When Recorded, Return to:
Berg Hill Greenleaf Ruscitti LLP
Attn: Peter C. Schaub
1712 Pearl St.
Boulder, CO 80302

CROSS EASEMENT AND COMMON AREA AGREEMENT

THIS CROSS EASEMENT AND COMMON AREA AGREEMENT (this “Agreement”) is made as of the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 2018, by and between **City Center, LLC, a Delaware limited liability company, as to an undivided 34.09% interest as tenant in common; Windy River Retail 5, LLC, a Colorado limited liability company, as to an undivided 34.09% interest as tenant in common; Vallejo CC, LLC, a Colorado limited liability company, as to an undivided 25.00% interest as tenant in common; and SD City Center, LLC, a Colorado limited liability company, as to an undivided 6.82% interest as tenant in common**. City Center, LLC; Windy River Retail 5, LLC; Vallejo CC, LLC; and SD City Center, LLC may sometimes each be referred to herein as a “Party” and collectively as the “Parties.”

RECITAL OF FACTS

A. The Parties are all of the fee owners of the properties listed on **Exhibit A**, attached hereto and incorporated herein by reference (each a “Parcel” and collectively, the “Parcels” or the “Property”).

B. The Parties recognize the benefits to be gained by facilitating the cross access of vehicles and pedestrians between the respective Parcels for the orderly operation of the Parcels as a shopping center, and recognize the desires and benefits of the easements granted hereunder, and the shared responsibilities for maintenance and costs incurred for the Access Road, Cross Access Drive Aisle(s), Common Areas and Common Area Improvements (all as defined below).

C. The Parties intend to set forth in this Agreement their rights, obligations, duties and responsibilities in connection with the access rights, cross easements, parking easements, and utility connections, and common area maintenance and expenses as herein described.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants contained herein and intending to be legally bound, the Parties agree as follows:

# DEFINITIONS

## **Terms Defined**

**.** As used in this Agreement, the following terms will have the following respective meanings:

### “Access Road” or “Access Roads” mean (i) that central private roadway running in a northerly/southerly direction extending from St. Helena Way (generally along the South side of Parcel B) to East Alameda Ave. (generally along the North side of Parcels A and E), and (ii) those private spur roads running in easterly/westerly directions, extending from such central private roadway, as generally shown on **Exhibit B**,.

### “Architectural Approval” shall have the meaning set forth in Section 5.1(d).

### “Building” shall mean the permanently enclosed structure(s) which has (have) been, will be or may be constructed within any Parcel, but shall not include Common Area Improvements. For purposes of this Agreement, "Building" shall include any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions.

### “Common Areas” shall mean all real property owned by the Parties for the common use and enjoyment of the Owners, the Occupants, and their respective Permittees, including, without limitation, those areas on each Parcel devoted to drive aisles, parking areas, access and egress drives, service drives, sidewalks and non-dedicated streets or roads, curb cuts, walls and fences, landscaping and related improvements. Common Areas do not include drive up or drive through areas and facilities, loading docks, patio areas, or outdoor sales areas or any Building.

### “Common Area Improvements” shall mean all improvements constructed from time to time within the Common Area and intended for common use which may include, without limitation, parking areas, access and egress drives, service drives, non-dedicated streets, lighting standards, sidewalks, landscaping, fixtures, and signage.

### “Covenant Not To Compete” shall be as set forth in Section 6.4, below.

### “Cross Access Drive Aisle(s)” means all cross access drive lanes and areas over, across, and between the Parcels, as generally shown on the attached **Exhibit B**.

### “Current Tenant” shall have the meaning as set forth in Section 6.4.

### “Default Rate” shall mean the rate of interest that is the lesser of (i) the prime rate as quoted by Citibank, N.A., or its successor, as of the date of such default plus two percent (2%), per annum, and (ii) the maximum rate allowed by applicable law.

### “Force Majeure” will have the meaning set forth in Section 9.1 of this Agreement.

### “Hazardous Materials” will have the meaning set forth in Section 14.18 of this Agreement.

### “Improvement(s)” shall mean Building(s) and other structures within a Parcel and Common Area Improvements.

### “Maintenance Director” shall initially mean the Owner of Parcel B.

### “No Change Area” is defined in Section 5.2.

###  “Occupant” means any Owner to the extent that it occupies building space on any Parcel, and any other Person, that from time to time is entitled to the use and occupancy of building space on any Parcel.

### “Owner” and “Owners” means each Party, the Parties, and the record fee owner of any Parcel or Parcels (whether one or more persons or entities), their successor and assigns.

### “Parcels,” collectively, or “Parcel,” individually, refers to the real property, described on **Exhibit A**.

### “Permittee(s)” means the officers, directors, employees, agents, contractors, subcontractors, patrons, customers, visitors, invitees, licensees and concessionaires of an Occupant.

### “Person(s)” means individual(s), partnership(s), firm(s), association(s) and corporation(s), or any other form of legal entity.

### “Proportionate Share” means a fraction (reflected as a percentage), the numerator being equal the square footage of the Building located on such Owner’s Parcel(s) and the numerator being equal to the total square footage of all Buildings located on all Parcels. The square footage of the Buildings as of the date of this Agreement are as set forth on **Exhibit C,** attached hereto and made a part hereof. The Owners acknowledge that as of the date of this Agreement, Parcel E (described on **Exhibit C**), is a vacant Parcel with no Improvements constructed thereon. At such time as any Improvements are constructed on Parcel E, the Maintenance Director is authorized to file an amendment to **Exhibit C**, to reflect the squarefootage of the Improvements made thereon, and the applicable adjustments to the Proportionate Share of each Parcel as a result of such Improvements. Whenever a “majority” is required under the terms of this Agreement the Proportionate Share defined under this Section shall be used to determine the “majority”; and unless otherwise provided in this Agreement, “majority” shall mean a simple majority of 51%.

### “Shopping Center” means the Owners’ Parcels as shown on the Site Plan, located in the City of Aurora, County of Arapahoe, State of Colorado.

### “Site Plan” means the site plan of the overall shopping center development, attached hereto and made a part hereof as **Exhibit B**.

## **Additions or Replacements**

**.**  Any reference in any defined term in Section 1.1 to any construction or improvement whatsoever will be deemed to also refer to any expansion, alterations, reconstruction or replacement thereof pursuant to this Agreement, unless the express language of such reference indicates otherwise.

## **Recitals**

**.**  The recitals are incorporated herein by reference.

# GRANT OF EASEMENTS

## **Definitions and Documentation**

**.** This **Article II** sets forth the easements, and the terms and conditions thereof, which the respective Owners hereby grant to each other and for the benefit and enjoyment of the each of the Parcels, and for their respective successors and assigns. As used in this Article:

### A Owner granting an easement is referred to as the “Grantor” thereof, it being intended that the grant will thereby bind and include not only such Owner but its successors and assigns as well;

### A Owner to which an easement is granted is referred to as the “Grantee” thereof, it being intended that the grant will benefit and include not only such Owner but its successors and assigns as well;

### The word “in”, in respect of an easement grant “in” a particular Parcel means, as the context may require, “in”, “to”, “on”, “over”, “through”, “upon”, “across” and/or “under”.

As to the easements herein granted;

### The grant of a particular easement by a Grantor shall bind and burden the respective Parcel or Parcels, which will, for the purpose of this **Article II**, be deemed to be a servient tenement, but where only a portion thereof is bound and burdened by the particular easement, only that portion thereof so bound and burdened will be deemed to be the servient tenement;

### The grant of a particular easement to a Grantee shall benefit its respective Parcel, which shall, for the purpose of this **Article II**, be deemed to be the dominant tenement, but where only a portion thereof is so benefited, only that portion will be deemed to be the dominant tenement;

### Each easement granted herein shall be deemed to be non-exclusive; and

### All easements granted herein shall be easements appurtenant and not easements in gross.

## **Easements for Use of Cross Access Drive Aisles, and Access Road**.

### Each Owner, as Grantor, establishes and grants for the benefit of the other Owners (as Grantee) and each Parcel, and such Owners’ Occupants and Permittees, the nonexclusive right, privilege and easement, in common with the Grantor and the Occupants and Permittees of the Grantor, to use the Cross Access Drive Aisles between the Parcels as shown on **Exhibit B** for ingress and egress (but not parking) to and from the respective Parcels, including the right to use the drive aisles on each respective Parcel. Included in the foregoing grant are:

#### easements to use the respective Cross Access Drive Aisles for vehicles;

#### easements to use the respective Cross Access Drive Aisles for the passage by pedestrians and cyclists; and

#### easements to use the drive aisles as they exist on each Parcel from time to time to provide passage by motor vehicles and pedestrians and cyclists between each Parcel.

