

STATE OF GEORGIA  
COUNTY OF FULTON

**RESOLUTION TO CONSENT TO: (A) MASTER LEASE AGREEMENT BY AND BETWEEN THE CITY OF SANDY SPRINGS PUBLIC FACILITIES AUTHORITY ("AUTHORITY"), AS LESSOR, AND SANDY SPRINGS CITY CENTER, LLC ("DEVELOPER"), AS LESSEE; (B) DECLARATION OF PARKING EASEMENTS AND COST SHARING AGREEMENT MADE BY THE AUTHORITY WITH CONSENT BY DEVELOPER; AND (C) MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS MADE BY THE AUTHORITY; AND TO APPROVE THE CITY IMPROVEMENTS COMPLETION AND ESCROW AGREEMENT BY AND AMONG DEVELOPER, THE CITY OF SANDY SPRINGS, GEORGIA, AND CHICAGO TITLE INSURANCE COMPANY ("ESCROW AGENT"); ALL AS CONTEMPLATED BY THAT CERTAIN REAL ESTATE ACQUISITION AGREEMENT BETWEEN THE CITY AND DEVELOPER CONCERNING CITY SPRINGS, APPROVED BY CITY COUNCIL ON AUGUST 18, 2015**

**WHEREAS**, in June 2014, City Council selected a team consisting of Carter & Associates, LLC and Selig Enterprises, Inc. ("Carter/Selig") to work with the City to develop the residential and retail components of the City Springs project ("Project"); and

**WHEREAS**, to develop the residential and retail components of the Project, Carter/Selig formed Sandy Springs City Center, LLC, a limited liability Company ("Developer"); and

**WHEREAS**, City Council authorized the City Manager to negotiate an agreement with the Developer to outline the basic terms of the Developer's interest in and use and operation of the Project; and

**WHEREAS**, pursuant to City Council's authorization, the Developer, the City Manager, City consultants and the City Attorney negotiated the basic terms of the Developer's interest in and use and operation of the Project in the form of a letter of intent/term sheet ("LOI"); and

**WHEREAS**, the negotiated LOI was approved by City Council on March 3, 2015; and

**WHEREAS**, on August 18, 2015, City Council approved the terms of a formal Real Estate Acquisition Agreement between the Developer and the City ("Acquisition Agreement") based on the terms of the LOI; and

**WHEREAS**, the approved Acquisition Agreement contemplated that several additional agreements would be entered between the City and the Developer in connection with the Project including, but not limited to: (a) a master lease agreement to govern Developer's lease of the retail space contained within the government building; (b) a parking declaration to govern the overall development, administration, maintenance and operation of the parking areas located within Project; (c) a master declaration imposing covenants, conditions, restrictions, reservations and easements to insure the proper use and appropriate development, administration, maintenance and improvement of the Project and to assist in implementing the Master Plan; and (d) a City improvements completion agreement describing the City's obligations with respect to certain improvements to be constructed and installed at the Project for the benefit of Developer; and

**WHEREAS**, in accordance with the provisions of the Acquisition Agreement, the City and the Developer have negotiated the following documents:

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- a. Master Lease Agreement (“Master Lease”) by and between the City of Sandy Springs Public Facilities Authority (“Lessor”) and Sandy Springs City Center, LLC (“Lessee);
- b. Declaration of Parking Easements and Cost Sharing Agreement (“Parking Declaration”) made by the City of Sandy Springs Public Facilities Authority with consent by Sandy Springs City Center, LLC;
- c. Master Declaration of Covenants, Conditions and Restrictions (“Master Declaration”), made by the City of Sandy Springs Public Facilities Authority; and
- d. City Improvements Completion and Escrow Agreement (“City Improvements Completion Agreement”) by and among Sandy Springs City Center, LLC, the City of Sandy Springs, and Chicago Title Insurance Company (“Escrow Agent”).

**WHEREAS**, the Master Lease contains certain terms and conditions governing the Developer’s lease of retail space contained within the government building, as more fully described therein, a copy of which is attached hereto in substantially final form; and

**WHEREAS**, the Parking Declaration contains certain terms and conditions providing for the overall development, administration, maintenance and operation of the parking areas located, or to be located, within the Project, as more fully described therein, a copy of which is attached hereto in substantially final form; and

**WHEREAS**, the Master Declaration imposes upon the Project certain covenants, conditions, restrictions, reservations and easements for the purpose of insuring the proper use and appropriate development, administration, maintenance and improvement of the Project and to assist in implementing the Master Plan, as more fully described therein, a copy of which is attached hereto in substantially final form; and

**WHEREAS**, the City Improvements Completion Agreement describes the City’s obligations with respect to certain improvements to be constructed and installed at the Project for the benefit of the Developer, as more fully described therein, a copy of which is attached hereto in substantially final form; and

**WHEREAS**, the City currently owns the property on which the Project is located, which will be conveyed to the City of Sandy Springs Public Facilities Authority for conveyance to the Developer; therefore, it is appropriate for City Council to consent to the Authority entering into the Master Lease, the Parking Declaration and the Master Declaration; and

**WHEREAS**, City Council desires to approve the City Improvements Completion Agreement;

**WHEREAS**, while the City Manager, City Attorney, and the Developer believe the attached documents are in substantially final form resolving all issues between the parties relating thereto, minor revisions may be required; and

**WHEREAS**, the City Manager and City Attorney request City Council to consent to the Authority entering into the Master Lease, the Parking Declaration and the Master Declaration, subject to such revisions as may be agreed by the parties and approved by the City Manager and City Attorney; and

**WHEREAS**, the City Manager and City Attorney request City Council to approve the City Improvements Completion Agreement,

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NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Sandy Springs, Georgia, while in regular session on April 19, 2016, at 6:00 p.m. as follows:

1. City Council hereby consents to the Authority entering into the Master Lease in the form attached to this resolution, subject to such revisions as may be agreed by the parties and approved by the City Manager and City Attorney;
2. City Council hereby consents to the Authority entering into the Parking Declaration in the form attached to this resolution, subject to such revisions as may be agreed by the parties and approved by the City Manager and City Attorney;
3. City Council hereby consents to the Authority entering into the Master Declaration in the form attached to this resolution, subject to such revisions as may be agreed by the parties and approved by the City Manager and City Attorney;
4. The City Improvements Completion Agreement is hereby approved in the form attached to this resolution, subject to such revisions as may be agreed by the parties and approved by the City Manager and City Attorney;
5. The City Manager is hereby authorized to execute the attached City Improvements Completion Agreement, as may be revised by agreement of the parties and approved by the City Manager and City Attorney;
6. Following execution of the Master Lease, the Parking Declaration, the Master Declaration, and the City Improvements Completion Agreement pursuant to authority given above, the City Manager and the City Attorney shall report back to Council any changes, additions, or deletions made to such documents subsequent to adoption of this resolution; and
7. The City Manager and the City Attorney are hereby authorized to take any and all other steps which may be necessary to effectuate the intent of this resolution.

RESOLVED this the 19<sup>th</sup> day of April, 2016.

Approved:

  
Russell K. Paul, Mayor

Attest:

  
Michael D. Casey, City Clerk

(Seal)



**CITY SPRINGS**

**MASTER LEASE**

by and between

**CITY OF SANDY SPRINGS PUBLIC FACILITIES AUTHORITY**

**(“Lessor”)**

and

**SANDY SPRINGS CITY CENTER, LLC**

**(“Lessee”)**

dated

\_\_\_\_\_, 2016

for

Approximately            Square Feet of Premises

**Sandy Springs, Georgia**

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**MASTER LEASE**

THIS MASTER LEASE ("Lease"), dated as of this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between CITY OF SANDY SPRINGS PUBLIC FACILITIES AUTHORITY, a political subdivision of the State of Georgia ("Lessor"), and SANDY SPRINGS CITY CENTER, LLC, a Georgia limited liability company ("Lessee").

**WITNESSETH:**

For and in consideration of the payment of rent, and the keeping and performing of the covenants and agreements hereinafter set forth to be kept and performed by Lessor and Lessee, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor certain retail premises (the "Premises") which have been, or shall be, constructed within a multi-use building containing public office facilities for the City of Sandy Springs, a performing arts center, and related facilities and improvements (the "Building") within the mixed-use development known as City Springs (the "Project") being developed and to be located in the City of Sandy Springs, County of Fulton, State of Georgia, which Premises and Building are more particularly described herein below, for the term, at the rental, and subject to and upon all of the terms and conditions hereinafter set forth.

**ARTICLE I  
BASIC LEASE PROVISIONS AND EXHIBITS**

1.1 Basic Lease Provisions.

(a)	Premises Area:	[TBD] square feet of rentable area, located within the Building.
(b)	Building Area:	[TBD] square feet of rentable area.
(c)	Initial Term	Fifty (50) Lease Years.
(d)	Options and Renewals:	Four (4) periods of ten (10) Lease Years, and one (1) period of nine (9) Lease Years.
(e)	Basic Rent:	See <b><u>Section 4.1.</u></b>

1.2 Exhibits.

The exhibits listed in this **Section 1.2** and attached to this Lease are incorporated in this Lease by this reference, and are to be construed as part of this Lease. Lessor and Lessee each agree to perform all of their respective obligations stated therein:

**Exhibit "A-1":** Legal Description of the Premises

**Exhibit "A-2":** Site Plan of the Building (Depicting the Premises and the Patio Area);

**Exhibit "B":** Depiction of the Land;

**Exhibit "C":** Agreement Setting Term;

**Exhibit "D":** Schedule of Permitted Encumbrances;

**Exhibit "E":** Construction Provisions; and

**Exhibit "F":** Depiction of Building Common Area;

**Exhibit "G"**: Depiction of North Parcel Retail Space; and

**Exhibit "H"**: Approved Form of Subordination, Non-Disturbance and Attornment Agreement

ARTICLE II  
PREMISES AND TERM

2.1 Premises.

(a) As used in this Lease:

(i) **"Leasehold Estate"** shall mean, collectively: (A) the leasehold estate and estate for years demised by this Lease in and to the Premises; (B) any and all rights, title, interest, powers, privileges, benefits and options of Lessee under this Lease; (C) any and all of the right, title and interest of Lessee in and to the Premises under this Lease; (D) any and all of the easements, rights, title and interest appurtenant to the Premises under the Parking Declaration, including, but not limited to the Retail Parking Rights; (E) any and all of the easements, rights, title and interest appurtenant to the Premises under the Master Declaration; and (F) any and all of the right, title and interest of Lessee in and to the Building and the Project under any of the foregoing.

(ii) **"Master Declaration"** shall mean that certain Master Declaration of Covenants, Conditions and Restrictions for City Springs, as amended from time to time.

(iii) **"Parking Declaration"** shall mean that certain City Springs Declaration of Parking Easements and Cost Sharing Agreement, as amended from time to time.

(iv) **"Retail Parking Easements"** shall have the meaning given to it in the Parking Declaration.

(v) **"Retail Parking Rights"** shall mean and have reference to the non-exclusive easement rights, appurtenant to the Premises, granted under the Parking Declaration through the Retail Parking Easements, which easement rights are conveyed and demised by this Lease (subject to the Parking Declaration), together with any and all other rights, title, interests, powers, privileges, benefits and options of Lessee, appurtenant to the Premises, in, to and under the Parking Declaration.

(b) Lessor hereby leases and demises to Lessee the Leasehold Estate for the Term at the rental and upon the conditions and agreements set forth in this Lease. The Premises shall be as described on **Exhibit "A-1"** attached hereto and by this reference made a part hereof and as depicted on the site plan for the Building contained on **Exhibit "A-2"** attached hereto and by this reference made a part hereof, which Premises and Building are located on all of that certain tract or parcel of land which is more particularly depicted on **Exhibit "B"** attached hereto and by this reference made a part hereof (the "**Land**"), together with the right to use in common with other occupants of the Building, the Building Common Areas, as defined in **Section 4.5(b)**.

(c) The Premises and the Building are agreed to contain the number of rentable square feet of floor area that is specified in **Section 1.1(a)** of the Basic Lease Provisions and Exhibits. The Premises include, as appurtenances thereto, the use and enjoyment of the Land, the foundation of the Building, the exterior walls of the Building, exterior windows, exterior doors, risers, the Building's structural and system components and roof of the Building, as and to the extent reasonably necessary to the use and enjoyment of the Premises for their intended purposes. Notwithstanding the foregoing, if, within ninety (90) days following the Actual Substantial Completion Date, Lessee's architect measures the Premises or the Building using the applicable standards of the Building Owners and Managers Association prevailing at such time (the "**Standards**"), and Lessee notifies Lessor that Lessee's architect's measurement varies from

the square footage of floor area of the Premises or the Building that is specified in **Section 1.1(a)** of the Basic Lease Provisions and Exhibits by greater than one percent (1%), the parties will endeavor in good faith to determine the actual square footage of the Premises or the Building, as applicable. If the parties cannot so agree, Lessee and Lessor shall appoint a mutually acceptable architect to determine the square footage of the Premises or the Building, as applicable, using the Standards and the determination of such architect shall be binding on Lessee and Lessor. Upon final determination of the square footage of the Premises or the Building, as applicable, Lessor and Lessee agree to execute a lease modification agreement (effective retroactive to the Commencement Date) adjusting the square footage of the Premises or the Building, as applicable, and Lessee's Proportionate Share and, if necessary, appropriately adjusting the Basic Rent, and those items of Additional Rent to the extent that such rents were originally calculated on a "per square foot basis".

## 2.2 Term; Options to Extend.

(a) The initial term of this Lease (the "**Initial Term**") shall be for a period of fifty (50) Lease Years. The Initial Term shall begin on the commencement date determined in the manner set forth below (the "**Commencement Date**"), and shall end on the last day of the fiftieth (50th) Lease Year (the "**Expiration Date**") subject to extension or earlier termination as provided herein. Within thirty (30) days after the Commencement Date, Lessor and Lessee each hereby covenant and agree to execute an "Agreement Setting Lease Term," in the form attached hereto as **Exhibit "C"** and by this reference made a part hereof.

(b) The Commencement Date shall occur on the earlier to occur of: (i) ninety (90) days after the later to occur of (A) the Actual Substantial Completion Date (as defined in the Construction Provisions) and (B) the date of Substantial Completion of all of the "City Improvements" (as defined in that certain City Improvements Completion and Escrow Agreement dated on or about the date of this Lease, between City of Sandy Springs, Georgia, and Lessee); or (ii) the date upon which any Space Tenant occupies any portion of the Premises for the purpose of conducting business therefrom.

(c) The term "**Lease Year**" shall mean: (i) if the Commencement Date is the first (1st) day of a calendar month, the twelve (12) calendar month period commencing on the Commencement Date and ending on the day immediately preceding the first (1st) anniversary of the Commencement Date, and each succeeding such twelve (12) calendar month period during the Term; and (ii) if the Commencement Date is a day other than the first (1st) day of a calendar month, the twelve (12) calendar month period commencing on the first (1st) day of the first (1st) calendar month following the Commencement Date and ending on the day immediately preceding the first (1st) anniversary of such date, and each succeeding such twelve (12) calendar month period during the Term, provided, however, that, if the Commencement Date is a day other than the first (1st) day of a calendar month, the first Lease Year shall include the period from the Commencement Date through the last day of the calendar month during which the Commencement Date occurs.

(d) Subject to **Section 2.2(e)**, if no Lessee Event of Default under this Lease shall have occurred and then be subsisting, Lessee shall have the right to extend the term of this Lease for **four (4)** additional periods of **ten (10) Lease Years**, followed by **one (1)** additional period of **nine (9) Lease Years** (each, an "**Extension Term**"), by delivering written notice to Lessor not less than **twelve (12) months** prior to the Expiration Date, as the same may have theretofore been extended. If Lessee exercises any of the foregoing rights to extend the term of this Lease, all terms and conditions of this Lease (other than the option to extend so exercised) shall remain in full force and effect, and the Expiration Date shall be extended to the last day of such Extension Term.

(e) Notwithstanding the provisions of **Section 2.2(d)**, in the event that Lessor gives Lessee written notice not less than **twenty four (24) months** prior to the Expiration Date, as the same may have theretofore been extended pursuant to **Section 2.2(d)** (such Expiration Date, the

“**Current Expiration Date**”) either that (i) Lessor has determined to demolish the Building, or (ii) Lessor has determined that, from and after the Current Expiration Date, all or a portion of the Premises specified in such notice will no longer be made available by Lessor for use and occupancy for retail (which for purposes of this **Section 2.2(e)** shall include restaurant, entertainment and service retail uses) purposes (the entirety or portion of the Premises subject to a notice from Lessor pursuant to clause (i) or (ii), above, the “**Excluded Space**”), then the option of Lessee for all further Extension Terms shall terminate and expire as to the Excluded Space. In the event Lessor gives notice pursuant to this **Section 2.2(e)**, then, for a period of twenty (20) years after the Current Expiration Date, Lessor shall not use or occupy the Excluded Space, or permit the Excluded Space to be used or occupied, for retail purposes, either by Lessor or any person claiming by, through or under Lessor.

