote for each acre owned within any Tract located within or derived from the Property, plus a fractional (hundredths) vote for each fractional (hundredths) acre within any Tract located within or derived from the Property.

(b) Each Member of the Master Association shall elect or otherwise designate one (1) authorized representative to cast its allocated votes on its behalf at all meetings of the Master



Association and on all Master Association matters. Such representative shall be presumed to be duly authorized and at all times acting upon the instructions and authorization of the Owner(s) or Sub-Association, as applicable, on whose behalf such representative is acting.

**Section 3. Board of Directors.** The Master Association shall be governed by a Board of Directors (the “**Board of Directors**”) in accordance with the Bylaws of the Master Association (the “**Bylaws**”). The Board of Directors may institute, defend, settle, or intervene on behalf of the Master Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Master Association Common Area, enforcement of this Declaration or the Bylaws, or any other civil claim or action; provided, however, that the foregoing shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Master Association or its Members. Notwithstanding any provisions to the contrary contained in this Declaration or in the Bylaws, the Declarant shall have the right to appoint or remove by written notice to the Board of Directors any member or members of the Board of Directors or any officer or officers of the Master Association until either (i) Declarant no longer owns any portion of the Property or (ii) Declarant surrenders the authority to appoint and remove members of the Board of Directors and officers of the Master Association by an express amendment to this Declaration executed and recorded by the Declarant. Once the Declarant no longer has the right to appoint or remove the members of the Board of Directors pursuant to subsections (i) or (ii) above, the Board of Directors shall be elected by the Members at the annual meeting of the Master Association pursuant to the provisions of the Bylaws.

**Section 4. Insurance.**

(a) The Master Association, acting through the Board of Directors or its authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

- (i) Blanket property insurance covering “risks of direct physical loss” on a “special form” basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Master Association Common Area. If such coverage is not generally available at a reasonable cost, then “broad form” coverage may be substituted. All property insurance policies obtained by the Master Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes; and
- (ii) Commercial general liability insurance on the Master Association Common Area, insuring the Master Association and its Members for damage or injury caused by the negligence of the Master Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$2,000,000.00 per occurrence with respect to bodily injury and/or personal injury, and not less than \$250,000.00 for property damage; provided, should additional coverage and higher limits be available at reasonable cost which a

reasonably prudent person would obtain, the Master Association shall obtain such additional coverages or limits; and

- (iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law; and
- (iv) Directors and officers insurance and liability coverage; and
- (v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Master Association funds in an amount determined in the Board of Director's business judgment. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and
- (vi) Such additional insurance for the Master Association or the Master Association Common Area as the Board of Directors, in the exercise of its business judgment, determines advisable.

Premiums for all insurance on the Master Association Common Area shall be included in Annual Assessments.

(b) The Master Association shall arrange for a periodic review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Charlotte, North Carolina metropolitan statistical area. All Master Association policies shall provide for a certificate of insurance to be furnished to the Master Association and, upon request, to each Member.

(c) The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Article II, Section 4(a). In the event of an insured loss, the deductible shall be included in Assessments; however, if the Board of Directors reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners, Tenants, or their guests, invitees, or licensees, then the Board of Directors may assess the full amount of such deductible against such Owner(s) as an assessment specifically against such Owner.

(d) All insurance coverage obtained by the Board of Directors shall: (i) be written with a company authorized to do business in North Carolina; (ii) be written in the name of the Master Association as trustee for the benefitted parties; (iii) be primary and not be brought into contribution with insurance purchased by any Member or Owners, Tenants, occupants, or their mortgagees individually; (iv) contain an inflation guard endorsement; (v) include an agreed amount endorsement, if the policy contains a co-insurance clause; (vi) provide that each Member is an insured person under the policy with respect to liability arising out of such Member's interest in the Master Association Common Area as a Member of the Master Association (provided, this provision shall not be construed as giving a Member any direct ownership interest in the Master Association Common Area other than that of a Member); (vii) provide a waiver of subrogation

under the policy against any Owner, Tenant, or occupant of any portion of the Property; (viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any curable defect or violation without prior written demand to the Master Association to cure the defect or violation and allowance of a reasonable time to cure; and (ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners or Tenants, unless such Owner is acting within the scope of its authority on behalf of the Master Association.

(e) In addition, the Board of Directors shall use commercially reasonable efforts to secure insurance policies that list the Owners as additional insureds and provide (i) a waiver of subrogation as to any claims against the Board of Directors or any officers, employees or manager of the Master Association, the Owners, the Tenants, or their employees, agents, guests and invitees; (ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash; (iii) an endorsement requiring at least thirty (30) days prior written notice to the Master Association of any cancellation, substantial modification, or non-renewal; (iv) a cross liability provision; and (v) a provision vesting in the Board of Directors exclusive authority to adjust losses; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

**Section 5. Manager of Master Association.** The Master Association's Board of Directors is authorized to hire a manager of the Master Association's activities (which may include the administration of the Design Review Board's functions) and to pay a fee therefor; provided, however, that if such manager is an affiliate of Declarant or an Owner, the fee or other terms of engagement of such manager shall be no less favorable to the Master Association than would be generally available from an unrelated third-party in the Charlotte, North Carolina metropolitan statistical area.

### **ARTICLE III**

#### **MASTER ASSOCIATION COMMON AREA AND EASEMENT RIGHTS**

##### **Section 1. Ownership of Master Association Common Area.**

(a) It is anticipated that Declarant, initially, and later, subsequent Owners of the Tracts comprising the Property, will retain ownership of the Master Association Common Area included within such Tracts, subject to the rights of the Master Association to maintain the Master Association Common Area in accordance with Section 2 of this Article III. Notwithstanding the foregoing, upon Declarant's request, the Master Association shall reconvey to Declarant any unimproved portions of the Master Association Common Area which Declarant originally conveyed to the Master Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(b) The Master Association may enter into leases, licenses or operating agreements for portions of the Master Association Common Area, for such consideration or no consideration as the Board of Directors deems appropriate, to permit the use of such portions of the Master Association Common Area by community organizations and by others, whether nonprofit or profit,

for the provision of goods or services for the general benefit or convenience of Owners, Tenants, and other occupants of the Property.

(c) Notwithstanding the recordation of any map or any other action by Declarant or the Master Association, the Master Association Common Area shall remain private property and shall not be considered as dedicated to the use and enjoyment of the general public.

**Section 2. Maintenance of Master Association Common Area.**

(a) The Master Association shall be responsible for the upkeep and maintenance of the Master Association Common Area once Declarant or any Owner has commenced to use or has the right to use the same. The Master Association shall maintain the Master Association Common Area at all times in a good, safe, clean and slightly first class condition and state of repair comparable to other private mixed-use facilities in the Charlotte, North Carolina metropolitan statistical area, in compliance with all laws, rules, regulations, orders, requirements and ordinances of any governmental agency or authority exercising jurisdiction thereover, and in compliance with the provisions of this Declaration.

(b) Notwithstanding anything in this Declaration to the contrary, some portions of the Master Association Common Area may consist of open space or conservancy areas (including “tree save” areas) intentionally left in a natural or relatively undisturbed state. The level of maintenance that the Master Association provides to the Master Association Common Area may vary from a high level of landscaping and regular, weekly maintenance to intermittent or no maintenance, depending on the nature and intended use of the particular open space area. Open space or other natural areas may serve as habitats for a variety of native plant, animal and insect species, and may contain creeks, fallen trees and other naturally occurring conditions, some of which may pose hazards to persons or pets coming in contact with them. Neither the Master Association nor the Declarant shall have any responsibility for providing maintenance in such areas or taking action to abate such conditions, unless required by applicable law.

**Section 3. Owner’s and Tenant’s Easements of Enjoyment.** Subject to any rights of Declarant and the Master Association as set forth in this Declaration, Declarant does hereby give, grant, bargain and convey unto, and every Owner and Tenant shall have, a non-exclusive right and easement of use and enjoyment in and to the Master Association Common Area, including the use of the utilities, stormwater drainage and related facilities installed therein, which right and easement shall be appurtenant to and pass with the title to every portion of the Property, subject to the following:

(i) The right of the Master Association to promulgate and enforce reasonable regulations governing the use of the same to ensure the safety and rights of all Owners and Tenants.

(ii) The right of the Master Association to dedicate or transfer all or any part of the Master Association Common Area and Designated Maintenance Items to any public agency, authority or public or private utility.

(iii) The right of the Master Association to mortgage, pledge, deed in trust, or otherwise hypothecate or encumber any or all of its real or personal property as security for money borrowed or debts incurred.

(iv) The right of the Master Association to grant easements over, across and under the Master Association Common Area as provided in this Declaration.

(v) Declarant shall have, for its benefit, easements for ingress, egress, use and enjoyment over, in, to, under and throughout the Master Association Common Area.

(vi) Declarant reserves the right to relocate the boundary of any Master Association Common Area. Declarant shall effect such boundary change by recordation of a supplemental Declaration setting forth the revised boundaries of any such Master Association Common Area. Such supplemental Declaration may be effected without the consent of the Members.

**Section 4. Master Association's Maintenance Easements.** The Master Association, its successors and assigns, shall have an easement over each Master Association Common Area for the purpose of installing, maintaining, repairing, replacing, operating, inspecting, using and administering landscaping (including, but not limited to, trees, shrubbery, grass and flowers), lighting, sprinkler and irrigation systems, sidewalks, utility lines, above ground and underground stormwater detention ponds and any other Designated Maintenance Items located within the Master Association Common Area. No fences, driveways or any structures or improvements of any kind or type shall be permitted in such areas other than those initially installed by Declarant or Designated Maintenance Items installed by the Master Association. The Master Association shall at all times have the right of access for its employees, agents and subcontractors over each Master Association Common Area for the purpose of planting, mowing, maintaining, repairing and replacing the general area and Designated Maintenance Items within the Master Association Common Area. The Master Association shall also maintain the Designated Maintenance Items in the medians, islands and entrance ways located within the rights-of-way of public streets within Kellswater Commons.

**Section 5. Declarant's and Master Association's Construction and Utility Easements.**

(a) Declarant hereby reserves, for the benefit of Declarant and the Master Association, permanent easements for construction, installation, maintenance, repair, replacement, operation, inspection, use and administration of driveways, sidewalks, walkways, parking areas, signage, public and private water/sewer lines, gas lines, cable television lines, telephone lines and other communication lines, electric power lines, sanitary sewer and storm drainage facilities, including above ground and underground stormwater detention ponds, and other utility installations and for environmental protection of trees and wetlands in, to, over and under the Master Association Common Area and in any other areas of the Property shown on recorded plats of the Property. These reservations and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of the soil or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and

appearance. Declarant further reserves the right to locate wells, pumping stations and tanks within the Master Association Common Area. Such rights may be exercised by any contractor or licensee of Declarant or the Master Association.

(b) In the event it is determined that other and further easements are required over any portion of the Property in locations not shown on any recorded plat, such easements may be established by Declarant, except that if any such easements are reserved or established after the conveyance of such portion of the Property to be affected thereby, the written consent of the Owner or Owners of such portion of the Property and of the mortgagees of deeds of trust constituting a lien thereon shall be required, such consent not to be unreasonably withheld, conditioned or delayed.

(c) Declarant or the Master Association may, without consent or approval of any Owner, grant or convey any of the easement rights hereinabove reserved for the purposes set forth herein to any person, public or private utility or service company or any agent of Declarant or the Master Association. The Master Association and Declarant shall have the right, power and authority to grant easements and rights-of-way for the installation and maintenance of drainage facilities and of utilities, whether private, public or quasi-public, including cable television, telephone, electric, water, gas, sanitary sewer and storm drainage upon, over, under and across any Master Association Common Area without the consent of the Members when, in the sole opinion of the Board of Directors, such easements are required or reasonably necessary for the development and/or the convenient use and enjoyment of the Property and, in the sole opinion of said Board of Directors, will not unreasonably interfere with the overall use and enjoyment of the Master Association Common Area. No structure, planting or other material shall be placed or permitted to remain within any easements provided for above that may interfere with the installation of sewage disposal facilities and utilities or that may change the direction of flow or drainage channels in the easements or that may obstruct or retard the flow of water through drainage channels in the easements.

**Section 6. Declarant's Easement to Inspect and Rights to Correct.** Declarant reserves for itself and any others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement or condition which may exist on any portion of the Property, including individual lots therein, which structure, improvement or condition Declarant reasonably believes is in violation of this Declaration or otherwise creates a nuisance at the Property, and a perpetual, non-exclusive easement of access throughout the Property to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto any portion of the Property owned by an Owner other than Declarant or the Master Association shall be only after reasonable notice to such Owner and no entry into a structure shall be permitted. The Person exercising this easement shall promptly repair, at such Person's own expense, any damage resulting from such exercise.