### Each Owner, as Grantor, establishes and grants for the benefit of the other Owners (as Grantee) and each Parcel, and such Owners’ Occupants and Permittees, the nonexclusive right, privilege and easement, in common with the Grantor and the Occupants and Permittees of the Grantor, to use the Access Road shown on the site plan attached hereto as **Exhibit B** for ingress and egress (but not parking) to and from each Owner’s Parcel. Included in the foregoing grant are:

#### easements to use the Access Road for vehicles; and

#### easements to use the Access Road for the passage by pedestrians and cyclists.

## **Easements for Utility Line Connections**

. Each Owner, as Grantor, establishes and grants for the benefit of the other Owners (as Grantee) and each Parcel, and such Owners’ Occupants and Permittees, the nonexclusive right, privilege and easement, in common with the Grantor and the Occupants and Permittees of the Grantor, an easement to install, remove, replace and connect to utilities within the utility easement areas as shown on **Exhibit B**, and to thereafter maintain such utilities and connections. Each Owner of a Parcel agrees to maintain its utilities and connections in good condition and repair at all times and agrees to restore to their prior condition any improvements disturbed by its activities associated with such easements and utilities and to promptly, at such Grantee’s sole cost and expense, repair and/or restore any damage done to the Parcel of any Owner and leave such area affected free and clear of all loose dirt, debris and construction materials and to repair all landscaping that is disturbed by such work.

## **Easements for Parking**. Each Owner, as Grantor, establishes and grants for the benefit of the other Owners (as Grantee) and each Parcel, and such Owners’ Occupants and Permittees, the nonexclusive right, privilege and easement, in common with the Grantor and the Occupants and Permittees of the Grantor, an easement over those portions of the Common Areas on Grantor’s Parcel designated as parking fields, for purposes of temporary vehicular parking. The parking rights and use of the easement granted hereunder are subject to the following conditions and restrictions:

### The parking areas will be used only for parking of passenger vehicles, and Grantee and its Occupants and Permittees will not use, suffer or allow said parking areas to be used for any disorderly or unlawful purpose; and

### Grantee and its Occupants and Permittees will not cause or allow any explosives, inflammable or combustible materials, oil, grease, toxic chemicals, pollutants, other Hazardous Material or other materials regulated pursuant to any of the Environmental Laws, to be used, kept, installed, generated, stored, discarded or disposed of on or about the parking areas (except oil, gas, grease, etc., used for normal operation of the vehicles, so long as they are properly installed and maintained within such vehicles).

## **Parking Ratio**

. Each Owner shall maintain on its respective Parcel the parking ratio required by applicable governmental requirements and by any governing instruments encumbering such Parcel, all without reliance on any parking situated on any other Owner’s Parcel.

## **Sign Easement**. Each Owner hereby grants to the other Owners to display a sign panel on the Shopping Center Sign, an easement for maintenance, repair and replacement of such sign panel. Each Owner shall have the right to place a sign panel equal to its Proportionate Share of each sign, and the maintenance of and replacement of each sign shall be paid for using the same Proportionate Share.

## **Cure Right Easements**. Subject to notice as set forth in Section 12.1 hereof, each Owner hereby grants to the Owners an easement and license to enter upon its Parcel for the purpose of exercising the cure rights provided under **Article XII** of this Agreement. Each Grantee of the easements granted under this Section shall defend, indemnify and hold Grantor harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorney's fees and reasonable attorneys' fees on appeal) incurred in connection with or arising out of Grantee's use of said easements, except to the extent occasioned by the Grantor's negligent or wrongful act or omission to act. The duration of the easements granted under this Section shall be coterminous with the respective provisions of this Agreement which give the Grantee the right or the obligation to perform the work described in this Section.

## **Extinguishment and Modification**

. Any of the easements granted may be (i) released or extinguished, or (ii) amended, waived or modified by written instrument, in recordable form, executed by the Owners of all the Parcels benefited and burdened by the respective easement affected thereby. With respect to any easements granted herein that pertain to a private drive or roadway which hereafter becomes a public road and right-of-way, if at all, such easements (and any related provisions respecting such easements) shall, following the occurrence of such conversion or dedication as a public roadway, automatically terminate and be considered null and void and of no further force or effect without further action by the Owners, and that other third parties, including title companies, may rely on this Section as a final termination of such easements.

## **Prohibition on Granting Easements and Other Provisions**

. Each Owner hereby reserves the right to eject or cause the ejection from the Common Area of its Parcel of any Person or Persons not authorized, empowered or privileged to use the Common Area of such Parcel pursuant to this Agreement. No Owner shall have the right, power, authority or privilege to grant to any other party, any easement, license or other right to use the easements granted hereunder without the express written consent of all the Owners of the Parcels so affected.

# MAINTENANCE OF THE CROSS ACCESS DRIVE AISLES, access road AND COMMON AREA

## **Maintenance Director**. The initial Maintenance Director shall be the Owner of Parcel B. A third party may be appointed to perform the maintenance obligations outlined in this Agreement, which the Owners acknowledge and agree maybe another Owner. The Maintenance Director may receive for such agency a fee that is commercially reasonable to cover supervision, management, accounting and similar fees. The cost of all maintenance and repair activities, as further set forth below, undertaken by the Maintenance Director, together with the agency fee, shall be prorated between all Owners based upon their Proportionate Share (as set forth in Section 3.4 below).

## **Maintenance of Cross Access Drive Aisles, Common Areas and Common Area Improvements**

. Subject to the reimbursement for costs (as set forth in Section 3.4 below) the Maintenance Director shall cause and is hereby empowered (including entering into appropriate management and service contracts as the Maintenance Director may reasonably determine as necessary or appropriate) to keep, maintain (including sweeping/cleaning and snow removal), repair, replace and reconstruct (except as provided in Section 3.4 below regarding damage or destruction caused by an Owner or any of its Occupants or Permittees), as may be appropriate, manage and operate the Cross Access Drive Aisles, the Common Areas (including all hardscape and landscape areas) and Common Area Improvements in a safe, good, orderly and clean condition and state of repair, in conformity with first-class regional shopping center standards. The sweeping/cleaning and snow removal shall be performed by the Maintenance Director (or caused to be performed by Maintenance Director) on an “as needed” basis, as reasonably determined by Maintenance Director.

## **Duty to Maintain Access Road; Sharing of Maintenance Costs**. So long as the Access Road is a private roadway, subject to the reimbursement for costs (as set forth in Section 3.4 below) the Maintenance Director shall cause and is hereby empowered (including entering into appropriate management and service contracts as the Maintenance Director may reasonably determine as necessary or appropriate) to keep, maintain (including sweeping/cleaning and snow removal), repair, replace and reconstruct, as may be appropriate, manage and operate the Access Road in a safe, good, orderly and clean condition and state of repair, in conformity with first-class regional shopping center standards. The sweeping/cleaning and snow removal shall be performed by the Maintenance Director (or caused to be performed by Maintenance Director) on an “as needed” basis, as reasonably determined by Maintenance Director.

## **Section 3.4 Reimbursement Obligations**.

### At least one hundred and twenty (120) days prior to the start of each calendar year, the Maintenance Director shall prepare (in such form as prescribed by Owners) and submit to Owners the following:

(i) A detailed operating expense budget showing monthly and annual expenditures for the then-ending calendar year;

(ii) A detailed operating expense budget showing proposed monthly and annual expenditures for the upcoming calendar year;

 (iii) Recommended capital expenditures for the upcoming year; and

 (iv) Such other information as reasonably requested by Owners.

### The foregoing, which will, in part, form the basis for the proposed budget for the upcoming calendar year, shall be submitted in a format prescribed by Owner and shall be accompanied by such supporting, back-up documentation as Owner may reasonably request and shall show in detail all receipts and expenditures, capital or otherwise, for the then-ending calendar year and the projected receipts and expenditures, capital or otherwise, for the next calendar year on a month-by-month cash basis. Owner swill consider the proposed budget and consult with Manager in the period prior to the commencement of the forthcoming calendar year in order to agree upon an "**Approved Budget**". The Budget must be approved by a majority of the Owners

### Nothing contained herein shall be deemed to obligate Maintenance Director to spend funds from its own account to perform the duties under this Agreement. Maintenance Director will exercise its duties under this Agreement in accordance with and subject to the necessary funding under the most recent Approved Budget until directed otherwise by a majority of the Owners. Maintenance Director may incur expenses necessary to perform its duties notwithstanding the expense is not set forth in or is not provided for, or if provided for therein the expenses are in excess of the item budgeted for in the Approved Budget; provided, however such expenses shall not exceed $5,000. Such expenses incurred shall be reimbursed by the Owners. Expenditures in excess of $5,000, if not provided for in the Approved Budget must be approved by a majority of the Owners.