(f) The Initial Term and the Extension Term(s), if any, are herein collectively called the “**Term**”. All references to the Term shall be references to the Term as it may be renewed or extended.

ARTICLE III  
CONSTRUCTION OF PREMISES

3.1 Covenants and Evidence of Title.

(a) Lessor represents and warrants to Lessee that it has acquired, or will acquire, fee simple title to the Land, subject to the Project Documents (as defined at **Section 5.4**) and the other matters affecting title to the Land scheduled on **Exhibit “D”** attached hereto and by this reference made a part hereof (collectively, the “**Permitted Encumbrances**”).

(b) The parties acknowledge and agree that this Lease is made subject to the Permitted Encumbrances. Lessor may not amend, modify, supplement, grant, renew or create any contract, agreement, instrument, easement, agreement of record and/or restriction encumbering the Premises which is made or entered into following the date hereof and which materially affects the use and occupancy of the Premises without Lessee’s and any Registered Mortgagee’s prior consent, other than conveyances or a Mortgage (as defined at **Section 16.7**) of the Premises.

3.2 Preparation of the Premises.

Lessor shall construct and install the Building and the Premises (collectively, the “**Improvements**”) in accordance with the provisions of **Exhibit “E”** attached hereto and by this reference made a part hereof (the “**Construction Provisions**”).

ARTICLE IV  
RENT, IMPOSITIONS, AND OTHER CHARGES

4.1 Basic Rent.

(a) Initial Term. This Lease is made at and for rent (the “**Basic Rent**”), for the Term hereof as follows:

Period:	<u>Annual Basic Rent<sup>1</sup>:</u>	<u>Quarterly Installments of Basic Rent:</u>	<u>Per square foot per annum</u>
Lease Years 1-5			\$11.38
Lease Years 6-10			\$12.52

<sup>1</sup> To be finalized upon confirmation of applicable square footage of the Premises.

<u>Period:</u>	<u>Annual Basic Rent<sup>1</sup>:</u>	<u>Quarterly Installments of Basic Rent:</u>	<u>Per square foot per annum</u>
Lease Years 11-15			\$13.77
Lease Years 16-20			\$15.15
Lease Years 21-25			\$16.67
Lease Years 26-30			\$18.34
Lease Years 31-35			\$20.17
Lease Years 36-40			\$22.19
Lease Years 41-45			\$24.41
Lease Years 46-50			\$26.85

The Basic Rent shall be payable in quarterly installments, commencing on the Commencement Date and continuing thereafter on the first (1<sup>st</sup>) day of each Quarterly Period during the Term (said Basic Rent, and all other sums due and payable by Lessee to Lessor hereunder are referred to collectively as "**Rent**"). All Rent shall be paid to Lessor without demand and, except as otherwise expressly set forth in this Lease, deduction, offset, abatement or diminution, at Lessor's notice address, or at such other location as Lessor has designated in written notice to Lessee. The term "**Quarterly Period**" shall mean: (i) if the Commencement Date is the first (1<sup>st</sup>) day of a calendar month, the three (3) calendar month period commencing on the Commencement Date and each three (3) calendar month period thereafter during the Term; and (ii) if the Commencement Date is a day other than the first (1<sup>st</sup>) day of a calendar month, the three (3) calendar month period commencing on the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) calendar month following the Commencement Date and each three (3) calendar month period thereafter during the Term, provided, however, that, if the Commencement Date is a day other than the first (1<sup>st</sup>) day of a calendar month, the first Quarterly Period shall include the period from the Commencement Date through the last day of the calendar month during which the Commencement Date occurs.

(b) Extensions Terms.

(i) Beginning one (1) year prior to each commencement of the subject Extension Term, Lessor and Lessee shall undertake to agree upon the annual Basic Rent effective as of such commencement of the subject Extension Term.

(ii) If, on or before the date eleven (11) full calendar months prior to such commencement of the subject Extension Term, Lessor and Lessee are unable so to agree upon the annual Basic Rent effective as of such commencement of the subject Extension Term, then, within thirty (30) days following such date, Lessor and Lessee shall each appoint and employ, at each party's own cost and expense, a real estate appraiser (who shall be a member of the American Institute of Real Estate Appraisers (MAI) with at least ten (10) years of full-time commercial appraisal experience in the Atlanta, Georgia, metropolitan area) to appraise the fair market annual rental value of the Premises that will be effective as of the applicable commencement of the subject Extension Term. Each appraiser shall submit its report on or before the date eight (8) months prior to the applicable commencement of the subject Extension Term. Each appraiser shall transmit to both Lessor and Lessee a copy of his appraisal report, promptly upon completion thereof. If the higher of the two (2) appraisals is not more than five percent (5%) higher than the lower, then, for the purposes of this **Section 4.1(b)**, the "**Applicable Fair Rental Value**" shall be the average of the two (2) appraisals. If the higher of the two (2) appraisals is more than five percent (5%) higher than the lower, then the two appraisers shall attempt to agree upon and designate a third appraiser meeting the qualifications set forth above. If the two appraisers are unable to agree upon the third appraiser on or before the date seven (7) months prior to the applicable commencement of the subject Extension Term, then Lessor and Lessee shall apply to the Presiding Judge of the highest ranking trial court of the County in which the Premises is located for the designation of the third appraiser. Lessor and Lessee shall each bear one-half (1/2)

of the third appraiser's fee. Within sixty (60) days after the designation of the third appraiser, the third appraiser shall also appraise the fair market annual rental value of the Premises as of the applicable commencement of the subject Extension Term. The third appraiser shall transmit to both Lessor and Lessee a copy of its appraisal report, promptly upon completion thereof. If the third appraisal is required as contemplated hereby, then, for the purposes of this Section 4.1(b), the "Applicable Fair Rental Value" shall be the average of the three (3) appraisals obtained pursuant to this Section 4.1(b)(ii); provided, however, that (A) if the highest of the three (3) appraisals is more than five percent (5%) higher than the intermediate appraisal, the highest appraisal shall be disregarded, and the "Applicable Fair Rental Value" shall be the average of the other two (2) appraisals, (B) if the lowest of the three (3) appraisals is more than five percent (5%) lower than the intermediate appraisal, the lowest appraisal shall be disregarded, and the "Applicable Fair Rental Value" shall be the average of the other two (2) appraisals, and (C) if both the highest and lowest appraisals are to be disregarded pursuant to clauses (A) and (B), above, then, for the purposes of this Section 4.1(b), the "Applicable Fair Rental Value" shall be the intermediate appraisal.

(iii) If Lessor and Lessee agree upon the Basic Rent effective as of the applicable commencement of the subject Extension Term, as set forth in Section 4.1(b)(i), then the Basic Rent as of the applicable commencement of the subject Extension Term shall be the amount upon which Lessor and Lessee agree.

(iv) If Lessor and Lessee are unable to agree upon the Basic Rent effective as of the commencement of the subject Extension Term, as set forth in Section 4.1(b)(i), and the fair market annual rental value of the Premises as of the applicable commencement of the subject Extension Term is appraised pursuant to Section 4.1(b)(ii), then the Basic Rent effective as of the commencement of the subject Extension Term shall be equal to the Basic Rent effective immediately prior to the applicable commencement of the subject Extension Term, as either (A) increased by ninety percent (90%) of the amount if any, by which (1) the Applicable Fair Rental Value determined in accordance with Section 4.1(b)(ii) is more than (2) the Basic Rent effective immediately prior to the applicable commencement of the subject Extension Term, or (B) decreased by ninety percent (90%) of the amount, if any, by which (1) the Applicable Fair Rental Value determined in accordance with Section 4.1(b)(ii) is less than (2) the Basic Rent effective immediately prior to the applicable commencement of the subject Extension Term.

(v) The Basic Rent effective as of the commencement of the subject Extension Term shall be the Basic Rent payable under this Lease for the first five (5) Lease Years of such Extension Term. Effective upon the commencement of the sixth (6<sup>th</sup>) Lease Year and for the remainder of such Extension Term, the Basic Rent payable under this Lease shall be an amount equal to one hundred ten percent (110%) of the Basic payable under this Lease for the first five (5) Lease Years of such Extension Term.

(vi) The appraisals made pursuant to Section 4.1(b)(ii) shall take into account, among other matters: (A) that the Premises are leased as a "master lease" as contemplated by this Lease and for further sublease to Space Tenants, and (B) the assumption that the then-existing use of the Premises will remain the use thereof for the period to which the appraisal applies and is the basis for the appraisal.

4.2 Additional Rent. In addition to the Basic Rent payable under Section 4.1, Lessee agrees to pay all other amounts which Lessee is required to pay or discharge pursuant to this Lease, other than Basic Rent, which shall constitute additional rent hereunder (collectively, "Additional Rent"). Lessee shall pay Additional Rent to Lessor (or to such other party as Lessor may from time to time specify in writing).

4.3 Utilities and Services. Lessee shall pay when due all charges for utility, janitorial, waste removal, security, internet, systems maintenance, telephone or other communications and other services to the extent rendered to and at the instance of Lessee during the Term on or about the Premises, whether or not payment therefor shall become due during or after the Term. Lessor shall have no obligation to provide any such utilities and services and no liability for the interruption or unavailability of any such utilities and services unless such interruption or failure is caused by Lessor or its employees, agents or contractors, and Lessor does not cure such interruption within **three (3) days** after written notice from Lessee (in which event Basic Rent and Additional Rent shall abate until such interruption is cured).

4.4 Impositions and Other Charges.

(a) Lessee shall pay and discharge, on or before the last day upon which the same may be paid without interest or penalty, all Lessee Impositions (as defined below), and any interest and penalties thereon, which are levied, assessed and due and payable during the Term. If any Lessee Imposition may legally be paid in installments, Lessee shall have the option to pay such Lessee Imposition in installments. Lessor shall pay and discharge, on or before the last day upon which the same may be paid without interest or penalty, all Lessor Impositions (as defined below), and any interest and penalties thereon, which are levied, assessed and due and payable during the Term. If any Lessee Imposition may legally be paid in installments, Lessee shall have the option to pay such Lessee Imposition in installments. Lessee and Lessor shall each furnish to the other within twenty (20) days after any written demand therefor by the other, proof of the payment of any amount which is payable by such party pursuant to this **Section 4.4(a)**.

(b) For purposes of this Lease:

(i) **"Lessee Impositions"** shall mean all taxes and assessments (and charges in lieu thereof) levied, imposed or assessed by the United States, State of Georgia, County of Fulton, the City of Sandy Springs, or any other governmental authority, and that are allocable and attributable to periods of time during the Term, with respect to Lessee (or any person or entity claiming any right, title, or interest by, through, or under Lessee), or with respect to any right, title, or interest of Lessee under this Lease (or any right, title, or interest of any person or entity claiming same by, through, or under Lessee), or upon the leasehold improvements installed by Lessee (or any person or entity claiming same by, through, or under Lessee) in the Premises or personal property or fixtures in the Premises.

(ii) **"Lessor Impositions"** shall mean all taxes and assessments (and charges in lieu thereof) levied, imposed or assessed by the United States, State of Georgia, County of Fulton, the City of Sandy Springs, or any other governmental authority, and that are allocable and attributable to periods of time during the Term, with respect to Lessor (or any person or entity other than Lessor claiming any right, title, or interest by, through, or under Lessor), or with respect to any right, title, or interest of Lessor under this Lease (or any right, title, or interest of any person or entity claiming same by, through, or under Lessor), or upon the Land, the Building or the Premises.

(iii) Notwithstanding the foregoing provisions of this **Section 4.4(b)**, in the event that there are levied or assessed by the City of Sandy Springs or any governmental or quasi-governmental authority created by or otherwise affiliated with the City of Sandy Springs any taxes or assessments that would constitute Lessee Impositions under this Lease but are not levied or assessed against all property and property interests in the City of Sandy Springs that are in the nature of the property and property interests that are subject to Lessee Impositions under this Lease, then such taxes or assessments shall constitute Lessor Impositions for purposes of this Lease, and not Lessee Impositions.

4.5 Building Common Area Charges.

(a) Commencing on the Commencement Date, Lessee agrees to pay to Lessor Lessee's Proportionate Share (as defined at **Section 4.5(d)**) of Building Common Area Charges (as defined at **Section 4.5(c)**) on the first day of each Quarterly Period, in advance, during the Term, which quarterly installments represent Lessor's estimate of the amount of Lessee's Proportionate Share of said Building Common Area Charges on the Commencement Date. Lessor shall, prior to the beginning of each calendar year, estimate the expected Building Common Area Charges for such calendar year and Lessee's Proportionate Share thereof, one-quarter (1/4) of which shall constitute the quarterly installments for such year. Within one hundred eighty (180) days after the end of each calendar year, Lessor shall advise Lessee of the actual Building Common Area Charges paid or payable during the prior calendar year and thereupon there shall be an adjustment between Lessor and Lessee with payment to or repayment by Lessor, as the case may require, to the end that Lessor shall receive the entire amount, and only the entire amount, of Lessee's annual Proportionate Share for said year. However, Lessor's failure to provide such statement of Building Common Area Charges by the date provided herein shall in no way excuse Lessee from its obligation to pay its Proportionate Share of Building Common Area Charges, or constitute a waiver of Lessor's right to bill and collect such Proportionate Share of Building Common Area Charges from Lessee in accordance with this **Section 4.5(a)**. Any repayment that may be due by Lessor to Lessee may, at Lessor's option, take the form of a credit on Lessee's next succeeding quarterly installment(s) or Basic Rent and Additional Rent, or may be reimbursed separately by Lessor. If Lessee's Proportionate Share is greater than the amount paid by Lessee during said prior year, Lessee shall pay Lessor the difference between the amount paid by Lessee and the amount actually due within thirty (30) days after Lessor billing Lessee for same. Lessor agrees to keep, at its principal office, records relating to said Building Common Area Charges. Lessee shall have the right to audit said records for the sole purpose of ascertaining the correctness of said Building Common Area Charges. Such audit shall be made during normal business hours; shall not unreasonably interfere with Lessor's office operations; shall be performed only by a qualified financial officer of Lessee or Lessee's management company, or a certified public accountant selected by Lessee, provided that any such accountant selected by Lessee shall not utilize a contingency fee based audit system; shall not be made more often than once during each calendar year; and shall be limited to the records for the preceding calendar year. If Lessee desires to audit said records as aforesaid, Lessee shall notify Lessor no later than ninety (90) days after receipt of Lessor's annual statement and thirty (30) days in advance of the date on which Lessee proposes to perform such audit, commence said audit within sixty (60) days of said notice, and once the audit has commenced, diligently complete the same. If Lessee fails to provide Lessor notice of its desire to audit Lessor's records within such ninety (90) day period, then Lessor's annual statement shall be deemed conclusive as to Lessee, absent manifest error.

(b) The term "**Building Common Area**" as used herein shall mean only the shared corridors, loading dock and trash collection areas depicted on **Exhibit "F"** attached hereto and by this reference made a part hereof.

(c) The term "**Building Common Area Charges**" shall include all of Lessor's cost to operate, and for the non-capital maintenance and repair of, the Building Common Area.

(d) The term "**Lessee's Proportionate Share**" means:

(i) as to the shared corridors and loading dock elements of the Building Common Area, a fraction, expressed as a percentage, the numerator of which is the number of rentable square feet of floor area in the Premises (10), and the denominator of which is the number of rentable square feet of floor area in the Building (100); which is calculated as follows:  $\frac{10}{100} = 0.10$ , and expressed as a percentage comes to ten percent (10 %);

(ii) as to the trash collection areas element of the Building Common Area, a fraction, expressed as a percentage, the numerator of which is the number of rentable square feet of floor area in the Premises ( 10 ), and the denominator of which is the number of rentable square feet of floor area in the Building ( 100 ); however, with respect to the numerator, the rentable square feet of any portion of such space that is utilized as a restaurant or for food service or preparation (such as a kitchen, catering facility, etc.) (a "**Food Related Use**") shall be multiplied by a factor of 3. For example, if 4 of the rentable square feet of floor area in the Premises is utilized for a Food Related Use, then the numerator of the fraction would be calculated as follows: multiply the number of square feet of floor area in the Premises that is utilized for a Food Related Use by 3 ( 4 x 3 = 12 ), then add that number to the remaining number square feet of floor area in the Premises which is 6 ( 12 + 6 = 20 ); and Lessee's Proportionate Share would be calculated as follows:  $\frac{20}{20} / \frac{100}{100} = 0.20$ , and expressed as a percentage comes to twenty percent ( 20 % ); and

(iii) Lessee and Lessor hereby agree that if, during the Term of this Lease, it becomes customary in the industry to allocate costs with respect to trash collection by actual weight, they will cooperate and work together in good faith to implement such technology and revise Lessee's Proportionate Share as to the trash collection areas accordingly.