**Section 7. Exercise of Rights and Easements.** Except in the cases of emergencies which threaten imminent damage, destruction or injury to persons or property, the exercise of the rights and easements reserved unto Declarant and/or the Master Association in accordance with the provisions of Sections 4, 5 and 6 of this Article III shall be with minimal inference to the business operations conducted upon portions of the Property. Further, to the extent this Article III

establishes easements for the benefit of Declarant or the Master Association, Declarant or the Master Association, as applicable, shall take reasonable measures to minimize any damage to the Property, or material inconvenience to Owners and Tenants, as a result of its exercise of such easements rights, and Declarant or the Master Association, as applicable, shall use commercially reasonable efforts to ensure that the exercise of such easement rights do not unreasonably and materially interfere with the intended use of any portion of the Property. Declarant or the Master Association, as applicable, in exercising any such easement rights, shall be obligated to promptly repair any damage caused by the exercise of such rights.

#### **ARTICLE IV**

#### **COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 1. Assessments for Maintenance Fund.** The Members covenant and agree to pay to the Master Association, and every Owner covenants and agrees, and each subsequent Owner of any Tract or other portion of the Property, by acceptance of a deed therefor, whether or not it is so expressed in such deed, is deemed to covenant and agree, to pay to the Master Association, either directly or through payment to any applicable Sub-Association and subsequent payment to the Master Association:

- (i) Annual assessments or charges for the creation and continuation of a maintenance fund in the amount hereinafter set forth (the “**Annual Assessments**”); and
- (ii) Special assessments as approved by the Master Association, to be established and collected as hereinafter provided (the “**Special Assessments**”).

**Section 2. Purposes of Assessments.** Except as hereinafter provided, the Assessments levied by the Master Association shall be used to pay the ongoing cost of and shall be used exclusively for the maintenance, repair, replacement, reconstruction, replenishment, restoration, administration, insuring, securing, cleaning and operation of the Designated Maintenance Items and the Master Association Common Area, including, but not limited to, the cost of repair, replacement and additions thereto, the cost of labor, equipment, materials, management and supervision thereof, the payment of taxes assessed against any such property, the cost of snow removal, the cost of trash removal, the cost of pest control, the procurement and maintenance of insurance in accordance with Article II, Section 4 herein and the Bylaws, the employment of attorneys to represent the Master Association when necessary, payments of principal and interest on funds borrowed for Master Association purposes and such other needs as may arise. Notwithstanding anything to the contrary set forth in this Declaration, the term “Assessments,” as used in this Declaration, shall not include any costs and/or expenses for the initial development, original construction, original installation or required re-installation of infrastructure, original capital improvements or other original construction costs of improvements constructed by or on behalf of Declarant or the Association; provided, however, replacements of Designated Maintenance Items at the expiration of the useful life thereof which are funded by reserves collected by the Master Association as a portion of the Assessments shall be permitted.

Without limiting the generality of the above-described purposes, the Master Association shall be responsible for performing the following in a diligent and reasonable manner, and the Assessments levied by the Master Association may be used for the following purposes:

(i) To maintain the Master Association Common Area in accordance with the highest standards for such private mixed-use facilities in the Charlotte, North Carolina metropolitan statistical area.

(ii) To keep the Master Association Common Area clean and free from refuse and debris, to maintain the amenities in a clean and orderly condition and to maintain the landscaping therein in good condition and appearance, including any necessary removal and replacement of landscaping.

(iii) To pay all ad valorem taxes levied against the Master Association Common Area, to the extent the same constitutes a separate tax parcel, and any property owned by the Master Association.

(iv) To pay the premiums on all hazard insurance, public liability insurance and officers' and directors' liability insurance carried by the Master Association.

(v) To pay legal, management, accounting and other professional fees incurred by the Master Association in carrying out its duties as set forth herein or in the Bylaws.

(vi) To maintain the signs and landscaping in the Master Association Common Area.

(vii) To maintain all Designated Maintenance Items.

(viii) To provide such maintenance in addition to that provided by the applicable governmental authorities with respect to public streets and roads located within the Property as the Master Association shall deem appropriate, including the clearance of storm drainage inlets to remove debris, and to provide such maintenance to any public streets and roads to the extent such public streets and roads are not maintained by the appropriate governmental authority in a manner deemed reasonably appropriate by the Board of Directors.

(ix) To pay for the cost of street and parking lot light lease charges, if any, and any other charges for electricity usage and/or bulb and light fixture repair and replacement for street lights located within public rights-of-way within the Property.

(x) To the extent that the Master Association takes steps to maintain or support certain activities within the Property designed to enhance the level of safety or security for the Property, subject to the provisions of Section 3 of Article IX hereinafter, to pay for the cost of such services.



(xi) To pay for the costs to organize and conduct events, promotions and other recreational and community activities for the general public and/or the Kellswater Commons community in the Master Association Common Area.

(xii) To pay for the costs to provide and maintain professional advertising and sales promotions and activities for the benefit of the Kellswater Commons.

(xiii) To pay for the costs to provide and maintain security service and personnel as determined from time-to-time by the Master Association.

(xiv) To collect from the Annual Assessments the portions designated as reserves and to maintain appropriate reserve accounts, in accordance with generally accepted accounting principles, for future capital expenditures in connection with the replacement of any Designated Maintenance Items.

**Section 3. Annual Assessments.** The Annual Assessments for each Member for each calendar year shall be determined by dividing the (i) number of votes to which each Member is entitled on January 1 of each year by (ii) a number equal to the aggregate acreage contained within the Property then subject to this Declaration and multiplying the percentage so obtained ( $\frac{[i]}{[ii]} \times 100$ ) by the total of the project expenditures for such calendar year determined as hereinafter set forth.

Beginning on the later of (i) the calendar year 2026 and (ii) the calendar year in which the substantial completion of the initial Improvements constructed on the Property occurs, and each year thereafter, the Master Association, acting through the Board of Directors, shall estimate the costs of performing its responsibilities hereunder, or so many of such responsibilities as it shall have expressly undertaken, for the next succeeding calendar year and advise each Member by notice in writing of the amount of the Annual Assessment determined as above provided for such next succeeding calendar year. In calculating the total project expenditures for any calendar year and the Annual Assessments to be collected for the payment of such project expenditures, the Board of Directors will take into account all amounts to be received from Meritage (or any successor association of townhome owners) under the REA in partial payment of maintenance and repair costs for the driveways and stormwater drainage systems within the Property.

The Annual Assessments may fund, in part, a contingency reserve for replacement and repair in a reasonable amount for each year, which reserve, if not expended, would be treated the same as excess funds. If, for any given calendar year, excess funds remain after payment of all expenditures for such calendar year, then such excess funds may be applied in payment of expenditures in succeeding calendar years or to the contingency reserve in the discretion of the Board of Directors.

**Section 4. Special Assessments for Capital Improvements and Other Matters.** In addition to the Annual Assessments authorized above, the Master Association may levy, in any assessment year, Special Assessment(s) for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon the Master Association Common Area, including, but not limited to, fixtures and personal property related thereto, any

Designated Maintenance Items, any private water or sewer or stormwater drainage line owned by Declarant or the Master Association, repayment of indebtedness and interest thereon, providing funds to pay for unforeseen or unbudgeted expenditures, borrowing the funds to make the Property comply with zoning ordinances, and borrowing of money for capital improvement and pledging or mortgaging of Master Association property as security for loans; provided, however, that any such Special Assessment(s) shall require the approval of the Members representing at least eighty percent (80%) of the total votes of the Master Association as set forth in Section 2 of Article II hereof, as then allocated. Special Assessments shall be due and payable on the date(s) which are fixed by the resolution authorizing such assessment.

**Section 5. Collection; Due Date.** Unless otherwise provided herein, Annual Assessments and Special Assessments shall be collected annually, semi-annually in two (2) equal installments, quarterly in four (4) equal installments or monthly in twelve (12) equal installments as determined by the Board of Directors. Unless otherwise provided herein or specified by the Board of Directors, Annual Assessments and Special Assessments shall be due and payable thirty (30) days after being billed to any Member by the Master Association. Late billing for a portion of any Assessments shall not affect an Owner's obligation to pay the same.

**Section 6. Notice and Quorum for Any Action Authorized Under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article IV shall be sent to each Member or designated representative thereof not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of in person or of proxies of representatives entitled to cast fifty percent (50%) of the votes of the Master Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 7. Date of Commencement of Annual Assessments.** The Annual Assessments provided for herein shall commence on the later of (i) the calendar year 2026 and (ii) the calendar year in which the substantial completion of the initial Improvements constructed on the Property occurs and thereafter shall be assessed as of January 1 of each year.

**Section 8. Records of Assessments.** The Master Association shall cause to be maintained in the office of the Master Association a record of all designated portions of the Property subject to assessment and Assessments applicable thereto which shall be open to inspection by any Member upon reasonable notice. Written notice of the Assessments shall be mailed to each Member or designated representative thereof.

**Section 9. Effect of Nonpayment of Assessments.** Any Assessments not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum or the maximum interest rate permitted to be legally charged under the laws of the State of North Carolina at the time of such delinquency, whichever is greater. In addition to such interest charge, any delinquent Member shall also pay such late charge as may have been theretofore established by the Board of Directors of the Master Association to defray the costs of

late payment. Any unpaid Assessment shall constitute a lien on that Tract for which such Assessment remains unpaid when filed of record in the Office of the Clerk of Superior Court of Cabarrus County, North Carolina. The Master Association, its agent or representative, or the applicable Sub-Association, its agent or representative, may bring an action at law against any Member personally obligated to pay the same or foreclose the lien against the Tract as provided in Section 47F-3-116 of the North Carolina General Statutes, and interest, late payment fee, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such Assessments. Such lien shall be prior to all other liens and encumbrances on that Tract for which such Assessment remains unpaid except (i) as specifically provided in Section 10 of this Article IV, and (ii) liens for ad valorem real estate taxes and other governmental assessments or charges against said Tract. No Member, Sub-Association or Owner may waive or otherwise escape liability for the Assessments provided for herein by abandonment of his or its Tract or other portion of the Property or by non-use of the Master Association Common Area, and until said cost and overdue charge are paid, there shall be a lien against such Tract, subordinate only to the lien of any first priority Deed of Trust encumbering such Tract.

**Section 10. Subordination of the Lien to Mortgages.** The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a portion of the Property and to other mortgages or deeds of trust if the mortgagee or beneficiary in such deed of trust is an Institutional Lender. The sale or transfer of any Tract shall not affect any assessment lien, but the sale or transfer of the Tract which is subject to a mortgage or deed of trust to which the lien of the assessment is subordinate, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to any installment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Tract from liability for any assessment thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of those mortgages and deeds of trust identified in the first sentence of this Section 10.

**Section 11. Exempt Property.** All property dedicated to, and accepted by, a local public authority for operation and maintenance shall be exempt from any provision of this Declaration, except that the foregoing shall not prevent the Master Association from maintaining any public streets and roads in accordance with this Declaration to the extent such public streets and roads are not maintained by the appropriate governmental authority in a manner deemed reasonably appropriate by the Board of Directors. All Master Association Common Area shall also be exempt from the Assessments created herein.

## **ARTICLE V**

### **MAINTENANCE OF TRACTS**

**Section 1. Owner and Sub-Association Maintenance Obligations.** Each Owner or Sub-Association, as applicable, shall maintain any Improvements situated on its Tract, including, but not limited to, plantings, landscaping, hedges, fencing, walls, roofs, windows, siding, lawns, driveway entrances, driveway bridges, driveways, parking areas and any portion of any public or private drainage easement affecting such portion of the Property as shown on any recorded map of the Property, at all times in a good, safe, clean and slightly first-class condition and state of

repair, consistent with the condition of the remainder of the Property, in compliance with all laws, rules, regulations, orders and ordinances of any governmental agency exercising jurisdiction thereover, in a manner satisfactory to the Board of Directors, and in compliance with the provisions of this Declaration. Each Owner or Sub-Association, as applicable, shall also maintain and repair, at its sole cost and expense, any underground and above ground lines, equipment and facilities for the delivery of utility services, which includes, but is not limited to, storm water, sanitary sewer, water (fire and domestic), sprinkler and irrigation, gas, electrical, cable television, telephone and other communication lines located on such Owner's or Sub-Association's Tract which exclusively serve such Tract, unless the same is otherwise maintained by a public utility company and/or governmental authority having jurisdiction. To the extent that any such utility lines, equipment and facilities which exclusively serve a Tract cross another portion of the Property not owned by the Owner of such Tract, the Owner or Sub-Association, as applicable, of the Tract that is exclusively served by such utility lines, equipment and facilities shall maintain and repair, at its sole cost and expense, such utility lines, equipment and facilities, unless the same has been dedicated to and accepted for public maintenance purposes by, or are otherwise maintained by, a public utility company and/or a governmental authority having jurisdiction.