### The Owner of each Parcel shall by the 1st of each month deliver to the Maintenance Director such Owner’s Proportionate Share of the cost incurred by the Maintenance Director for the operation, maintenance and repair (including replacement, as needed, of the existing improvements, using materials of like quality) of the Access Road, Cross Access Drive Aisles, the Common Areas and Common Area Improvements (including any sweeping/cleaning and snow removal costs). Notwithstanding any other provisions hereof, if any Owner or any of its Occupants or Permittees damages the Access Road, Cross Access Drive Aisles, the Common Areas or Common Area Improvements, such Owner shall be solely responsible for and shall reimburse the Maintenance Director for the actual, reasonable, and necessary costs and expenses for the repair and restoration of such damage within thirty (30) days after receipt of an invoice (including all supporting documentation) from the Maintenance Director. In the event any Owner fails to make any payment due to the Maintenance Director hereunder when due, such Defaulting Owner shall be required to pay interest on the amount due at the Default Rate. Additionally, the Maintenance Director shall have the contractual right to file a lien against the Parcel of such Defaulting Owner in accordance with applicable laws and Section 12.4 below. In the event the Access Road becomes a public roadway, the provisions of this Section for reimbursement shall be of no further force or effect, provided the maintenance, repair and operation obligations for the Access Road are assumed by the City of Aurora or another governmental agency.

## **Section 3.5 Indemnification of Maintenance Director**. The Owners hereby agree to defend, indemnify and save harmless Maintenance Director and Maintenance Director's agents, officers, employees, members, directors and shareholders (collectively, the “Maintenance Director Indemnified Parties”) from and against any and all claims, demands, obligations, liabilities, suits, actions, proceedings, judgments, fines, losses, damages, penalties, charges, costs, and expenses (including, without limitation, reasonable attorneys’ fees) (collectively, the “Claims”) that may be asserted against, imposed upon or incurred by Maintenance Director or any of the Maintenance Director Indemnified Parties by reason of Maintenance Director carrying out its duties and obligations under this Agreement or any material default by another Owner (or its respective agents or employees) in the performance of such Owner’s obligations under this Agreement, or any fraud, bad faith, illegality or gross negligence of Owner or Owner’s Occupants or Permittees relating hereto.

## **Section 3.6 Resignation, Removal and Replacement of Maintenance Director.**

### The Maintenance Director may resign at any time upon written notice to the Owners. In the event the Maintenance Director: (1) is voluntarily dissolved pursuant to applicable law; (2) resigns; (3) is removed by the affirmative vote of a majority of the Owners; or (4) if any of the events under Sections 3.6(b) or 3.6(c) shall occur, then the Maintenance Director shall be immediately removed, and the Owners (with majority vote) shall appoint a replacement Maintenance Director. Such replacement Maintenance Director may be an Owner, an agent or employee of an Owner, or a third party (whether an individual or entity) with experience in managing projects similar to the Shopping Center. The replacement Maintenance Director, regardless of whether it is an Owner, shall be entitled to compensation at a commercially reasonable rate for its services rendered as expressly set forth hereunder. After the Owners have replaced Maintenance Director, any reference herein to “Maintenance Director” shall mean the replacement Maintenance Director. Until such time that any resigning or terminated Maintenance Director is replaced as set forth herein, the Owner of Parcel D shall serve as the interim replacement Maintenance Director. If the Owner of Parcel D fails or refuses to serve as an interim replacement Maintenance Director, the Property shall be managed by the Owner of Parcel A, until a replacement Maintenance Director is appointed.

### The following events shall also be grounds for removal of the Maintenance Director:

#### If a petition in bankruptcy is filed by the then-serving Maintenance Director, or if the Maintenance Director shall make an assignment for the benefit or creditors or take advantage of any insolvency act, then the Maintenance Director shall be removed.

#### If either party shall default in the performance of any of its obligations hereunder and such default shall continue for thirty (30) days after written notice from one party to the defaulting party designating such default, the party not in default may terminate this Agreement upon five (5) days' written notice to the defaulting party.

### Notwithstanding the foregoing, any Owner may terminate the Maintenance Director for cause effective immediately upon written notice to Maintenance Director and the other Owners following the occurrence of any of the following circumstances, such notice to contain with specificity the grounds for termination:

#### Malfeasance, gross negligence, theft, embezzlement or other illegal act of Maintenance Director.

#### Execution by Maintenance Director of any agreements purporting to bind Owners or the Shopping Center, unless expressly permitted under this Agreement or otherwise authorized in writing by all of the Owners.

#### A material default by Maintenance Director of any provision of this Agreement that is not cured within 10 days after delivery of written notice of default to Maintenance Director and the other Owners (unless more time is reasonably required to effectuate the cure period, in which case Maintenance Director shall have such additional time to cure as may be reasonably required as long as Maintenance Director commences the cure within such initial 10-day period and thereafter diligently pursues it to completion within 30-days from the date of notice).

# OBSTRUCTION OF CROSS ACCESS DRIVE AISLES and access road

## **Covenants Respecting Cross Access Drive Aisles and Access Road**.

 Each Owner covenants and agrees with the other Owners with respect to the Access Road, Cross Access Drive Aisles and related drive aisles and parking areas on its Parcel so long as this Agreement is in full force and effect, as follows:

### It will not obstruct the free flow of pedestrian or vehicular traffic; and

### It will not construct or locate, or suffer to be constructed or located, any fence or barricade (except as permitted hereunder), structure, building, merchandise, commercial facility, amenity, landscaping, lights, sign or other obstruction or, installation of any kind whatsoever on its Parcel that would interfere with the cross access provided for in this Agreement, or prevent the free flow of traffic to, across or from its Parcel to the other Parcels. Notwithstanding the above, each Owner will have the right, one day each calendar year, but more often if legally required in the reasonable opinion of its counsel, upon no fewer than seven (7) days advance notice to the other Owners, to erect barriers or chains to block off access to the Cross Access Drive Aisles located on its Parcel to avoid the possibility of dedicating the same for public use; if possible, such barriers or chains shall be erected for such purposes at a time, or upon a day, when the Parcels are not open for business or are in limited use.

## **Exceptions to Covenants**

. Notwithstanding Section 4.1, each Owner may use the drive aisles and adjacent Common Area to the extent reasonably required in connection with:

### The proper use or exercise of the easements, licenses or any other rights specifically granted to the respective Owners under this Agreement; and

### The performance of any construction which the respective Owner is permitted or required to make under this Agreement

# ARCHITECTURAL CONTROL

## **Changes to Buildings or Improvements on a Parcel; Building Design**.

### Harmony. All structures (including Common Area Improvements such as lighting) erected within the Shopping Center shall be architecturally harmonious (including, without limitation, harmonious colors, materials and designs). The Owners shall cooperate in creating a reasonably harmonious exterior appearance for the Buildings and Improvements to be constructed by them within the Shopping Center. Specifically the initial design and appearance of the Buildings and Improvements shall be in accordance with the existing Buildings and Improvements as of the date of this Agreement. Any changes to the Buildings and Improvements, including the colors and materials used must be such that the changes to the Buildings and Improvements integrate harmoniously into the Shopping Center.

### Approvals. Except for alterations, modifications, changes or construction activities (i.e., tenant improvement work) that are wholly internal to a Building and will not affect the exterior of any such Building or the Common Areas and/or Common Area Improvements, no buildings or structures shall be modified, altered, changed or erected or allowed to remain on any Parcel unless the submittal requirements as set forth in Section 5.1(d) below, including all architectural renderings (depicting the exterior elevations of all sides, materials, colors and dimensions), and a site plan (i.e., the Plans, as more fully defined below) for such structure have been approved in writing by the majority of the Owners (as set forth in Section 14.1), which approval shall not be unreasonably withheld, conditioned or delayed. All improvements shall comply with the Plans as approved by the Owners unless changes are approved in writing by the Owners having voted in approval of the initial Plans. The right to make inspections necessary to assure compliance is reserved to the Owners. After initial construction of Buildings and other Improvements, no Owner shall make alterations that will substantially change the exterior of its Buildings without the consent of the majority of the Owners (as set forth in Section 14.1), such consents not to be unreasonably withheld, conditioned or delayed. For purposes of approval or denial of the Owners to such Plans or alterations as required in this Section, such Plans or alterations shall be deemed approved by any Owner who has not responded with a written denial, objection or consent with forty-five (45) days after receipt of a written request to approve Plans or alterations provided that such request include a statement that failure to deny approval within said forty-five (45) day period shall be deemed an approval of such Plans.