(e) Lessee and Lessor hereby agree to cooperate and work together in good faith to establish a recycling plan for the government building, including the retail portion thereof, and a reasonable cost-sharing arrangement in connection with the same.

4.6 No Security Deposit. Lessee shall not be required to pay to Lessor any security deposit or other security for the satisfaction and performance of the duties and obligations of Lessee under this Lease.

## ARTICLE V LEGAL REQUIREMENTS; PROJECT DOCUMENTS

5.1 Certain Definitions. As used in this Lease:

(a) "**Legal Requirements**" shall mean all laws, rules, orders, ordinances, regulations and requirements now or hereafter enacted or promulgated, of every government and municipality having jurisdiction over the Premises and of any agency thereof. Notwithstanding the foregoing, the term "Legal Requirements" as used in this **Section 5.1** shall expressly exclude Environmental Laws, Lessor and Lessee agreeing that compliance with Environmental Laws is governed solely by the provisions of **Section 16.24**.

(b) "**Lessee Legal Requirements**" shall mean any Legal Requirement applicable to the Premises, if and to the extent, and only if and to the extent, that compliance therewith is required to permit the lawful use and occupancy, or non-use, of the Premises by Lessee during the Term. For avoidance of doubt, and without limitation, the term "**Lessee Legal Requirement**" shall not include any Legal Requirement as to which compliance therewith is first required to permit the lawful use and occupancy, or non-use, of the Premises upon or after the expiration of the Term or upon or after Lessee's vacating the Premises at the expiration of the Term.

5.2 Lessor Compliance. Lessor, at Lessor's sole cost and expense, shall ensure that the Improvements constructed and installed by Lessor pursuant to the Construction Provisions, the Lessor Maintenance Elements, and all repairs, maintenance and replacements by Lessor of the Lessor Maintenance Elements pursuant to **Section 8.1**, at all times comply in all material respects with all Legal Requirements, including, without limitation, the Americans with Disabilities Act, including any Alteration required to any of the foregoing elements.

5.3 Lessee Compliance. Except to the extent of Lessor's duties and obligations pursuant to **Section 5.2** and Lessor's warranty obligations under the Construction Provisions, Lessee, at Lessee's sole cost and expense, shall comply in all material respects with all Lessee Legal Requirements, including, without limitation, the Americans with Disabilities Act.

5.4 Project Documents. Lessor and Lessee agree that they will not cause a default (after giving effect to any applicable cure period) in any respect under any provision of the Master Declaration or the Parking Declaration (collectively, the "**Project Documents**").

#### ARTICLE VI USE OF PREMISES; QUIET ENJOYMENT

6.1 Use of Premises. Lessee may use the Premises or cause the Premises to be used for any lawful purpose not prohibited by the Declaration. Lessee shall use the Premises in a careful and safe manner, and shall not use, or permit the use of, the Premises for any purpose(s) prohibited by the Project Documents or any applicable Legal Requirements. Lessee shall not commit waste, or suffer or permit waste to be committed, or permit any nuisances on or in the Premises.

6.2 Quiet Enjoyment. Lessor hereby covenants and agrees that if Lessee shall perform all of the covenants and agreements herein stipulated to be performed by Lessee, Lessee shall at all times during the Term have peaceable and quiet enjoyment and possession of the Premises without any interference by Lessor or persons or entities claiming by, through or under Lessor, subject, always, to the terms and provisions of this Lease. Lessee hereby acknowledges that portions of the Project may be used for entertainment, concerts, live performances and other similar uses as contemplated under and governed by the Project Documents.

#### ARTICLE VII COMMON AREAS

7.1 Building Common Areas. Lessor hereby grants to Lessee the non-exclusive right to use all the Building Common Areas. Lessor hereby reserves the right to change, alter and modify the size, location, nature or use of the Building Common Areas or components thereof from that shown on **Exhibit "F"**, at any time and from time to time during the Term hereof; provided, however, that no such Alteration shall interfere with the use and enjoyment of the Premises or the Building Common Areas, the visibility of the storefront signage on the Premises, or with the means of ingress and egress to and from the Premises.

#### ARTICLE VIII MAINTENANCE, REPAIRS AND ALTERATIONS; FIXTURES; SIGNS

##### 8.1 Lessor's Maintenance and Repairs.

(a) Lessor, at Lessor's sole cost and expense, shall during the Term keep, repair and maintain in good order and condition, and make all necessary replacements to, the following elements of the Building (the "**Lessor Maintenance Elements**"): the roof; the gutters and downspouts; the exterior walls; the footings; the foundation; structural parts of the floor; any load bearing interior walls; and all utility lines serving the Premises located above the lowest interior surface of the roof of the Building, outside the innermost surface of the exterior walls of the Building, and below the uppermost surface of the slab of the floor of the Building. Lessor shall not be required to make any replacements and repairs to windows, plate glass or doors, interior plumbing, or to electric or telephone lines which exclusively service the Premises, interior walls, interior ceilings, or to repair any damage which it would otherwise be obligated to repair if caused by or resulting from the act, default or negligence of Lessee, its employees, officers, agents, licensees, invitees, contractors or subcontractors, or resulting from any Alterations, including roof penetrations, made to the Premises by Lessee whether with or without Lessor's consent. Additionally, Lessee shall pay to Lessor upon demand, and without contribution from Lessor, all costs and expenses for (i) the repair and replacement of any utility lines and related facilities

(including sewer lines, drains, drainage systems, storm sewer systems, sanitary sewer systems and plumbing equipment, fixtures and appliances) which are necessary because of the obstruction of the flow, clogging, backing-up or other malfunction of said lines and related appurtenances resulting from any negligent act or omission of Lessee or any other party using or occupying the Premises, and (ii) any repairs to the roof required because of penetrations made by or on behalf of Lessee, whether or not such penetrations were made with Lessor's consent.

(b) Lessor further covenants and agrees that it shall, at its sole cost and expense, make any and all repairs and Alterations to the Lessor Maintenance Elements which may be hereinafter required to be made pursuant to any applicable Legal Requirements or the Project Documents, and shall not be liable for any claims relating to loss of use of any portion of the Premises so long as any such repairs and Alterations are performed with minimal interference with the use and enjoyment of the Premises and are completed within a reasonable period of time; provided, however, that Lessor shall not be obligated to make (i) any repairs pursuant to this **Section 8.1(b)** to the extent necessitated by reason of a breach of this Lease by Lessee, or (ii) Alterations pursuant to this **Section 8.1(b)** to the extent compliance with the applicable Legal Requirements or the Project Documents is made necessary by reason of a specific and unique use of the Premises, as distinguished from Legal Requirements of general application to retail space.

(c) Notwithstanding anything else contained herein, Lessor may, from time to time and subject to the Project Documents, make Alterations to the portions of the Building other than the Premises and to the Project; provided, however, that no such Alteration shall interfere with the use and enjoyment of the Premises, the visibility of the Premises, or with the means of ingress and egress to and from the Premises.

(d) Lessee may give Lessor written notice if Lessee believes that there is a condition that requires maintenance, repair or replacement that is the obligation of Lessor pursuant to **Section 8.1(a)**, which notice shall include a description of the condition in reasonable detail. Notwithstanding anything to the contrary set forth in this Lease, if Lessee gives written notice to Lessor of the need for any such maintenance, repair or replacement and Lessor fails to commence such maintenance, repair or replacement within a commercially reasonable period of time (in light of the nature of such required maintenance, repair or replacement), and thereafter Lessee gives Lessor further written notice thereof and of Lessee's intention to undertake such maintenance, repair or replacement, then Lessee may proceed to undertake such maintenance, repair or replacement; provided, however, that such further notice to Lessor shall not be required if Lessee's initial notice identifies the condition requiring maintenance, repair or replacement as one that involves present or imminent danger of injury to persons or damage to property. All costs and expenses incurred by Lessee in exercising Lessee's rights under this **Section 8.1(d)** shall bear interest at the Overdue Rate from the date of payment by Lessee and shall be payable by Lessor to Lessee upon demand, which shall be accompanied by an invoice of such costs and expenses and reasonable documentation substantiating such costs and expenses. If Lessor fails to pay any such amount within ten (10) days after demand therefor, Lessee shall have the right to set off against, and deduct from, Basic Rent and Additional Rent payable hereunder such amounts owing by Lessor to Lessee.

## 8.2 Lessor's Right of Entry; Right to Act for Other Party.

(a) Lessee acknowledges and agrees that Lessor and its agents, servants, employees and representatives may enter the Premises at any time, in the event of an emergency, and upon reasonable prior notice during reasonable business hours as follows: to examine and inspect same; to exhibit same to prospective purchasers, investors or, during the last six (6) months of the Term, prospective Lessees; or to perform such repairs, Alterations or other maintenance as Lessor is obligated to perform hereunder, or as Lessor may deem necessary or proper for the safety, improvement or preservation of the Premises, Building and Project. No such entry or acts of Lessor, its agents, servants or employees or representatives

shall constitute or be deemed to constitute an actual or constructive eviction of Lessee, nor result in Lessor being liable for any claims or damages, or any offset, deduction, reduction or abatement of rent.

(b) If either party fails to take any other action when and as required under this Lease, the other party may, without waiving or releasing any duty, obligation or liability under this Lease, upon not less than fifteen (15) days' prior written notice (except in the event of an emergency), take any such action required of the other party. The actions which the parties may take shall include, but are not limited to, the performance of maintenance or repairs. A party acting under this **Section 8.2(b)** may pay all incidental costs and expenses incurred in exercising its rights under this **Section 8.2(b)**, including, without limitation, reasonable attorneys' fees and expenses actually incurred, penalties, re-instatement fees, late charges, and interest, all of which shall be due and payable by the other party within ten (10) days after demand.

8.3 Lessee's Maintenance and Repairs. Except as provided in **Section 8.1**, Lessee covenants and agrees that it shall at all times during the Term make any and all repairs to the Premises that are necessary or desirable to keep, repair and maintain the Premises in good condition and repair and in a safe, dry and tenantable condition as required by the Legal Requirements and the Project Documents, ordinary wear and tear and damage by fire or other casualty and condemnation excepted. Such repairs and maintenance of the Premises which are the responsibility of Lessee shall include, without limitation, the following elements within the Premises: the interior walls; the HVAC equipment; the floor surfacing; the replacement of plate and other glass; all doors, including frames, and any automatic doors; the automatic sprinkler system; the plumbing, sewerage and related fixtures within the Premises installed by Lessee; and the lighting fixtures, electrical fixtures, and related wiring within the Premises installed by Lessee. Lessee shall keep in force, or cause to be kept in force, throughout the Term one or more maintenance contracts for the HVAC equipment installed by Lessee or Space Tenants within the Premises which are customary for retail premises similar to the Premises.

8.4 Lessee's Alterations; No Liens.

(a) As used in this Lease, "**Alteration**" or "**Alterations**" shall mean, whether performed by Lessor or Lessee, any or all changes, additions, expansions, improvements, reconstructions, removals or replacements of any of the Improvements, both interior or exterior, and ordinary and extraordinary, to the Premises, the Building or the Land.

(b) Lessee shall have the right, at any time and from time to time, to make Alterations to the interior of the Premises and the exterior storefronts of the Premises (including signage) without the requirement of any approval or consent by Lessor, and to demolish and remove the same at any time and from time to time; provided, however, that Lessor's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed) shall be required for Alterations that materially adversely affect either: (i) the structural components or load bearing walls of the Building; or (ii) the building systems for the Building. Title to Lessee's Alterations shall be vested in Lessee during the Term; and title to all Alterations then in place shall vest in Lessor upon the expiration of the Term of, or upon any earlier termination of the Term of, this Lease.

(c) Lessee shall not create any lien, encumbrance or charge against the Premises or any part of the Premises. If any lien, encumbrance or charge is filed against all or any part of the Premises, Lessee shall cause the same to be discharged by payment, satisfaction or posting of bond within thirty (30) days after the date filed. Notice is hereby given that Lessor shall not be liable for any labor or services performed or rendered, or materials supplied or furnished, to the Premises at the instance of Lessee or any person claiming by, through or under Lessee, and no mechanics or other liens with respect thereto shall attach to or affect the reversion or other estate or interest of Lessor in and to the Premises.

8.5 Emergency Repairs. If, in an emergency, it shall become necessary to make promptly any repairs then Lessor or Lessee may proceed forthwith to have the repairs made and pay the

cost thereof, and if such repairs were the responsibility of the other party hereto to receive payment therefor within thirty (30) days after a written request for same. Each party shall provide the other with oral notification of its intention to make such repairs, or the occurrence of such repairs, at the earliest practicable time given the nature and extent of the emergency.

8.6 Fixtures. Subject to the terms of this Lease, Lessee may construct and build or install in the Premises or cause to be constructed or built in the Premises at any time and from time to time during the Term hereof, such fixtures and other equipment of every kind and nature as Lessee may deem necessary or desirable, or both, in connection with the Premises. All such fixtures and equipment installed by or at the expense of Lessee in accordance with this **Section 8.6**, and constituting moveable equipment, personal property or trade fixtures at or prior to the expiration of the Term, shall remain the property of Lessee and may be removed by Lessee. Lessee shall remove the same, and restore any material damage caused by such removal, upon the expiration of the Term of, or upon any earlier termination of the Term of, this Lease.

8.7 Signs. Subject to the terms and conditions of the Project Documents and all Legal Requirements, during the Term: (i) Lessee shall have the right to fabricate, design, install, operate and maintain, or grant to its Space Tenants, licensees and users of the Premises, the right to fabricate, design, install, operate and maintain, each and every kind of signage, architectural and design elements and business identification for operations at the Premises; and (ii) Lessee shall have the right, in its reasonable discretion, to approve, revise, modify, waive and render any and all decisions regarding signage, architectural and design elements, business identification and outdoor operations, deemed by Lessee as necessary or desirable for the Premises, in compliance with the Project Documents and Legal Requirements; provided, however, Lessee shall provide Lessor with Lessee's proposed signage criteria (and any changes or amendments thereto, from time to time) for the Premises to be approved (such approval not to unreasonably withheld, conditioned or delayed) by Lessor prior to implementation with respect to the Premises. Other than Lessor's prior approval of Lessee's signage criteria, as between Lessor and Lessee, during the Term, all matters regarding fabrication, design, installation, operation and maintenance of signage, architectural and design elements and business identification are hereby reserved to Lessee, in its reasonable discretion, as provided herein.

8.8 Standards for Work. Whenever Lessor or Lessee is permitted or required to maintain and repair, or make Alterations to, the Building or the Premises (the "**Work**"), the following provisions shall apply:

(a) No Work shall be commenced until the party performing the same shall have obtained all certificates, licenses, permits, authorizations, consents and approvals necessary for the Work, from all governmental authorities having jurisdiction with respect to the Work.

(b) All Work shall be done and completed with first class materials and in a good, substantial and workmanlike manner, and in compliance with all Legal Requirements. The party performing the Work shall be solely responsible for construction means, methods, techniques, sequences and procedures, and for coordinating all activities related to the Work, and the other party shall have no duty or obligation to inspect the Work, but shall have the right to do so, at reasonable times, upon reasonable prior notice and in a reasonable manner.

(c) The party performing the Work shall be responsible for the acts and omissions of all of its employees, contractors and all other persons performing any of the Work.

#### ARTICLE IX LESSEE'S ADDITIONAL COVENANTS

9.1 Rubbish Removal. Lessee shall keep the Premises clean both inside and outside, at its own expense, and will remove or have removed all refuse from the Premises such that all refuse is placed in the dumpsters serving the Project. Lessee shall not burn any materials or rubbish of any description upon the Premises. Lessor reserves the right to remove or have removed all refuse not

properly removed by Lessee and to employ rubbish removal service for the Premises, and Lessee agrees to pay the costs of said removal and/or service attributable to the Premises.