**Section 2. Failure to Perform.** Upon an Owner's or Sub-Association's failure to perform any of the obligations set forth in Article V, Section 1 above, the Master Association may, at its option, after approval by a majority vote of the Board of Directors and after giving the Owner or Sub-Association, as applicable, thirty (30) days written notice sent to its last known address, perform such obligations on behalf of the Owner or Sub-Association, as applicable. All expenses of the Master Association incurred under this Article shall be a lien and charge against the Tract on which the work was done and the personal obligation of the then Owner of such Tract. The Master Association or its agents or employees may enter any portion of the Property to perform the maintenance and repairs set forth herein and such entry shall not be a trespass.

**Section 3. Repairs and Restoration in the Event of a Casualty.** In the event any of the Improvements on a Tract are damaged by fire or other casualty (whether insured or not), the relevant Owner of such Tract shall promptly remove the debris resulting from such event and, within a reasonable time thereafter, shall either (i) repair or restore the Improvements so damaged, such repair or restoration to be performed in accordance with all provisions of this Declaration (including, without limitation, the review and approval of all plans and specifications therefor by the Design Review Board), or (ii) erect other Improvements in such location, provided all provisions of this Declaration are complied with (including, without limitation, the review and approval of all plans and specifications therefor by the Design Review Board); provided, however, that all plans and specifications of the original construction of the Improvements shall be deemed approved by the Design Review Board in the event of reconstruction of the Improvements so damaged by fire or other casualty), or (iii) demolish the damaged portion of such Improvements, restore any remaining Improvements (if any) to an architectural whole (subject to the review and approval of all plans and specifications by the Design Review Board), remove all rubbish, and pave or grass and otherwise restore the area to a neat, orderly, sanitary and attractive condition. Each applicable Owner shall have the option to choose among the aforesaid alternatives, but each applicable Owner shall be obligated to perform promptly one of such alternatives.

## **ARTICLE VI**

### **RESTRICTIONS**

**Section 1. Obstructions.** There shall be no obstruction of the Master Association Common Area, nor shall anything be kept or stored in such areas by any Owner, nor shall anything be altered, constructed or planted in, or removed from such areas, without the prior written consent of the Master Association.

**Section 2. Restricted Actions.** No Owner or Tenant shall permit anything to be done or kept on the Property that will result in the cancellation of or increase in the cost of any insurance carried by the Master Association, or that would be in violation of any law. No waste shall be permitted in the Master Association Common Area. Each Owner and Tenant shall comply with all laws, regulations, ordinances (including, without limitation, applicable zoning ordinances) and other applicable governmental rules and restrictions.

**Section 3. Signs.** No sign of any kind, including free-standing signs and building-mounted signs, shall be displayed on any portion of the Property without the written consent of the Design Review Board, which consent shall be based on the Design Guidelines promulgated from time to time by the Design Review Board and shall not be unreasonably withheld by the Design Review Board. Notwithstanding the foregoing, (a) nothing herein shall act to restrict or prohibit Declarant or the Master Association from erecting and maintaining directional and other signs relating to the use of the Property, including, but not limited to, signs and billboards advertising the Property or portions thereof, (b) all signs erected and maintained on at the Property must conform with all applicable governmental requirements and (c) the Master Association and Declarant shall have the right to install signs in the Master Association Common Area.

Each Owner or Tenant that is specifically allowed by the Design Review Board to have an individual sign or sign panel at the Property shall be responsible, at its sole cost and expense, for (i) obtaining all necessary governmental permits and approvals for such signage and (ii) constructing, installing, maintaining, repairing and replacing of such signage, as well as ensuring the same remains in first-class condition and is otherwise in accordance with applicable governmental requirements.

**Section 4. Parking and Parking Decks.** No parking decks or structured parking shall be erected within the Property without the express written consent of Declarant or, if Declarant no longer owns any portion of the Property, the Board of Directors. The parking areas located within Kellswater Commons outside of the Grocery Store Parcel on the Retail Center shall provide at least the number of parking spaces required by applicable laws, codes, ordinances and regulations.

**Section 5. Subdivision.** No Owner or Sub-Association shall be permitted to subdivide its Tract into separate parcels without the prior written consent of Declarant or, if Declarant no longer owns any portion of the Property, the Board of Directors.

**Section 6. Rezoning.** No Owner shall rezone its portion of the Property or obtain any zoning variance or waiver without the prior written consent of Declarant, so long as Declarant

shall own any portion of the Property, and thereafter, without the prior written consent of the Board of Directors.

**Section 7. Damage to the Master Association Common Area.** Each Owner shall be liable to the Master Association and/or Declarant for damage to property owned by the Master Association and/or the Declarant which is caused by the negligence or willful misconduct of such Owner, or any of their Tenants, guests, agents, contractors, employees or invitees. Each Owner will be held responsible for any sums expended by the Master Association to repair such damage.

**Section 8. Rules of the Master Association.** The Board of Directors shall have the power and authority to promulgate rules and regulations to enable the Master Association to carry out the letter and intent of this Declaration. Each Sub-Association shall be responsible for distributing such rules and regulations to its members. All Owners shall abide by all rules and regulations so adopted by the Board of Directors from time to time. The Board of Directors shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and any Owner violating such rules and regulations shall be liable to the Master Association for all damages and costs, including reasonable attorneys' fees, resulting from such violations. The Board of Directors shall not have the power to impose restrictions, rules or limitations on Declarant.

**Section 9. Waste; Prohibition Against Dumping.** No portion of the Property may be used or maintained as a dumping ground for rubbish, trash or garbage. Waste of any nature shall not be kept on any portion of the Property except on a temporary basis in sanitary containers. No dumping of trash, garbage, sewage, sawdust, organic or inorganic waste or other similar materials shall occur and no unsightly or offensive material shall be placed on the Master Association Common Area, except as is temporary and incidental to the bona fide improvement of the area in a manner consistent with its classification as Master Association Common Area. In addition, the following types of activities are prohibited:

- (i) Dumping backfill into Master Association Common Area.
- (ii) Excavating soil from Master Association Common Area.
- (iii) Parking in a Master Association Common Area, except as otherwise designed by Declarant or, in the event Declarant no longer owns any portion of the Property, the Board of Directors.
- (iv) Stacking or storing supplies or equipment in the Master Association Common Area.
- (v) Changing site grade so as to cause drainage problems in the Master Association Common Area.
- (vi) Locating temporary construction buildings in the Master Association Common Area.

(vii) Disposing of toxic or hazardous materials in the Master Association Common Area.

Notwithstanding the provisions of this Section 9, the Master Association may establish and maintain, from time to time within any Master Association Common Area, storage areas for mulch piles, stacked firewood, rocks and other natural materials for the use and benefit of the Master Association Common Area.

**Section 10. Open Space.** Notwithstanding any provisions of this Declaration to the contrary, any portion of any Tract designated as “Open Space,” “Open Area,” “Tree Save Area,” “No-Build Area” or “Natural Area” on any plat of the Property heretofore or hereafter duly recorded in the Cabarrus County, North Carolina Public Registry shall be restricted as a permanent open space, and shall be maintained by the applicable Owner or Sub-Association in its natural or relatively undisturbed state, subject to any further restrictions and/or obligations imposed by the Declarant or the Master Association with respect to the use and maintenance of such open space and the natural features (including trees and vegetation) thereon.

**Section 11. Septic Systems.** No on-site septic system or sanitary sewer treatment facility will be permitted on any Tract.

**Section 12. Restricted Uses and Exclusive Uses.** No portion of the Kellswater Commons shall be used for those certain prohibited uses set forth at Section 1 on Exhibit C attached hereto and incorporated herein (such uses, collectively, the “**Restricted Uses**”). Declarant has granted certain exclusive use rights to the Owners, Tenants and Occupants of certain Tracts within the Property. Notwithstanding anything to the contrary contained herein, no Owner, Occupant, Tenant or any other Person (including, without limitation, Declarant) may engage in any of the activities described in Section 2 of Exhibit C (such uses, collectively, the “**Exclusive Uses**”) other than the Owner, Tenant and/or Occupant of the Tract identified therein as having the exclusive right to engage in such activity. Notwithstanding anything to the contrary contained in this Declaration: (a) Grocery Store Anchor’s written consent shall be required for any release, modification or amendment to the Grocery Store Exclusive Use (as defined below), which consent may be granted or withheld in the sole and absolute discretion of Grocery Store Anchor, and (b) until the expiration or termination of the Grocery Store Lease, the Grocery Store Anchor’s written consent shall be required for any release, modification or amendment to the Restricted Uses, which consent may be granted or withheld in the sole and absolute discretion of Grocery Store Anchor. Any Owner, Occupant or Tenant benefitting from any such Exclusive Uses shall have the same rights afforded Declarant to enforce the provisions of this Section 12 of Article VI, including, without limitation, the right to seek an injunction prohibiting any violation hereof. As used herein, the term “Grocery Store Exclusive Use” shall refer to the terms and conditions of Section 2(A) of Exhibit C to this Declaration.

**Section 13. Outparcel Restrictions.** For purposes of this Declaration, each of those certain Tracts located adjacent to the Retail Center and depicted as Outparcel #1, Outparcel #3, Outparcel #4, Outparcel #5, Outparcel #6, Outparcel #7, Outparcel #8, Outparcel #9 and Outparcel #10 on the Subdivision Plat and shown on the Site plan attached hereto shall be referred to herein as an “**Outparcel**”, and collectively, as the “**Outparcels**”. Each Outparcel shall contain at least

the number of parking spaces required by applicable laws, codes, ordinances and regulations, and no parking spaces located outside of any Outparcel may be counted toward the number of parking spaces required by such laws, codes, ordinances and regulations; it being the intent of the Declarant that each Outparcel shall be “self-parked”; provided, however, if the rules, regulations, orders, requirements or ordinances of any governmental agency or authority exercising jurisdiction over the Property mandate the sharing of vehicular parking spaces between adjoining Outparcels, then the same shall be permitted provided that the two Outparcels with shared vehicular parking in the aggregate provide the number of parking spaces required by applicable laws, codes, ordinances and regulations for the uses conducted on the Outparcels. Notwithstanding the foregoing sentence to the contrary, the Outparcels shall in no way infringe or utilize cross-parking on the Retail Center. Further, any buildings and/or improvements constructed on the Property, including, without limitation, an Outparcel or within the Retail Center (other than the Grocery Store Parcel) must meet the following criteria: the height of any structure, including any screening, parapet, mechanical equipment or similar appurtenance erected on the Property, any Outparcel or within the Retail Center (other than the Grocery Store Parcel) may not exceed thirty (30) feet measured perpendicular to the finished floor elevation of the building located on the Grocery Store Parcel, and the average height of all structures (including any screening, parapet, mechanical equipment or similar appurtenance) erected on any building located within the Retail Center (other than the Grocery Store Parcel) or on any of Outparcel #3, Outparcel #4, Outparcel #5, Outparcel #6 and Outparcel #7 on the Site Plan attached hereto may not exceed twenty-four (24) feet measured perpendicular to the finished floor elevation of the building located on the Grocery Store Parcel. For clarification, for any building located within the Retail Center (other than the Grocery Store Parcel) or on any of Outparcel #3, Outparcel #4, Outparcel #5, Outparcel #6 and Outparcel #7, the height of all structures located on that building (including any screening, parapet, mechanical equipment or similar appurtenance) will be averaged and the resulting average shall not exceed twenty-four (24) feet measured perpendicular to the finished floor elevation of the building located on the Grocery Store Parcel. By way of example only, if a portion of the height of a building constructed on Outparcel #3 equals twenty-four (24) feet measured perpendicular to the finished floor elevation of the building located on the Grocery Store Parcel and the remaining portion of the height of the building constructed on Outparcel #3 equals twenty-two (22) feet measured perpendicular to the finished floor elevation of the building located on the Grocery Store Parcel, the average height of all structures (including any screening, parapet, mechanical equipment or similar appurtenance) erected on such building on Outparcel #3 shall equal twenty-three (23) feet.