### Submittals for Approvals. Any Owner wishing to construct or make any modification, alteration, or change or erect any Building or Improvement on any Parcel (except as allowed in Section 5.1(b) above, e.g., tenant improvements), must submit to the Maintenance Director architectural renderings (depicting the exterior elevations of all sides, materials, colors and dimensions), a foundation plan, a landscape plan, proposed signage, site lighting, a site plan, construction schedules, and any other relevant constructions plans or information reasonably requested by Maintenance Director (collectively, the "Plans") for the improvements to be constructed. Four (4) complete sets of the Plans shall be submitted to the Maintenance Director for the purpose of distributing to and obtaining the Owners’ approval as required hereunder ("Architectural Approval") of the improvements, accompanied by a written request containing a general description of the improvements submitted for approval signed by the Owner or authorized agent of Owner requesting such Architectural Approval. The Maintenance Director shall have discretion, exercised upon its reasonable judgment, to waive or amend the requirements for Architectural Approval. Within ten (10) days of receipt, the Maintenance Director shall review the Plans and other documents submitted for Architectural Approval, and within such ten-day period, shall notify the Owner (or Owner’s agent) having submitted the same whether the Plans are complete for purpose of distributing to and obtaining the Owners’ approval as required hereunder, or if said Plans are insufficient, or other information is reasonably required by Maintenance Director before distributing to the other owners. If the Maintenance Director does not notify the submitting Owner (or Owner’s agent) within such ten-day period that the Plans submitted for Architectural Approval are complete or incomplete, then the Plans so submitted shall be deemed complete. Thereafter the Maintenance Director shall distribute the Plans and other information submitted or obtained for Architectural Approval to the other Owners for their review and authorization or denial. The other Owners (and Maintenance Director) shall deliver written notice to the Maintenance Director and owner submitting for Architectural Approval (or such Owner’s agent) their written consent to such Plans, or their denial or objection to such Plans (and include reasonable detail as to the reason for such objection or denial) within forty-five (45) days following their receipt of the Plans. Any request for Architectural Approval shall be conclusively deemed approved unless disapproved in writing within forty-five (45) days of the Owners’ receipt of written request for such consent which written request and notice shall expressly state that consent is deemed approved if not disapproved within forty-five (45). In the event Owners have not approved or disapproved of the Plans, as properly submitted, in writing within forty-five (45) days from the date of submission and provided that the Plans are accompanied by a written request for approval which states that such Plans shall be deemed approved unless disapproved within forty-five (45) days from receipt of such request, the Plans shall be deemed approved.

#### It shall be deemed reasonable that an Owner's disapproval of the Plans shall be based, among other things, on adequacy of the Parcel dimensions for the desired improvements, adequacy of structural design, conformity and harmony of the exterior design elements of building or improvements to the remaining Shopping Center, the effect of location and use of improvements on operations and use of neighboring Parcels, grade and finished ground elevation with respect to streets and Common Area Improvements, and conformity with the specific conditions and intent of this Agreement. The Owners’ approval of the Plans as required hereunder, shall be evidenced by the signature of the Maintenance Director upon the Plans, or by other written instrument signed by Maintenance Director.

### Construction Timing. Upon receipt of the requisite Owners’ approval of the Plans, the Owner to whom approval was given shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all approved construction and alterations.

#### Weather permitting, all paving and landscaping will be finished upon completion of the improvements set forth in the approved Plans, but in no event shall it be installed later than ninety (90) days after completion of the improvements set forth in the approved Plans. Subject to force majeure, total construction time from commencement to completion of the improvements set forth in the approved Plans (ready for occupancy) shall not exceed one (1) year. Construction of the improvements set forth in the approved Plans shall occur within three (3) months from the date of the approval of the Plans. The effect of the failure to comply with the foregoing timing provisions (time being of the essence thereof) shall have the effect of revoking the approvals granted to such Owner.

## **Changes to the Common Areas**.

### No Change Area: The No Change Area may be shown on the Site Plan. Notwithstanding the foregoing, all Common Areas and Common Area Improvements, including without limitation, the access drives and entrances and all drive aisles, and parking areas located on any Parcel shall be included in the No Change Area; and if such items are not shown on the Site Plan but are later added to the Shopping Center, they shall be included in the No Change Area.

### Initial Development of the Common Areas: The Common Area Improvements depicted on the Site Plan are hereby deemed approved by the Parties.

### Changes after Initial Development: No Owner may make any change to the Common Area and Common Area Improvements within the "No Change Area" without the prior written consent of the majority of the Owners (as set forth in Section 14.1), which consent of each Owner may be withheld in its reasonable discretion; provided, however, that consent for changes which impact traffic flow (e.g., alignment of drive aisles and orientation of parking spaces, location of drive through and drive up lanes, location of curb cuts, entrances and exits) or the location of signs may be withheld in the sole discretion of each Owner. The Owner seeking a change to the Common Area or Common Area Improvements shall submit Plans for the same as set forth in Section 5.1(d) above. Any request for such consent for changes to the Common Areas or Common Area Improvements shall be conclusively deemed approved unless disapproved in writing within forty-five (45) days of receipt of written request for such consent which written request and notice shall expressly state that consent is deemed approved if not disapproved within forty-five (45).

## **Development Parameters; General Terms**.

### Performance of Construction Work Generally: All construction, alteration or repair work pursuant to the approved Plans ("Work") undertaken by an Owner shall be accomplished in an expeditious, diligent and speedy manner. The person or entity undertaking such Work shall:

#### pay all costs and expenses associated with such Work;

#### take necessary measures to minimize disruption and inconvenience caused by such Work;

#### make adequate provisions for the safety and convenience of the Owners and their Permittees;

#### control dust, noise and other effects of such work using methods customarily utilized in order to control such deleterious effects associated with construction projects in a populated or developed area;

#### repair any and all damage which may be caused by or result from such Work;

#### restore all affected portions of any Parcel to a condition equal to or better than the condition existing prior to beginning such Work;

#### indemnify and hold harmless all other Owners in the Shopping Center against any mechanics liens for such Work, particularly as to Common Areas; and

#### obtain all necessary governmental approvals.

#### (Provide performance bond if required by any Owners lender

#### Such Work shall not unreasonably interfere with the business operations on any other Parcel and shall not block or impede the Shopping Center ingress or egress from public streets. The party performing such Work shall limit all construction work and staging areas to its own Parcel and not encroach on any Common Areas on any other Parcel and shall not utilize parking areas of any other Parcel. In connection with Work performed, incidental encroachment upon the Common Area of the Parcel of the party performing such Work may occur in the use of ladders, scaffolding, store-front barricades and similar facilities resulting in temporary obstruction of portions of such Common Area, if such encroachment is kept within reasonable requirements of such Work expeditiously pursued.

### For construction purposes in connection with the Work, the Common Areas may be utilized:

#### for ingress and egress of vehicles transporting construction materials and equipment and persons employed in connection with such Work (but each Owner performing Work shall, to the extent reasonably possible limit such access to its own Parcel); and

#### temporary storage and parking on the constructing Owner's Parcel of materials and vehicles in connection with such Work.

#### All such Work for which a license is granted above (1) which will be performed by an Owner on another Owner's Parcel (subject to such Owner’s express consent, which may be withheld at its sole discretion), or (2) which would adversely affect the ingress and egress to the Shopping Center, the availability of parking and/or circulation of traffic in the Shopping Center, or the operation and supply of common utility facilities to or in the Shopping Center shall be undertaken only after giving the other Owners’ or Owners’ prior fifteen (15) day written notice of the Work to be undertaken, and the scope, nature, duration, location and extent of the Work (subject to the disclosure and approval of the same as set forth in the Architectural Approval process set forth above).

### Compliance in Construction: All work which an Owner undertakes pursuant to this Agreement shall comply with the Plans, the requirements of all applicable governmental authorities, public bodies and other entities (such as public utilities) having jurisdiction, and all applicable laws, ordinances, rules and regulations, including procurement of all license and permits required for such Work. The consent by the Owners of any such Work or Plans, under any provisions of this Agreement, shall not constitute any assumption of responsibility for the accuracy, sufficiency or propriety of such Work or Plans, nor shall such consent constitute a representation or warranty that such Work or Plans will be economic to construct or will comply with law.