9.2 Sidewalks. Lessee shall have the non-exclusive right to use the sidewalks immediately adjacent to the Premises for uses ancillary to the use and occupancy of the Premises in any manner not prohibited by the Master Declaration; provided, however, that such use shall not obstruct the ordinary use of any such sidewalks for pedestrian purposes or be in violation of any applicable Legal Requirements.

9.3 Plate Glass. Lessee shall replace, at its sole cost and expense, any and all plate and other glass damaged or broken from any cause whatsoever in and about the Premises with glass of similar type and quality.

## ARTICLE X INSURANCE

10.1 Lessor. Lessor shall procure and maintain in full force and effect throughout the Term, at its sole cost and expense, insurance in such coverages and subject to such conditions as more particularly set forth below. The following is the minimum insurance and limits that Lessor must maintain, If Lessor maintains higher limits than the minimums shown below, Lessee requires and shall be entitled to coverage for the higher limits maintained by Lessor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Lessee.

(a) Commercial General Liability Insurance, including contractual liability insurance, product and completed operations, personal and advertising injury, host liquor liability (if alcoholic spirits are served and Lessor is not engaged in this activity as a business enterprise), with limits of liability of not less than \$1,000,000.00 for each occurrence and \$2,000,000.00 policy aggregate per location for personal injury, bodily injury and property damage.

(b) Special Perils Property, and Business Income/Business Expense Insurance, including, without limitation, the perils of sprinkler leakage coverage, in an amount adequate to cover the full replacement cost of the Building.

(c) Boiler and Machinery/Equipment Breakdown Insurance in an amount adequate to cover the full replacement cost of the Building.

(d) Automobile Liability Insurance with a limit of not less than \$1,000,000.00 per accident for bodily injury and property damage. Such insurance shall include all owned, non-owned and hired vehicle liability.

(e) If and to the extent that Lessor has any employees, Worker's Compensation Insurance required in compliance with the applicable Workers' Compensation Act(s) of the states(s) wherein the work is to be performed or where jurisdiction could apply in amounts required by statutes and Employer's Liability Insurance with limits of liability of not less than \$500,000.00 per accident for bodily injury or disease.

(f) If and to the extent that Lessor has any employees, Employer's Liability Insurance, with limits of liability of not less than \$500,000.00 per accident for bodily injury or disease.

(g) Excess/Umbrella Liability Insurance, in excess of Employer's Liability Insurance, Commercial General Liability Insurance and Automobile Liability Insurance in the amount of not less than \$5,000,000.00.

10.2 Lessee. Lessee shall procure and maintain in full force and effect, or cause its Space Tenants to procure and maintain in full force and effect, from and after the date Lessor shall deliver possession of the Premises to Lessee (except as otherwise expressly provided in this Lease) and

throughout the Term, at its sole cost and expense, insurance in such coverages and subject to such conditions as more particularly set forth below. The following is the minimum insurance and limits that Lessee must maintain. If Lessee maintains higher limits than the minimums shown below, lessor requires and shall be entitled to coverage for the higher limits maintained by Lessee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Lessor.

(a) Commercial General Liability Insurance, including contractual liability insurance, product and completed operations, personal and advertising injury, host liquor liability (if alcoholic spirits are served and Lessee is not engaged in this activity as a business enterprise), with limits of liability of not less than \$1,000,000.00 for each occurrence and \$2,000,000.00 policy aggregate per location for personal injury, bodily injury and property damage.

(b) Commercial Liquor Liability Insurance covering any portion of the Premises on which alcoholic spirits are sold or distributed with a limit of not less than \$1,000,000.00 per occurrence.

(c) Special Perils Property, and Business Income/Business Expense Insurance, including, without limitation, the perils of sprinkler leakage coverage, in an amount adequate to cover the full replacement cost of all leasehold or building improvements in the Premises, as well as the cost of replacement of all fixtures, equipment, decorations, contents and personal property therein; with a reasonable deductible including no coinsurance clause or an agreed value provision, and exterior sign insurance and plate glass insurance covering all plate glass in the Premises.

(d) Business Income or Loss of Rents and Extra Expense coverage in the amount of the "actual loss sustained" for a term of at least six (6) months.

(e) Automobile Liability Insurance with a limit of not less than \$1,000,000.00 per accident for bodily injury and property damage. Such insurance shall include all owned, non-owned and hired vehicle liability.

(f) If and to the extent that Lessee has any employees, Worker's Compensation Insurance required in compliance with the applicable Workers' Compensation Act(s) of the states(s) wherein the work is to be performed or where jurisdiction could apply in amounts required by statutes and Employer's Liability Insurance with limits of liability of not less than \$500,000.00 per accident for bodily injury or disease.

(g) If and to the extent that Lessee has any employees, Employer's Liability Insurance, with limits of liability of not less than \$500,000.00 per accident for bodily injury or disease.

(h) Excess/Umbrella Liability Insurance, in excess of Employer's Liability Insurance, Commercial General Liability Insurance and Automobile Liability Insurance in the amount of not less than \$5,000,000.00. Lessee's carrying this coverage will be sufficient to meet this requirement.

#### 10.3 Insurance Policy Requirements.

(a) All of the aforementioned insurance policies shall contain or be endorsed to contain, the following provisions:

(i) A provision that coverage afforded under such policies shall not expire, be canceled or materially altered without at least forty-five (45) days prior written notice to Lessor (as to Lessee's policies) or Lessee (as to Lessor's policies).

(ii) Property and Boiler & Machinery and Workers' Compensation and Employer's Liability Insurance policies shall contain a waiver of subrogation in favor of Lessor, if available, (as to Lessee's policies) and Lessee (as to Lessor's policies) and their respective boards, officials, directors, officers, employees, agents and volunteers.

(iii) Commercial General Liability, Excess/Umbrella Liability and Automobile Insurance policies shall include an endorsement making Lessor (as to Lessee's policies) or Lessee (as to Lessor's policies) and their respective boards, officials, directors, officers, employees, agents and volunteers Additional Insureds under the other's policies.

(b) On or before the earlier of (i) the date on which Lessee first enters the Premises for any reason or (ii) the Commencement Date, each party shall furnish the other with certificates evidencing the insurance coverage required by this Lease, and renewal certificates shall be furnished to the other at least annually thereafter, and at least five (5) business days prior to the expiration date of each policy for which a certificate was furnished. Upon request by either Lessor or Lessee, a true and complete copy of any insurance policy required by this Lease shall be delivered to the requesting party within ten (10) days following request. Such policies shall be issued by one (1) or more insurance which are A.M. Best Company rated at A-Viii or greater, and licensed to do business in the State of Georgia. All such insurance may be carried under a blanket policy and shall contain endorsements that: (A) such insurance may not be canceled or materially amended with respect to Lessor (as to Lessee's policies) or Lessee (as to Lessor's policies) (or its designee(s)), except upon forty-five (45) days prior written notice by certified mail to Lessor (as to Lessee's policies) or Lessee (as to Lessor's policies) (and such designee(s)), by the insurance company; and (B) Lessor (as to Lessor's policies) or Lessee (as to Lessee's policies) shall be solely responsible for payment of premiums for such insurance. The obligations for Lessor or Lessee to procure and maintain insurance shall not be construed to waive or restrict other obligations and it is understood that insurance in no way limits liability of Lessor or Lessee whether or not same is covered by insurance. All insurance certificates required to be provided by Lessee may, at the option of Lessee, name any Leasehold Mortgagee or any other persons, all as their respective interests may appear.

#### 10.4 Indemnities.

(a) As used in this Lease:

(i) **"Indemnified Matters"** shall mean all liabilities, damages, losses, costs, expenses (including, without limitation, reasonable consultants' and experts' fees and reasonable attorneys' fees actually incurred and expenses and costs of investigation and defense), penalties, assessments, fines (including, without limitation, reasonable consultants' and experts' fees and reasonable attorneys' fees and expenses and costs of investigation and defense), causes of action, suits, claims, demands and judgments of any nature whatsoever, actually suffered, incurred or sustained by a person entitled to indemnification pursuant to any term or provision of this Lease.

(ii) **"Indemnitee"** shall mean any Lessor Indemnitee or Lessee Indemnitee, as the context requires.

(iii) **"Indemnitor"** shall mean Lessor or Lessee, as the context requires, in respect of their respective obligations to provide indemnification pursuant to this Lease.

(iv) **"Lessee Indemnitee"** shall mean Lessee, the transferees of Lessee's interest under this Lease, any sublessee, and their respective owners, officers, directors, managers, agents and employees.

(v) **"Lessor Indemnitee"** shall mean Lessor, the transferees of Lessor's interest under this Lease, any Mortgagee, and their respective owners, officers, directors, managers, agents and employees.

(b) Subject to **Section 10.5**, to the extent permitted by applicable law, Lessee will indemnify, save harmless, and defend Lessor Indemnitees promptly and diligently at Lessee's sole expense from and against any and all Indemnified Matters arising in connection with any accident, injury or damage whatsoever caused to any person or property arising directly or indirectly out of Lessee's use or occupancy of the Premises, including any initial construction, Alteration, renovation, remodeling, repair and/or fixturing of the Premises (whether or not occurring prior to the Commencement Date), or arising out of the business conducted in the Premises or occurring in, on or about the Premises or any part thereof, including the Building Common Areas, or arising directly or indirectly from any act or omission of Lessee or any of its contractors, subcontractors or concessionaires or Space Tenants or their respective licensees, servants, agents, employees, contractors or subcontractors, and from and against any and all costs, expenses and liability incurred in connection with any such claim or proceeding brought thereon. The Commercial General Liability insurance maintained by Lessee pursuant to **Section 10.2** shall specifically insure the contractual obligations of Lessee as set forth herein.

(c) Subject to **Section 10.5**, to the extent permitted by applicable law, Lessor will indemnify, save harmless, and defend the Lessee Indemnitees promptly and diligently at Lessor's sole expense from and against any and all Indemnified Matters arising in connection with any accident, injury or damage whatsoever caused to any person or property arising directly or indirectly out of Lessor's use or occupancy of the Project or the Improvements, including any initial construction, Alteration, renovation, remodeling, repair and/or fixturing of the Project or the Improvements (whether or not occurring prior to the Commencement Date), or arising directly or indirectly from any act or omission of Lessor or any of its contractors, subcontractors or concessionaires or tenants or their respective licensees, servants, agents, employees, contractors or subcontractors, and from and against any and all costs, expenses and liability incurred in connection with any such claim or proceeding brought thereon.

(d) Notwithstanding anything to the contrary contained in this **Section 10.4**: (i) Lessee shall not be required to indemnify any Lessor Indemnitee under this **Section 10.4** for any Indemnified Matter if and to the extent such Indemnified Matter arises out of, by reason of or in connection with the act, omission, negligence or willful misconduct of any Lessor Indemnitee; (ii) Lessor shall not be required to indemnify any Lessee Indemnitee under this **Section 10.4** for any Indemnified Matter if and to the extent such Indemnified Matter arises out of, by reason of or in connection with the act, omission, negligence or willful misconduct of any Lessee Indemnitee; (iii) in no event shall any Indemnitor be liable for any impairment or diminution of the value of the Project, the Building or the Premises; and (iv) in no event shall any Indemnitor be liable for special, punitive, consequential or similar damages.

#### 10.5 Waiver of Subrogation.

Each insurance policy required by this Lease shall provide that the insurance company waives all right of recovery by way of subrogation against Lessor or Lessee and their respective agents, officers and employees, in connection with any loss or damage covered thereby. Lessor and Lessee hereby waive any and all rights of recovery, claim, action or cause of action against each other, their respective agents, officers and employees, for any loss or damage that may occur to the Project, the Building, the Premises, or to any other property, whether real, personal or mixed, located on or in the Project, the Building or the Premises, by reason of fire, the elements, or any other cause insured against, or required to be insured against, under the terms of policies of insurance maintained, or required to be maintained, by Lessor or Lessee (as the case may be) under the terms of this Lease, regardless of cause or origin, including negligence of the parties hereto, their respective agents and employees.

ARTICLE XI  
CASUALTY; CONDEMNATION

11.1 Casualty.

(a) As used in this Lease:

(i) **"Casualty"** shall mean damage or destruction of the Premises, or any portion thereof, by fire or other casualty.

(ii) **"Date of Casualty"** shall mean the date on which a Casualty occurs.

(iii) **"Substantial Portion of the Premises"**, in respect of a Casualty, shall mean a Casualty that renders the Premises (including, without limitation, parking, ingress, egress or access to the Premises or any portion thereof) unsuitable for the continued feasible and economic use by Lessee for substantially the same purposes as immediately prior to such Casualty, as determined in Lessee's reasonable business judgment.

(iv) **"Proceeds"** shall mean any amounts paid, recovered or recoverable as damages, compensation or proceeds by reason of damage to the Premises on account of a Casualty, including, without limitation, insurance payments, less the actual and reasonable costs and expenses incurred in collecting such amounts.

(b) If there occurs (i) a Casualty affecting a Substantial Portion of the Premises, or (ii) a Casualty within the last twenty four (24) months of the Term that, in Lessee's reasonable opinion, will require more than ninety (90) days after the date of the Casualty for Restoration of the Premises to be completed, then Lessee shall have the right, at its option, to terminate this Lease by giving written notice to Lessor of such termination within sixty (60) days after the Date of Casualty, in which event this Lease shall terminate, and the Term shall expire, on the Date of Casualty with the same effect as if the Date of Casualty were the Expiration Date, and all Basic Rent and Additional Rent shall be apportioned and paid through and including the Date of Casualty.

(c) If there occurs a Casualty as to which this Lease is not terminated by Lessee pursuant to **Section 11.1(b)**, then this Lease and all duties and obligations of Lessee under this Lease shall remain unmodified, unaffected and in full force and effect, but the Basic Rent and Additional Rent payable under this Lease between the Date of Casualty and the date of completion of the Restoration shall be abated in the same proportion and to the same extent as the Casualty has rendered the Premises unsuitable for the continued feasible and economic use by Lessee for substantially the same purposes as immediately prior to such Casualty, as determined in Lessee's reasonable business judgment, and Restoration of the Premises shall proceed in accordance with **Article XII**.

11.2 Condemnation.

(a) As used in this Lease:

(i) **"Taking"** shall mean any condemnation or exercise of the power of eminent domain by any public authority vested with such power, or any taking in any other manner for public use, including a private purchase, in lieu of condemnation, by a public authority vested with the power of eminent domain.

(ii) **"Date of Taking"** shall mean the earlier of: (A) the date upon which title to or an interest in the Premises or portion thereof subject to a Taking is vested in the condemning authority; or (B) the date upon which possession of the Premises or portion thereof is taken by the condemning authority.

(iii) “**Substantial Portion of the Premises**”, in respect of a Taking, shall mean a Taking affecting so much of the Premises (including, without limitation, parking, ingress, egress or access to the Premises or any portion thereof) as, when taken, after giving consideration to the anticipated Restoration, leaves the untaken portion unsuitable for the continued feasible and economic operation of the Premises by Lessee for substantially the same purposes as immediately prior to such Taking, as determined in Lessee’s reasonable business judgment.

(iv) “**Award(s)**” shall mean any amounts paid, recovered or recoverable as damages, compensation or proceeds by reason of any Taking or on account of a Taking, including, without limitation, all amounts paid pursuant to any agreement which has been made in settlement or under threat of any such action or proceeding, less the actual and reasonable costs and expenses incurred in collecting such amounts.

(b) If a Taking occurs, then Lessor shall use commercially reasonable efforts to achieve the maximum Award obtainable under the circumstances. Lessee may appear in any such proceeding or other action in a manner consistent with the foregoing.

(c) If there occurs a Taking of all of the Premises, other than a Taking for temporary use, then this Lease shall automatically terminate, and the Term shall automatically expire, on the Date of Taking, as if such date were the Expiration Date, and all Basic Rent and Additional Rent shall be apportioned and paid through and including the Date of Taking.

(d) If there occurs a Taking of a Substantial Portion of the Premises, but less than all of the Premises, other than a Taking for temporary use, then Lessee shall have the right, at its option, to terminate this Lease by giving written notice to Lessor of such termination within sixty (60) days after the Date of Taking, in which event this Lease shall terminate, and the Term shall expire, on the Date of Taking, as if such date were the Expiration Date, and all Basic Rent and Additional Rent shall be apportioned and paid through and including the Date of Taking.