**Section 14. View Corridor.** Notwithstanding anything to the contrary set forth in this Declaration and so long as the Grocery Store Lease remains in full force and effect, no building, structure, improvement, sign, fixture, appurtenance, amenity, tree, plant or vegetation of any kind or type, in each case whether temporary or permanent, may be constructed within the View Corridor (as defined herein); provided, however, that Approved View Corridor Installations may be installed in such View Corridor. As used herein, the term “**Approved View Corridor Installations**” shall collectively refer to the following: roadways, sidewalks, trails, curb and gutter, street lights poles and other reasonable lighting installations, landscaping and plants as required by code by inspection authorities having jurisdiction, stormwater facilities, and other non-building amenities typically found in retail shopping center developments (such as trash cans, benches, and utility structures and appurtenances) that do not, individually or in the aggregate, materially obstruct the view of the Grocery Store Parcel from Kannapolis Parkway. Notwithstanding the



foregoing, in the event an applicable authority with appropriate jurisdiction requires the installation of any landscaping or plans within the View Corridor, Declarant, the Master Association or the Owner of the Tract located within the View Corridor, as the case may be, shall use commercially reasonable efforts to select and install such landscaping and/or plans in a manner that does not materially obstruct the view of the Grocery Store Parcel from Kannapolis Parkway. As used in this Declaration, the term “**View Corridor**” shall mean the area depicted as the “View Corridor” on **Exhibit B-1** attached hereto and incorporated herein by this reference.

Declarant shall have the right to change the location of the View Corridor, so long as, at all times: (a) the width of the View Corridor extends for at least one hundred (100) contiguous feet; (b) the length of the View Corridor extends from the western boundary(ies) of the particular Outparcel(s) upon which any portion of the View Corridor is located to the front of the Improvements constructed on the Grocery Store Parcel, such that the View Corridor is generally rectangular in nature (as generally depicted on **Exhibit B-1**); and (c) no portion of the View Corridor is located in any Outparcels other than Outparcel #6 and/or Outparcel #7, each as depicted on the Site Plan; it being the intent that, with respect to the portion of the View Corridor within any Outparcel(s), such portion must be located within Outparcel #6, Outparcel #7 or a combination of both Outparcel #6 and Outparcel #7. For the purposes of this paragraph: (1) the “width” of the View Corridor shall be measured based on the sides of the View Corridor that generally run parallel to Kannapolis Parkway and the front of the Improvements constructed on the Grocery Store Parcel; and (2) the “length” of the View Corridor shall be measured based on the sides of the View Corridor that generally run perpendicular to Kannapolis Parkway and the front of the Improvements constructed on the Grocery Store Parcel, and generally run parallel to the boundary line separating Outparcel #6 from Outparcel #7. If, subject to the provisions of this Declaration and the Grocery Store Lease, Declarant desires to make any change to the location of the View Corridor from that as generally depicted on **Exhibit B-1**, Declarant shall be able to enter into an amendment to this Declaration with the prior written consent of the Grocery Store Anchor to document any change to the location of the View Corridor pursuant to the terms of this paragraph.

## **ARTICLE VII**

### **CONSTRUCTION OF IMPROVEMENTS AND ARCHITECTURAL CONTROL**

**Section 1. Construction of Improvements.** Notwithstanding anything contained within this Declaration to the contrary, no Owner (other than Declarant, the Master Association, or any institutional builder designated as exempt by Declarant in its sole discretion, each of which shall be exempt from the requirements of this Article VII) shall undertake on any portion of the Property (i) any construction of any Improvement(s) or other structures, which shall include any staking, clearing, underbrushing, excavation, grading or other site work, (ii) the initial installation of any landscaping, plantings, trees or shrubs or any material alterations thereto, other than general maintenance of landscaping located pursuant to previously approved landscaping plans, or (iii) any exterior modification, change or alteration of any portion of the Property or any Improvements located thereon, whether functional or decorative, unless and until the requirements below in this Article VII have been fully met, and the Design Review Board has rendered a final decision pursuant to Section 15 of this Article VII. In determining acceptable construction materials, which determination shall be in the Design Review Board’s sole discretion, the Design Review Board may take into consideration the desire for high quality aesthetic appeal and long-term value both

in utility and appearance. The Design Review Board may refuse approval of plans, location, exterior color or finish or specifications for any reason, including purely aesthetic reasons.

**Section 2. Building Setback Lines.** All Improvements shall conform to the setback, sideline and rear yard requirements, including stream buffer lines, required by applicable zoning laws and other governmental requirements, as indicated on any recorded plat for the applicable portion of the Property or as required by the Design Review Board on the approved plans and specifications for the Improvements to be constructed on any portion of the Property.

**Section 3. New Construction.** Construction of new Improvements only shall be permitted on the Property, it being the intent of this covenant that all Improvements on any portion of the Property shall be defined as and have the overall appearance of new construction.

**Section 4. Temporary Structures and Storage Areas.** No partially completed Improvements or other structures of a temporary nature shall be permitted to exist on any portion of the Property except during such reasonable time period as is necessary for the completion of construction of such Improvements permitted by the Design Review Board. Notwithstanding anything to the contrary set forth herein, in no event shall storage sheds or areas, barns or other freestanding storage areas be constructed or installed on any portion of the Property, except during the course of construction of the principal structure on such portion of the Property. Notwithstanding anything to the contrary set forth herein, the Grocery Store Anchor shall be permitted to construct and/or install on the Retail Center in the sidewalk area in the front of the Grocery Store Parcel and the parking lot serving the Grocery Store Parcel temporary structures and storage areas incidental to the use of the Grocery Store Parcel as a grocery store. Such permitted improvements include, but are not limited to, cart containment systems (which may be placed in the parking lot serving the Grocery Store Parcel), seasonal product displays, outside seating areas with fencing, curbside pickup and related improvements, drive-thru pickup and related improvements and other customary improvements relating to the grocery store operated on the Grocery Store Parcel.

**Section 5. Diligent Construction.** All construction, landscaping or other work that has been commenced on any portion of the Property must be continued with reasonable diligence to completion in accordance with the provisions of Section 15 of this Article VII. All lawn areas and landscaping located on any portion of the Property must be installed in accordance with plans therefor approved by the Design Review Board no later than six (6) months after the date on which a Certificate of Occupancy has been issued for the Improvements on such portion of the Property.

**Section 6. Performance of Construction.** Every contractor and subcontractor constructing Improvements within the Property shall, consistent with best construction practices for a first-class development, keep all portions of its portion of the Property free of unsightly construction debris and shall at all times during construction either provide dumpsters for the containment of garbage, trash or other debris that is occasioned by construction of Improvements or take other measures consistent with best construction practices for a first-class development necessary to keep its portion of the Property free of garbage, trash or other debris that is occasioned by the construction of the Owner's Improvements. Any trash or construction debris caused by the activities of such Owner or Owner's contractors, subcontractors or agents shall be promptly

removed from any streets, sidewalks, walkways or other portions of the Property outside the Tract or within the Master Association Common Area. Any portable bathrooms or port-o-johns shall be screened to the extent and in the manner required by Declarant or the Master Association. The Owner of each portion of the Property shall at all times keep adjacent public and private areas free from any dirt, mud, garbage, trash or other debris that is occasioned by construction of Improvements. Each Owner shall promptly comply with any street washing requirement imposed by Declarant or the Master Association during any period of construction. Any trucks, construction equipment or machinery used by such Owner or such Owner's contractors, subcontractors or agents during any such period of construction shall be parked only within the boundaries of such Owner's Tract, and any construction vehicles and traffic must follow the routes that may be designated by the Master Association for construction traffic. No such construction shall proceed in a manner that interferes with the visibility of, access to, or operation of any other permitted use being conducted on the Property. All construction materials within a temporary staging and/or storage area must be located wholly within such Owner's Tract, at a location that will not unreasonably interfere with vehicle and pedestrian circulation. Any damage to the street, curb or sidewalk or to any part of any Master Association Common Area or utility system caused by an Owner or Owner's contractors, subcontractors or agents shall be repaired by such responsible Owner. Declarant or the Master Association, upon five (5) business days written notice, may provide for the cleaning of public and private areas due to the activities of the Owner or Owner's builder and may assess the Owner a reasonable charge not to exceed the actual cost for such cleaning. All Owners and Owners' contractors, subcontractors and agents shall comply with such rules of the Master Association as are from time to time adopted with respect to construction of Improvements. All Owners shall be responsible to assure that any contractor or builder employed by it complies with all builders' rules adopted by the Master Association from time to time.

**Section 7. Standards for Improvements and Governmental Requirements.** All Improvements constructed upon the Property shall conform to the minimum standards specified by the applicable governmental building codes in effect at the time of the permitting of such construction, as well as to all other rules, regulations, requirements, ordinances and laws of any local, state or federal governmental unit(s) or authorities having jurisdiction thereof. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirements applicable to any portion of the Property and all applicable governmental requirements or restrictions relative to the construction of Improvements on and/or use and utilization of any portion of the Property shall continue to be applicable and shall be complied with in regard to such portion of the Property.

**Section 8. Location of Improvements.** The Design Review Board shall have the right to control absolutely (subject to the provisions of zoning ordinances of the appropriate governmental authorities) the precise site, grade, elevation and location of any building or structure on any Tract in the sole discretion and judgment of the Design Review Board. Such location shall be determined only after reasonable opportunity is afforded the Owner of the Tract in question to recommend a specific site.

**Section 9. Curbs, Traffic Indicators and Poles/Bases.** All curbs and gutters shall be poured in place standard-sized curbs. Pavement markings, directional signs, and other traffic indicators upon each Tract shall be in accordance with the *Manual on Uniform Traffic Control*

*Devices*, and shall provide for a reasonable traffic flow scheme consistent with the plans and specifications approved by the Design Review Board in accordance with Section 15 of this Article VII. Any poles/bases for signage and/or lighting shall be uniform throughout Kellswater Commons unless otherwise approved by Declarant in its sole discretion.

**Section 10. Roof Drainage; Backflow Preventers.** Each building located on the Property shall be equipped with adequate roof drainage, and no downspout water shall be permitted to be deposited directly into landscaped areas or open ditches. Declarant shall have the sole authority to regulate backflow preventers at the Property, including any cover requirements and/or vegetation/landscaping requirements around such covers; provided that such authority shall vest in the Board of Directors once Declarant no longer owns any portion of the Property.

**Section 11. Utilities.** All utilities and utility connections shall be located underground, including electrical and telephone cables and wires, except as otherwise approved by the Design Review Board in writing. Unless otherwise required by the applicable public utility, transformers, electric, gas or other meters of any type, or other apparatus shall be located at the rear of the Improvements constructed on the Property or, if approved by the Design Review Board in writing, located elsewhere on such portion of the Property provided they are adequately screened as required by the Design Review Board in accordance with the provisions of this Declaration.

**Section 12. Landscaping.** The Design Review Board reserves the right to promulgate and amend from time-to-time landscape guidelines, which shall establish approved standards, methods and procedures for landscape management on the Property. The Design Review Board may also adapt one or more typical landscape plans consistent with such landscape guidelines that may be selected by an Owner. Each Owner shall install landscaping for all surface parking lots, buffer areas, and parking lot perimeters, and foundation plantings around buildings, all in compliance with the terms of this Declaration, its approved site plan, and applicable ordinances of the Town of Kannapolis and/or Cabarrus County, North Carolina. Any areas not covered by buildings, parking lots or other paved areas, including buffer strips and other undeveloped land areas, shall be landscaped with trees, shrubs, ground covers, or irrigated lawn areas in a uniform manner.

**Section 13. Sediment Control.** Sufficient sediment control measures, including, but not limited to, installation and maintenance of silt fences, temporary sediment traps, diversion ditches, storm water inlet protection or retention pond and temporary seeding, to the extent deemed reasonably necessary by the Design Review Board, shall be installed by the Owner or Owner's builder to ensure that all sediment resulting from any land disturbance or construction operation is retained on the Tract in question. All sediment control measures must be regularly cleaned out and maintained until such portion of the Property has been permanently stabilized with respect to soil erosion.

**Section 14. Screening, Fences and Walls.** All water towers, storage tanks, maintenance facilities, heating and air conditioning equipment, loading docks and utility service areas located on any Tract shall either be housed within a building, or otherwise screened from public view in a manner architecturally compatible with the building(s) located on that Tract. All trash receptacles not located within the service areas of a building shall be located in a permanent

gated enclosure that is constructed from the same primary building material as the building(s) on that Tract. All loading areas shall be screened from public view to the extent practical. All loading docks and associated areas shall have adequate space on each Tract so that loading and maneuvering of trucks and service vehicles will not disturb vehicle and pedestrian circulation. No fence, hedge, wall or timber wall, including any retaining wall, shall be erected, placed or altered on any Tract without written approval from the Design Review Board. Except as otherwise permitted by Declarant in its sole discretion, no chain link fence or vinyl fence shall be permitted on any Tract. All fences shall be constructed of wood or wrought iron. All walls shall be constructed of wood or stone and, unless approved by the Design Review Board, shall not exceed six feet (6') in height. The Design Review Board may adopt a standard design for approved fences and/or walls.

