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**DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS**

**THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS**  
(this "Agreement") is made as of September 23, 2005, by Williamson County Joint Venture, a Tennessee general partnership ("Developer"), as the owner of certain real property located in Williamson County, Tennessee, as more particularly described in Exhibit A attached hereto (the "Property").

**1. PRELIMINARY**

1.1. **Developer:** Developer is the Owner of the Property which consists of the eighteen (18) lots identified on the Site Plan attached hereto as Exhibit B (the "Site Plan"). The Property is located at the Northwest corner of the intersection of Thompson's Ridge Road and Highway 31, in Thompson's Station, Williamson County, Tennessee, as more clearly delineated on the Site Plan.

1.2. **Purpose:** The Parties plan to develop the Property as an integrated office/retail mixed use complex for the mutual benefit of all Parcels in the Center and, therefore, do hereby fix and establish the Easements and Restrictions upon and subject to which all of the Property, or any part thereof, shall be improved, held, leased, sold and/or conveyed. Such Easements and Restrictions shall run with the land and inure and pass with the Parcels and shall apply to and bind the respective successors in interests thereof, and all and each Easement and Restriction is imposed upon the Parcels as a mutual equitable servitude in favor of the Parcels and any portion thereof.

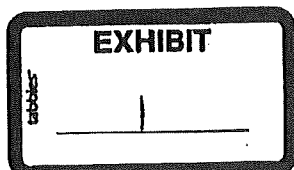
1.3. **Definitions:** The following defined terms shall have the meanings set forth below for purposes of this Agreement.

(a) **"Agreement":** This Declaration of Covenants, Restrictions and Easements.

(b) **"Approved Plans":** The plans for development of improvements on a Parcel which satisfy the requirements of this Agreement. The Approved Plans for the initial grading, drainage and utility plans necessary for the Center shall be made available by Developer upon request.

(c) **"Architectural Guidelines":** The guidelines established by Developer from time to time for construction of Buildings and other improvements on a Parcel.

(d) **"Building":** Any enclosed structure placed, constructed or located on a Parcel, which shall include any appurtenant canopies and supports.



(e) **"Building Area"**: With respect to the Retail Parcels, all those areas on each Retail Parcel designated as "Building Area" on the Site Plan, or as otherwise established by the Developer, and with respect to Parcels 8-18, that portion of the Parcel on which Improvements may be constructed in accordance with applicable Governmental Regulations. Parcels 5, 8 and 14 are restricted for use as detention areas and contain no Buildable Area.

(f) **"Center"**: Collectively, all of the Parcels.

(g) **"City"**: The City of Thompson's Station, Tennessee.

(h) **"Claims"**: Causes of action, claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys fees and court costs).

(i) **"Common Area"**: The roadways, drainage areas and other common areas noted on Exhibit C attached hereto, as well as all those areas on Parcels which are not Building Area or Service Areas, together with those portions of the Building Area on the Retail Parcels which are not from time to time actually covered by a Building, Garden Center or being used as Outside Sales Area. The improvement or use of any portion of the Building Area as Common Area shall not be construed as a permanent inclusion of such portion within the Common Area, and such portions may, at any time thereafter, be improved with Buildings and appurtenances as contemplated by this Agreement.

(j) **"Consenting Owners"**: The Owner of Parcel 7 and the Developer, so long as the Developer owns any Parcel.

(k) **"Default Rate"**: The prime rate plus four percent (4%). As used herein, "prime rate" shall mean the rate of interest published from time to time as the "Prime Rate" in the Wall Street Journal under the heading "Money Rates".

(l) **"Developer"**: Williamson County Joint Venture, a Tennessee general partnership, its successors and assigns.

(m) **"Developer Parcels"**: The Parcels owned by Developer at any given time, provided that upon the sale of a Parcel by the Developer, such Parcel shall no longer be a Developer Parcel.

(n) **"Easements"**: The easements fixed and established upon the Center pursuant to this Agreement.

(o) **"Floor Area"**: The total number of square feet of floor space on each floor in a Building, including basement, subterranean; balcony and mezzanine space, irrespective of whether actually occupied, and including any outdoor seating area used exclusively by an Owner or Occupant for its Permittees. Floor Area shall be measured from the exterior line of the exterior walls and from the center line of any party or common interior walls without deduction for columns, walls or other structural or non-structural components; provided, however, in no event shall the following be included in such calculations: (i) an Outside Sales Area, (ii) any Garden Center, or (iii) Service Areas.

(p) **"Garden Center"**: A fenced outdoor area within the Building Area located on the Retail Parcel (or other Parcel if approved by Developer), portions of which may be under roof or canopy and other portions of which may be "open air" areas.

(q) **"Governmental Regulations"**: Any or all laws, statutes, ordinances, codes, decrees, rulings, regulations, writs, injunctions, orders, rules, or conditions of approval or authorization of any governmental entity, agency or political subdivision whether now in force or which may hereafter be in force.

(r) **"Improvements"**: Any Building, sign or Common Area improvements located in the Center.

(s) **"Land Area"**: The total gross square footage of a Parcel.

(t) **"Lienholder"**: Any mortgagee under a mortgage, a grantee under a deed to secure debt, or a trustee or beneficiary under a deed of trust constituting a lien on any Parcel.

(u) **"Maintaining Party"**: The Owner of Parcel 7.

(v) **"Occupant"**: Any Person or Prime Lessee from time to time entitled to the use and occupancy of any portion of a Building in the Center under an ownership right or any lease, sublease, assignment, license, concession, or other similar agreement.

(w) **"Retail Outparcel" or "Retail Outparcels"**: Individually or collectively, Parcels 1-4.

(x) **"Outside Sales Area"**: An area generally unprotected from the elements which may be used for sales and/or storage purposes. An Outside Sales Area shall only be located on a Retail Parcel in the area(s) designated on the Site Plan or otherwise approved by Developer. Any designation on the Site Plan of "seasonal sales" or "seasonal sales area" shall be deemed Outside Sales Area, including, without limitation, all outside display areas making up a part of the TSC Parcel.

(y) **"Owner"**: (i) The record holder of fee simple title to a Parcel, its heirs, personal representatives, successors and assigns, or (ii) a Prime Lessee as to a Parcel. Each Parcel may have only one Owner, provided that the Owner of a Parcel subject to a Lease with a Prime Lessee shall be jointly and severally liable with the Prime Lessee for any Claims or any default hereunder with regard to the ownership or operation of such Parcel.

(z) **"Parcel" or "Parcels"**: Individually or collectively, the lots identified on the Site Plan.

(aa) **"Permittee"**: All Occupants and the, officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, assignees, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended use of the Center.

(bb) **"Person"**: Individuals, partnerships, firms, associations, corporations, limited liability companies, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

(cc) **"Prime Lessee"**: An Occupant of an entire Parcel who is not the Owner of such Parcel pursuant to an agreement by which such Prime Lessee is subject to all obligations and responsibilities relating to the ownership and operation of such Parcel and any business thereon.

(dd) **"Restaurant"**: Any operation or business which requires a governmental permit, license and/or authorization to prepare and/or serve food for either on- or off-site consumption.

(ee) **"Restrictions"**: The covenants, restrictions, liens and encumbrances fixed and established upon the Center pursuant to this Agreement.

(ff) **"Retail Monument Sign"**: The monument sign for the Retail Parcels to be located on Highway 31, in accordance with the approved Sign Plan described in Section 4.2 hereof.

(gg) **"Retail Parcel" or "Retail Parcels"**: Individually, or collectively, Parcels 1-7.

(hh) **"Service Areas"**: The sidewalks attached to and/or adjoining a building, trash compactors and enclosures, exterior lighting attached to a Building, drive-up or drive-thru customer service facilities directly adjacent or in close proximity to a Building, side yards and rear yards used for outdoor storage (provided such outdoor storage does not interfere with the flow of vehicular traffic), loading docks, electrical facilities and transformers, truck ramps and other similar exclusive service facilities and outward extensions, and customer pickup areas directly adjacent or in close proximity to a Building, whether or not described, labeled or depicted as such on the Site Plan. The Service Areas are the exclusive property of the Owner of the Parcel and not part of Common Area.