### No Liability: Neither Maintenance Director, nor the Owners representing shall be liable for damages to any party submitting plans for approval including Architectural Approval, or to any Owner, arising out of or in connection with the approval or disapproval of such Plans, or failure to approve any requested use or operation, or failure to grant any requested waiver or variance provided such approvals or disapprovals are granted or denied in accordance with the terms herein. Every party who submits Plans for approval agrees by submission of such plans, and every Owner or Occupant of any Parcel agrees, by acquiring title thereto or an interest herein, that he waives the right to bring action or suit against Maintenance Director, it's successors or assigns, or any other Owner to recover any damages arising out of or in connection with the approvals or disapprovals provided they are granted or withheld in accordance with the terms herein.

# USE RESTRICTIONS

## **Permitted Uses**. Every Parcel shall be used only for financial institutions, service shops, Retail Offices, retail stores selling retail merchandise, schools, fitness studios and restaurants all as subject to the further restrictions of this **Article VI**.

### "Retail Offices" shall mean offices of the type customarily found in retail shopping centers for use primarily with customers or clients including, without limitation, insurance offices, real estate offices, banks and financial institutions, travel agents and chiropractic, medical or dental offices.

## **No Nuisances**. No Parcel shall be used for anything other than purposes which may be permitted by applicable zoning regulations. Nothing shall be done on any Parcel which is a public nuisance to the community or to another Owner.

## **Use Restrictions**.

### During the term of this Agreement no portion of the Shopping Center may be used for any of the following purposes without the prior written consent of a majority of the Owners which consent may be withheld in the sole discretion of an Owner:

#### A tavern, bar, nightclub, cocktail lounge, discotheque, dance hall or any other establishment selling alcoholic beverages for on-premises consumption; provided, however, the foregoing shall not prohibit the operation of a restaurant where the sale of alcoholic beverages therein comprises up to but not exceeding forty percent of the restaurant's gross revenues.

#### A bowling alley, billiards parlor, bingo parlor, arcade, game room or other amusement center.

#### A theater (motion picture or live performance).

#### A service station, automotive repair shop or truck stop.

#### A flea market, open air market, tent sale or pawn shop.

#### A training or educational facility (including, without limitation, a school, college, reading room or other facility catering primarily to students and trainees rather than customers; provided that such restriction shall not prohibit the incidental use of an otherwise permitted business for tutoring or for training or classes, such as "how to" classes taught in conjunction with the sale of retail items from an otherwise permitted retail use).

#### A child day care facility.

#### A car wash.

#### A medical clinic or medical office.

#### A storage or mini-warehouse facility.

#### An establishment for the sale of automobiles, trucks, mobile homes, boats or recreational motor vehicles.

#### A dry cleaning plant, central laundry or laundromat (except pick-up laundry services or pick up dry cleaning services with no washing or cleaning done on site).

#### A hotel or motel.

#### Governmental offices.

#### An adult type bookstore or other establishment selling, renting, displaying or exhibiting pornographic or obscene materials (including without limitation: magazines, books, movies, videos, photographs or so called "sexual toys") or providing adult type entertainment or activities (including, without limitation, any displays or activities of a variety involving, exhibiting or depicting sexual themes, nudity or lewd acts).

#### A massage parlor (except certified chiropractic offices subject to Section 6.1 above).

#### A skating rink.

#### A mortuary, crematorium or funeral home.

#### A mobile home or trailer court, labor camp, junkyard or stockyard.

#### A landfill, garbage dump or other such facility for the dumping, disposing, incineration or reduction of garbage.

#### A telephone call center.

#### A gambling establishment or betting parlor.

#### A veterinary hospital or animal raising or keeping facilities except as part of a national or regional chain pet or pet supply store.

#### An assembling, manufacturing, industrial, distilling, refining or smelting facility.

## **Covenant Not To Compete**. Each Owner, by acceptance of title to its Parcel subject to the terms of this Agreement, covenants not to lease any portion of the Improvements on its Parcel to any business that is a direct competitor or will operate a business substantially similar to that of any current tenant of any other Owner (referred to as a “Current Tenant”), without first obtaining such other Owner’s prior written consent, which consent may be withheld in its sole discretion. As used herein, a “direct competitor” shall mean a readily recognizable national or regional competitor of such Current Tenant, and “substantially similar” shall mean a business that derives seventy-five percent (75%) or more of its gross revenues from the sales of goods or provision of services similar to those provided by the Current Tenant. This Covenant Not To Compete shall only be in effect so long as the Current Tenant remains continuously open for business and operating pursuant to its permitted use under its lease, and shall cease if the Current Tenant ceases to remain open for business to the public (pursuant to its customary operations) for a period of 30-days or more, or its right of possession of the leased space is terminated or expires.

# DAMAGE AND DESTRUCTION

## **Destruction of Common Area by Fire or other Casualty**

. In the event of the destruction or damage of the Cross Access Drive Aisles and adjacent drive aisles, or the Common Area and/or Common Area Improvements on any Owner’s Parcel by any casualty, each Owner covenants and agrees to promptly rebuild such improvements so destroyed or damaged on its respective Parcel. Rebuilding, when once commenced by an Owner, will be carried through diligently and continuously to conclusion by it, but delays caused by Force Majeure will not be deemed such an interruption as constitutes a default in the obligation to cause such work to be performed continuously to completion.

# INSURANCE

## **Liability Insurance for Common Area, Buildings, Employees and Motor Vehicles**

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### Each Owner shall, during the term of this Agreement, maintain, or cause to be maintained, in full force and effect, Commercial General Liability Insurance, including contractual liability coverage covering all indemnities herein, covering its Parcel with an insurer rated A-; VII or better in the most recent addition of Best’s Insurance reports, such insurance to afford protection of not less than $2,000,000 combined single limit per occurrence for personal injuries, including personal and bodily injury, death, blanket broad form contractual liability, libel, slander, wrongful eviction, false arrest, completed operations, and consequential damages arising therefrom.

### Each Owner shall, severally, during the term of this Agreement, maintain in full force and effect workers’ compensation insurance with at least statutory limits (containing, where available, an alternate employer endorsement in favor of the other Owner) and employer’s liability insurance (with minimum limits of $1,000,000 per accident, $1,000,000 per disease and $1,000,000 policy limit on disease),

### Each Owner shall, severally, during the term of this Agreement, maintain in full force and effect motor vehicle liability insurance with coverage for all owned, non-owned and hired vehicles to afford protection of not less than $2,000,000 combined single limit.

### Maintenance Director shall during the term of this Agreement, maintain, or cause to be maintained, in full force and effect, Commercial General Liability Insurance, including contractual liability coverage covering all indemnities herein, covering the Common Areas, with an insurer rated A-; VII or better in the most recent addition of Best’s Insurance reports, such insurance to afford protection of not less than $2,000,000 combined single limit per occurrence for personal injuries, including personal and bodily injury, death, blanket broad form contractual liability, libel, slander, wrongful eviction, false arrest, completed operations, and consequential damages arising therefrom. Such insurance shall be in the name of the Owners, and Maintenance Director shall be named as an additional insured. If requested by an Owner, Maintenance Director shall deliver a certificate evidencing such liability insurance to the Owners. Maintenance Director agrees to report immediately to Owners any and all accidents, claims, or damage or destruction relating to the ownership, operation or maintenance of the Shopping Center. The costs incurred in connection with this Section shall be assessed to the Owners pursuant to Section 3.4.

## **Release; Waiver of Subrogation**

. Each Owner hereby releases (for itself and, to the extent legally possible for it to do so, on behalf of its insurer) the other Owners from any liability for any loss or damage to property located on its Parcel, which loss or damage is caused by a risk of the type generally covered by policies of insurance of the type referred to in Section 8.1 above. Each Owner covenants that it will, to the extent such insurance endorsement is available (even if such endorsement requires the payment of a reasonable additional premium), obtain for the benefit of the other Owners a waiver of any right of subrogation which the insurer of such Owner might otherwise acquire against the other Owners by virtue of the payment of any loss covered by such insurance.

## **Evidence of Insurance**

. Each Owner will furnish to the other Owners hereto requesting the same, evidence that the insurance referred to herein, or a reasonable, viable plan of self-insurance is in full force and effect.

## **Cross Indemnity**. To the extent not covered by the insurance policies described above, each Owner (the "Indemnitor") will pay, and indemnify and save harmless the other Owners (the "Indemnitee") from and against, all third party liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses), causes of action, suits, claims (including, but not limited to, third-party claims), demands or judgments of any nature arising from: (i) any injury to or death of a person or loss of or damage to property occurring on the Indemnitor's Parcel; (ii) any use or condition of the Indemnitor's Parcel; and (iii) any negligence or tortious acts of the Indemnitor or any of his tenants, licensees, invitees, customers, agents or employees, except to the extent that such causes of action, suits, claims, demands or judgments arise out of the negligence or intentional misconduct of the Indemnitee.