**Section 15. Procedure.** No Improvements of any kind or nature shall be erected, remodeled or placed on any portion of the Property until the plans and specifications therefor and a site plan therefor have been approved in writing by the Design Review Board, which plans and specifications and site plan shall include:

- (i) the nature, kind, shape, color, size, materials and location for all Improvements or other structures proposed to be constructed or modified on any portion of the Property;
- (ii) a depiction of driveways, walkways, parking and other paved areas, lawn areas, landscaped areas and drainage patterns;
- (iii) specifications describing the principal building and roofing materials (including all applicable material and color selections);
- (iv) final floor plans, final elevations showing all sides, and a final survey;
- (v) a landscape plan identifying all species of trees and plants to be planted on the Tract, with sizes specified; and
- (vi) with respect to any Tract, an exterior lighting plan (including site photometrics) confirming that exterior lighting will be focused on the applicable Tract and will not create direct glare onto adjoining Tracts.

The final plans and specifications and site plan as provided for above shall be submitted to the Design Review Board for approval or disapproval in accordance with the requirements of the Design Guidelines (See Section 20 of this Article VII). The Design Review Board is authorized to request the submission of samples of proposed construction materials as stipulated in the Design Guidelines, including, at the request of the Design Review Board, the submission of sample panels of such proposed materials in the field.

In reviewing each submission, the Design Review Board may consider: the quality of workmanship, design and materials; the adequacy of site dimensions and alignment of main elevations with respect to nearby streets; the harmony of the external design, color, type and

appearance of exterior surfaces, including roofs/rooftops, and landscaping with existing structures and landscaping; compliance with applicable governmental construction permit requirements; location in relation to surrounding structures; topography; finish grade elevation; landscaping; efforts made to mitigate sound and light transmission; and other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within the Design Guidelines (and any amendments hereto) promulgated by the Design Review Board, or other matters in which the Design Review Board has been vested with the authority to render a final interpretation and decision. All approvals and/or interpretations rendered by the Design Review Board shall be done by at least a majority vote of the members of the Design Review Board.

Once the Design Review Board has approved the plans and specifications for the Improvements, the construction of such Improvements must be promptly commenced and diligently pursued to completion. If such construction is not commenced within twelve (12) months following the date of approval of the plans and specifications therefor by the Design Review Board, such approval shall be deemed rescinded and before construction of Improvements can thereafter be commenced or completed, as applicable, on the portion of the Property in question, the plans and specifications therefor must again be approved by the Design Review Board pursuant to this Article VII.

In addition to the procedures described in this Section 15 and the Design Guidelines, and in recognition of the cost involved in producing the final plans and specifications, the applicable Owner may request a preliminary review of the design of the Improvements upon the submission of the following:

- (A) Schematic floor plans at a scale of one-fourth inch (1/4") equals one foot (1');
- (B) Final elevations showing all sides, the rooftop and any rooftop equipment;
- (C) Specifications describing the principal building and roofing materials (including all applicable material and color selections); and
- (D) Schematic site plan.

All Improvements, including the parking, roadway and pedestrian walking areas on any Tract, shall be located substantially in accordance with the final plans and specifications approved by the Design Review Board. Any material deviation from such approved final plans and specifications, including any material deviation in the location of the Improvements, shall require further approval from the Design Review Board pursuant to this Section 15.

**Section 16. No Waiver of Future Approvals.** The members of the Design Review Board will change from time-to-time and the interpretation, application and enforcement of the Design Guidelines may vary accordingly. The approval by the Design Review Board of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Design Review Board shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar

proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

**Section 17. Enforcement.**

(a) The Master Association shall have the specific right (but not obligation) to enforce the provisions contained in this Article VII and/or to prevent any violation of the provisions contained in this Article by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions. In addition to the foregoing, the Board of Directors shall have the authority and standing, on behalf of the Master Association, to pursue all legal and equitable remedies available to enforce the provisions of this Article VII and the decisions of the Design Review Board.

(b) As to nonconforming or unapproved Improvements or other work done in violation of this Article, the Master Association may require any Owner to restore such Owner's Improvements and/or remove such other work and restore the applicable portion of the Property to the condition existing prior to the construction thereof, including, without limitation, the demolition and removal of any unapproved Improvements if such Improvements were commenced or constructed in violation of this Article. In addition, the Master Association may, but has no obligation to do so, enter the affected portion of the Property and cause such restoration, demolition and removal and levy the amount of the cost thereof as a special individual assessment against the applicable portion of the Property.

**Section 18. Failure of the Design Review Board to Act.** If the Design Review Board fails to approve or disapprove any plans and specifications and other submittals that conform (and that relate to Improvements that will conform) with the requirements hereof or to reject them as being inadequate or unacceptable within thirty (30) days after receipt thereof, and provided such submittal was a full and complete submittal of all items that were to have been submitted to the Design Review Board, and provided the Design Review Board shall again fail to approve or disapprove of such plans, specifications and other submittals within twenty (20) days after additional written request to act on such items is delivered to the Design Review Board following the passage of such first above described thirty (30) day period, it shall be conclusively presumed that the Design Review Board has approved such conforming plans and specifications and other submittals, except that the Design Review Board has no right or power, either by action or failure to act, to waive or grant any variances relating to any mandatory requirements specified in this Declaration, except where variances shall be expressly permitted herein. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Design Review Board may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject the balance.

**Section 19. Limitation of Liability.** Neither the Design Review Board, the members thereof, the Master Association, nor Declarant shall be liable in damages or otherwise to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with any submittal for approval or disapproval or failure to approve or disapprove any plans or specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Master Association, the Design Review

Board, the Board of Directors or the officers, directors, members, employees and agents of any of them, to recover any such damages and hereby releases, remises and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law that provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

**Section 20. Design Guidelines.** The Design Review Board has published and promulgated, as of the date of this Declaration, the “Kellswater Commons Design Guidelines” which are intended to be explanatory and illustrative of the general intent of the development of the Property, are intended to govern the types of uses, locations for such uses and integration of parking areas, access and circulation to serve such uses within the Kellswater Commons and are intended to govern the submission, review and approval of the plans for the construction of Improvements in the Kellswater Commons and certain site development and design standards in connection therewith (the “**Design Guidelines**”). The Design Guidelines are more detailed than the provisions of this Declaration, including this Article VII and copies of the Design Guidelines are available upon request of the Design Review Board. In case of a conflict between the provisions of this Declaration and the Design Guidelines, the Design Guidelines shall control. The Design Guidelines contain general provisions applicable to the entire Property, as well as specific provisions which vary from one portion of the Property to another depending upon the location, unique characteristics, and intended use thereof. The Design Guidelines shall supplement these covenants, conditions and restrictions and are incorporated herein by reference. The Design Review Board may refuse approval of plans, location, exterior color or finish or specifications for any reason, including purely aesthetic reasons, which in the sole discretion of the Design Review Board shall be deemed sufficient, and the Design Guidelines shall not constitute, in every event, the sole basis for approval or disapproval of plans, specifications and other materials submitted to the Design Review Board for approval.

**Section 21. Variances.** Upon submission of a written request for same, the Design Review Board may, from time to time, in its sole discretion, permit Owners to construct, erect or install Improvements that are in variance with the architectural standards or similar provisions of this Declaration or supplemental Declarations that may be promulgated in the future; provided that only the Master Association may permit Owners, upon submission of a written request for same, to construct, erect or install Improvements that are in variance with the setback requirements. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the Property and shall not materially change the scheme of restrictions herein set forth. Written requests for variances shall be deemed to be disapproved in the event the Design Review Board or the Master Association, as applicable, has not expressly and in writing, approved such request within thirty (30) days of the submission of such requests. No member of the Design Review Board or the Board of Directors shall be liable to any Owner for any claims, causes of action or damages arising out of the grant or denial of any variance to any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Design Review Board’s (or, in the case of setback requirements, the Master Association’s) right to strictly enforce the covenants, restrictions and architectural standards provided hereunder against any other Owner.



**Section 22. Review Fee and Address.** A review fee per set of plans and specifications as specified in the Design Guidelines may be imposed for initial submittals of plans and specifications for Improvements to be located on an Owner's portion of the Property and for each re-submittal of plans and specifications to the Design Review Board. A review fee may also be imposed for any Owner's request for a variance as specified hereinabove and in the Design Guidelines. The address of the Design Review Board shall be the principal place of business of the Master Association from time to time designated in writing by the Board of Directors. Such address shall be the place of the submittal of any plans and specifications and the place where the current rules and regulations, if any, of the Design Review Board shall be kept.

**Section 23. No Liability for Design Defect.** Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither Declarant, the Design Review Board, the members thereof, the Master Association, nor the Board of Directors assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications.

**Section 24. Applicable to Additional Property.** Without limitation, all requirements of this Article VII also shall apply to any Improvements or other structures constructed on any additional real property brought within the scheme of this Declaration if and when such additional real property is subjected to this Declaration, as provided in Article X, Section 3.

**Section 25. Amendment of this Article.** This Article shall not be amended without the prior written consent of Declarant so long as Declarant owns any portion of the Property, which consent may be granted or withheld in Declarant's sole and absolute discretion.

## **ARTICLE VIII**

### **SUB-ASSOCIATIONS**

**Section 1. Master Association Approval.** Except for actions consistent with declarations, bylaws and/or other instruments previously approved by Declarant in accordance with Section 4 of this Article VIII, no action of any Sub-Association shall become effective or be implemented until and unless the Master Association shall have been given written notice of such proposed action and the opportunity to disapprove the proposed action or unless such action is in strict compliance with guidelines set by the Board of Directors. The Master Association shall have ten (10) days from receipt of the notice to disapprove any proposed action. The Master Association may disapprove any action taken or contemplated by any Sub-Association which the Board of Directors reasonably determines to be adverse to the interests of the Master Association or its Members.

Further, the Master Association shall have the power to require specific action to be taken by any Sub-Association in connection with its obligations and responsibilities, such as requiring specific maintenance and repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor. In the event any Sub-Association fails to comply with such directives, the Master Association shall have the right to effect such action on behalf of the Sub-Association and levy an assessment against the

applicable Tract subject to the Sub-Association's jurisdiction to cover the costs incurred, as well as an administrative charge and sanctions.

**Section 2. Restrictions on Declarant's Rights.** So long as Declarant owns any portion of the Property, neither the Master Association nor any Sub-Association shall, without the prior written approval of Declarant, adopt any policy, rule or procedure that:

- (i) Limits the access of Declarant, its successors, assigns and/or affiliates or their personnel and/or guests, including visitors, to the Master Association Common Area or to any property owned by any of them;
- (ii) Limits or prevents the Declarant, its successors, assigns and/or affiliates or their personnel from advertising, marketing or using the Master Association or the Master Association Common Area or any property owned by any of them in promotional materials;
- (iii) Discriminates against or singles out Declarant; or
- (iv) Impacts the ability of Declarant, its successors, assigns and/or affiliates, to carry out to completion its development plans and related construction activities for Kellswater Commons, as such plans may be amended and updated from time to time. Policies, rules or procedures affecting the provisions of existing easements established by Declarant and limiting the establishment by Declarant of easements necessary to complete Kellswater Commons shall be expressly included in this provision. Easements that may be established by Declarant shall include, but shall not be limited to, easements for development, construction and landscaping activities and utilities.

**Section 3. No Interference.** Neither the Master Association nor any Sub-Association shall exercise its authority over the Master Association Common Area (including, but not limited to, any gated entrances and other means of access to the Property) to interfere with the rights of Declarant set forth in this Declaration or to impede access to any portion of the Property, over the streets and other Master Association Common Area within the Property.

**Section 4. Additional Documents.** No Sub-Association or any person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium [or townhomes] bylaws or similar instrument affecting any portion of the Property without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by Declarant.

**Section 5. Amendment of this Article.** This Article shall not be amended without the prior written consent of Declarant so long as Declarant owns any portion of the Property, which consent may be granted or withheld in Declarant's sole and absolute discretion.