(ii) **"Share"**: A fraction, the numerator of which shall be the Floor Area in all Buildings located on an individual Owner's Parcel and the denominator of which shall be equal to the aggregate of the Floor Area in all Buildings in the Center.

(jj) **"Site Plan"**: The site plan of the Center shown on Exhibit B attached hereto, together with any amendments or modifications thereto.

(kk) **"TSC Parcel"**: Parcel 6, as identified on the Site Plan.

(ll) **"Utility Lines"**: Those facilities and systems for the transmission or other provision of utility services, including, but not limited to, water drainage, detention or retention systems or structures, water mains, sewers, lift stations, water sprinkler system lines, electrical conduits or systems, gas mains, other public or private utilities providing service to all Owners of the Center in common.

## 2. BUILDING AND COMMON AREA DEVELOPMENT

2.1. **Building Location:** All Buildings shall be placed or constructed upon the Parcels only in the Building Areas. Buildings may be reconfigured and/or located (or relocated) anywhere within the Building Area provided the total Floor Area of all Buildings constructed within the Building Area on a Parcel does not exceed the square footage assigned to such Building Area as shown on the Site Plan, if any (or as otherwise designated herein), subject to the minimum parking requirements set forth in Section 4.1 below. All unimproved portions of a Parcel shall be covered by decomposed granite, gravel, sod, hydroseed or as otherwise permitted by Governmental Regulations and kept weed free and clean at the subject Owner's sole cost and expense until such time as Buildings are constructed thereon.

2.2. **Common Area:** The Common Area is hereby reserved for the sole and exclusive use of all Owners and Occupants of the Center and their Permittees. The Common Area may be used for vehicular driving, parking and pedestrian traffic and such other purposes as are usual and customary in similar centers in the Williamson County, Tennessee area, unless otherwise specifically prohibited in this Agreement. No cross parking shall be permitted on any portion of Parcels 8-18 without the specific prior consent of the Owner of such Parcel. The Common Area shall be maintained as provided for in Article 6. The Owners acknowledge and agree that incidental temporary encroachments upon the Common Area may occur as a result of the use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of Buildings, signs and/or the Common Area, all of which are permitted under this Agreement so long as all activities requiring the use of such equipment are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with use of the improved Common Area or with the normal operation of any business in the Center.

### 2.3. Type and Design of Building:

(a) All Improvements in the Center shall be constructed in accordance with the Architectural Guidelines and applicable Government Regulations, and based upon plans approved by the Consenting Owners, provided the consent of the Owner of Lot 7 shall not be required for any plans for improvements on Lots 8-18. Prior to constructing any Improvements, each Owner or Occupant shall submit plans to the Consenting Owners for approval. Provided such plans conform to the Architectural Guidelines, the Consenting Owners shall not unreasonably withhold consent to such plans. Unless specifically approved in writing by the Consenting Owners, the drainage, grading and utilities of any Parcel shall not be modified or otherwise changed from the Developer's approved plans (provided, however, a modification to a Utility Line that does not impact any other Parcel shall not require additional approval). There shall be no interference with the established drainage pattern and system over any portion of the Parcels unless adequate provision is made for proper drainage and such interference is approved by all affected Owners.

(b) Unless otherwise approved by the Consenting Owners, all Buildings constructed on a Retail Outparcel shall not exceed one (1) story and 25 feet in height (except for Lot 1, which shall not exceed 30 feet in height), or 8,000 square feet, except (i) the total square footage of Improvements on Parcel 1 shall not exceed 16,000 square feet, and (ii) if two (2)

Retail Outparcels are combined, the total square footage of the Improvements on the combined Outparcels shall not exceed 16,000 square feet;

(c) There shall not be constructed in the Center any parking structure, whether over or under ground level.

#### 2.4. Construction Requirements:

(a) All work performed in the construction, repair, replacement, alteration or expansion of any Improvements shall be performed as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (i) access to or from the Center, or any part thereof, to or from any public right-of-way, (ii) customer vehicular parking in that portion of the improved Common Area located in front of any Building constructed on a Retail Parcel, or (iii) access to any Parcel or the Improvements located thereon. In addition, all work performed on Improvements shall not unreasonably interfere, obstruct or delay (i) construction work being performed on any other Parcels, or (ii) the use, enjoyment or occupancy of any other Parcels. Unless otherwise specifically stated herein, the Person contracting for the performance of such work ("Contracting Party") shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all Buildings, signs and Common Area improvements damaged or destroyed in the performance of such work.

(b) The Contracting Party (as defined in Section 2.4(a) above) shall not permit any mechanics', materialmen's or other professional services liens (as contrasted with consensual monetary liens such as construction and/or permanent financing) to stand against any other Parcel for any work done or materials furnished in connection with the performance of the work described in subparagraph (a) above.

(c) Staging for the initial construction of Buildings or the replacement, alteration or expansion of any Building, sign or Common Area improvements located in the Center including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall (i) be located solely on the constructing Owner's Parcel, or (ii) be limited to specific areas ("Staging Area") of the Center designated on the Site Plan or otherwise approved in writing by the Consenting Owners. Each Staging Area on any Parcel shall be located in such a way that it will not interfere with the use of any other Parcel. At the request of any Consenting Owner, any Staging Area for a Parcel shall be enclosed by a safety fence. Upon completion of such work, the Constructing Party shall, at its expense, restore any damaged Common Area to a condition equal to or better than that existing prior to commencement of such work.

2.5. **Temporary License:** Each Owner hereby grants to the other Owners a temporary license for access and passage over and across the Common Area located on the granting Owner's Parcel, to the extent reasonably necessary for such Owner to construct and/or maintain Improvements upon its Parcel; provided, however, that such license shall be in effect only during periods when actual construction and/or maintenance is being performed, and provided further, that the use of such license shall not unreasonably interfere with the use and operation of (i) any business conducted by an Owner or Occupant, or (ii) the access to, or use of, the granting Owner's Parcel.

2.6. **Indemnity:** Each Owner and Occupant shall indemnify, defend, protect and hold every other Owner and Occupant and their respective officers, directors, shareholders, employees and agents harmless for, from and against any and all Claims arising out of or related to injury to or death of any person or damage to or destruction of any property occurring on any Parcel and arising out of or resulting from any construction activities performed by or at the request of such Owner or Occupants, including such Owner's or Occupant's own negligence, unless such damage or destruction is caused solely by the negligent or willful act or omission of the indemnified Owner or Occupant.

2.7. **Approval Procedures:**

(a) Before any action requiring the Consenting Owners' approval is commenced, sufficient information shall be sent to the Consenting Owners to enable the Consenting Owners to make a decision as to the proposal. Each Consenting Owner shall have the right to approve or disapprove the proposal in accordance with the manner and time procedures set forth in Section 14.6 below, and if such Consenting Owner disapproves the proposal, it shall provide a written explanation in reasonable detail of its reasons for disapproval.

(b) No Consenting Owner shall be liable in damages or otherwise for any reason, including any mistake in judgment, negligence or nonfeasance, arising out of or in connection with the approval or disapproval or failure to approve or disapprove any proposal submitted pursuant to this Agreement. Each Owner agrees that, by acquiring title to its Parcel and submission of such plans, drawings and/or specifications, it will not bring any action or suit against any Consenting Owner to recover any such damages. No approval shall be considered an approval of the plans, drawings and/or specifications from an engineering perspective or a determination that they meet building, environmental or engineering design standards, or that any such Improvements have been built in accordance with such plans, drawings and/or specifications.

3. **EASEMENTS**

3.1. **Ingress and Egress:** Each Owner, as grantor, hereby grants to each other Owner, as grantee, for the benefit of each Parcel belonging to the other Owners, and for the use of said Owner and its Permittees, a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic upon; over and across the Common Area located on the grantor's Parcel(s), except for those areas devoted to Service Areas.