(e) If there occurs a Taking affecting a Substantial Portion of the Premises and Lessee does not terminate this Lease pursuant to **Section 11.2(d)**, or if there occurs a Taking of less than a Substantial Portion of the Premises, then this Lease and all duties and obligations of Lessee under this Lease shall remain unmodified, unaffected and in full force and effect, and Restoration of the Premises shall proceed in accordance with **Article XII**; provided, however, that (i) the Basic Rent shall be abated between the Date of Taking and the completion of the Restoration to the same extent as the Premises cannot reasonably be used by Lessee during such period of time for the same purposes as immediately prior to the Taking, and (ii) the Basic Rent payable after the completion of the Restoration shall be reduced to an amount which bears the same ratio to the Basic Rent payable immediately prior to the Taking as the rental value of the Premises after the completion of the Restoration bears to the rental value of the Premises immediately prior to the Taking.

(f) If there occurs a Taking of the Premises, or any portion thereof, for temporary use, then this Lease shall remain in full force and effect for the remainder of the Term, provided, however, that during such time as Lessee shall be out of possession of the Premises by reason of such Taking, the failure to keep, observe, perform, satisfy and comply with those terms and conditions of the Lease compliance with which are effectively impractical or impossible as a result of Lessee’s being out of possession of the Premises (and which shall not include payment of Basic Rent or Additional Rent) shall not be a Lessee Event of Default under this Lease. The Award for any such temporary Taking payable for any period prior to the Expiration Date shall be paid to Lessee and, for any period thereafter, to Lessor.

(g) Except as expressly provided in **Section 11.2(f)** and as hereinafter set forth in this **Section 11.2(g)**, Lessor shall be entitled to all Awards payable by reason of any Taking, and Lessee shall not be entitled to any portion of, and shall have no claim for, and hereby transfers, assigns, conveys and sets over unto Lessor all of its right, title and interest, if any, in or to, any

Award payable by reason of any Taking; provided, however, that Lessee shall have the right to pursue and retain an Award (whether by separate Award or by apportionment of a single Award) for (i) the value of the Leasehold Estate for the unexpired Term, (ii) business interruption or inconvenience, (iii) moving expenses, (iv) the value of any personal property subject to any Taking, and (v) the cost incurred by Lessee for Improvements or Alterations.

## ARTICLE XII RESTORATION

12.1 Restoration. “**Restoration**” shall mean the restoration of the Premises after any Casualty or Taking, as nearly as commercially practicable to their value, condition and character (as required to be maintained under this Lease) prior to such Casualty or Taking.

12.2 Lessor Obligation. In the event of a Casualty or a Taking, Lessor shall commence the Restoration promptly after the occurrence of the Casualty or Taking, as applicable, and thereafter diligently prosecute the same to completion in accordance with **Section 8.8**.

## ARTICLE XIII ASSIGNMENT; SPACE LEASES

### 13.1 Assignment of Lease.

(a) Lessee shall have the right to assign the Leasehold Estate without the requirement of any consent or approval by Lessor to any person or entity that is the North Parcel Retail Owner. In the event of a conveyance of the North Parcel Retail Space, Lessee shall assign the Leasehold Estate, or cause the Leasehold Estate to be assigned, to the grantee of such conveyance that becomes the North Parcel Retail Owner. For the purposes of this **Section 13.1(a)**: (i) the “**North Parcel Retail Space**” shall mean the space within the Project depicted on **Exhibit “G”** attached hereto and by this reference made a part hereof which are then utilized for retail purposes; and (ii) the “**North Parcel Retail Owner**” shall mean the person or entity which then owns and holds, or contemporaneously with the assignment of the Leasehold Estate acquires, either fee simple title to or a leasehold estate in the North Parcel Retail Space.

(b) Except to the extent permitted by **Section 13.1(a)**, Lessee shall not have the right to assign the Leasehold Estate unless the proposed assignee has been approved by Lessor, which approval by Lessor shall be limited to Lessor’s determination, in its reasonable discretion, as to whether the proposed assignee of the Leasehold Estate lacks the expertise to fully perform and comply with this Lease or to manage and operate the Premises in a professional fashion.

(c) Any assignee of this Lease shall succeed to the interest of Lessee under this Lease, subject, however, to all duties, covenants, and obligations of Lessee under this Lease arising out of or in connection with events occurring on or after (but not before) the effective date of said assignment.

(d) Upon an assignment by Lessee of this Lease pursuant to **Section 13.1(a)** or assignment approved pursuant to **Section 13.1(b)**, and upon the assignee’s due execution and delivery to Lessor of such assignee’s written assumption of all duties, covenants, and obligations of Lessee under this Lease arising out of or in connection with events occurring on or after (but not before) the effective date of said assignment, the assigning Lessee shall be released from any liabilities, duties, covenants, or obligations under this Lease arising out of or in connection with events occurring on or after the effective date of said assignment (but not from any liabilities, duties, covenants, or obligations under this Lease arising out of or in connection with events occurring before the effective date of said assignment).

13.2 Space Leases; Rights of Recognized Tenants and Space Tenants.

(a) Lessee shall have the right to sublease all or any portion or portions of the Premises, without the requirement of any consent or approval by Lessor (any such sublease, a **"Space Lease"**, and the subtenant thereunder, a **"Space Tenant"**). Upon written request of Lessor, Lessee shall provide Lessor with a copy of each executed Space Lease. Lessee may, but shall not be obligated to, submit any proposed Space Lease for Lessor's approval. Each Space Lease shall contain an express provision whereby the Space Tenant acknowledges and agrees that such Space Tenant's rights and interests under its Space Lease are subject and subordinate to this Lease; provided, however, that the foregoing shall not diminish or affect the rights of a Space Tenant as a Recognized Tenant, or the obligations of Lessor, pursuant to this **Section 13.2(a)** or pursuant to any nondisturbance and attornment agreement between Lessor and such Space Tenant. Lessor shall have the right to disapprove the Space Lease only if Lessor determines, in Lessor's reasonable discretion, that: (i) the proposed Space Lease is inconsistent with the terms of this Lease; or (ii) the proposed Space Lease is not made on commercially reasonable terms giving due consideration to applicable facts and circumstances, including, by way of illustration but not limitation, the size of the sublet area, market conditions at the time of the sublease, the term of the sublease and the creditworthiness of the Space Tenant, the Space Tenant's financial background, business history, and experience and expertise in managing and operating the proposed sublease area. Any such proposed Space Lease which has been approved by Lessor, or deemed approved by Lessor pursuant to this **Section 13.2(a)**, shall become a **"Recognized Lease"**, and the tenant thereunder a **"Recognized Tenant"**, immediately upon Lessor's approval or deemed approval thereof. Lessor shall approve or disapprove any proposed Space Lease within fifteen (15) days following the submission of the proposed Space Lease and such other information as necessary to enable Lessor to evaluate the proposed Space Lease. Any Space Lease duly submitted for Lessor's approval and not disapproved in writing (with specification of the reasons therefor) within such fifteen (15) day period shall be deemed approved. Upon such approval or deemed approval by Lessor, Lessor shall promptly execute and deliver such documents and instruments as Lessee or any Space Tenant shall reasonably request to evidence the approval, or deemed approval, of a Space Lease and its status as a Recognized Lease. Upon request, Lessor shall enter into an appropriate non-disturbance, recognition, and attornment agreement with each Recognized Tenant, in form and substance reasonably satisfactory to Lessor and such Recognized Tenant.

(b) In the event that this Lease is terminated prior to the expiration of the term of any Recognized Lease, each Recognized Lease shall continue for the duration of the term of such Recognized Lease as a direct lease between Lessor and each such Recognized Tenant. In the event that this Lease is terminated prior to the expiration of the term of any Space Lease which is not a Recognized Lease, Lessor shall have the right to terminate any such Space Lease upon the giving of thirty (30) days written notice to the Space Tenant. Each Space Lease that is not a Recognized Lease shall contain a provision notifying the Space Tenant of Lessor's aforesaid right.

ARTICLE XIV  
DEFAULT; REMEDIES

14.1 Lessee Events of Default; Lessor's Remedies.

(a) Any of the following occurrences or acts shall constitute a **"Lessee Event of Default"** under this Lease:

(i) Lessee shall fail to pay any installment of Basic Rent or Additional Rent when due, and such failure to pay such amounts continues for more than five (5) Business Days after notice thereof from Lessor to Lessee thereof;

(ii) Lessee fails to perform any other obligation of Lessee under this Lease, and such failure continues for more than forty five (45) days after written notice thereof

from Lessor to Lessee thereof; provided, however, if any such default is of such a nature that it is not reasonably susceptible of being cured within such forty five (45) day period Lessee shall not be in default if it in good faith commences its efforts to cure such default within said forty five (45) day period and thereafter in good faith and with diligence and continually prosecutes such cure until the completion thereof;

(iii) Lessee shall file a petition of bankruptcy or for reorganization or for an arrangement pursuant to Title 11 of the United States Code or any other federal or state bankruptcy, insolvency or similar law, now or hereafter in effect in the United States (the "**Bankruptcy Code**"), or shall be adjudicated as bankrupt or become insolvent or shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall be dissolved, or shall suspend payment of its obligations, or shall take any corporate action in furtherance of any of the foregoing;

(iv) A petition or answer is filed proposing the adjudication of Lessee as bankrupt, or its reorganization pursuant to the Bankruptcy Code, and Lessee shall consent to the filing thereof, or such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or

(v) A permanent receiver is appointed for Lessee's property, including Lessee's interest in the Premises, and such receiver is not removed within sixty (60) days after notice from Lessor to Lessee to obtain such removal.

(b) Upon the occurrence of a Lessee Event of Default, Lessor shall have the following remedies, to the extent permitted by law:

(i) Lessor may give Lessee notice of Lessor's intention to terminate this Lease on a date specified in such notice (which date shall be no sooner than the later of (A) the date thirty (30) days after the date of such notice, or (B) the earliest date for termination of a lease permitted under applicable laws). At the option of Lessor, upon the date therein specified, unless the Lessee Event of Default for which the termination is effected has been cured by Lessee, the Term shall expire and terminate as if such date were the Expiration Date. In such event, Lessee shall immediately quit and vacate the Premises and deliver and surrender possession of the Premises to Lessor, and this Lease shall be terminated at the time designated by Lessor in its notice of termination to Lessee.

(ii) Lessor may give Lessee written notice of Lessor's intention to terminate Lessee's right of possession to the Premises without terminating the Lease and to surrender the Premises to Lessor on a date specified in such notice (which date shall be no sooner than the later of (A) the date thirty (30) days after the date of such notice, or (B) the earliest date for termination of possession of a lease permitted under the applicable laws of the State), at which time Lessee shall surrender and deliver possession of the Premises to Lessor unless the Lessee Event of Default for which the termination of possession is effected has been cured by Lessee. No such entry or repossession shall be construed as an election by Lessor to terminate this Lease unless Lessor gives a written notice of such intention to Lessee pursuant to **Section 14.1(b)(i)**.

(iii) Lessor may re-lease the Premises or any part thereof, on such terms and conditions as Lessor may deem satisfactory, and receive the rental for any such releasing, in which event, prior to any termination of the Lease, Lessee shall pay to Lessor on demand any deficiency that may arise by reason of such re-leasing.

(iv) Lessor may hold Lessee liable for all Basic Rent and Additional Rent accrued to the date of the occurrence of such Lessee Event of Default, and, prior to election of termination of the Lease, all Basic Rent and Additional Rent thereafter required to be paid by Lessee to Lessor during the Term. Actions to collect amounts due

by Lessee provided for in this **Section 14.1(b)(iv)** may be brought from time to time by Lessor, on one or more occasions, without the necessity of Lessor's waiting until expiration of the Term.

(v) Lessor may do whatever Lessee is obligated to do under the terms of this Lease, in which event Lessee shall reimburse Lessor on demand for any reasonable and actual expenses, including, without limitation, reasonable attorneys' fees, which Lessor may incur in thus effecting satisfaction and performance of or compliance with Lessee's duties and obligations under this Lease.

(c) In the event of termination of this Lease or of Lessee's right to possession of the Premises or repossession of the Premises for a Lessee Event of Default, Lessor shall use reasonable efforts to relet the Premises, and in the event of reletting Lessor may relet the whole or any portion of the Premises for any period, to any Lessee, and for any use and purpose. Upon each such reletting, all rentals received by Lessor from such reletting shall be applied: first to the payment of any indebtedness (other than any Basic Rent or Additional Rent due under this Lease) from Lessee to Lessor; second, to the payment of the reasonable and actual costs and expenses of such reletting, including, without limitation, brokerage fees and attorneys' fees and costs of repairing the Premises to the extent such repairs are Lessee's obligation pursuant to this Lease; third, to the payment of Basic Rent and Additional Rent then due and unpaid under this Lease; and the residue, if any, shall be held by Lessor to the extent of and for application in payment of future Basic Rent and Additional Rent as the same may become due and payable hereunder. If such rentals received from such reletting shall at any time or from time to time be less than sufficient to pay to Lessor the entire Basic Rent and Additional Rent then due from Lessee hereunder, Lessee shall pay any such deficiency to Lessor upon demand. Such deficiency shall, at Lessor's option, be calculated and paid monthly. No such reletting shall be construed as an election by Lessor to terminate this Lease unless a written notice of such election has been given to Lessee by Lessor. Notwithstanding any such reletting without termination, Lessor may at any time thereafter elect to terminate this Lease for any such previous Lessee Event of Default.

(d) In the event Lessor elects to terminate this Lease by reason of a Lessee Event of Default, Lessor may hold Lessee liable for: (i) all Basic Rent and Additional Rent accrued to the date of such termination; plus (ii) an amount which, at the date of such termination, represents the present value, as computed using a discount rate equal to the Overdue Rate, of the excess, if any, of (A) the Basic Rent and Additional Rent which would have otherwise been payable hereunder during the remainder of the Term, over (B) the fair rental value of the Premises for the same period. Such payment shall constitute liquidated damages to Lessor, Lessee and Lessor acknowledging and agreeing that it is difficult to determine the actual damages that Lessor would suffer by virtue of a Lessee Event of Default and that the agreed-upon liquidated damages are not punitive or a penalty and are just, fair and reasonable, all in accordance with O.C.G.A. § 13-6-7.

(e) Exercise by or on behalf of Lessor of any one or more remedies provided in this Lease or otherwise available at law or in equity: (i) shall not be the basis for any claim of constructive eviction, or allow Lessee to withhold any payments under this Lease; (ii) shall not be deemed to be an acceptance of surrender of the Premises by Lessee whether by agreement or by operation of law (it being understood that such surrender can be effected only by the written agreement of Lessor and Lessee); (iii) shall not preclude exercise of any other remedy or remedies provided in this Lease or any other remedy or remedies provided for or allowed by law or in equity, separately or concurrently or in any combination, to the extent permitted by law, except that, if elected, the remedy specified in **Section 14.1(d)**, shall be Lessor's sole monetary remedy for such Lessee Event of Default; and (iv) shall not constitute an election of remedies excluding the election of another remedy or other remedies, or a forfeiture or waiver of any Basic Rent or Additional Rent or of any damages or other sums accruing to Lessor by reason of Lessee's failure to fully and completely keep, observe, perform, satisfy and comply with all of the

agreements, terms, covenants, conditions, requirements, provisions and restrictions of this Lease. Lessor's forbearance in pursuing or exercising one or more of its remedies shall not be deemed or construed to constitute a waiver of any Lessee Event of Default or of any remedy. No waiver by Lessor of any right or remedy on one occasion shall be construed as a waiver of that right or remedy on any subsequent occasion or as a waiver of any other right or remedy then or thereafter existing. No failure of Lessor to pursue or exercise any of Lessor's powers, rights or remedies or to insist upon strict and exact compliance by Lessee with any agreement, term, covenant, condition, requirement, provision or restriction of this Lease, and no custom or practice at variance with the terms of this Lease, shall constitute a waiver by Lessor of the right to demand strict and exact compliance with terms and conditions of this Lease. No termination of this Lease shall affect Lessor's right to collect Basic Rent and Additional Rent for the period prior to termination.

(f) Notwithstanding anything to the contrary set forth in this Lease, and notwithstanding any statutory or decisional law to the contrary, Lessor shall use reasonable efforts to mitigate its monetary damages by reason of any Lessee Event of Default hereunder.