# FORCE MAJEURE

## **Performance Excused**

. Each Owner shall (whether or not any particular provision of this Agreement makes specific reference to this **Article IX**) be excused from performing any of its duties, obligations or undertakings provided in this Agreement (except any of its duties, obligations or undertakings to pay any sums of money) if and so long as the performance of such duty, obligation or undertaking is prevented, delayed, retarded or hindered by act of God, epidemic, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, mob violence, civil commotion, sabotage, malicious mischief, strikes, lock-outs, action of labor unions, condemnation, order of civil or military or naval authorities, embargoes, impossibility of obtaining materials, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of the Owner in question (any and all of which events are defined as “Force Majeure”). Specifically excluded are delays resulting from an Owner’s inability to obtain financing or an Owner’s lack of capital.

# REAL ESTATE TAXES, WATER AND SEWER AND OTHER CHARGES

## **Covenant to Pay**

. Each Owner covenants to pay, with respect to its Parcel, all real estate taxes and assessments, and all assessments hereafter made by governmental authorities having jurisdiction.

## **Right to Contest or Appeal**

. Each Owner may defer payment of any such taxes, assessments, rates or charges payable by them, respectively, as aforesaid, while appealing or contesting the validity and/or amount thereof, provided that such contest shall be in good faith and that any such Owner shall, upon receiving a final adverse ruling or decision, immediately pay any such taxes, assessments, rates or charges payable, and at all times take such steps as may be necessary, including the payment thereof under protest, to ensure that foreclosure or sale of the property in question will not occur.

# CONDEMNATION

## **Restoration Upon Condemnation**

. Subject to the provisions of Section 11.2, if any improved portion of the Parcel of any Owner is condemned, the Owner owning the Parcel upon which the condemnation occurs will promptly notify the other Owners thereof and will, insofar as it is practicable to do so in the reasonable exercise of good faith judgment of such Owner, promptly upon payment of the award thereof, rebuild any Cross Access Drive Aisle or adjacent drive aisles or Common Area on its Parcel to the extent of such award.

## **Termination of Operations**

. If so much of a Parcel is condemned that it is impracticable, in the good faith reasonable business judgment of the Owner owning such Parcel, to operate thereon the improvements that the Owner owning such Parcel is required to operate or is operating pursuant to this Agreement or if, as a result of condemnation, an Owner elects to cease operating its improvements, then such Owner shall be released from all obligations to operate, to maintain and insure the Cross Access Drive Aisles and adjacent drive aisles and Common Area on its Parcel effective at the date of such condemnation, provided such Owner notifies the other Owners of its election to so cease operating within ninety (90) days of the effective date of such condemnation.

## **Condemnation Does Not Affect Easements**

. A condemnation will not affect the existence of the easements or licenses referred to herein, except to the extent that they are taken as part of the condemnation.

## **Waiver of Award**

. Except for any award attributable to any easements, each Owner waives in favor of the Owner whose Parcel or any portion thereof is condemned any value attributable to any easements or licenses of the former and in the Parcel of the latter as to any award for the condemnation; and no part of such award or proceeds will be payable to the owner of the dominant tenement by virtue of such easement or licenses.

# DEFAULTS; REMEDIES

## **Events of Default**. The occurrence of anyone or more of the following events shall constitute a breach of this Agreement by the non-performing party (the "Defaulting Owner"):

### The failure to perform any obligation pertaining to maintenance, insurance or taxes, hereof and to cure such failure within the time requirements cited in such relevant Section, which shall be a breach under this Agreement without necessity of any further notice to the defaulting party other than the notices required in such Section;

### The failure to make any payment required to be made hereunder within ten (10) business days of the due date which shall be a breach under this Agreement without necessity of any notice to the Defaulting Owner, or

### The failure to observe or perform any other of the covenants, conditions or obligations of this Agreement or to abide by the restrictions and requirements herein provided, including, without limitation, the Covenant Not To Compete under Section 6.4, which shall be a breach under this Agreement after expiration of thirty (30) days after the issuance of a notice by a non-defaulting Owner ("Non-Defaulting Owner") specifying the nature of the default claimed (other than as described in (b) above, which shall not require notice).

In the event such default is not cured within thirty (30) days following written notice from the Non-Defaulting Owner, or from an Occupant on a Parcel, then such Non-Defaulting Owner or Occupant shall have, in addition to all remedies at law or in equity, the additional remedy of curing such default using its own forces or third parties and charging the reasonable costs thereof to the Defaulting Owner. As set forth in Section 12.3, the Curing Owner may go upon the Parcel of the Defaulting Owner in order to accomplish such curing without being guilty of trespass or unlawful entry.

## **Remedies for all Owners**. Each Non-Defaulting Owner shall have the right to prosecute any proceedings at law or in equity against any Owner or any other person for breach of any easement or restriction benefiting such Non-Defaulting Owner, including, without limitation the violation of the Covenant Not To Compete. Such proceeding shall include the right to restrain by injunction any such violation or threatened violation by another of any of such terms, covenants, or conditions of this Agreement, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. The parties acknowledge and agree that a remedy at law for a breach of the Covenant Not To Compete would be inadequate to protect the interest of the Non-Defaulting Owner, and upon such breach or threatened breach the Non-Defaulting Owner shall be entitled to an injunction or other restraining order prohibiting the Defaulting Owner from such breach without posting a bond. No Occupant or Permittee shall have the right to bring any action to enforce any provision of this Agreement and no enforcing Owner shall have the obligation to join any Occupant or Permittee in any action to enforce this Agreement. No Owner shall be required to post any bond as a condition to the granting of any injunctive relief for a violation of this Agreement (including a preliminary injunction or temporary restraining order), nor shall the right to such injunctive relief be affected by any arbitration provisions in any contact executed by an Owner, a tenant or their agents. The rights and remedies provided herein shall be cumulative and not exclusive and shall be in addition to, and not in lieu of, any other rights and remedies that may exist in the event of a violation of this Agreement. The exercise of any one or more of such rights and remedies shall not be deemed an election precluding the exercise of any of the others.

## **Right to Cure**. With respect to any event of default under Section 12.1, any Non-Defaulting Owner (the "Curing Owner") shall have the right, but not the obligation, to cure such default, provided the Defaulting Owner has failed to cure such default within the applicable notice period, by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Owner; provided, however, with respect to a default which constitutes an emergency condition involving an immediate and imminent threat of substantial injury or harm to persons or property, any Non-Defaulting Owner who is acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, due to such emergency, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Curing Owner shall have the right to enter upon the Parcel of the Defaulting Owner (but not into any Building) to perform any necessary work or to furnish any necessary material to cure the default of the Defaulting Owner. Each Owner shall be responsible for the non-performance of its Occupants and its tenants In the event any Curing Owner shall cure such a default, the Defaulting Owner shall reimburse the Curing Owner for all actual and reasonable costs and expenses incurred in connection with such curative action (including, without limitation, such Curing Owner’s attorneys’ fees and costs), plus interest at the Default Rate, within ten (10) business days of receipt of ,demand, together with reasonable documentation supporting the expenditures made.

## **Liens**. Costs and expenses accruing and/or assessed pursuant to Section 12.3 above and the amounts described in Section 12.1 shall constitute a lien against the Defaulting Owner's Parcel. A lien under this Section shall attach and take effect only upon recordation of a claim of lien in the applicable real estate records office of the County in which the said Parcel is located, by the Curing Owner making the claim. The claim of lien shall include the following:

### The name and address of the lien claimant;

### A statement concerning the basis for the claim of lien and identifying the lien claimant as a Curing Owner;

### An identification by name and address (if known) of the Owner or reputed Owner of the Parcel or interest therein against which the lien is claimed;

### A description of the Parcel against which the lien is claimed;

### A description of the work performed which has given rise to the claim of lien;

### A statement itemizing the total amount due, including interest;

### A statement that the lien is claimed pursuant to theprovisions of this Agreement, reciting the date, book and page of recordation hereof.

The notice shall be duly acknowledged and contain a certificate that a copy thereof has been served upon the Defaulting Owner against whom the lien is claimed, by personal service or by mailing pursuant to **Article XIII** below. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law, including without limitation, in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the law of the State in which the Shopping Center is located.