3.2. **Parking:** Each Parcel shall be required to be self-parked and to maintain adequate parking in accordance with all applicable Governmental Regulations and as more specifically set forth in Section 4.1 below. Notwithstanding anything contained herein to the contrary, no cross parking will be permitted on Parcels 8-18 except with the prior permission of the Owner of the Parcel.

3.3. **Utility Lines and Facilities:**

(a) Each Owner, as grantor, hereby grants to each other Owner, as grantee, for the benefit of each Parcel belonging to the other Owners, a nonexclusive easement under, through and across the Common Area of the grantor's parcel(s) for the installation, operation,

flow, passage, use, maintenance, connection, repair, relocation, removal and replacement of Utility Lines, subject to the written approval of the granting Owner as to the location of such Utility Lines, and otherwise consistent with the Approved Plans. To the extent feasible, Utility Lines shall be installed within public or private utility easements shown on the recorded plat or plats for the Center. All such Utility Lines shall be installed and maintained below the ground level or surface of such easements, except that fire hydrants, ground mounted electrical transformers and, such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any Buildings or improvements located in the Center) or which have been approved by the Consenting Owners shall be permitted. The easement area shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility, or five feet (5') on each side of the centerline if the easement is granted to a private party. The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the Common Area or with the normal operation of any business in the Center. The grantee shall bear all costs related to the installation, operation, maintenance, repair and replacement of such easement facilities, shall repair to the original specifications any damage to the Common Area resulting from such use, and shall provide as-built plans for all such facilities to the Owners of all Parcels upon which such Utility Lines are located within thirty (30) days after the date of completion of construction of the easement facilities.

(b) Notwithstanding the grant of easement for sewer lines included within Section 3.3(a) above, any connections to sewer lines, if such connections are not shown on the Approved Plans, may only be made in the event that (i) the Owner of a Parcel benefiting from the sewer line easement (a "Grantee Parcel") makes at its sole expense any and all improvements to the sewer lines and systems (including, without limitation, any lift stations) as are necessary or required in order to increase the capacity of the sewer lines and systems to adequately serve the Grantee Parcel pursuant to plans and specifications that comply with the requirements of all Governmental Regulations and that are first approved by the Consenting Owners and the Owner of the Parcel burdened by the sewer line easement (a "Grantor Parcel"), provided, however, that the Owner of the Grantee Parcel shall not be required to obtain the Consenting Owner's approval for any sewer line to be installed unless the Consenting Owner's will be adversely affected by such sewer line, (ii) the Owner of the Grantee Parcel procures all permits, licenses and approvals and pays any and all tap-on or similar fees required to make any such improvements and to so utilize and connect with such sewer lines and systems, and (iii) the Owner of the Grantee Parcel pays for increased costs of maintenance and repair due to such development work.

(c) At any time and from time to time an Owner shall have the right to install, repair, maintain and/or relocate on its Parcel any Utility Line installed (or to be installed) pursuant to the foregoing grant of easement which is then located (or to be located) on the Parcel of such Owner, provided that (i) in the case of an installation or relocation, such installation or relocation shall be performed only after sixty (60) days' notice in writing of the Owner's intention to undertake the relocation shall have been given to the Owner of each Parcel served by the Utility Line, (ii) in the case of a repair and/or maintenance, such repair and/or maintenance shall be performed only after thirty (30) days notice in writing of the Owner's intention to undertake repair and/or maintenance shall have been given to the Owner of each Parcel served by the Utility Line, except in the case of an emergency (defined as any situation where there is



an imminent threat of harm to persons or property), when such notice shall be given a reasonable period in advance of such emergency repair as is practicable, (iii) any such repair, maintenance and/or relocation shall not unreasonably interfere with or diminish utility service to the Parcels served by the Utility Line, (iv) any such repair, maintenance and/or relocation shall not reduce or unreasonably impair the usefulness, capacity or function of the Utility Line, (v) any such repair, maintenance and/or relocation shall be performed without cost or expense to the Owner or Occupant of any other Parcel, (vi) any such repair, maintenance and/or relocation shall provide for the original and relocated area (if applicable) to be restored using materials and design standards which equal or exceed those originally used, (vii) any such repair, maintenance and/or relocation shall not interfere with the business operation of any of the Owners or Occupants of the Center, (viii) if an electrical line/computer line is being relocated, the grantor and grantee shall coordinate such interruption to eliminate any detrimental effects. The Owner performing such relocation shall provide as-built plans for all such relocated Utility Lines to the Owners of all Parcels served by such Utility Lines within thirty (30) days after the date of completion of such relocation.

(d) The terms and provisions of this Section 3.3 shall survive the expiration or earlier termination of this Agreement.

**3.4. Intentionally Omitted.**

**3.5. Dedication to Public Entities:** Without the prior written consent of the Consenting Owners, which consent may be granted or withheld in the sole and absolute discretion of each Consenting Owner, no Owner shall grant any easement for the benefit of any property not within the Center; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by an Owner on its Parcel to governmental or quasi-governmental authorities or to public utilities to service the granting Owner's Parcel.

**3.6. No Merger:** Notwithstanding an Owner's ownership of more than one Parcel, the easements granted hereunder shall burden and benefit each Parcel individually, without merger as a result of such common ownership.

**3.7. Permanent Drive:** Unless otherwise approved in writing by the Consenting Owners, which approval may be withheld in each Consenting Owner's sole and absolute discretion, those certain accessways and drives designated on the Site Plan as common or permanent drives (the "Permanent Drives") shall not be modified or changed.

**3.8. Storm Drainage and Detention Easements:** Each Owner hereby grants and conveys to each other Owner owning an adjacent Parcel the perpetual right and easement to discharge surface storm water drainage and/or runoff from the grantee's Parcel over, upon and across the Common Area of the grantor's Parcel, upon the following conditions and terms: (i) the grades and the surface water drainage/retention system for the Center shall remain in strict conformance with the Approved Plans, and (ii) no Owner shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Parcel if such alteration is not in conformance with the Approved Plans or would materially increase the flow of Surface water onto an adjacent Parcel either in the aggregate or by directing the flow of surface water to a limited area. All surface water collection, retention and distribution facilities

shall be deemed a Utility Line. All drains, gutters, downspouts, berms, swells, and other drainage facilities and systems (collectively, "Systems") shall be maintained by each Owner, with respect to the portion of each such System located upon an Owner's Parcel, in a neat, orderly, safe and sanitary condition, and in such a manner as to facilitate the orderly discharge of water by means thereof. The detention areas located on Parcels 5, 8 and 14 shall be maintained as part of the Common Area.

#### 4. OPERATION OF COMMON AREA

##### 4.1. Parking:

(a) There shall be no charge for parking in the Common Area on the Retail Parcels. There shall be no cross-parking rights on Parcels 8-18. The parking area on each Parcel shall contain sufficient ground level parking spaces (exclusive of parking spaces used for cart corrals and/or recycle centers) in order to comply with the minimum number of parking spaces required by Governmental Regulations, without reliance on parking spaces located on any other Parcel.

(b) In the event of a condemnation of part of a Parcel or sale or transfer in lieu thereof that reduces the number of usable parking spaces below that which is required in this Section 4.1, the Owner whose Parcel is so affected shall use its best efforts (including, without limitation, using proceeds from the condemnation award or settlement) to restore and/or substitute parking spaces in order to comply with the parking requirements set forth in this Section 4.1.