#### 14.2 Lessor Events of Default; Lessee's Remedies.

(a) Any of the following occurrences or acts shall constitute a "**Lessor Event of Default**" under this Lease:

(i) Lessor shall fail to pay when due any sum of money that Lessor is obligated to pay under this Lease, and such failure to pay such amounts continues for more than five (5) Business Days after notice thereof from Lessee to Lessor thereof;

(ii) Lessor fails to perform any other obligation of Lessor under this Lease, and such failure continues for more than forty five (45) days after written notice thereof from Lessee to Lessor thereof; provided, however, if any such default is of such a nature that it is not reasonably susceptible of being cured within such forty five (45) day period Lessor shall not be in default if it in good faith commences its efforts to cure such default within said forty five (45) day period and thereafter in good faith and with diligence and continuity prosecutes such cure until the completion thereof;

(iii) Lessor shall file a petition of bankruptcy or for reorganization or for an arrangement pursuant to the "Bankruptcy Code, or shall be adjudicated as bankrupt or become insolvent or shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall be dissolved, or shall suspend payment of its obligations, or shall take any corporate action in furtherance of any of the foregoing;

(iv) A petition or answer is filed proposing the adjudication of Lessor as bankrupt, or its reorganization pursuant to the Bankruptcy Code, and (A) Lessor shall consent to the filing thereof or (B) such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or

(v) A permanent receiver is appointed for Lessor's property, including Lessor's interest in the Premises, and such receiver is not removed within sixty (60) days after notice from Lessor to Lessor to obtain such removal.

(b) Upon the occurrence of a Lessor Event of Default, Lessee shall have the following remedies, to the extent permitted by law:

(i) Lessee may terminate this Lease by giving Lessor written notice of termination, in which event this Lease shall be terminated at the time designated by Lessee in its notice of termination to Lessee.

(ii) Lessee may do whatever Lessor is obligated to do under the terms of this Lease, in which event Lessor shall reimburse Lessee on demand for any expenses, including, without limitation, reasonable attorneys' fees, which Lessee may incur in thus effecting satisfaction and performance of or compliance with Lessor's duties and obligations under this Lease.

(iii) Lessee may recover from Lessor all damages suffered, incurred or sustained by Lessee and arising out of or by reason of any Lessor Event of Default and any other amounts owing by Lessor to Lessee.

(iv) Lessee may set off and deduct from the Basic Rent or Additional Rent payable under this Lease all damages suffered, incurred or sustained by Lessee and arising out of or by reason of any Lessor Event of Default and any other amounts owing by Lessor to Lessee.

(c) Exercise by or on behalf of Lessee of any one or more remedies provided in this Lease or otherwise available at law or in equity: (i) shall not preclude exercise of any other remedy or remedies provided in this Lease or any other remedy or remedies provided for or allowed by law or in equity, separately or concurrently or in any combination, to the extent permitted by law; and (ii) shall not constitute an election of remedies excluding the election of another remedy or other remedies, or a forfeiture or waiver of any damages or other sums accruing to Lessee by reason of Lessor's failure to fully and completely keep, observe, perform, satisfy and comply with all of the agreements, terms, covenants, conditions, requirements, provisions and restrictions of this Lease. Lessee's forbearance in pursuing or exercising one or more of its remedies shall not be deemed or construed to constitute a waiver of any Lessor Event of Default or of any remedy. No waiver by Lessee of any right or remedy on one occasion shall be construed as a waiver of that right or remedy on any subsequent occasion or as a waiver of any other right or remedy then or thereafter existing. No failure of Lessee to pursue or exercise any of Lessee's powers, rights or remedies or to insist upon strict and exact compliance by Lessor with any agreement, term, covenant, condition, requirement, provision or restriction of this Lease, and no custom or practice at variance with the terms of this Lease, shall constitute a waiver by Lessee of the right to demand strict and exact compliance with terms and conditions of this Lease.

## ARTICLE XV LEASEHOLD MORTGAGES

### 15.1 Leasehold Mortgages.

(a) As used in this Lease:

(i) "**Institutional Lender**" shall mean a commercial bank or trust company (whether acting individually or in a fiduciary capacity), savings bank, savings and loan association, pension or retirement fund, accredited college or university, insurance company organized and existing under the laws of the United States or any state thereof, real estate investment trust existing in compliance with Sections 856 through 860 of the Internal Revenue Code of 1986, as amended, or any combination of any of the foregoing.

(ii) "**Leasehold Mortgage**" shall mean and have reference to any encumbrance of the Leasehold Estate, or any interest therein, or the rents, income, revenues, issues and profits of Lessee now or hereafter incident or belonging to the Leasehold Estate, as security for any bona fide indebtedness or other bona fide obligation of Lessee or Lessee's successors and assigns, whether by deed to secure debt, mortgage, deed of trust, pledge, financing statement, security agreement, or other security instrument.

(iii) **"Leasehold Mortgagee"** shall mean and have reference to any holder of the indebtedness or other obligation secured by any Leasehold Mortgage, which holder shall be an Institutional Lender

(b) Lessee shall have the right to grant one or more Leasehold Mortgages.

(c) Lessor hereby agrees to enter into an appropriate non-disturbance, recognition, and attornment agreement with Leasehold Mortgagees, in form and substance reasonably acceptable to Lessor and to the Leasehold Mortgagees, which such agreement shall provide that this Lease and the rights and interests of Lessee in and to the Leasehold Estate shall survive any foreclosure or deed in lieu of foreclosure under the Leasehold Mortgages.

(d) In the event Lessee shall encumber the Premises or any portion thereof or any interest therein with a Leasehold Mortgage and the Leasehold Mortgagee shall register with Lessor by delivering to Lessor a copy of the Leasehold Mortgage as recorded in the Office of the Clerk of the Superior Court of Fulton County, together with a written notice specifying the name and address of the Leasehold Mortgagee, the pertinent recording data, and the term or duration of the Leasehold Mortgage, then such Leasehold Mortgagee shall thereafter be a **"Registered Mortgagee"** under this Lease. From and after the date of receipt by Lessor of such registration and for the term or duration of said Leasehold Mortgage, upon serving Lessee with any notice under this Lease, Lessor shall, concurrently, serve a copy of such notice to all Registered Mortgagees, the serving of which notice upon each Registered Mortgagee entitled to the receipt thereof shall be a condition precedent to the effectiveness thereof. Upon request, Lessor shall notify any Registered Mortgagee of the identity and address of Lessor's agent, if any, for receipt of notice and payments hereunder and such Registered Mortgagee shall be entitled to rely on such notice until such Registered Mortgagee is delivered a notice from Lessor changing the identity and/or address of such agent, and notices sent and payments made in accordance with such a notice by Lessor shall constitute notice and payment to all parties included within the term "Lessor." Each Registered Mortgagee shall have the right, but not the obligation, to remedy or cause to be remedied any Lessee Event of Default complained of or request made, and Lessor shall accept performance by or at the instigation of any Registered Mortgagee with the same force and effect as if Lessee had performed the action in question. Nothing contained herein shall be construed as imposing any obligation upon any Leasehold Mortgagee so to perform or comply on behalf of Lessee.

(e) All costs incurred in connection with a Leasehold Mortgage shall be paid by Lessee, including, without limitation, all reasonable attorneys' fees and other costs actually incurred by Lessor in connection with such Leasehold Mortgage. No Leasehold Mortgagee shall be or become liable to Lessor under this Lease, or otherwise, unless it expressly assumes by written instrument such liability (in which event the Leasehold Mortgagee's liability shall be limited to the period of time it is the owner of the Leasehold Estate), and no assumption shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by such Leasehold Mortgage or other instrument or from a conveyance from Lessee pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Lessee under the terms of this Lease. It is further agreed that no person that acquires title to, or other rights in, the Leasehold Estate or this Lease solely by virtue of the provisions of a Leasehold Mortgage, collateral assignment, security agreement, or similar security instrument shall have any liability hereunder except as expressly provided in this **Section 15.1**, notwithstanding that such security instrument may provide for a present assignment of Lessee's rights to the Leasehold Mortgagee.

(f) Lessor shall not accept any surrender of, or agree to any termination of, or enter into any modification or amendment of, this Lease without the prior written consent thereto by all Leasehold Mortgagees who are Registered Mortgagees, and any attempt so to do without such written consent shall be void and of no force and effect. Any Leasehold Mortgage may provide that no rejection of this Lease by Lessee as a debtor in possession in bankruptcy, or by a trustee

in bankruptcy for Lessee, shall be effective as to the Leasehold Mortgagee thereof, unless consented to in writing by such Leasehold Mortgagee.

(g) Lessor agrees to modify this Lease from time to time for the purpose of incorporating herein such additional mortgagee protective provisions as may be reasonably and customarily requested by any Leasehold Mortgagee and customarily agreed to by a ground lessor; provided, however, that such modifications do not result in a change in the payment of Rent hereunder in any respect and do not result in modifications to the obligations of Lessee hereunder in any material respect, and are not inconsistent with any of the terms and conditions of this Lease in any material respect and do not increase in any respect the obligations of or otherwise unduly burden Lessor. The reasonable fees and expenses actually incurred by Lessor in connection with any additional modifications pursuant to this **Section 15.1** shall be promptly paid by Lessee.

## ARTICLE XVI GENERAL PROVISIONS

### 16.1 Permitted Contests.

(a) Lessee shall not be required to (i) pay any Lessee Imposition, (ii) comply with any Lessee Legal Requirement or take any action with respect to any alleged violation thereof, or (iii) discharge or remove any lien referred to in **Section 8.4**, so long as Lessee shall contest, in good faith and at its expense, the existence, the amount or the validity thereof, the amount of the damages caused thereby, or the extent of its or Lessor's liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent (A) the collection of, or other realization upon, the Lessee Imposition or lien so contested, (B) the sale, forfeiture or loss of any of the Premises, any Basic Rent or any Additional Rent to satisfy the same or to pay any damages caused by the violation of any such Lessee Legal Requirement or by any such violation, (C) any interference with the use or occupancy of any of the Premises, (D) any interference with the payment of any Basic Rent or any Additional Rent, and (E) the cancellation of any insurance policy.

(b) In no event shall Lessee pursue any contest with respect to any Imposition, Legal Requirement, lien, or violation, referred to above in such manner that exposes Lessor to an Unpermitted Risk. For purposes of this **Section 16.1(b)**, an "**Unpermitted Risk**" shall mean imminent risk of: (i) any criminal charge, charge, penalty or sanction, other than monetary amounts for which Lessee has made provisions reasonably acceptable to Lessor; (ii) any civil liability, penalty or sanction, other than monetary amounts for which Lessee has made provisions reasonably acceptable to Lessor; or (iii) defeasance of Lessor's or Lessee's interest in the Premises.

(c) Each such contest shall be promptly and diligently prosecuted by Lessee to a final conclusion, except that Lessee shall have the right to attempt to settle or compromise such contest through negotiations. Lessee may pursue any such contest in Lessee's own name and on Lessee's own behalf, or in the name and on behalf of Lessor. Lessor, at the sole cost and expense of Lessee, shall cooperate fully with Lessee in any such contest.

16.2 Surrender of Possession. Upon the expiration or other termination of the Term, Lessee shall promptly quit and surrender the Premises to Lessor broom clean, remove all Lessee signage (including, but not limited to, Lessee's pylon panel, store front/back signage and any decal signage on windows).

16.3 Holding Over. Should Lessee or any Space Tenant, licensee or other similar occupant, remain in possession of the Premises after the expiration or other termination of the Term, it shall be a tenant-at-sufferance subject to summary eviction pursuant to OCGA § 44-7-50, et seq., at a rental equal to one hundred twenty five percent (125%) of the Rent hereunder during the first three (3) months of such holdover, and one hundred fifty percent (150%) of the Rent hereunder for each month

thereafter, and otherwise on the same terms and conditions as herein provided. Nothing herein shall be construed as constituting Lessor's consent or approval to any such hold over, nor operate to preclude or inhibit the exercise by Lessor of all of its rights and remedies hereunder or available under applicable law to dispossess or evict Lessee. There shall be no renewal of this Lease by operation of law, and no acceptance of rent payments by Lessor shall be deemed an acceptance of any holdover or renewal of this Lease.

16.4 Short Form of Lease. Lessor and Lessee each hereby agree to execute in recordable form a short form of this Lease to be recorded in the Office of the Clerk of the Superior Court of Fulton County, Georgia.

16.5 Estoppel Certificates. Lessor and Lessee hereby agree that any time and from time to time during the Term, upon not less than ten (10) days' written notice from the other party, they shall execute and deliver to such other party a statement in writing certifying the following: that this Lease is unmodified and in full force and effect, or, if modified, stating the nature of such modification; stating the date to which the Rent is paid, and the amount of any advance Rent; acknowledging that there are not, to its knowledge, any uncured defaults on the part of either party, or specifying the nature of such defaults, if claimed, or any events which, with the giving of notice or the passage of time, or both, would constitute defaults; and such other information as is reasonably requested by the other party. If either party fails to execute such a statement, then after five (5) days' written notice and opportunity to cure have been given and expired, each party hereby waives, appoints and constitutes the other as its true and lawful attorney in fact, to execute such a statement for it. Such statements may be conclusively relied upon by any prospective purchaser of the Building from Lessor, prospective or existing mortgagee of the Building, prospective Space Tenant or assignee of the Leasehold Estate, or prospective or existing Leasehold Mortgagee, but such statements are not intended to be for the benefit of or relied upon by Lessor or Lessee.

16.6 Parties. "Lessor," as used herein, shall include Lessor, its heirs, successors, legal representatives and assigns. "Lessee," as used herein, shall include Lessee, its heirs, successors, legal representatives, and assigns. "Lessor" and "Lessee" shall include the male and female, singular and plural, corporation, partnership or individual, as may fit the particular parties.

16.7 Sale or Mortgage of Premises or Building by Lessor; Subordination, Non-Disturbance and Attornment Agreement.

(a) In the event of any sale or transfer of the Premises or the Building by Lessor, Lessor shall and is hereby entirely freed and relieved of all liability under any or all of its covenants and obligations contained in or derived from this Lease arising out of any acts, occurrences or omissions occurring after the consummation of such sale or transfer; and the purchaser or other transferee of the Premises or Building, at such sale or any subsequent sale of the Premises or Building shall be deemed, without any further agreement between the parties, to have assumed and agreed to carry out any and all of the covenants and obligations of Lessor under this Lease during the period commencing on and after the date such party acquires the Premises or Building.

(b) In the event that Lessor grants a mortgage, deed to secure debt, deed of trust, trust deed or other conveyance of, or lien or encumbrance against, the Premises or Building as security for a debt of Lessor, whether now existing or hereafter arising or created (a "Mortgage"), Lessor (including any future Lessor), Lessee and the initial or any subsequent holder of such mortgage (the "Mortgagee"), hereby agree to enter into a subordination, non-disturbance, assumption and attornment agreement, in form substantially identical to Exhibit "H", attached hereto and by this reference made a part hereof.

16.8 Limitation on Lessor's Liability.

(a) EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR INTENTIONAL ACT OF LESSOR OR LESSOR'S AGENTS, EMPLOYEES OR CONTRACTORS,

OR BY OR THE FAILURE OF LESSOR TO PERFORM ITS DUTIES AND OBLIGATIONS UNDER THIS LEASE, LESSOR SHALL NOT BE LIABLE FOR INJURY OR DAMAGE WHICH MAY BE SUSTAINED BY LESSEE OR SPACE TENANTS, OR TO THEIR GOODS, WARES, MERCHANDISE OR PROPERTY, CAUSED BY OR RESULTING FROM THE STATE OF REPAIR OF THE PREMISES, BUILDING, OR PROJECT. LESSOR SHALL NOT BE LIABLE FOR DAMAGE ARISING FROM ANY ACT OR NEGLIGENCE OF ANY OTHER TENANT OR LICENSEE OF THE BUILDING OR THE PROJECT NOT AFFILIATED WITH LESSOR.