## **Cumulative Remedies**. All of the remedies permitted or available to a Consenting Owner under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

## **No Waiver**. No delay or omission of any Owner in the exercise of any right accruing upon any default of any other Owner shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. No waiver by any Owner of any default under this Agreement shall be effective or binding on such Owner unless made in writing by such Owner and no such waiver shall be implied from any omission by an Owner to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers or any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Agreement.

## **No Termination for Breach**. No breach, whether or not material, of the provisions of this Agreement shall entitle any Owner to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies which any party may have hereunder by reason of any breach of the provisions of this Agreement.

## **Limitation of Liability**. Notwithstanding the foregoing, any person acquiring fee or leasehold title to a Parcel, or any portion thereof, shall be bound by this Agreement only as to the Parcel or portion of the Parcel acquired or possessed by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee leasehold Owner or occupant of such Parcel or portion of the Parcel; and, upon conveyance or transfer of the fee or leasehold interest shall be released from liability hereunder, except as to the obligations, liabilities or responsibilities that accrue prior to such conveyance or transfer. Although persons may be released under this Section, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon said Parcels running with the land.

## **Attorney’s Fees**. In the event of a breach hereof, the non-prevailing Owner shall pay the reasonable attorney's fees (and the reasonable attorneys' fees on appeal) of the prevailing Owner.

# NOTICES

## **Place and Manner of Notice**

. Any notice, demand, request, consent, approval, designation or other communication that any Owner is required or desires to give, make or communicate to any other Owner will be in writing and will be given, made or communicated in person or by United States registered or certified mail, return receipt requested, with postage fully prepaid, or by an independent, nationally recognized overnight delivery service that provides receipts to indicate delivery, addressed to (subject to the right of any Owner to designate a different address by notice similarly given):

|  |  |
| --- | --- |
| **City Center, LLC**: | 215 Hallock Road, Suite 1AStony Brook, NY 11790Attention: Rich Kolsch |
| with a copy to: | Berg Hill Greenleaf Ruscitti LLP1712 Pearl St.Boulder, CO 80302Attn: Peter C. Schaub |
| **Windy River Retail 5, LLC**: | 1000 Highway 395 South #423Hermiston, OR 97838Attention: Carrie Burns |
| with a copy to: |     Attention:  |
| **Vallejo CC, LLC** | 270 St. Paul Street, Suite 200Denver, CO 80206 Attention: Richard O. Campbell |
| with a copy to: |     Attention:  |
| **SD City Center, LLC**: | 270 St. Paul Street, Suite 200Denver, CO 80206 Attention: Richard O. Campbell |
| With a copy to: |     Attention:  |

Any notice, demand, request, consent, approval, designation or other communication so sent by registered or certified mail will be deemed to have been given, made, received, or communicated, as the case may be, on the date of delivery as shown on the return receipt; and any notice, demand, request, consent, approval, designation or other communication sent or delivered in any other manner will be deemed given, made, received or communicated, as the case may be, as of the time of the actual delivery thereof. In addition, from and after the date that an Owner receives notice from another Owner containing the name and address of such Owner’s mortgagee, each Owner will give any and all notices given to such Owner to the holder of the mortgage covering such Owner’s Parcel, (such obligation to continue whether or not such Mortgagee is in possession of any Parcel of any Owner).

# MISCELLANEOUS

**Approvals; Actions Without Meetings**. The Owners may conduct the approvals and actions required under this Agreement with or without a meeting (and nothing herein shall be construed as to require any meetings). Approvals of any matter may be conducted by mail, email, or by written consent without a meeting, without prior notice and without a formal vote. Wherever used in this Agreement, approval by a majority or other proportion of the Owners refers to approval in accordance with and based on each Owner’s Proportionate Share; provided, however, that in connection with approvals as set forth in **Article V**, the Owner seeking such approval shall not be permitted to vote and only the Proportionate Share of the other Owners shall be used for such approval purposes (without discount or adjustment).

## **No Waiver**. No waiver of any default by any Owner hereto shall, be implied from any omission by any Owner or Owners hereto to take any action in response to such default if such default continues or is repeated. No express waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more waivers of any default in the performance of any term, provision or covenant of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant of this Agreement.

## **Successors and Assigns Bound and Benefited**

. This Agreement will be binding upon and inure to the benefit of each Party, Owner and its respective successors and assigns.

## **No Relationship of Principal and Agent**

. Neither anything contained in this Agreement nor any acts of the Owners will be deemed or construed by any Owner or Owners or by any third person to create the relationship of principal and agent or of limited or general partnership or of joint venture or of any association between or among any of the Owners.

## **Separability of Void Provisions**

. If any provision of this Agreement, or the application thereof to any Owner or Owners, and/or any Person and/or circumstances will be held to be invalid, void or illegal, the remaining provisions and/or the application of such provisions to any Owner or Owners and/or any circumstances other than as to those which it is held to be invalid, void, or illegal, will nevertheless remain in full force and effect and not be affected thereby, and the Owners agree that they would have entered into this Agreement independently of any provision or provisions of this Agreement held to be invalid, void or illegal.

## **Captions**

. The captions of the Sections and Articles of this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation and construction. This document is the result of an arm’s-length transaction among the Owners and is to be construed according to its fair meaning and not strictly against any Owner or Owners.

## **Governing Law**

. This Agreement will be construed, interpreted and applied under the laws of the State of Colorado.

## **Amendment; Entire Agreement**

. This Agreement may be amended or terminated by, and only by, the written agreement of all the Owners hereto or their successors or assigns. Notwithstanding the foregoing, at such time as any Improvement is modified, altered or constructed on any Parcel, the Maintenance Director is authorized to file an amendment to **Exhibit C**, without agreement or consent of the Owners, to reflect the squarefootage of the modification, alteration or construction of the Improvements made thereon, and the applicable adjustments to the Proportionate Share of each Parcel as a result of such modification, alteration or construction of Improvements. This Agreement embodies the entire agreement of the Owners with respect to the subject matter hereof.

## **Counterparts**

. This Agreement may be signed in several counterparts, each of which will be deemed an original and all such counterparts together will constitute one and the same instrument.

## **Exhibits**

. The Exhibits attached hereto and referred to herein are hereby incorporated into and made a part of this Agreement as fully as if set forth in full herein. Any reference to any Exhibit contained within this Agreement will be deemed to mean any Exhibit to this Agreement as from time to time amended by the Owners or the Maintenance Director.

## **Covenants Run with Land**

. The agreement of the Owners set forth to this Agreement will be construed as covenants and not as conditions. To the fullest extent legally possible, all of the covenants of the Owners will run with the land.

## **No Gift or Dedication**

. Nothing herein contained will be deemed to be a gift or dedication of any portion of a Parcel to the general public, or for the general public or for any public purpose whatsoever, it being the intention of the Owners that this Agreement will be strictly limited to and for the purpose expressed.

## **No Third-Party Beneficiaries**

. Except as herein specifically provided, no rights, privileges or immunities of any Party hereto will inure to the benefit of any tenant, Occupant or other third party; nor will any tenant, Occupant or such other third party be deemed to be a third-party beneficiary of any of the provisions contained herein.

## **Rule Against Perpetuities**

. Notwithstanding anything to the contrary herein contained, any contingent license, easement or other right granted by this Agreement mat has not vested by the “Vesting Date,” as hereinafter defined, will terminate as of said Vesting Date. The Vesting Date is defined as the twenty-first (21st) anniversary of the death of the last to die of the living heirs of all natural Persons as of the date hereof who are, or who directly or indirectly own an interest in, an Owner to this Agreement.

## **Use of the Word “Include” or “Including”**

. Throughout this Agreement, whenever the word “include” or “including” is used, it shall be deemed to mean “include, without limitation” or “including, without limitation”, unless specifically stated otherwise.

## **Use of Singular and Plural**

. Whenever the context requires or permits, the singular shall include the plural, and the plural shall include the singular.

## **Indemnification of Related Parties**

. Whenever an Owner has agreed in this Agreement to indemnify, defend and hold harmless another Owner, such agreement to indemnify shall include the indemnified Owner’s officers, directors, and employees, agents and contractors.

## **Hazardous Materials**

. Each Owner agrees that there shall be no Hazardous Materials (defined below) on its Parcel, except as part of the ordinary course of such Owner’s business in the construction and operation of improvements on its Parcel and in compliance with all applicable laws. Each Owner agrees to indemnify, defend and hold the other Owners harmless with respect to the existence of any Hazardous Material on its Parcel if and to the extent that the sole source of the Hazardous Materials is the Parcel of the indemnifying Owner and a release occurred in the first instance only on that Owner’s Parcel during such Owner’s ownership or occupancy thereof. As used herein, “Hazardous Materials” means hazardous polychlorinated biphenyls, petroleum products, asbestos, and other toxic materials, hazardous substances or wastes within the meaning of any applicable statute, law, ordinance, regulation, rule, order or determination of any governmental or quasi-governmental authority, including, without limitation, CERCLA, the Resource Conservation and Recovery Act, the Clean Water Act, the Safe Drinking Water Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, all as such Acts have been amended, and the regulations promulgated pursuant to such laws (collectively, the “Environmental Laws”).