##### 4.2. Signs:

(a) Developer shall construct the Retail Monument Sign in the location shown on the Site Plan at the time of its initial development of the Property. The Retail Monument Sign shall be constructed in accordance with the design and specifications submitted by the Developer and approved by the City of Thompson's Station (the "Sign Plan"). A copy of the basic dimension criteria for signs at the Center is attached hereto as Exhibit D. Initially, the Owners or Occupants of Retail Parcels 6 and 7 shall have the right to place sign panels on the Retail Monument Sign in accordance with the Sign Plan. The right to place sign panels on the Retail Monument Sign may be granted by Developer from time to time in the Developer's discretion. The Owners of Parcels 8-18 shall have no signage rights on the Retail Monument Sign, unless otherwise approved by the Developer, or, if the Developer no longer owns a Parcel, then the Consenting Owner. The Owner of Parcel 7 may request approval from the applicable governmental authorities for an additional sign, provided the location, size and specifications shall be subject to the approval of the Consenting Owners, and such sign shall not alter or diminish the signage rights or the Retail Monument Sign.

(b) The cost of constructing, installing, maintaining, insuring, repairing and replacing the Retail Monument Sign (including electrical hookup to a common meter) shall first be paid by Developer. Developer shall then be entitled to be reimbursed for such costs by the Owners of the Retail Parcels permitted to display designations on either the Retail Monument Sign, in the proportion that the total square footage of each Owner's designation or designations

bears to the total square footage of all designations entitled to be displayed thereon (excluding any designation for the Center generally). Each Person displaying a designation on the Retail Monument Sign shall supply and maintain its own sign fascia and can.

(c) Each Parcel may have, subject to Governmental Regulations, one free-standing, permanent monument sign located on the Parcel in the area designated on the Site Plan, or otherwise approved by Developer. Such monument signs shall only display a designation for each Occupant of the Parcel and the business conducted therein (which may include reader boards). The design of the monument sign structures (including, without limitation, height and size) to be located on the Parcels shall conform to the dimensions in the Sign Plan attached hereto as Exhibit D. Any change to the design of any such monument sign shall be subject to the prior written approval of the Consenting Owners. The size of any monument sign to be located on the Parcels shall not exceed ten feet (10') in width by six feet (6') in height. The cost of constructing, installing, maintaining, insuring, operating, repairing and replacing such sign structures and sign fascia shall be paid by the applicable Owner of the Parcel upon whose Parcel such monument sign is located.

(d) Except as otherwise approved by the Consenting Owners, all signs on the Parcels shall conform with the following standards:

(i) All exterior Building signs on any Retail Parcel shall be restricted to identification of the business or service located or provided therein.

(ii) No exterior Building or free-standing sign shall utilize flashing, moving or audible lights or appurtenances.

4.3. **Protection of Common Area:** Each Owner and Occupant shall have the right to take such steps as it deems necessary to prevent those Persons not authorized by this Agreement to use the Common Area from using the Common Area for ingress, egress, parking or any other purpose. Subject to Governmental Regulations, such steps shall include, without limitation, the construction of fences, walls or barricades along the boundary lines of any portion of the Center except along the common boundary line of any Parcel with any other Parcel; provided, however, that any impairment of vehicular access to or from the Center, or any part thereof, shall require the Consenting Owners' prior written approval, which may be withheld in such Consenting Owners' sole and absolute discretion.

4.4. **Changes to Common Area:**

(a) Except as expressly permitted by this Agreement, no other Improvements shall be placed in the Common Area without the prior written approval of the Consenting Owners except (i) Service Areas in accordance with the requirements of paragraph (b) below, (ii) public pay telephones provided their location has been approved in writing by the Consenting Owners, (iii) temporary booths, stands, displays, tents or other structures or equipment used for sales in the parking area of the Retail Parcels in the locations designated as "Outside Sales Area" on the Site Plan.

(b) The size and arrangements of the Permanent Drives and curb cuts (as shown on the Site Plan) may not be materially changed without the Consenting Owners' prior

written approval. A Consenting Owner may withhold its consent to any material change to the entrances or exits to or from the Center or to the Permanent Drives in its sole and absolute discretion. The Developer shall have exclusive control of the size and arrangement of the Common Area on the Developer. Nothing in this Section 4.5 shall be interpreted to require the Consenting Owners' approval to (i) the construction, alteration or relocation of any Service Areas to the extent that they are located, and do not impede access, to the rear or sides of Buildings, or (ii) the location or relocation of items which are permitted to be placed in the Common Area without consent pursuant to paragraph (a)(iii) above.

## 5. RESTRICTIONS ON USE

### 5.1. Center Restrictions:

(a) No portion of the Center shall be used for any of the following purposes: a flea market or a business selling so-called "second hand" goods (the term "second hand" shall mean stores which sell goods primarily as a service to the public rather than to a retail customer for a profit); cemetery; mortuary; any establishment engaged in the business of selling, exhibiting or delivering pornographic or obscene materials; a so-called "head shop"; off-track betting parlor; junk yard; stockyard; and, to the extent as the Retail Parcels, any business that stores vehicles outdoors overnight, body and fender shop, or motor vehicle or boat storage facility (except in conjunction with the operation of the Tractor Supply Company Store on the TSC Parcel, it being the intent of this Agreement that neither the foregoing restriction nor anything else in this Agreement to the contrary shall preclude the sale or rental of delivery vehicles and trailers to customers as part of a business on the TSC Parcel or any other Retail Parcel.

In addition, no portion of the Retail Parcels shall be used as a mini-storage or self-storage facility; a laundromat or dry-cleaning facility (but this shall not be deemed to prohibit nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer); a bar, tavern or cocktail lounge; a discotheque, dance hall, comedy club, night club or adult entertainment facility; billiard or pool hall; massage parlor; a beauty school, barber college, reading room, place of instruction or any other operation catering primarily to students or trainees and not to customers (but shall specifically not prohibit a school which is incidental to a primary retail purpose); residential or heavy industrial or manufacturing uses (other than a facility operated for distribution or light assembly or manufacturing), school or house of worship.

(b) Without the prior written consent of the Consenting Owners, the following shall not be allowed to operate on the Retail Parcels or Common Area of the Retail Parcels, except as otherwise permitted in this Agreement: traveling carnivals, fairs, shows, kiosks, booths for the sale of fireworks, sales by transient merchants utilizing vehicles or booths and other promotions of any nature. Except as otherwise permitted in this Agreement, in the event that unauthorized Persons, including without limitation tenants or invitees of tenants occupying Buildings now or at any future time located in the Center, utilize the parking areas on the Retail Parcels for other than temporary parking by customers, Developer shall at its sole expense, upon written request by the Owner of the Retail Parcel, take whatever action as shall be reasonably necessary to prevent said unauthorized use.

(c) No Occupant of any Parcel shall operate a business or use which creates strong, unusual or offensive odors, fumes, dust or vapors; emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness; creates unusual fire, explosive or other hazards, or materially increases the rate of insurance for any other Parcel, Owner or Occupant; provided however, the operation of a typical Tractor Supply Company store shall not be deemed to be in violation of this Section 5.1(c).

(d) No oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any portion of the Parcels, nor shall oil wells, tanks, tunnels, or mineral excavation or shafts be permitted upon the surface of any portion of the Parcels, or within five hundred (500) feet below the surface of any of the Parcels. No derrick or other structure designed for use in boring for water, oil, natural gas or other minerals shall be erected, maintained or permitted on any portion of the Center.

(e) No portion of the Common Area shall be used for the sale, storage or display of merchandise or food; provided, however, that (i) the display of delivery vehicles and trailers for sale and/or rental to its customers as part of the business of the Occupant of the TSC Parcel shall be permitted, (ii) the seasonal sale of merchandise by the Owner or Occupant of the TSC Parcel shall be permitted from the Outdoor Sales Areas designated on the Site Plan; and (iii) the display and sale of merchandise from the sidewalks located directly in front of any Building located on a Retail Parcel shall be permitted, subject to Developer's prior written approval, which approval may be withheld in Developer's sole discretion.

(f) For purposes of this Agreement, all Service Areas shall be the sole exclusive property of the Owners of the Buildings associated with such areas and each Owner shall have the exclusive right to use such areas for whatever purpose such Owner deems appropriate, including, without limitation, the sale and display of merchandise.