## **ARTICLE IX**

### **DISCLAIMER OF LIABILITY**

**Section 1. Disclaimer of Liability.** Notwithstanding anything contained herein or in the Bylaws, or any rules or regulations of the Master Association or any other document governing or binding the Master Association, neither the Master Association, the Board of Directors, the management company of the Master Association, Declarant nor any successor Declarant shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or occupant of any portion of the Property or any Tenant, guest or invitee of any Owner or occupant or for any property of any such persons. Each Owner and occupant of any portion of the Property and each Tenant, guest and invitee of any Owner or occupant shall assume all risks associated with the use and enjoyment of the Property. No provision of this Declaration or the Bylaws or any other document governing or binding the Master Association shall be interpreted as creating a duty of the Master Association, the Board of Directors, the management company of the Master Association, Declarant or any successor Declarant to protect or further the health, safety or welfare of any person(s), even if the funds of the Master Association are used for any such purpose.

**Section 2. Utilities.** Neither the Master Association, the Board of Directors, the management company of the Master Association, Declarant nor any successor Declarant shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Property. Each Owner and occupant of any portion of the Property, Tenant, guest and invitee of any Owner or occupant shall assume all risk of personal injury, illness or other loss or damage arising from the presence of utility lines or utility sub-stations and further acknowledges that the Master Association, the Board of Directors, the management company of the Master Association, Declarant and any successor Declarant have made no representations or warranties, nor has any Owner or occupant, or any family member, Tenant, guest or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

**Section 3. Safety and Security.** The Master Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to enhance the level of safety or security that each person provides for himself and his property. However, no representation or warranty is made that any systems or measures cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Neither the Master Association, the Declarant, the Board of Directors, nor the members, partners, affiliates, officers, directors, agents or employees of any of the foregoing, shall in any way be considered insurers or guarantors of the safety or security within Kellswater Commons, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

Each Owner, Tenant, occupant, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in Kellswater Commons and each of them assumes all risk of personal injury or loss or damage to their property resulting from acts of third parties.

**Section 4. Acceptance.** Each Owner (by virtue of his, her or its acceptance of title to his, her or its portion of the Property) and each other person having an interest in or lien upon, or making any use of, any portion of the Property (by virtue of accepting such interest or lien or making such use) shall be bound by this Article IX and shall be deemed to have waived any and all rights, claims, demands and causes of action against the Master Association, the management company of the Master Association, if any, Declarant and any successor Declarant, their directors, officers, committee and Board of Directors members, employees, agents, contractors, subcontractors, successors and assigns arising from or connected with any matter for which the liability has been disclaimed.

## **ARTICLE X**

### **GENERAL PROVISIONS**

**Section 1. Enforcement.** The Master Association, or any Member, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Master Association or by any Member to enforce any covenant or restriction herein contained in no event shall be deemed a waiver of the right to do so hereafter.

**Section 2. Right to Transfer or Assign Declarant's Rights.** Any or all of Declarant's special rights and obligations set forth in this Declaration or the Bylaws may be transferred in whole or in part to any Person; provided that such transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the Bylaws. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and the transferee and is recorded. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise. Upon any transfer by Declarant of any or all of its rights and obligations hereunder, Declarant shall be relieved of any and all obligations and liabilities with respect to the rights and obligations so transferred; provided, however, that nothing contained herein shall be interpreted to absolve Declarant of any obligations or liabilities that Declarant has separately contracted for with any Owner or Occupant pursuant to a separate instrument in the event of a transfer by Declarant of any of its rights and obligations provided in this Declaration as contemplated in this Section 2 of this Article X.

**Section 3. Additions to Property.** Provided that Declarant still owns any portion of the Property, additional real property (and common areas) that is contiguous to the existing Property may be annexed to the existing Property by Declarant and brought within the scheme of this Declaration and the jurisdiction of the Master Association with the consent of the Grocery Store Anchor but without the consent of the Master Association or the Members. The additions of such property authorized under this Section shall be made by recording a supplementary Declaration of Covenants, Conditions and Restrictions executed by Declarant and the Grocery Store Anchor with respect to the additional property, which shall extend the operation and effect of the covenants, conditions and restrictions (including, without limitation, the restrictions set forth

in **Exhibit C**) in this Declaration to such additional property, and shall, if applicable, designate the additional property as a portion of a Tract. Upon the recording of such supplementary Declaration of Covenants, Conditions and Restrictions, all references in this Declaration to the "Property" shall include reference to the property annexed to the existing Property thereby. In the event that additional property is annexed within the Master Association, the allocation of votes as set forth in this Section 2 of Article II of this Declaration (and consequently the allocation of Assessments as set forth in Article IV of this Declaration) shall be reallocated for each Tract in the manner as provided in this Declaration.

**Section 4. Severability.** Invalidity of any one of these covenants or restrictions by judgment or court order shall in no manner affect any other provisions which shall remain in full force and effect.

**Section 5. Term.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty-five (35) years from the date this Declaration is recorded after which time they shall be automatically extended for successive periods of ten (10) years each unless Members with at least seventy-five percent (75%) of the votes and the Grocery Store Anchor elect not to continue the same in existence.

**Section 6. Amendment.** This Declaration may be terminated or amended by an instrument signed by (a) the Grocery Store Anchor and (b) Members duly authorized and empowered to vote at least seventy-five percent (75%) of the Master Association votes set forth in Section 2 of Article II hereof as then allocated, provided that any provision of this Declaration which specifies a higher vote percentage may not be amended without the approval of the Members authorized and empowered to vote such higher approval percentage, and no amendment to this Declaration (including, but not limited to, all exhibits hereto), the Bylaws or the Articles of Incorporation of the Association which would materially, adversely and disproportionately impact the rights of the Grocery Store Anchor or a Member as currently provided hereunder may be adopted without the prior written consent of the Grocery Store Anchor or such Member. Notwithstanding any provisions to the contrary contained herein, so long as Declarant, or any affiliate of Declarant, owns any portion of the Property, (i) this Declaration and the Bylaws of the Master Association may not be amended without its and/or, his or her written consent and (ii) Declarant may unilaterally amend this Declaration for the purpose of (a) bringing any provision into compliance with any applicable governmental statute, rule, regulation or judicial determination; (b) enabling any reputable title insurance company to issue title insurance coverage on any portion of the Property; (c) enabling any institution or governmental lender, purchaser, insurer or guarantor of mortgage loans, including any Institutional Lender, to make, purchase, insure or guarantee mortgage loans on any portion of the Property; (d) satisfying the requirements of any local, state or federal governmental agency. However, any unilateral amendment by Declarant pursuant to this Section shall not materially adversely affect the title to any portion of the Property or adversely affect such Owner's rights under this Declaration or adversely affect such Owner's use and operation of its Tract unless the Owner of such portion of the Property shall consent in writing. Further, notwithstanding any provisions to the contrary contained herein, no amendment to this Section 6 of Article X or Section 12, Section 13 or Section 14 of Article VI of this Declaration and the corresponding exhibits (including, without limitation **Exhibit C** attached

hereto) shall be made without the prior written consent of the Grocery Store Anchor which may be withheld in Grocery Store Anchor's sole and absolute discretion.

Any amendment shall become effective upon recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within one (1) year of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

**Section 7. Notices.** All notices, demands, requests, permissions, consents or approvals given by Declarant or the Master Association to any Owner or Sub-Association or by any Owner or Sub-Association to Declarant or the Master Association shall be in writing and shall be deemed to have been properly given three (3) days after posted if sent by United States registered or certified mail, postage prepaid, return receipt requested, addressed to the Master Association to its registered agent at its registered office and addressed to Declarant at the following address: c/o MPV Properties, 2400 S. Boulevard, Suite 300, Charlotte, NC 28203, Attention: Property Management, or such other mailing address and contact person as Declarant may designate from time to time, and if to an Owner or a Sub-Association, at such mailing address designated in writing by such Owner or Sub-Association.

**Section 8. Estoppel Certificates.** Upon written request (which shall not be made more frequently than two (2) times during any calendar year) from time to time by any Owner (the "**Requesting Party**") and upon payment of the Master Association's reasonable administrative fee therefor, the Master Association shall issue to the Requesting Party or to a prospective or existing lender of the Requesting Party or to a prospective successor in title to the Requesting Party, an estoppel certificate stating:

(i) Whether the Declarant or the Master Association has given any notice to the Requesting Party of any default by the Requesting Party under this Declaration which remains uncured, and if there are such defaults of which notice has been given and which remains uncured, specifying the nature thereof;

(ii) Whether, to the Master Association's knowledge, as between the Master Association and the Requesting Party, this Declaration has been supplemented, modified or amended in any way (and if it has, stating the nature thereof);

(iii) That, to the Master Association's knowledge, this Declaration as of that date is in full force and effect (if and to the extent such statement can truthfully be made and, if not, setting forth the exceptions to such statement); and

(iv) The then current amount(s) of the Annual Assessments, Special Assessments, and any other assessments charged by or on behalf of the Master Association and the status of the Requesting Party's payment thereof.

**Section 9. Condemnation.** In the event of a condemnation or a sale in lieu thereof concerning a portion or all of the Property, the following provisions shall apply:

(i) Once such portion of the Property becomes subject to a condemnation action, the Owner or Owners of such portion of the Property affected thereby shall give prompt written notice of such condemnation action to Declarant and all other Owners.

(ii) The award or purchase price paid for such taking shall be paid to the Owner or Owners of the portion of the Property so taken (or to such Owner's mortgagees or tenants, as their interests may appear), it being the intent of any other Owner who might have an easement or other property interest or right under this Declaration in the land so taken to release and/or waive such property interest or right with respect to such award or purchase price; provided, however, such other Owner(s) shall have the right to seek an award or compensation for the loss of its or their easement rights to the extent such award or compensation paid or allocated for such loss does not reduce or diminish the amount paid to the Owner(s) owning such portion of the Property.

**Section 10. Paragraph Headings.** Paragraph headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the particular paragraphs to which they refer.

**Section 11. Applicable Law.** This Declaration shall be governed by and construed in accordance with the laws of the State of North Carolina.

**Section 12. Binding Effect.** All of the covenants, restrictions, stipulations and conditions contained in this Declaration shall be binding upon and inure to the benefit of Declarant, the Master Association, the Owners, and their respective heirs, executors, administrators and assigns.

**Section 13. Use of the Word "Kellswater Commons".** No natural person or legal entity shall use the word "Kellswater Commons" or any derivative, or any other term which Declarant may select as the name of this development or any component thereof, in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the word "Kellswater Commons" in printed or promotional matter solely to specify that particular property is located within the Property and the Master Association shall be entitled to use the word "Kellswater Commons" in its name.

**Section 14. No Public Rights.** The establishment of the Master Association Common Area does in no way grant to the public or to the owners of any surrounding or adjacent land the right to enter the Master Association Common Area without the express permission of Declarant or the Master Association.

**Section 15. Exhibits.** Exhibits "A," "B", "B-1", "C" and "D" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article.

**Section 16. Planned Community Act Not Applicable.** Notwithstanding anything to the contrary contained in this Declaration, the provisions of the North Carolina Planned Community Act (NCGS Section 47F-1-101, *et seq.*) shall **not** apply to the Property or this

Declaration; provided, however, that the foregoing shall not prevent the application of the North Carolina Condominium Act, and any applicable Sub-Association if, and to the extent, provided for in a separate declaration encumbering such property.

*[signature on following page]*

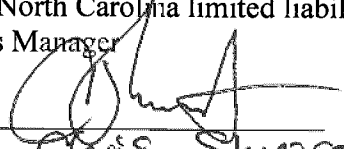


IN WITNESS WHEREOF, the undersigned has duly executed these presents by authority duly given as of the date and year first above written.

**DECLARANT:**

**MPV KELLSWATER, LLC**

By: MPV Properties, LLC,  
a North Carolina limited liability company,  
its Manager


By:   
Name: Chris Skvoretz  
Title: Manager

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Kimberly B Young, a Notary Public for the County of Mecklenburg, and State of North Carolina, do hereby certify Chris Skvoretz Manager of MPV Properties, LLC, a North Carolina limited liability company, itself the Manager of MPV KELLSWATER, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said limited liability company.

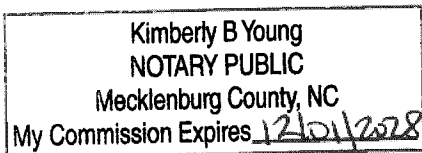
Witness my hand and official stamp or seal, this 23 day of October, 2024.