## **Attorneys’ Fees**

. In the event that any Owner shall institute any action or proceeding against another Owner relating to the provisions of this Agreement, or any default hereunder, then, and in that event, the unsuccessful litigant in such action or proceeding shall reimburse the successful litigant therein for the reasonable expenses of attorneys’ fees and disbursements (but not exceeding the actual amount of such fees and disbursements) incurred therein by the successful litigant as an element of the cost of suit, and not as damages.

## **Ordinances**

. Each Owner shall, at all times, both during and after the completion of construction, comply with all Federal, State, County and Municipal laws, ordinances, rules and regulations.

## **Uniform Common Interest Ownership Act**. In no event shall the provisions of the Colorado Common Interest Ownership Act, or any similar act (including, without limitation, Uniform Common Interest Ownership Act) which may now or hereafter exist under the laws of the State of Colorado, modify any of the terms and provisions of this Agreement, it being the intent of Owners to exclude this Agreement and the Parcels from the applicability of any such act.

*[Intentionally left blank – signature page to follow]*IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date and year first above written.

**City Center, LLC**,

a Delaware limited liability company

By:

Name: Richard Kolsch

Title: President

**SD City Center, LLC**,

a Colorado limited liability company

By:

Name: Robert Steven Davis

Title: Sole Member

**Vallejo CC, LLC**,

a Colorado limited liability company

By: Vallejo Management, LLC,

a Colorado limited liability company,

its Manager

By:

Name: Richard O. Campbell

Title: Manager

**Windy River Retail 5, LLC**,

a Colorado limited liability company

By: Windy River Investments, LLC,

an Oregon limited liability company,

its Manager

By: Windy River,

an Oregon general partnership,

its Sole Manager

By:

Name: Carrie Burns

Title: Authorized Representative

STATE OF \_\_\_\_\_\_\_\_\_\_\_ )

 ) ss

COUNTY OF \_\_\_\_\_\_\_\_ )

On this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who is known to me to be the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and the identical person who signed the foregoing instrument on behalf of said entity and said person did acknowledge such execution to be the voluntary act and deed of said entity.

Notary Public

(Notarial Seal)

STATE OF \_\_\_\_\_\_\_\_\_\_\_ )

 ) ss

COUNTY OF \_\_\_\_\_\_\_\_ )

On this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who is known to me to be the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and the identical person who signed the foregoing instrument on behalf of said entity and said person did acknowledge such execution to be the voluntary act and deed of said entity.

Notary Public

(Notarial Seal)

STATE OF \_\_\_\_\_\_\_\_\_\_\_ )

 ) ss

COUNTY OF \_\_\_\_\_\_\_\_ )

On this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who is known to me to be the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and the identical person who signed the foregoing instrument on behalf of said entity and said person did acknowledge such execution to be the voluntary act and deed of said entity.

Notary Public

(Notarial Seal)

STATE OF \_\_\_\_\_\_\_\_\_\_\_ )

 ) ss

COUNTY OF \_\_\_\_\_\_\_\_ )

On this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who is known to me to be the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and the identical person who signed the foregoing instrument on behalf of said entity and said person did acknowledge such execution to be the voluntary act and deed of said entity.

Notary Public

(Notarial Seal)

SUBORDINATION AND CONSENT

TO

CROSS EASEMENT AND COMMON AREA AGREEMENT

**A10 Term Asset Financing 2016-1, LLC, a Delaware limited liability company** (“Lender”), is the beneficiary and the holder of all the beneficial interest under that certain Deed of Trust With Assignment of Leases and Rents and Security Agreement dated July 31, 2015, from Borrowers, as grantors, to the Public Trustee of Arapahoe County, Colorado, as trustee, for the benefit of A10 Capital, as beneficiary, recorded on August 4, 2015, as Reception #D5086988, in the official records of Arapahoe County, Colorado (the “Records”), as assigned pursuant to that certain Assignment of Deed of Trust and Loan Documents dated July 31, 2015, from A10 Capital, as assignor, to A10 REIT, LLC, a Delaware limited liability company, as assignee, recorded on August 4, 2015, in the Records as Reception #D5086989, as further assigned pursuant to that certain Assignment of Deed of Trust and Loan Documents dated July 31, 2015, from A10 REIT, LLC, as assignor, to A10 Revolving Asset Financing I, LLC, a Delaware limited liability company, as assignee, recorded on August 4, 2015, in the Records as Reception #D5086990, and as further assigned pursuant to that certain Assignment of Deed of Trust and Loan Documents dated May 27, 2016, from A10 Revolving Asset Financing I, LLC, as assignor, to Lender, as assignee, recorded on June 28, 2016, in the Records as Reception #D6068034, as the (collectively, the “Deed of Trust”)

 The Deed of Trust encumbers that certain real property located in Arapahoe County, Colorado, more particularly described in the Deed of Trust (the “Property”).

To facilitate the development of certain adjacent property and to thereby enhance the value of the Property, Lender is willing to subordinate the Deed of Trust to the CROSS EASEMENT AND COMMON AREA AGREEMENT (the “Easement Agreement”) set forth above. Accordingly, Lender hereby covenants and agrees that the Deed of Trust is and shall be junior and subordinate in all respects to the Easement Agreement. Any foreclosure of the Deed of Trust shall not affect or impair any rights of the other parties to the Easement Agreement, and the purchaser at any foreclosure sale shall take title subject to the Easement Agreement. Lender agrees that it will not challenge the validity, enforceability, or priority of the Easement Agreement. This subordination shall be binding on and inure to the benefit of all successors and assigns of the parties.

[signature follows on next page]

IN WITNESS WHEREOF, Lender hereby acknowledges and consents to the foregoing subordination as of the date set forth below.

**A10 Term Asset Financing 2016-1, LLC**,

a Delaware limited liability company

By: **A10 REIT, LLC**,

a Delaware limited liability company,

its Designated Manager

By: **A10 Capital, LLC**,

a Delaware limited liability company,

its Manager

By:

Name: Jacqueline C. Cox

Title: Executive Vice President

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_ )

:ss

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_ )

On this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who is known to me to be the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and the identical person who signed the foregoing instrument on behalf of said entity and said person did acknowledge such execution to be the voluntary act and deed of said entity.

Notary Public

(Notarial Seal)

EXHIBIT A

LEGAL DESCRIPTION

Parcel A:
Lot 3, Block 1, City Center Marketplace Subdivision Filing No. 1, according to plat recorded November 13, 1984, at reception no. 2471224, County of Arapahoe, State of Colorado.

Parcel B:
Lot 1, Block 1, City Center Marketplace Subdivision Filing No. 2, a resubdivision of Lots 1 and 2, Block 1, City Center Marketplace Subdivision Filing No. 1, according to plat recorded \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, at reception no. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Parcel C:
Lot 2, Block 1, City Center Marketplace Subdivision Filing No. 2, a resubdivision of Lots 1 and 2, Block 1, City Center Marketplace Subdivision Filing No. 1, according to plat recorded \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, at reception no. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Parcel D:
Lot 3, Block 1, City Center Marketplace Subdivision Filing No. 2, a resubdivision of Lots 1 and 2, Block 1, City Center Marketplace Subdivision Filing No. 1, according to plat recorded \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, at reception no. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Parcel E:
Lot 4, Block 1, City Center Marketplace Subdivision Filing No. 2, a resubdivision of Lots 1 and 2, Block 1, City Center Marketplace Subdivision Filing No. 1, according to plat recorded \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, at reception no. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

EXHIBIT B

DRAWING DEPICTING LOCATION OF PARCELS, CROSS ACCESS DRIVE AISLES, ETC.

(Attached)

EXHIBIT C

Squarefootage of the Buildings

|  |  |  |
| --- | --- | --- |
| Parcel | Building Squarefootage | Proportionate Share |
| Parcel A | 40,238 | 16.57% |
| Parcel B | 104,722 | 43.14% |
| Parcel C | 11,578 | 4.77% |
| Parcel D | 86,277 | 35.52% |
| Parcel E | 0 | 0 |
| TOTAL | 242,815 | 100% |

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