(g) For purposes of this Agreement, Persons who are not Owners or Occupants engaging in the following activities on any Parcel will not be considered to be Permittees under this Agreement: (i) exhibiting any placard, sign or notice that does not advertise an existing business in the Center (ii) distributing any circular, handbill, placard, or booklet promoting an existing business in the Center; (iii) soliciting memberships or contributions for an existing business in the Center; (iv) parading, picketing, or demonstrating; and (v) failing to follow regulations relating to the use of the Center.

(h) This Agreement is not intended to, and does not create or impose any obligation on a Party to operate, continuously operate, or cause to be operated a business or any particular business in the Center or on any Parcel.

(i) For so long as the Owner or Occupant of the improvements on Parcel 11 operates an orthodontic practice on Lot 11, no other Owner or Occupant shall operate or permit the operation of an orthodontic or pediatric dentistry practice on any other Parcel, provided this restriction shall not prohibit the operation on any Parcel of a general dentistry practice or the provision of orthodontic services to the patients of such a practice.

## 6. MAINTENANCE STANDARDS

6.1. **Maintenance Obligations:** Each Owner shall, except as hereinafter provided, maintain the Common Area on its Parcel at all times in good and clean condition and repair, said maintenance to include, without limitation, the following:

(a) Maintaining, repairing and resurfacing, when necessary, all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability; and restriping, when necessary, to maintain clearly visible parking stall and traffic control lines;

(b) Removing all papers, debris, filth and refuse from the Common Area and washing or thoroughly sweeping the Common Area to the extent reasonably necessary to keep the Common Area in a clean and orderly condition, unobstructed, and if applicable, free from ice and snow;

(c) Placing, painting, maintaining, repairing, replacing and repainting, as and when necessary, all directional signs, markers, striping and pedestrian crossings upon or within the Common Area;

(d) Maintaining, repairing and replacing, when necessary, (i) Service Areas, and (ii) traffic directional signs, markers and lines, and all informational signs such as "Handicapped Parking", in good repair and condition;

(e) Operating, maintaining, repairing and replacing, when necessary, such artificial lighting facilities as shall be reasonably required, including, but not limited to, poles, pole bases, wiring, lamps, ballasts, lenses, photocells, time clocks, and contacts. Each Owner shall maintain and provide electricity to all lighting fixtures attached to its respective Building(s) at its sole cost and expense;

(f) Maintaining and watering all landscaped areas; maintaining, repairing and replacing, when necessary, automatic sprinkler systems, if applicable, and water lines; replacing shrubs and other landscaping as necessary;

(g) Maintaining, repairing and replacing, when necessary, all Common Area walls (including, without limitation, all fences, walls or barricades constructed pursuant to Section 4.4 above);

(h) Maintaining, repairing and replacing, when necessary, all Common Area storm drains, sewers, lift stations and other Utility Lines not dedicated to the public or conveyed to any public or private utility which are necessary for the operation of the Buildings and Improvements located in the Center;

(i) Performing itself or contracting with a competent third party or parties to perform any of the services described herein;

(j) Supervising traffic at entrances and exits to the Center and within the Center if necessary as conditions reasonably require in order to maintain an orderly and proper traffic flow; and

(k) Keeping the Common Area and all common Utility Lines free from any obstructions including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this Agreement.

**6.1.1 Additional Maintenance Obligations.** The Developer has designated the Permanent Drives and the drainage facilities on Parcels 5, 8 and 14 as "Areas for Shared Maintenance". Notwithstanding anything to contrary contained herein, the Maintaining Party shall maintain, repair and, if necessary, replace any areas designated as "Areas For Shared Maintenance", including lighting and landscaping thereof, in accordance with the standards set forth in Section 6.1 above. Each Owner or Occupant shall be responsible to pay within sixty (60) days after receipt of an invoice its respective Share of the costs incurred by the Maintaining Party in performing such services, which costs shall include the ordinary operating and maintenance expenditures incurred as well as capital expenditures to the extent so authorized; provided, however, that any expenditure in which any Owner(s) or Occupant(s) Share of a repair or replacement will exceed \$5,000.00 shall require the prior approval of any Owner(s) and Occupant(s) whose Share will exceed \$5,000.00, such consent not to be unreasonably withheld.

**6.2. Duty to Maintain:** Each Owner shall be responsible for the maintenance, insurance and lighting of its own Parcel as enumerated in Section 6.1 above. In the event any Owner defaults in the performance of such obligations (including the Maintaining Party's obligations set forth in Section 6.1.1), any other Owner may cause the performance of the obligations of the defaulting Owner and bill the defaulting Owner for the expenses incurred. In such event, the notice and cure provisions and remedies of Sections 10.2, 11.1 and 11.2 shall apply.

**6.3. Indemnity Against Liens:** Each Owner shall indemnify, defend, protect and hold all other Owners and Occupants harmless for, from and against any and all Claims in connection with any and all liens arising out of any work performed, materials furnished to or obligations incurred by such Owner in connection with the operation and maintenance of the Common Area hereunder.

## **7. LIGHTING**

After completion of the Common Area lighting system on its Parcel, each Owner of a Retail Parcel hereby covenants and agrees to keep such Retail Parcel fully illuminated each day from dusk to at least 11:00 p.m. unless the Consenting Owners agree upon a different time. Each Owner further agrees to keep any exterior Building security lights on from dusk until dawn. During the term of this Agreement, each Owner grants an irrevocable license to each other Owner for the purpose of permitting the lighting from one Parcel to incidentally shine on the adjoining Parcels.

## 8. PAYMENT OF TAXES

8.1. **Taxes and Assessments:** Each Owner shall pay direct to the tax collector, prior to delinquency, the real property taxes and other special taxes and assessments levied and assessed against the Owner's Parcel, including the portion of the Common Area on such Owner's Parcel; subject, however, to the right of any such Owner to contest the amount or validity of all, or any, part of said taxes and assessments.

8.2. **Failure to Pay Taxes and Assessments:** Each Owner shall indemnify, defend, protect and hold all other Owners and Occupants harmless for, from and against any and all Claims in connection with any and all liens arising out of the failure of an Owner to pay prior to delinquency, all taxes and assessments described in Section 8.1 above.

## 9. SUCCESSORS AND ASSIGNS; LIMITATION ON RELEASE

This Agreement and the Easements and Restrictions created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, Occupants, successors and assigns, and upon any Person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise; provided, however, that if any Owner sells all or any portion of its interest in any Parcel, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the Parcel sold by it arising under this Agreement after the sale and conveyance of title but shall remain liable for all obligations arising under this Agreement prior to the sale and conveyance of title.

## 10. DEFAULT

10.1. **Default:** In the event any Owner or Occupant fails to perform any other provision of this Agreement, which failure continues for a period of ten (10) days after receipt of written notice specifying the particulars of such failure, such failure shall constitute a default and any other Owner or Prime Lessee may thereafter institute legal action against the defaulting Owner or Occupant for specific performance, declaratory or injunctive relief, monetary damages or any other remedy provided by law; provided, however, that the defaulting Owner or Occupant shall not be deemed to be in default if such failure to perform cannot be rectified within said ten (10) day period and such Owner or Occupant is diligently proceeding to rectify the particulars of such failure and rectifies same within a period not to exceed ninety (90) days.

10.2. **Self-Help:** If an Owner or Occupant of any Parcel fails to perform any applicable provision of this Agreement, then, upon the expiration of the cure period provided in Section 10.1, and upon an additional ten (10) days prior written notice (except that no additional notice shall be required in an emergency), the Maintaining Party shall have the right, but not the obligation, to enter upon the defaulting Owner's or Occupant's Parcel to cure such default for the account of and at the expense of the Owner or Occupant of such Parcel. If the Maintaining Party exercises its self-help right, then, within thirty (30) days after receipt of an invoice from the Maintaining Party, the defaulting Owner and/or Occupant shall reimburse to the Maintaining Party all costs reasonably incurred by the Maintaining Party in curing such default, plus an administrative fee equal to fifteen percent (15%) of such costs. Furthermore, the Maintaining Party shall have the right, if such invoice is not paid within said thirty (30) day period, to record



a lien on the Parcel of the defaulting Owner and/or Occupant for the amount of the unpaid costs incurred by the Maintaining Party pursuant to this Section 10.2 and the administrative fee, together with accrued interest at the Default Rate.