(b) EXCEPT IN RESPECT OF LIABILITIES AND OBLIGATIONS OF LESSOR THAT HAVE ACCRUED AS OF THE TIME OF A MORTGAGE DEFAULT TRANSFER: (I) LESSOR SHALL HAVE NO LIABILITY FOR PAYMENT OF ANY SUMS PAYABLE BY LESSOR UNDER THIS LEASE OR FOR THE PERFORMANCE BY LESSOR OF ANY OTHER DUTIES OR OBLIGATIONS OF LESSOR UNDER THIS LEASE BEYOND THE INTEREST OF LESSOR IN THE BUILDING AND THE RENTS, PROFITS, AWARDS, AND PROCEEDS THEREOF; AND (II) LESSEE WILL NOT SEEK TO ENFORCE ANY JUDGMENT OBTAINED BY LESSEE AGAINST LESSOR AGAINST ANY PROPERTY OF LESSOR OTHER THAN THE BUILDING, AND LESSEE SHALL LOOK SOLELY TO, AND RELY SOLELY ON, LESSOR'S INTEREST IN THE BUILDING AND THE RENTS, PROFITS, AWARDS, AND PROCEEDS THEREOF FOR ENFORCEMENT AND SATISFACTION THEREOF. THE FOREGOING LIMITATION ON THE LIABILITY OF LESSOR SHALL NOT APPLY TO ANY LIABILITIES AND OBLIGATIONS OF LESSOR THAT HAVE ACCRUED AS OF THE TIME OF A MORTGAGE DEFAULT TRANSFER.

16.9 Rights Reserved By Lessor. Subject to the terms of this Lease, Lessor reserves all rights more particularly set forth in the Project Documents to the extent set forth therein.

16.10 Binding Effect. The provisions of this Lease shall bind and inure to the benefit of the parties hereto, their heirs, executors, administrators, legal representatives, successors and assigns, subject to the provisions of Article XIII.

16.11 Severability. Lessor and Lessee hereby agree that if any provision of this Lease or the application of any provision of this Lease to any person or in any circumstance shall be determined to be invalid or unenforceable, then such determination shall not affect any other provision of this Lease or the application thereof to any other person or in any other circumstance, all of which shall remain in full force and effect. It is the intention of the parties hereto that in lieu of each provision of this Lease which is determined to be invalid or unenforceable there shall be added, as part of this Lease, such an alternative clause or provision as may be possible and be valid and enforceable.

16.12 Captions and Interpretation. The headings or titles to the Articles and Sections of this Lease are not part of the Lease, but are inserted for convenience only and shall have no effect upon the construction or interpretation of any part of this Lease. Lessor and Lessee hereby agree that both parties were equally influential in preparing and negotiating this Lease; therefore, no presumption should arise that this Lease should be construed more strongly against any one party.

16.13 Notices. Any notices, requests, or consents required to be given by or on behalf of Lessor or Lessee shall be in writing and shall be (i) hand delivered or (ii) sent by (a) registered or certified United States mail, return receipt requested, postage prepaid or (b) national overnight courier service, addressed to the parties hereto at the respective addresses set forth below, or at such other address as may be specified from time to time, in writing. Such notice shall be deemed given when delivered by hand or, if sent by United States mail, three (3) days after it is deposited in an official United States Post Office, postage prepaid, or, if sent by overnight courier, the next business day after deposit with such overnight courier.

(i) If to Lessor:

City of Sandy Springs Public Facilities Authority  
7840 Roswell Road, Building 500  
Sandy Springs, Georgia 30350  
Attention: Chairman

With a copy to:

c/o City of Sandy Springs, Georgia  
7840 Roswell Road, Building 500  
Sandy Springs, Georgia 30350  
Attention: City Manager

With a copy to:

City of Sandy Springs, Georgia  
7840 Roswell Road, Building 500  
Sandy Springs, Georgia 30350  
Attention: City Attorney

(ii) If to Lessee:

Sandy Springs City Center, LLC  
c/o Carter and Associates, LLC  
171 17th Street NW, Suite 1200  
Atlanta, Georgia 30363  
Attention: Jerome Hagley

With a copies to:

Kilpatrick Townsend & Stockton LLP  
Suite 2800, 1100 Peachtree Street NE  
Atlanta, Georgia 30309-4528  
Attention: M. Andrew Kauss, Esq.

and

Selig Enterprises, Inc.  
1100 Spring Street, NW, Suite 550  
Atlanta, Georgia 30309-2848  
Attention: Kenneth J. Clayman  
Senior Vice-President and, General  
Counsel

16.14 Waivers/Rights Cumulative. No waiver of any condition or covenant of this Lease by either party shall be deemed to imply or to constitute a further waiver of the same or any other condition or covenant of this Lease. No failure to or delay in exercise of any right or power given herein, or to insist upon strict compliance with any obligation herein, and no custom or practice of either party at variance with any term hereof shall constitute a waiver or modification of the terms hereof by either party or any right to demand strict compliance with the terms hereof. All rights, powers and privileges conferred hereunder upon parties hereto shall be cumulative but not restrictive to those given by law.

16.15 Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of Rent nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Lessor and Lessee.

16.16 Time of Essence. Time is of the essence in the performance of all covenants and conditions of this Lease in which time is a factor.

16.17 Attorneys' Fees/Waiver of Jury Trial. If either party brings an action to enforce the terms hereof or to declare rights hereunder, the ultimately prevailing party in any such action shall be

entitled to reasonable attorneys' fees to be paid by the losing party, as fixed by the court. The parties hereto shall, and they hereby do, waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties against the other on any matters whatsoever arising out of, or in any way connected with, this Lease, the relationship of Lessor and Lessee, Lessee's use or occupancy of the Premises, and/or any claim of injury or damage arising out of the Premises, Building, or Project.

16.18 Force Majeure. Both parties shall be excused for the period of any delay and shall not be deemed in default with respect to the performance of any of the non-monetary terms, covenants, and conditions of this Lease when prevented from so doing by a cause or causes beyond their reasonable control, which shall include, without limitation, all labor disputes, governmental regulations or controls, fire or other casualty, inability to obtain any material or services, and acts of God.

16.19 Governing Law. The laws of the State of Georgia shall govern the interpretation, validity, performance and enforcement of this Lease. In the event any litigation concerning this Lease, jurisdiction and venue of said dispute shall be proper only in the courts of the State of Georgia located in Fulton County, Georgia, and Lessee consents to the exercise of personal jurisdiction by such courts and hereby waives all defenses related to personal jurisdiction, venue, or *forum non conveniens* in any action involving this Lease, brought and filed in the courts of Georgia.

16.20 Governmental Regulations. Lessee waives the benefits of all existing and future rent control legislation and statutes and similar governmental rules and regulations, whether in time of war or not, to the full extent permitted by law.

16.21 Interest; Late Charge.

(a) Any amount due from either party to the other which remains outstanding ten (10) days after such amount was due and payable shall accumulate interest at a rate (the "**Overdue Rate**") of the lesser of: (i) three (3) percentage points above the rate then most recently announced by JP Morgan Chase Bank N.A. or its successor as its so-called "prime" reference or corporate base rate from time to time in effect at its office in Atlanta, Georgia; or (ii) the maximum rate allowable by law. The provisions of this Section shall not in any way affect either party's remedies in the event of default by the other.

(b) In the event that Lessee shall fail, on more than two (2) occasions during any Lease Year, to pay Basic Rent on or before the date ten (10) days after its due date, then, as to each subsequent failure during such Lease Year to pay Basic Rent on or before the date ten (10) days after its due date, Lessee shall pay to Lessor a late charge in the amount of two percent (2%) of the amount of such installment of Basic Rent.

16.22 Entire Agreement. It is agreed between Lessor and Lessee that there are no oral agreements or representations between the parties hereto affecting this Lease and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements, representations and undertakings, if any, between the parties hereto or between the parties hereto and any real estate broker who may represent either or both of said parties, and none thereof shall be used to interpret or construe this Lease. There are no other representations or warranties between the parties and all reliance with respect to representations is solely upon the representations and agreements contained in this Lease.

16.23 Real Estate Brokers. Lessee and Lessor each represents and warrants to the other that no real estate broker, agent, commission salesman, or other person has represented the warranting party in the negotiations for and procurement of this Lease and of the Premises, and that no commissions, fees or compensation of any kind are due and payable in connection herewith to any real estate broker, agent, commission salesman or other person (even including the broker or other person or firm excluded above from the warranting party's warranty of no broker) except if and only as may be provided in a separate written commission agreement signed simultaneously with or before this Lease by the party against whom the commission or compensation is charged. Each party agrees to indemnify and hold the other hereunder harmless from and against any claim for any such commissions, fees or other

form of compensation by any such third party claiming through the indemnifying party, including, without limitation, any and all claims, causes of action, damages, costs and expenses (including attorneys' fees), associated therewith.

16.24 Hazardous Wastes. In addition to, and not in limitation of any other provision of this Lease, Lessee agrees not to generate, store, use treat or dispose of any "hazardous waste" or "hazardous substance" (as those terms are defined in the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901 et seq., as amended ("**RCRA**") or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C Sections 9601 et seq., as amended ("**CERCLA**"), and any rules and regulations now or hereafter promulgated under either of such acts) or any pollutant or other contaminant on, in, from or about the Premises, Building, or Project which hazardous material is prohibited or controlled by any federal, state or local law, ordinance, rule or regulation now or hereafter in effect, other than the use and storage of such substances and materials as are customarily used in the operation of premises similar to the Premises in compliance with applicable environmental laws (collectively, "**Environmental Laws**"). Lessee shall and hereby does indemnify and hold Lessor harmless from and against any and all loss, damages, expenses, fees, claims, costs and liabilities (including, but not limited to, attorneys' fees and costs of litigation) arising out of or in any manner related to the "release" or "threatened release" of, and for any clean up responsibility imposed upon Lessor under any federal, state or local law, ordinance, rule or regulation now or hereafter in effect, with respect to any "hazardous waste" or "hazardous substance" (as those terms are defined under any Environmental Law), and any rules and regulations now or hereafter promulgated thereunder), or any pollutant, or other contaminant on, in, from or about the Premises, Building, Project or any portion or portions thereof, which release or threatened release arises out of or is in any manner related to Lessee's use or occupancy of the Premises. Lessor shall and hereby does indemnify and hold Lessee harmless from and against any and all loss, damages, expenses, fees, claims, costs and liabilities (including, but not limited to, attorneys' fees and costs of litigation) arising out of or in any manner related to the "release" or "threatened release" of, and for any clean up responsibility imposed upon Lessor under any federal, state or local law, ordinance, rule or regulation now or hereafter in effect, with respect to any "hazardous waste" or "hazardous substance" (as those terms are under any Environmental Law, and any rules and regulations now or hereafter promulgated thereunder), or any pollutant, or other contaminant on, in, from or about the Premises, the Building, the Project or any portion or portions thereof, which release or threatened release arises out of Lessor's use of the Building or the Project. The provisions of this **Section 16.24** shall survive the termination or expiration of this Lease.

16.25 Patriot Act – Executive Order 13224.

(a) Each party hereby certifies that: (i) it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity, or nation.

(b) Each Party hereby agrees to defend, indemnify and hold harmless the other Party from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the foregoing certification.

(c) Lessee hereby represents and warrants to Lessor that Lessee is not, and the entities or individuals constituting Lessee or which may own or control Lessee or which may be owned or controlled by Lessee are not, among the individuals or entities identified on any list compiled pursuant to Executive Order 13224 for the purpose of identifying suspected terrorists.

16.26 Patio Area. Lessee may apply for and pursue all necessary approvals and permits ("**Patio Use Permits**") for use of the area outside the Premises designated on **Exhibit "A-2"** as the "**Patio Area**" for outdoor seating, food and beverage service and other uses ancillary to a use

permitted by **Section 6.1** of this Lease. The application for the Patio Use Permits shall be made in accordance with plans provided by (or otherwise approved by) Lessor. Any modifications to the plans submitted for the Patio Use Permits shall be subject to Lessor's approval, such approval not to be unreasonably withheld, delayed or conditioned. Provided Lessee obtains the Patio Use Permits, if required (and if not required, in the event Lessee elects to utilize the Patio Area), Lessor and Lessee agree that the Premises shall include the Patio Area, subject to the following:

(a) Wherever in the Lease a charge is made based on the square footage of the Premises (including, without limitation, Basic Rent), the square footage of the Patio Area will not be included.

(b) The Patio Area shall be constructed by Lessee with barriers and other items in accordance with the Patio Use Permits (or if not so required, such barriers shall be constructed in accordance with plans approved by Lessor and Lessee). If the Lease expires or is earlier terminated, the barriers and other items shall be deemed to be the property of Lessor.

(c) Lessee agrees to maintain the Patio Area in a condition commensurate with the standard of maintenance of the Project and replace dead and unsightly plants within the Patio Area when needed. Lessee agrees at Lessee's cost and expense to be responsible for the maintenance and daily cleaning of the Patio Area. In the event Lessee fails to maintain the Patio Area in a neat, clean, sanitary, and safe condition, then Lessor, after giving Lessee at least twenty-four (24) hours' notice (except no notice shall be required in the event of an immediate threat of personal injury or material property damage), shall have the right to take such action as may be necessary to clean and maintain the Patio Area, and Lessee shall reimburse Lessor upon demand for the reasonable and actual cost incurred.

(d) Lessee, at its sole cost and expense, shall promptly comply with all applicable governmental rules and regulations affecting the Patio Area including, but not limited to, those of the local health department and the applicable liquor authority. Lessee shall not be permitted to use loud speakers in the Patio Area other than in compliance with the terms of the Master Declaration.

[Signatures on the Following Page]

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument, individually or through their respective authorized officers, agents or attorneys in fact, as the case may be, causing their respective seals to be affixed hereto, the day and year set forth to the left of their respective executions, the latest of which is and shall be deemed to be the date of this Lease.

**LESSOR:**

**CITY OF SANDY SPRINGS PUBLIC FACILITIES  
AUTHORITY**, a political subdivision of the State of  
Georgia

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

**LESSEE:**

**SANDY SPRINGS CITY CENTER, LLC**,  
a Georgia limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT "A-1"

Legal Description of the Premises

EXHIBIT "A-2"

Site Plan of the Building (Depicting the Premises and the Patio Area)

EXHIBIT "B"

Depiction of the Land

EXHIBIT "C"

Agreement Setting Lease Term

Supplement to Lease dated \_\_\_\_\_, 201\_\_ between **CITY OF SANDY SPRINGS PUBLIC FACILITIES AUTHORITY**, ("Lessor") and **SANDY SPRINGS CITY CENTER, LLC** ("Lessee") in certain premises of the Project known as "City Springs". Pursuant to the provisions of Section 2.2A of the Lease, Lessor and Lessee hereby confirm and agree as follows:

1. The Commencement Date of the Term of this Lease is \_\_\_\_\_.
2. The Term of the Lease ends on \_\_\_\_\_.

**LESSOR:**

**CITY OF SANDY SPRINGS PUBLIC FACILITIES AUTHORITY**, a political subdivision of the State of Georgia

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

**LESSEE:**

**SANDY SPRINGS CITY CENTER, LLC**, a Georgia limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT "D"

Schedule of Permitted Encumbrances

## EXHIBIT "E"

### Construction Provisions

1. **Definitions.** For purposes of this **Exhibit "E"**, all terms defined in the body of this Lease shall have the meanings ascribed therein and the following terms shall have the following meanings:

**"Actual Substantial Completion Date"** shall mean the date upon which Substantial Completion of the Lessor Work occurs.

**"City"** shall mean the City of Sandy Springs, Georgia.

**"City Improvements"** shall mean all improvements required to be constructed and installed by the City for the benefit of Lessee pursuant to the City Improvements Completion and Escrow Agreement;

**"City Improvements Agreement"** shall mean that certain City Improvements Completion and Escrow Agreement dated on or about the date of this Lease, between the City and Lessee.

**"Design Documents"** shall mean the scope of work, plans and specifications for the Lessor Work, set forth on **Schedule 1** to this **Exhibit "E"**.

**"Design Services"** shall mean all architectural, engineering, design or other services required for the design and engineering of the Improvements and the administration of the Lessor Work, to be performed by the Lessor Architect and other Lessor Design Professionals.

**"Force Majeure"** shall mean any of the following events or circumstances, but only **(i)** if and to the extent such event or circumstance is beyond the reasonable control of Lessor and all Lessor Parties, **(ii)** if and to the extent Lessor and all Lessor Parties shall have taken all reasonable precaution to prevent delays by reason of such event or circumstance if such event or circumstance was actually known in advance to Lessor or any Lessor Party, **(iii)** if and to the extent such event or circumstance is not caused by the fault or negligence of Lessor, any Lessor Party, or any of their respective employees, agents or contractors, and **(iv)** if and to the extent Lessor and all Lessor Parties shall have taken all reasonable precautions to prevent further delays owing to such event or circumstance: **(a)** strikes, work stoppages, lockouts or picketing (legal or illegal); **(b)** acts of God, including, without limitation, tornadoes, hurricanes, floods, sinkholes, landslides, earthquakes, epidemics, quarantine and pestilence; **(c)** adverse weather conditions for which the Lessor Contractor is entitled to an extension of time under the GMP Agreement; **(d)** fire and other casualties; **(e)** condemnation or other exercise of the power of eminent domain; **(f)** acts of a public enemy, acts of war, terrorism, effects of nuclear radiation, blockades, insurrections, riots, civil disturbances or national or international calamities; **(g)** unavailability of materials not reasonably anticipatable; and **(h)** other circumstances for which Lessor Contractor is entitled to an extension of time under the GMP Agreement. Force Majeure shall in any event exclude lack of sufficient funds or any other financial difficulty of Lessor or any Lessor Party.