  
Notary Public

My Commission Expires:

12/01/2028

[AFFIX NOTARY SEAL BELOW]



**EXHIBIT A****PROPERTY DESCRIPTION**

Being all of those certain lots, parcels or tracts of land lying and being situated in the City of Kannapolis, Cabarrus County, North Carolina and being more particularly described as follows:

**Parcel I:**

BEGINNING at an iron rod set located in the Rogers Lake Road Variable Width Public Right of Way (PB 51 PG 78) and the northeast corner of Outparcel 5; thence with Outparcel 5 the following five (5) courses and distances: (1) S 16° 43' 19" E 194.78' to an iron rod set; (2) thence S 64° 42' 39" W 17.46' to an iron rod set; (3) thence a curve to the left having a radius of 150.00', an arc length of 22.00', and a chord bearing of S 60° 30' 31" W for a distance of 21.98' to an iron rod set; (4) thence S 56° 18' 23" W 77.88' to an iron rod set; and (5) thence a curve to the left having a radius of 150.00', an arc length of 89.61', and a chord bearing of S 39° 11' 32" W for a distance of 88.28' to an iron rod set located in the corner of Outparcels 5 and 6; thence with Outparcel 6 the following three (3) courses and distances: (1) a curve to the left having a radius of 150.00', an arc length of 99.34', and a chord bearing of S 3° 06' 22" W for a distance of 97.53' to an iron rod set; (2) thence S 15° 51' 56" E 142.32' to an iron rod set; and (3) thence a curve to the left having a radius of 185.00', an arc length of 11.41', and a chord bearing of S 17° 37' 56" E for a distance of 11.41' to an iron rod set in the corner of Outparcels 6 and 7; thence with Outparcel 7 the following four (4) courses and distances: (1) a curve to the left having a radius of 185.00', an arc length of 72.32', and a chord bearing of S 30° 35' 53" E for a distance of 71.86' to an iron rod set; (2) thence S 41° 47' 51" E 132.22' to an iron rod set; (3) thence a curve to the left having a radius of 500.00', an arc length of 49.91', and a chord bearing of S 38° 56' 17" E for a distance of 49.88' to an iron rod set; and (4) thence S 36° 04' 43" E 39.51' to an iron rod set in the corner of Outparcels 7 and 8; thence with Outparcel 8 the following three (3) courses and distances: (1) S 36° 04' 43" E 61.08' to an iron rod set; (2) thence a curve to the left having a radius of 500.00', an arc length of 49.91', and a chord bearing of S 38° 56' 17" E for a distance of 49.88' to an iron rod set; and (3) thence S 41° 47' 51" E 22.72' to an iron rod set in the line of the Dogwood Boulevard 60' Public Right of Way; thence with Dogwood Boulevard N 48° 12' 09" E 30.00' to an iron rod set in the northwest corner of Georgetown Crossing Homeowners Association Inc. (DB 16260 PG 238 PB 91 PG 98)(now or formerly), said iron rod set located N 85° 20' 12" W 32.23' from a right of way disk found; thence with Georgetown Crossing Homeowners Association Inc. N 56° 18' 23" E 402.70' to an iron rod set located in the western corner of Outparcel 1; thence with Outparcel 1 N 02° 13' 21" E 374.27' to an iron rod set; thence continuing with Outparcel 1 N 32° 01' 03" E 229.17' to an iron rod set located in the Furlong Way 100' Public Right of Way; thence with Furlong Way a curve to the right having a radius of 89.00', an arc length of 47.47', and a chord bearing of N 19° 01' 09" W for a distance of 46.91' to an iron rod set located in the southeast corner of Outparcel 3; thence with Outparcel 3 the following five (5) courses and distances: (1) S 86° 47' 50" W 65.97' to an iron rod set; (2) thence a curve to the left having a radius of 150.00', an arc length of 43.89', and a chord bearing of S 78° 24' 52" W for a distance of 43.74' to an iron rod set; (3) thence S 70° 01' 54" W 103.51' to an iron rod set; (4) thence a curve to the right having a radius of 150.00', an arc length of 57.51', and a chord bearing of S 81° 00' 58" W for a distance of 57.16' to an iron rod set; and (5) thence N 87° 59' 58" W 4.73' to an

iron rod set located in the corner of Outparcels 3 and 4; thence with Outparcel 4 the following six (6) courses and distances: (1) N 87°59' 58" W 80.85' to an iron rod set; (2) thence a curve to the left having a radius of 150.00', an arc length of 52.33', and a chord bearing of S 82° 00' 20" W for a distance of 52.07' to an iron rod set; (3) thence S 72° 00' 37" W 140.83' to an iron rod set; (4) thence a curve to the left with a radius of 150.00', an arc length of 19.11', and a chord bearing of S 68° 21' 38" W for a distance of 19.10' to an iron rod set; (5) thence S 64° 42' 39" W 6.90' to an iron rod set; and (6) thence N 16° 43' 19" W 175.85' to an iron rod set located in the right of way for Rogers Lake Road (PB 51 PG 78); thence with Rogers Lake Road S 80° 06' 41" W 70.50' to the point and place of BEGINNING, containing 9.878 acres, 430,290 square feet and being shown as Retail Center on the plat entitled, "Recombination Survey for MPV Kellswater, LLC," dated July 18, 2023, prepared by Tracy Thane Bishop, PLS, L-4765, with Colliers Engineering & Design CT, P.C., recorded August 28, 2023, in Plat Book 97, Page 72 in the Office of the Register of Deeds for Cabarrus County, North Carolina.

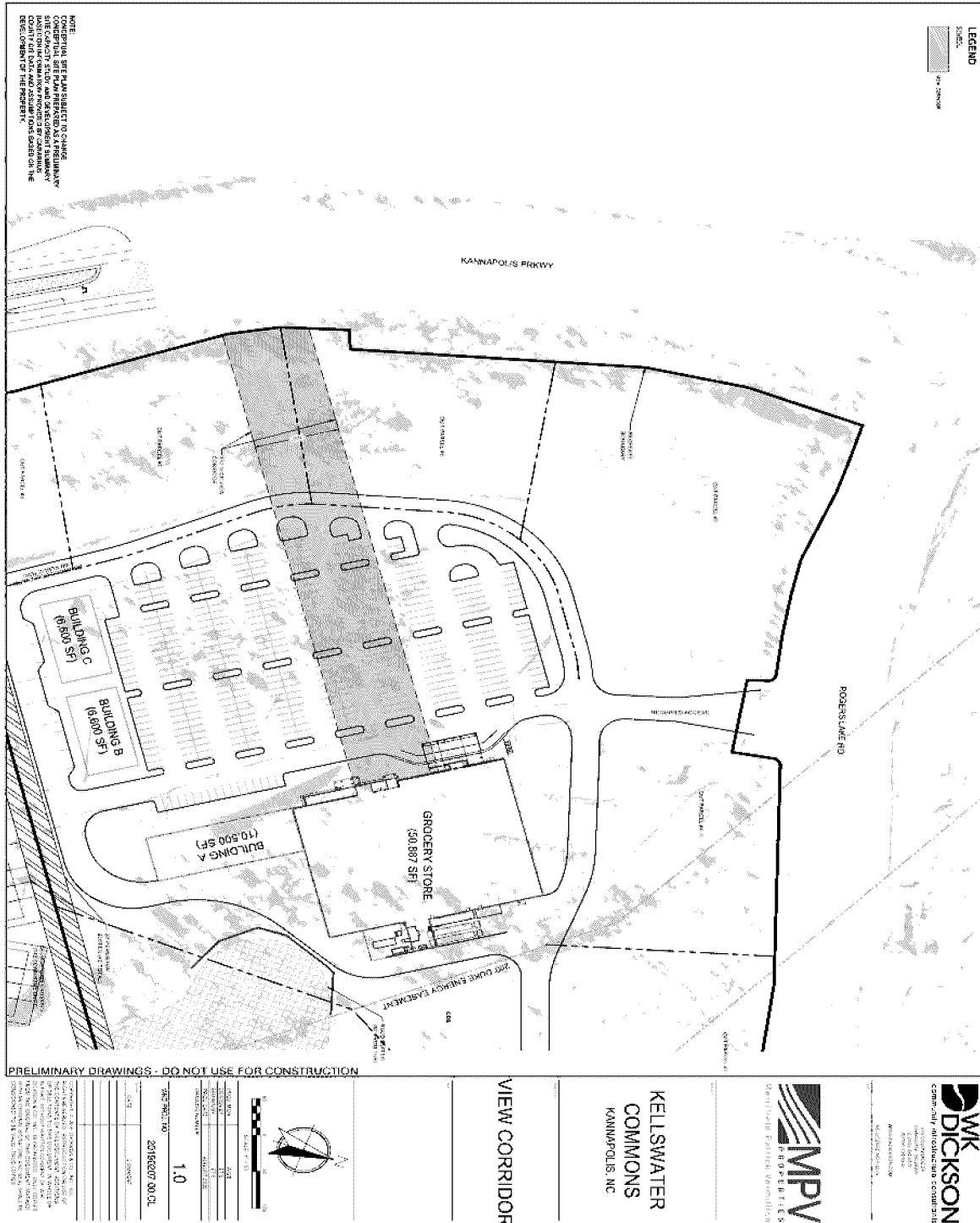
Parcel II:

BEING all of **Outparcel 1** (10.137 acres; 441,566 square feet), **Outparcel 3** (1.868 acres; 81,363 square feet), **Outparcel 4** (1.572 acres; 68,498 square feet), **Outparcel 5** (2.956 acres; 128,783 square feet), **Outparcel 6** (1.467 acres; 63,915 square feet), **Outparcel 7** (1.662 acres; 72,399 square feet), **Outparcel 8** (1.429 acres; 62,259 square feet), **Outparcel 9** (1.097 acres; 47,765 square feet) and **Outparcel 10** (1.598 acres; 69,616 square feet) as the same are shown on that certain "Recombination Survey for Kellswater Commons, LLC" prepared by Tracy Thane Bishop, NCPLS, #L-4765, dated as of July 18, 2023, and recorded in Book 97 at Page 72 in the Cabarrus County Public Registry, reference to which survey is hereby made for a more particular description of the property.

**EXHIBIT B****SITE PLAN**

**EXHIBIT B-1**

**VIEW CORRIDOR**



**EXHIBIT C****RESTRICTED USES AND EXCLUSIVE USES**

**Section 1. Restricted Uses.** No portion of the Retail Center, Outparcels or Property or Kellswater Commons shall be used for any of the following uses:

- a. any automotive service or repair business (provided that auto parts stores shall be permitted as long as no on-site repair services are offered);
- b. any facility for the sale, lease, display, repair or rental of automobiles, trucks, trailers, motorcycles, recreational vehicles, boats or other vehicles (except that nationally or regionally recognized operators of auto parts sales locations may be located in the Retail Center);
- c. any manufacturing facility;
- d. any retail operation in which more than twenty (20%) percent of the sales area of such operation is used for the display and/or sale of clothing or goods commonly referred to as close outs, manufacturer's overruns, or excess inventory or manufacturer's seconds or imperfect merchandise in the Shopping Center. Nothing herein shall restrict stores such as Steinmart, Ross, TJ Maxx, Off 5th and the like from operating anywhere in the Kellswater Commons;
- e. any "second hand" store, used clothing or thrift store, pawn shop, salvation army type store, "surplus" store or liquidation outlet with the exception of stores such as Plato's Closet and "Designer Consignment" shops which shall be permitted;
- f. any mortuary or funeral parlor;
- g. any coin operated laundry;
- h. any medical marijuana dispensary;
- i. a pinball, video game, or any form of entertainment arcade (but video and/or arcade games shall be permitted as an incidental part of a restaurant business);
- j. any skating rink, bowling alley, bingo parlor or other place whose primary business is recreation or amusement;
- k. a gambling or betting office, other than for the sale of lottery tickets;
- l. a massage parlor (provided that this restriction shall not apply to massage services provided by state licensed massage therapists in connection with a beauty salon, day spa, physical therapy or rehabilitation office, or to a first-class, franchised massage concept such as Massage Envy);
- m. a health club or spa with leased space of more than five thousand (5,000) square feet (except with Declarant's and Grocery Store Anchor's prior written consent, which may be withheld each party's sole discretion);
- n. a cinema, theater, video store, bookstore or any other establishment selling, renting or exhibiting pornographic materials;

- o. a movie theater;
- p. a cocktail lounge, tavern, brewery or bar (including, without limitation, a wine bar); provided, however, that a bar in conjunction with a restaurant is allowed, and provided further, however, that the operation of a bar as an ancillary use within a grocery store or supermarket is allowed;
- q. an adult entertainment bar, night club or discotheque;
- r. any mobile home park, trailer court, labor camp, junkyard or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction or remodeling);
- s. any dumping, disposing, incineration or reduction of garbage (exclusive of dumpsters located in the rear or side designated locations of any building);
- t. an auction house operation or flea market;
- u. professional office uses, provided, however, that such prohibition on professional office uses (1) shall only apply to the Retail Center, and not to any Outparcels, and (2) shall not prohibit any portion of the Retail Center from being operated (i) primarily as a medical office (such as a dentist, optometrist, etc.), even if such medical office operator uses a portion of such operator's facility for general office uses on an ancillary basis, or (ii) primarily for the provision of financial services, accounting or insurance services;
- v. any animal raising facilities, facilities providing animal daycare or boarding (regardless of whether such boarding is provided on an overnight, daily or hourly basis) or pet shop, except that the offices of a veterinarian which provides boarding on a daily or hourly (but not overnight) basis is permitted;
- w. any hotels, motels or similar lodging rooms;
- x. school or educational training facilities, provided, however, that children's play centers and day care centers are allowed;
- y. a nursing home;
- z. a church;
- aa. a residence or for any residential or dwelling purposes;
- bb. a warehouse;
- cc. an outdoor firearms shooting range or any other use which creates or causes excessive noise; or
- dd. any use inconsistent with the customary character of a first-class retail shopping center (such as, without limitation, any "head" shop or tattoo or piercing parlor).