**10.3. Remedies Cumulative:** In addition to the remedies set forth in this Agreement, each Person entitled to enforce this Agreement shall be entitled to exercise all other remedies provided by law or in equity to the same extent as if fully set forth herein word for word. No remedy herein conferred upon, or reserved to any Person shall exclude any other remedy herein, by law or in equity, but each shall be cumulative.

## **11. LIEN FOR EXPENSES OR TAXES**

**11.1. Effectiveness of Lien:** The liens provided for in Section 10.2 above shall only be effective when filed as a claim of lien against the defaulting Owner or Occupant in the office of the recorder of the county in which the Center is located, signed and verified, which shall contain at least:

- (a) An itemized statement of all amounts due and payable pursuant hereto;
- (b) A description sufficient for identification of that portion of the real property of the defaulting Owner which is the subject of the lien;
- (c) The name of the Owner or Occupant of the property which is the subject of the lien; and
- (d) The name and address of the Owner or Party recording the claim of lien.

The lien shall attach from the date a claim of a lien is recorded and may be enforced in any manner allowed by law, including, but not limited to, by suit in the nature of an action to foreclose a mortgage or mechanic's lien under the applicable provisions of the laws of the State of Tennessee. The Owner or Party who recorded the claim of lien shall release the claim of lien once the costs and expenses secured by the lien have been paid in full.

**11.2. Priority of Lien:** The claim of lien, when so established against the real property described in the claim of lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing the claim of lien, and shall be subordinate to any others. The claim of lien shall be for the use and benefit of the Person curing the default of the Owner in default.

## **12. LIABILITY INSURANCE; INDEMNIFICATION**

### **12.1. Liability Insurance:**

- (a) Each Owner shall maintain or cause to be maintained commercial general liability insurance with broad form coverage insuring against claims on account of bodily injury or death, personal and advertising injury, property damage or destruction, contractual liability (i.e., exclusions for liability assumed under contract must be deleted), and in the event of a fuel center operator, pollution liability that may arise from, or be related to (i) the conduct of the

Owner and/or Occupants, or (ii) the condition, use or occupancy of each Owner's Parcel (the "Owner's Liability Insurance"). The Maintaining Party shall maintain or cause to be maintained the foregoing commercial general liability insurance on the Permanent Drives, and any other Shared Maintenance Areas, provided that each other Owner or Occupant of the Center shall reimburse the Maintaining Party for its Share of such insurance.

(i) The Owner's Liability Insurance shall be carried by an insurance company or companies qualified to do business in the State in which the Center is located and have limits for bodily injury to or personal injury to or death of any person, or more than one (1) person, or for damage to property, in an amount of not less than Two Million and No/100 Dollars (\$2,000,000.00) per occurrence and Five Million and No/100 Dollars (\$5,000,000.00) in the aggregate, or such amounts as may be otherwise approved by the Consenting Owners.

#### 12.2. Insurance Coverage During Construction:

(a) Prior to commencing any construction activities within the Center, each Owner or Occupant shall obtain or require its contractor to obtain and thereafter maintain, so long as such construction activity is occurring, at least the following coverages:

- (i) Workers' compensation and employer's liability insurance;
- (ii) Commercial General Liability insurance covering all operations by or on behalf of the general contractor;
- (iii) Automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired, and non-owned automobiles;
- (iv) If the construction activity involves the use of another Owner's Parcel, the Owner of such other Parcel shall be added as an additional insured and such insurance shall provide that the insurance shall not be canceled, or reduced in amount or coverage below the requirements of this Agreement without at least thirty (30) days' prior written notice to the insureds and each additional insured. If such insurance is canceled or expires, the constructing Owner shall immediately stop all work on or use of the other Owner's Parcel until either the required insurance is reinstated or replacement insurance obtained. The general contractor shall supply each Owner with certificate(s) of insurance with respect to all insurance required by this Section 12.2.

12.3. Indemnification by Owners: Subject to the provisions of Section 13.4 below regarding waiver of subrogation with respect to damage to property, each Owner shall defend, indemnify, protect and hold the other Owners and Occupants harmless for, from and against any and all Claims in connection with the loss of life, personal injury and/or damage to property (i) arising from or out of any occurrence in or upon the indemnifying Owner's Parcel, including an Owner's or Occupant's own negligence; (ii) occasioned wholly by any negligent or willful act or omission of the indemnifying Owner, its Occupants or their respective its agents, contractors, servants or employees; or (iii) in connection with the failure to comply with the provisions of this Agreement. If a Consenting Owner shall, without fault, be made a party to any litigation

commenced by or against the Owner or Occupants of another Parcel, or if a Consenting Owner shall, in its reasonable discretion, determine that it must intervene in such litigation to protect its interest hereunder, the indemnifying Owner shall defend such Consenting Owner using attorneys reasonably satisfactory to such Consenting Owner and shall pay all costs, expenses and reasonable attorneys' fees and costs in connection with such litigation. A Consenting Owner shall have the right to engage its own attorneys in connection with any of the provisions of this Section 12.3 or any of the provisions of this Agreement, including, but not limited to, any defense of or intervention by such Consenting Owner, notwithstanding any contrary provisions of the laws or court decisions of the state in which the Center is located.

### **13. PROPERTY DAMAGE AND EMINENT DOMAIN**

**13.1. Damage to Buildings:** If any of the Buildings located on any Parcel are damaged or destroyed by fire or other cause, the Owner of such Parcel shall promptly cause either (i) the repair, restoration, or rebuilding of the Building so damaged or destroyed to a condition and an architectural style existing immediately prior to the damage or destruction, (ii) the rebuilding of a completely new Building (subject to the approval process set forth in this Agreement), or (iii) the razing of any damaged Building, the filling of any excavation, and performance of any other work necessary to put such portion of the Center in a clean, sightly and safe condition.

**13.2. Casualty Damage to Common Area:** In the event any of the Common Area is damaged or destroyed by any cause whatsoever, whether insured or uninsured, during the term of this Agreement, the Owner upon whose Parcel such Common Area is located shall repair or restore such Common Area at its sole cost and expense with all due diligence. Except to the extent limited by Section 13.4 below, in the event such damage or destruction of Common Area is caused wholly by the negligent or willful act of another Owner, Occupant or third Person, the Owner obligated to make such repair or restoration reserves and retains the right to proceed against such other Owner or third Person for indemnity, contribution or damages.

**13.3. Property Insurance:** To assure performance of their respective obligations under Sections 13.1 and 13.2 above, the Owners of the respective Parcels shall cause to be carried causes of loss - special form property insurance, in an amount not less than eighty percent (80%) of the full insurable replacement cost (excluding footings, foundations or excavations) of all Buildings and improvements (including Common Area improvements) on their respective Parcels.

**13.4. Waiver of Subrogation:** The Owners and Occupants each hereby waive any rights one may have against the other on account of any loss or damage occurring to an individual Owner or Occupant, or its respective property, either real or personal, arising from any risk generally covered by property insurance then in effect. In addition, the Owners and Occupants, for themselves and on behalf of their respective insurance companies, waive any right of subrogation that any insurance company may have against the Owners and Occupants. It is the intent of the parties that with respect to any loss from a named peril required to be covered under a policy of property insurance, the parties shall look solely to their respective insurance company for recovery. The foregoing waivers of subrogation shall be operative only so long as available in the State where the Center is situated, and provided further that no policy of insurance is. invalidated thereby.

13.5. **Eminent Domain:** In the event the whole or any part of the Center shall be taken or damaged by right of eminent domain or any similar authority of law or any transfer in lieu thereof (a "Taking"), the entire award for the value of the land and improvements so taken shall belong to the Owner of the Parcel so taken or to such Owner's Lienholders or Occupants, as they may have agreed between or among themselves, and in the absence of any such agreement, as provided by law, and no other Owner shall have a right to claim any portion of such award by virtue of any interest created by this Agreement. In the event of a partial Taking, the Owner of the portion of the Center so taken shall restore the Improvements located on the Common Area of the Owner's Parcel as nearly as possible to the condition existing prior to the Taking to insure the continued ingress/egress to, from and between all areas of the Center to the extent reasonably feasible, without contribution from any other Owner.

#### 14. GENERAL PROVISIONS

14.1. **Covenants Run With the Land:** The terms of this Agreement and each Restriction and Easement on each Parcel shall be a burden on that Parcel, shall be appurtenant to, and for the benefit of the other Parcels and each part thereof, and shall run with the land.

14.2. **No Public Dedication:** Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Center or of any Parcel or portion thereof to the general public, or for any public use or purpose whatsoever; it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed. An Owner shall have the right to close, if necessary, all or any portion of the Common Area on its Parcel from time to time as may be necessary; in the opinion of such Owner, to prevent a dedication thereof or the accrual of any rights of the public therein.

14.3. **Duration:** Except as otherwise provided herein, the term of this Agreement shall be for sixty-five (65) years (the "Primary Period") from the date hereof. Notwithstanding the foregoing, upon the expiration of the Primary Period, the term of this Agreement shall automatically renew for successive periods of ten (10) years each (each such period being referred to as an "Extension Period" unless, at least ninety (90) days prior to the date of expiration of the Primary Period or Extension Period then in effect, the Consenting Owners deliver to the other Owners in the Center written notice of termination, in which event, this Agreement shall automatically expire at the end of the Primary Period or Extension Period then in effect.

14.4. **Injunctive Relief:** In the event of any violation or threatened violation by any Person of any of the Easements, Restrictions or other terms of this Agreement, any or all of the Owners and Prime Lessees of the property included within the Center shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Agreement or provided by law or in equity.

14.5. **Modification and Termination:** Notwithstanding the provisions of Section 14.6 below, this Agreement may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of all of the Consenting Owners (and, if applicable, the Prime Lessees of a Consenting Owner's Parcel) at the time of such modification or termination, and

then only by written instrument duly executed and acknowledged by all of the Consenting Owners and Prime Lessees and recorded in the office of the recorder of the county in which the Center is located. No modification or termination of this Agreement as provided herein shall adversely affect the rights of any senior Lienholder unless such Lienholder consents in writing to the modification or termination.

**14.6. Method of Approval:** Unless otherwise provided in this Agreement, whenever approval, consent or satisfaction (collectively, an "approval") is required of an Owner pursuant to this Agreement (or any Exhibit hereto), it shall not be unreasonably withheld, conditioned or delayed. Unless provision is made for a specific time period, approval or disapproval shall be given within thirty (30) days after receipt of written request for approval. If an Owner neither approves nor disapproves within the required time period, then the Owner requesting approval shall have the right to send a second written request for approval. If such second request states on its face in all capital letters that failure to respond thereto within ten (10) days shall be deemed approval, then the failure to respond within such ten (10) day period shall constitute the approval of the Owner from whom approval was requested. Except with respect to approvals which are deemed approved pursuant to the preceding sentence, all approvals (including conditional approvals) and disapprovals shall not be effective unless given or made in writing. If an Owner disapproves, the reasons therefor shall be stated in reasonable detail in writing. An Owner's approval of any act or request by another Owner shall not be deemed to waive or render unnecessary approval of any similar or subsequent acts or requests. Since the submission of a proposed amendment to the Parties is not an item of "consent" or "approval", each Party may consider any proposed amendment to this Agreement in its sole and absolute discretion without regard to reasonableness or timeliness.

**14.7. Multiple Owners:** In the event an Owner sells its Parcel and becomes the Prime Lessee thereon, said Prime Lessee is hereby appointed the entity to cast the vote or consent or give the consent for said Parcel on behalf of the Owner thereof (except as otherwise required in Section 14.5) and is hereby granted all of the rights and remedies granted to the Owner of said Parcel so long as it is the Prime Lessee of said Parcel, anything in this Agreement to the contrary notwithstanding.

**14.8. Estoppel Certificates:** Any Owner may, at any time and from time to time, in connection with the sale or lease of the Owner's Parcel (or any portion thereof), or in connection with the financing or refinancing of the Owner's Parcel by bona fide mortgage, deed of trust or sale-leaseback made in good faith and for value, deliver written notice to the other Owners requesting such Owners to execute certificates certifying that to the best knowledge of the other Owners, (i) neither the requesting Owner nor any other Owner is in default in the performance of its obligations under this Agreement, or, if a default is alleged, specifically describing the nature and amount thereof, and (ii) confirming that this Agreement has not been amended (or, if so, identifying the amendments), and is in full force and effect. Each Owner shall execute and return such a certificate within thirty (30) days after receipt of a request therefor.

**14.9. Breach Shall Not Permit Termination:** It is expressly agreed that a breach of this Agreement shall not entitle any Owner to terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Agreement.

14.10. Notices:

(a) All notices given pursuant to this Agreement shall be in writing and shall be given by facsimile, by personal delivery, by United States mail or United States express mail postage or delivery charge prepaid, return receipt requested, or by an established express delivery service (such as Federal Express or United Parcel Service), sent to the person and address or facsimile number designated below or, in the absence of such designation, to the person and address shown on the then current real property tax rolls of the county in which the Center is located. All notices to Developer shall be sent to the person and address set forth below:

Developer: Williamson County Joint Venture  
1616 Westgate Circle  
Brentwood, Tennessee 37027  
Attention: Glenn R Wilson

With a copy to: Sherrard & Roe, PLC  
424 Church Street, Suite 2000  
Nashville, TN 37219  
Attention: Kim A. Brown

The Person and address to which notices are to be given may be changed at any time by any Party upon written notice to the other Parties. All notices given pursuant to this Agreement shall be deemed given upon receipt.

14.11. **Waiver:** The failure of a Person to insist upon strict performance of any of the Restrictions or other terms and provisions contained herein shall not be deemed a waiver of any rights or remedies that said Person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the Restrictions or other terms and provisions contained herein by the same or any other Person.

14.12. **Attorneys' Fees:** In the event any Person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover from the non-prevailing party in any such action or proceeding its reasonable costs and attorneys' fees (including its reasonable costs and attorneys' fees on any appeal).

14.13. **Severability:** If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

14.14. **Not a Partnership:** The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the Parties. Each Party shall be considered a separate

party and no Party shall have the right to act as agent for another, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

**14.15. Captions and Headings:** The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

**14.16. Interpretation:** Whenever the context requires construing the provisions of this Agreement, the use of a gender shall include both genders, use of the singular shall include the plural, and the use of the plural shall include the singular. The word "including" shall be construed inclusively, and not in limitation, whether or not the words "without limitation" or "but not limited to" (or words of similar importance) are used with respect thereto. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party. Unless otherwise provided, references to Articles and Sections refer to the Articles and Sections of this Agreement.

**14.17. Entire Agreement:** This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the Easements, Restrictions and other terms and conditions contained in this Agreement affecting the Parcels.

**14.18. Joint and Several Obligations:** In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

**14.19. Recordation:** This Agreement shall be recorded in the office of the Register of the County in which the Center is located.

**14.20. Limitation on Liability:** Except as specifically provided below, there shall be absolutely no corporate or personal liability of persons or corporations who constitute a respective Consenting Owner hereunder, including, but not limited to, officers, directors, employees or agents thereof, with respect to any of the terms, covenants, conditions and provisions of this Agreement.