## **Section 2. Exclusive Uses.**

**A. Grocery Store Exclusive Use.** No Owner, Occupant or Tenant of the Tracts or any other Person with an interest in the Tracts referenced herein or the Property may engage in the

following activities without the prior written consent of the Declarant and the Grocery Store Anchor:

Excepting the Grocery Store Parcel, no portion of the Retail Center, Outparcels, Property or Kellswater Commons shall be sold, conveyed, leased, rented, used, occupied, or suffered or permitted to be used or occupied, for the operation of a Prohibited Grocery Use. As used herein, the term “**Prohibited Grocery Use**” shall mean any one or more of the following: (i) a food store or a food department, including, without limitation, a so-called “grocery store” or “supermarket” and any Deli Store (defined below), and (ii) the sale of any Grocery Items (defined below) for off-premises consumption. As used herein, the term “Grocery Items” shall collectively refer to produce, fresh meat, dairy products, wine, bakery products (including, without limitation, cakes and cupcakes), and all items typically offered for sale at so-called “grocery stores” or “supermarkets” in Cabarrus County, North Carolina. As used herein, the term “**Deli Store**” shall mean any deli store, butcher shop or similar business which sells fresh meat or other deli products for on or off-premises consumption. The “**Prohibited Grocery Use**” shall not include (a) the operation of a restaurant selling freshly prepared food for contemporaneous consumption on or off such restaurant’s premises, including, but not limited to, such stores as a pizza store, ice cream store, bagel store, sandwich store such as “Subway,” “Jersey Mike’s” and “Panera Bread” stores and a donut store such as “Dunkin Donuts” stores, but expressly excluding any Deli Store (it being the intent that any Deli Store be included within the definition of Prohibited Grocery Use); or (b) the sale of Grocery Items other than bakery products and wine (which are addressed in subsection (c) of this paragraph below) as an ancillary use to any particular operator’s primary business, so long as the total number of square feet devoted by operator to the display for sale of Grocery Items (other than bakery products and wine) does not, in the aggregate, exceed five percent (5%) of the total number of square feet of building area leased or occupied by such operator in the Retail Center or Outparcels (as the case may be), or 500 square feet (including, in either such case, one-half (1/2) of the aisle space adjacent to any display area), whichever is smaller; or (c) the sale of bakery products for off-premises consumption as an ancillary use to any particular operator’s primary business, so long as, with respect to each calendar month, the particular operator derives, in the aggregate, less than twenty percent (20%) of such operator’s revenue for each such calendar month from the sale of bakery products; or (d) the sale of wine for off-premises consumption as an ancillary use to any particular operator’s primary business, so long as, with respect to each calendar month, the particular operator derives, in the aggregate, less than twenty percent (20%) of such operator’s revenue for each such calendar month from the sale of wine; provided, however, that notwithstanding anything to the contrary contained herein, the sale of fresh meat and/or produce for off-premises consumption by any Tenant, Occupant or operator at the Retail Center (other than Grocery Store Anchor or any subtenant or assignee of Grocery Store Anchor) or Outparcels shall not be permitted by the terms of subsections (a), (b), (c) or (d) of this Section 2(A) of this **Exhibit C** and shall be strictly prohibited; it being the intent of that the sale of fresh meat and/or produce



for off-premises consumption be considered a “Prohibited Grocery Use” for all purposes of this Lease, regardless of the ancillary nature of such sales and/or the floor area devoted to such items. For the avoidance of doubt, the term “fresh meat” shall be deemed to include (but not limited to) whole size and half size hams and turkeys, whether cooked or uncooked, and substantially similar meat products. In addition, excepting the Grocery Store Parcel, no portion of the Retail Center, Outparcels, Property or Kellswater Commons shall be sold, conveyed, leased, rented, used, occupied, or suffered or permitted to be used or occupied, for the operation or placement of lockers (or similar devices) used for retail pick up and/or drop off.

#### **B. McDonald’s Exclusive Use:**

Provided that Tenant is not in default under this Lease beyond any applicable notice and cure period and except as otherwise provided in the following paragraphs of this Article 4G, no property located in the Shopping Center depicted on Exhibit B (other than the Leased Space and except for the Grocery Store Parcel to which Tenant’s exclusive as described herein shall not apply) now or hereafter owned, leased or controlled, directly or indirectly, by Landlord, its members, shareholders, or partners (or, if Landlord is a corporation, any subsidiary or parent of Landlord), whether or not such other property is subsequently voluntarily conveyed by Landlord, will, during the Term, be leased, used or occupied for food service purposes. As used in this Article, the term “food service purposes” includes any business establishment that offers either or both of food and drinks, including, without limitation, a kiosk, stand, booth, or area located inside another business facility, provided such business establishment (i) offers drive-thru service; and (ii) specializes solely or predominantly in the sale of any, a combination, or all of the following products (the “**Prohibited Sandwiches**”): hamburgers, cheeseburgers or any other type of ground beef products served in sandwich form. For purposes of this Lease, a business establishment will be deemed to specialize solely or predominantly in the sale of the Prohibited Sandwiches if the total number of Prohibited Sandwiches listed on the menu of such business exceeds the total number of the sandwiches listed on the menu that are not Prohibited Sandwiches. For purposes of this Lease, wraps, tacos and breakfast sandwiches will not be considered a “Prohibited Sandwich” or a sandwich.

Notwithstanding the foregoing, if, after Tenant or its subtenant initially opens for business on the Leased Space, no restaurant business is being operated on the Leased Space for a period of 18 months (excluding temporary closures during any periods when the restaurant business on the Leased Space is not operated due to strike, lockout, riot, insurrection, fire or other casualty, condemnation, acts of God, alterations, repairs, remodeling, operation of law, government requirements, or similar cause beyond the reasonable control of Tenant, other than Tenant’s financial inability), the foregoing restrictions (the “**Covenant Not to Compete**”) shall terminate 60 days after Tenant’s receipt of Landlord’s written notice of same, provided that no restaurant business that sells the Prohibited Sandwiches reopens on the Leased Space within the 60 day period. Following the expiration of said 60-day period, if any restaurant business that sells the Prohibited Sandwiches reopens on the Leased Space, the business shall be subject to any then current exclusives that encumber the Shopping Center.

**EXHIBIT D****RETAIL CENTER**

Being all of that certain lot, parcel or tract of land lying and being situated in the City of Kannapolis, Cabarrus County, North Carolina and being more particularly described as follows:

BEGINNING at an iron rod set located in the Rogers Lake Road Variable Width Public Right of Way (PB 51 PG 78) and the northeast corner of Outparcel 5; thence with Outparcel 5 the following five (5) courses and distances: (1) S 16° 43' 19" E 194.78' to an iron rod set; (2) thence S 64° 42' 39" W 17.46' to an iron rod set; (3) thence a curve to the left having a radius of 150.00', an arc length of 22.00', and a chord bearing of S 60° 30' 31" W for a distance of 21.98' to an iron rod set; (4) thence S 56° 18' 23" W 77.88' to an iron rod set; and (5) thence a curve to the left having a radius of 150.00', an arc length of 89.61', and a chord bearing of S 39° 11' 32" W for a distance of 88.28' to an iron rod set located in the corner of Outparcels 5 and 6; thence with Outparcel 6 the following three (3) courses and distances: (1) a curve to the left having a radius of 150.00', an arc length of 99.34', and a chord bearing of S 3° 06' 22" W for a distance of 97.53' to an iron rod set; (2) thence S 15° 51' 56" E 142.32' to an iron rod set; and (3) thence a curve to the left having a radius of 185.00', an arc length of 11.41', and a chord bearing of S 17° 37' 56" E for a distance of 11.41' to an iron rod set in the corner of Outparcels 6 and 7; thence with Outparcel 7 the following four (4) courses and distances: (1) a curve to the left having a radius of 185.00', an arc length of 72.32', and a chord bearing of S 30° 35' 53" E for a distance of 71.86' to an iron rod set; (2) thence S 41° 47' 51" E 132.22' to an iron rod set; (3) thence a curve to the left having a radius of 500.00', an arc length of 49.91', and a chord bearing of S 38° 56' 17" E for a distance of 49.88' to an iron rod set; and (4) thence S 36° 04' 43" E 39.51' to an iron rod set in the corner of Outparcels 7 and 8; thence with Outparcel 8 the following three (3) courses and distances: (1) S 36° 04' 43" E 61.08' to an iron rod set; (2) thence a curve to the left having a radius of 500.00', an arc length of 49.91', and a chord bearing of S 38° 56' 17" E for a distance of 49.88' to an iron rod set; and (3) thence S 41° 47' 51" E 22.72' to an iron rod set in the line of the Dogwood Boulevard 60' Public Right of Way; thence with Dogwood Boulevard N 48° 12' 09" E 30.00' to an iron rod set in the northwest corner of Georgetown Crossing Homeowners Association Inc. (DB 16260 PG 238 PB 91 PG 98)(now or formerly), said iron rod set located N 85° 20' 12" W 32.23' from a right of way disk found; thence with Georgetown Crossing Homeowners Association Inc. N 56° 18' 23" E 402.70' to an iron rod set located in the western corner of Outparcel 1; thence with Outparcel 1 N 02° 13' 21" E 374.27' to an iron rod set; thence continuing with Outparcel 1 N 32° 01' 03" E 229.17' to an iron rod set located in the Furlong Way 100' Public Right of Way; thence with Furlong Way a curve to the right having a radius of 89.00', an arc length of 47.47', and a chord bearing of N 19° 01' 09" W for a distance of 46.91' to an iron rod set located in the southeast corner of Outparcel 3; thence with Outparcel 3 the following five (5) courses and distances: (1) S 86° 47' 50" W 65.97' to an iron rod set; (2) thence a curve to the left having a radius of 150.00', an arc length of 43.89', and a chord bearing of S 78° 24' 52" W for a distance of 43.74' to an iron rod set; (3) thence S 70° 01' 54" W 103.51' to an iron rod set; (4) thence a curve to the right having a radius of 150.00', an arc length of 57.51', and a chord bearing of S 81° 00' 58" W for a distance of 57.16' to an iron rod set; and (5) thence N 87° 59' 58" W 4.73' to an iron rod set located in the corner of Outparcels 3 and 4; thence with Outparcel 4 the following six (6) courses and distances: (1) N 87° 59' 58" W 80.85' to an iron rod set; (2) thence a curve to the left having a radius of 150.00', an arc length of 52.33', and a chord bearing of S 82° 00' 20" W

for a distance of 52.07' to an iron rod set; (3) thence S 72° 00' 37" W 140.83' to an iron rod set; (4) thence a curve to the left with a radius of 150.00', an arc length of 19.11', and a chord bearing of S 68° 21' 38" W for a distance of 19.10' to an iron rod set; (5) thence S 64° 42' 39" W 6.90' to an iron rod set; and (6) thence N 16° 43' 19" W 175.85' to an iron rod set located in the right of way for Rogers Lake Road (PB 51 PG 78); thence with Rogers Lake Road S 80° 06' 41" W 70.50' to the point and place of BEGINNING, containing 9.878 acres, 430,290 square feet and being shown as Retail Center on the plat entitled, "Recombination Survey for MPV Kellswater, LLC," dated July 18, 2023, prepared by Tracy Thane Bishop, PLS, L-4765, with Colliers Engineering & Design CT, P.C., recorded August 28, 2023, in Plat Book 97, Page 72 in the Office of the Register of Deeds for Cabarrus County, North Carolina.