**14.21. Lienholder Protection:** This Agreement and the Easements and Restrictions established hereby with respect to each Owner and Parcel, shall be superior and senior to any lien placed upon any Parcel, including the lien of any mortgage or deed of trust. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust made in good faith and for value, but all the Easements and Restrictions and other provisions, terms and conditions contained in this Agreement shall be binding upon and effective against any Person (including, but not limited to, any mortgagee or beneficiary under a deed of trust) who acquires title to any Parcel or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

**14.22. Variances:** Where appropriate, the Consenting Owners may, in their sole and absolute discretion, grant written variances to the provisions this Agreement (in lieu of an amendment), signed by all of the Consenting Owners, where strict adherence to the requirements of this Agreement or any architectural standards established by the Consenting Owners would, in the judgment of the Consenting Owners, cause undue hardship. The granting of a waiver or variance to one Owner shall not automatically entitle another Owner to the same waiver or

variance; it being understood that each request for a waiver or variance shall be treated on its own individual merits.

14.23. **Time of Essence:** Time is of the essence with respect to the performance of each obligation of this Agreement.

14.24. **Joinder of Willsons:** Glenn R. Wilson and Katherine N. Wilson (collectively, the "Wilsons") have joined in this Agreement for the sole purpose of subjecting the portion of Lot 1 owned by the Wilson to the terms and provisions of this Agreement.

(Remainder of Page Intentionally Left Blank)



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and date first above written.

WILLIAMSON COUNTY JOINT VENTURE

By: [Signature]  
Glenn R. Wilson, Venturer

"DEVELOPER"

[Signature]  
Glenn R. Wilson

[Signature]  
Katherine N. Wilson

"WILSONS"

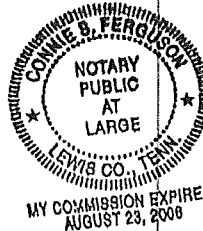
STATE OF TENNESSEE )  
COUNTY OF ~~DAVIDSON~~ )  
Williamson

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Glenn R. Wilson, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be a Venturer of William County Joint Venture, the within named bargainor, a Tennessee joint venture, and that he as such Venturer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the joint venture by himself as Venturer.

Witness my hand and seal at office, this 23<sup>rd</sup> day of September, 2005.

[Signature]  
Notary Public

My Commission Expires: August 23, 2006



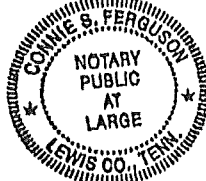
STATE OF TENNESSEE )  
 )  
COUNTY OF DAVIDSON )  
*Williamson*

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Glenn R. Wilson and Katherine N. Wilson, the within named bargainors, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that they executed the within instrument for the purposes therein contained.

Witness my hand and seal, at office in Nashville, Tennessee, this 23<sup>rd</sup> day of September, 2005.

My Commission Expires: August 23, 2006

*Connie S. Ferguson*  
\_\_\_\_\_  
Notary Public



MY COMMISSION EXPIRES:  
AUGUST 23, 2006

EXHIBIT A

Land in Williamson County, Tennessee, being Lots 1-18 and the related common areas, roads and other property, as identified on the Final Subdivision Plat of Heritage Commons, of record in Plat Book P39, page 143, Register's Office for Williamson County, Tennessee.

BK/PG:3696/241-268

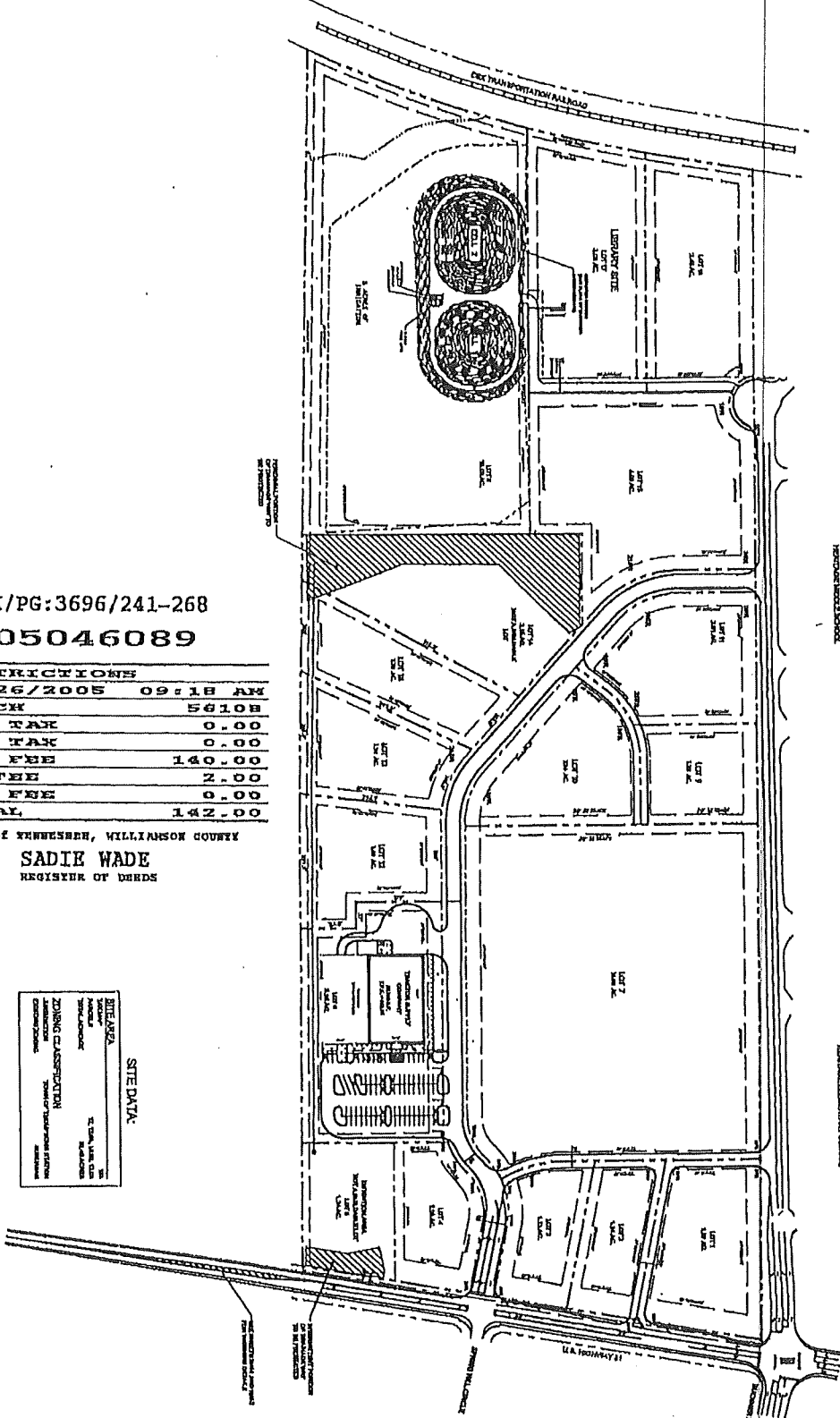
05046089

RESTRICTIONS	
09/26/2005	09:18 AM
BATCH	56108
REG TAX	0.00
TRN TAX	0.00
REG FEE	140.00
DP FEE	2.00
REG FEE	0.00
TOTAL	142.00

STATE OF TENNESSEE, WILLIAMSON COUNTY

SADIE WADE  
REGISTER OF DEEDS

SITE DATA	
SITE AREA	1.00 AC.
OWNER	HERITAGE COMMONS, LLC
DEVELOPER	HERITAGE COMMONS, LLC
DESIGNER	HERITAGE COMMONS, LLC
CONSTRUCTION	HERITAGE COMMONS, LLC
CONTRACT NO.	HERITAGE COMMONS, LLC



C1.1

OVERALL  
SITE PLAN

HERITAGE COMMONS - PHASE II  
COLUMBIA PIKE - U.S. HIGHWAY 31  
THOMPSON'S STATION, WILLIAMSON COUNTY, TENNESSEE