**"Force Majeure Delay"** shall mean any period of time during which the commencement, prosecution or completion of the Lessor Work is delayed by events of Force Majeure.

**"GMP Agreement"** shall mean that certain Contract for Construction of City of Sandy Springs, Georgia, City Center Project between City of Sandy Springs, Georgia, and Holder Construction Group, LLC dated June 30, 2015.

**"Lessee Delay"** shall mean any period of time during which the commencement, prosecution or completion of the Lessor Work is delayed by the act of Lessee, or any employee,

agent or other representative of Lessee, or any separate contractor employed by Lessee (and such separate contractor's agents, employees, contractors and representatives).

**"Lessee Work"** shall mean Alterations to the Premises and other work in preparation of the Premises for occupancy.

**"Lessor Architect"** shall mean the architect selected by Lessor in connection with the Lessor Work, i.e., **Rosser International, Inc.**

**"Lessor Contractor"** shall mean each contractor with Lessor for the performance of the Lessor Work, or any portion thereof, including, without limitation, **Holder Construction Group, LLC.**

**"Lessor Design Professional"** shall mean the Lessor Architect or any other person hired, retained or engaged by, through or under Lessor or Lessor Architect to provide any Design Services.

**"Lessor Party"** shall mean the Lessor Architect, any other Lessor Design Professional, any Lessor Contractor, any Lessor Subcontractor, or any other person performing or providing any of the Design Services or the Lessor Work or furnishing or supplying goods, materials or services in connection with the Design Services or the Lessor Work.

**"Lessor Subcontractor"** shall mean any Person having a contract with any Lessor Contractor or with any other Lessor Subcontractor for the performance of any part of the Lessor Work.

**"Lessor Work"** shall mean the construction of the Building and the Premises pursuant to the Design Documents.

**"Lessor Work Costs"** shall mean all costs and expenses of any kind or nature whatsoever of the development, design, construction and installation of the Lessor Work.

**"Lessor's Guarantee"** shall have the meaning set forth in **Section 6(a)**.

**"Net Lessor Work Delay"** shall mean the positive difference, if any, of: (a) the total number of days by which the Actual Substantial Completion Date is delayed beyond the Scheduled Substantial Completion Date; minus (b) the total number of days of (i) Force Majeure Delay of the Lessor Work, and (ii) Lessee Delay.

**"Non-Guarantee Claims"** shall have the meaning set forth in **Section 6(c)**.

**"Non-Lessor Guarantee"** shall mean any warranty or guarantee received by Lessor from any Lessor Party in connection with the Improvements.

**"Outside Delivery Date"** shall mean the date **( ) months** after the Required Substantial Completion Date.

**"Punch List"** means the list of Punch List Items to be prepared initially by the Lessor Architect pursuant to **Section 5(b)**.

**"Punch List Items"** means items of the Lessor Work that are incomplete but, in the aggregate, do not materially interfere with the use or enjoyment of the Improvements for their intended purposes.

**“Required Substantial Completion Date”** shall mean the date by which Lessor has agreed to cause Substantial Completion of the Lessor Work to occur, which shall be **August 1, 2017**.

**“Substantial Completion”** shall mean: **(a)** completion of all elements of the Lessor Work in accordance with and in compliance with the Design Documents and all applicable Legal Requirements so that **(i)** Lessee can use the Improvements for their intended purposes without material interference to Lessee conducting its ordinary business activities, and **(ii)** the only incomplete items are Punch List Items; **(b)** the issuance of a final, permanent and unconditional certificate of occupancy from the applicable governmental authority; **(c)** the issuance by the Lessor Architect of a certificate of substantial completion (AIA Doc. No. G704); **(d)** Lessee, its employees, agents and invitees, have ready access to the Improvements; **(e)** all fixtures, and equipment, including, without limitation, all mechanical, electrical, plumbing and life safety systems, are installed and in good operating order; **(f)** the Improvements are ready for the installation of any equipment, furniture, fixtures, or decoration that Lessee will install; **(g)** the Improvements are broom clean; and **(h)** the City Improvements shall have been substantially completed in accordance with the City Improvements Agreement, and all requirements for substantial completion thereunder have been satisfied.

## **2. Design Documents.**

**(a)** Lessor and Lessee have approved the Design Documents.

**(b)** Lessee may propose to Lessor, at any time before the Actual Substantial Completion Date, one or more changes to the Design Documents in connection with Lessor's Work. As promptly as reasonably practicable after the receipt and approval thereof, Lessor shall provide Lessee with a written estimate of the delay (if any) in the Actual Substantial Completion Date (which delay shall be a Lessee Delay) and the amount of additional Lessor Work Costs that will be paid or incurred by Lessor by reason thereof or, if such be the case, the amount of Lessor Work Costs that will be saved by reason thereof. If Lessee fails to approve of the revised Design Documents and associated estimate within ten (10) business days after delivery of the same, Lessee shall be deemed to have abandoned its request for such change, and the Improvements shall be constructed in accordance with the then-existing Design Documents. If Lessee approves the revised Design Documents and associated estimate within said ten (10) business day period by signing and returning a copy of Lessor's estimate, Lessor shall cause the Improvements to be constructed in accordance with the Design Documents as so revised. Unless requested in writing by Lessee to the contrary, Lessor shall continue with construction of the Improvements according to the then-existing Design Documents during the pendency of any proposed change in the Design Documents until such change is approved by Lessor and Lessee as provided above. Lessor shall have the right to determine, in its sole discretion, whether to agree to Lessee's request to delay or stop construction during the pendency of any proposed change in the Design Documents. Any delay or stoppage in construction requested in writing by Lessee and agreed to by Lessor shall constitute a Lessee Delay.

**(c)** If Lessee has requested and approves of Lessor's estimate of the time and cost of a proposed change to the Design Documents, then: **(i)** Lessee shall be liable and responsible for, and shall pay to Lessor, the total of all additional Lessor Work Costs paid or incurred by Lessor by reason of such change, whether or not such total exceeds Lessor's estimate; **(ii)** if such change will result in a savings in Lessor Work Costs, then such savings shall be offset against the initial installments of Basic Rent and Additional Rent payable under this Lease; and **(iii)** any delay in the Actual Substantial Completion Date resulting from the requested change shall constitute Lessee Delay, whether or not the delay exceeds Lessor's estimate.

**3. Performance of Lessor Work.**

(a) Lessor shall promptly commence, and shall thereafter diligently prosecute to completion, the Lessor Work, in accordance with the Design Documents and the provisions of this **Exhibit "E"**.

(b) Subject to Force Majeure Delay, Lessor shall use commercially reasonable efforts to cause the Lessor Work to be Substantially Completed on or before the Required Substantial Completion Date.

(c) Lessor shall be ultimately liable and responsible for all matters pertaining to the development, design, permitting, construction and installation of the Lessor Work and for the performance of the Lessor Parties and their respective agents, employees, contractors, subcontractors and representatives, and for all services, work and materials performed, provided, and/or furnished by any of them, including, without limitation: (i) the development, design, construction and installation of the Lessor Work; (ii) the preparation of the Design Documents, and the design, architectural and engineering services related thereto; (iii) the design, functional and structural quality and integrity of the Lessor Work, as constructed in accordance with the Design Documents; (iv) the compliance of the Lessor Work with all applicable Legal Requirements of all governmental authorities having jurisdiction with respect thereto; (v) the compliance of the construction of the Lessor Work with the Design Documents; (vi) the quality, integrity and freedom from defects of the workmanship and materials incorporated into the Lessor Work; and (vii) the professional quality, technical adequacy and accuracy of the Design Documents and the Lessor Work.

(d) Subject to Lessee's compliance with the conditions set forth in **Section 7(c)**, Lessor shall permit Lessee and its agents, employees, representatives or consultants to enter upon the Building and the Premises to inspect the Lessor Work, and to examine: (i) all plans, shop drawings and work details pertaining to the Lessor Work; and (ii) certificates and reports of inspecting architects, engineers and public officials pertaining to the Lessor Work. Lessor shall maintain such records in a single, consolidated, easily accessible location.

(e) Lessor shall promptly cause to be corrected any aspect or element of the Lessor Work that is defective or is not in accordance with the Design Documents, whether observed before or after Substantial Completion, and whether or not fabricated, installed or completed.

(f) Lessor shall be liable and responsible to Lessee for acts and omissions of Lessor, the Lessor Architect, the Lessor Contractor, and their respective agents, employees, contractors and representatives.

**4. Payment of Lessor Work Costs.** Lessor shall pay all Lessor Work Costs other than costs expressly set forth in **Section 2(c)** to be borne by Lessee.

**5. Substantial Completion; Punchlist Items.**

(a) When Lessor reasonably believes that Substantial Completion has occurred, a date for an inspection by the Lessor Architect shall be set by Lessor in a written notice to Lessee and the Lessor Architect, which date shall not be less than **three (3) business days** after the date of the receipt of the written notice from Lessor of such inspection. If the inspection reveals that Substantial Completion has not occurred, Lessor shall promptly cause any unperformed or incorrect construction work to be performed and corrected and then shall request a reinspection by the same procedure set forth above. If the inspection (or reinspection, as the case may be) reveals that Substantial Completion has occurred, the Lessor Architect shall issue its certificate of Substantial Completion.

(b) During the inspection, or the reinspection as applicable, the Lessor Architect shall prepare the Punch List, and deliver the Punch List to Lessor within three (3) business days after the inspection. Within **forty five (45) days** after the Actual Substantial Completion Date (or such additional time as may be reasonably necessary to complete "long lead" items), Lessor shall cause all Punch List Items to be completed and corrected, any and all recleaning required by the completion and correction of the Punch List Items and removal of equipment and excess materials and debris from the Premises to be completed. Within **five (5) days** after receipt of the Punch List, Lessor shall submit to the Lessor Architect for its approval a written estimate of the costs to correct and complete the Punch List Items. Lessor shall deposit with Lessee an amount equal to **One Hundred Fifty Percent (150%)** of the estimate as submitted and approved by the Lessor Architect, as security for the correction and completion of the Punch List Items. If, at the end of the **forty five (45) day period** (or the longer period for "long lead" items) for correction and completion of the Punch List Items, the correction and completion has not been accomplished, Lessee may, but shall have no obligation to do so, use such funds to complete and correct the Punch List Items. Any excess funds remaining after completion and correction of the Punch List Items, whether by Lessor or Lessee, shall be paid to Lessor promptly after the completion of all Punch List Items.

## 6. Guarantees; Assignment of Claims.

(a) Lessor guarantees to Lessee that the materials and equipment provided as part of the Improvements will be of good quality and new unless otherwise required or permitted by the Design Documents, that the Improvements will be free from defects not inherent in the quality required or permitted by the Design Documents, and that the Improvements will not deviate materially from the Design Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. If, within **two (2) years** after the Actual Substantial Completion Date any of the Improvements is found to be defective, as hereinabove defined, Lessor shall, at Lessor's cost, correct it, or cause it to be corrected, promptly after written notice from Lessee to do so. The guarantee provided by Lessor to Lessee under this Section 6(a) is referred to herein as "**Lessor's Guarantee**".

(b) Lessor shall obtain from the Lessor Parties all Non-Lessor Guarantees specified in or required by the Design Documents. Effective as of the date on which Lessor's Guarantee expires, Lessor hereby assigns, transfers and sets over to Lessee all of Lessor's right, title and interest in, to and under all Non-Lessor Guarantees for those portions of the Premises that Lessee shall be responsible for repairing or maintaining under this Lease which are still then in effect which are still then in effect.

(c) Notwithstanding anything contained herein to the contrary, the parties hereby acknowledge that Lessor may have certain claims against a Lessor Party other than on the basis of any guarantee furnished by such Lessor Party (the "**Non-Guarantee Claims**"). Lessor may elect to pursue a Non-Guarantee Claim in Lessor's reasonable discretion; provided, however, at Lessee's request and expense, Lessor shall evaluate any potential Non-Guarantee Claim to determine the validity, materiality and likelihood of success on such claim in light of all surrounding facts and circumstances and exercising commercially reasonable judgment, but with the ultimate decision of whether to pursue such claim being made by Lessor in its reasonable discretion. If Lessor pursues a Non-Guarantee Claim at Lessee's request, all costs associated with the pursuit of such Non-Guarantee Claim, including, without limitation, attorneys' fees, shall be at Lessee's sole cost and expense.

(d) Nothing set forth in this **Exhibit "E"** shall diminish, affect, impede or impair, in any manner whatsoever, any of Lessor's duties and obligations for the maintenance, repair and replacement of the Premises pursuant to this Lease.

7. **Access by Lessee Prior to Substantial Completion of the Lessor Work.**

(a) Subject to Lessee's compliance with the conditions set forth in **Section 7(c)**, Lessee shall have the right to come onto the Premises to inspect the Lessor Work from time to time during the course of performance prior to the Actual Substantial Completion Date, at reasonable times and upon **twenty-four (24) hours** prior written notice to Lessor, subject, however, to any limitations set forth in the Design Documents or the GMP Agreement. Unless otherwise consented to by Lessor, Lessee's right to inspect shall be limited to inspection by the representatives of Lessee named in **Section 9** and any third party construction-related experts and consultants as Lessee may from time to time select to undertake an objective review of the Lessor Work. Lessor reserves the right to have its representatives, the Lessor Work Architect, the Lessor Work Contractors or other consultants or construction-related experts accompany Lessee during such inspections. In the event that Lessee or any of its permitted invitees has actual knowledge of any aspect of the Lessor Work which Lessee reasonably believes to deviate from the Design Documents, Lessee shall immediately notify Lessor in writing of such deviation.

(b) Subject to Lessee's compliance with the conditions set forth in **Section 7(c)**, and with all other provisions of this Lease, Lessee shall have the right to commence and prosecute Lessee Work prior to the Actual Substantial Completion Date. Lessee shall adopt a schedule for performing the Lessee Work reasonably approved by Lessor and consistent with the schedule of the Lessor Work Contractor for the Lessor Work, and shall see that the Lessee Work is conducted in such a manner as to maintain harmonious labor relations and as not to interfere with or to delay the Lessor Work. Subject to the foregoing, at any time prior to the Actual Substantial Completion Date, Lessor shall give access and entry to the Premises to Lessee and its contractors performing the Lessee Work.

(c) Lessee shall comply, and shall cause all of its permitted inspecting parties, contractors, agents, employees, licensees and invitees to comply, with all applicable health and safety rules of which Lessee has been informed established by Lessor, the Lessor Architect and/or the Lessor Contractors for personnel present on the Premises. Lessee's inspecting parties, contractors, agents, employees, licensees and invitees shall conduct their activities and store their property in such a manner as to not interfere with or interrupt activities on the Premises in any manner. Lessee is not permitted to perform any destructive testing of Lessor Contractor's work. Any delay or interruption in the progress of the Lessor Work arising out of or related to the presence of Lessee or any of Lessee's inspecting parties, contractors, agents, employees, licensees or invitees or the property of any thereof pursuant to this **Section 7(c)** shall constitute Lessee Delay.

8. **Delays; Outside Delivery Date.**

(a) If (i) the Actual Substantial Completion Date is delayed beyond the Required Substantial Completion Date, and (ii) there is Net Lessor Work Delay, then Basic Rent shall be abated from and after the Commencement Date for (A) the number of days of Net Lessor Work Delay, plus (B) an additional number of days such that the total amount of Basic Rent abated pursuant to this clause (B) is equal to the total damages for which Lessee is liable to Space Tenants by reason of the Net Lessor Work Delay.

(b) Notwithstanding anything to the contrary set forth in this Lease or this **Exhibit "E"**, in the event Lessor fails or is unable to achieve Substantial Completion for any reason other than Lessee Delay, including Force Majeure, on or prior to the Outside Delivery Date, then Lessee may, in its sole and absolute discretion, cancel and terminate this Lease by providing written notice thereof to Lessor at any time thereafter (but prior to Substantial Completion), whereupon this Lease shall terminate effective as of the date set forth in Lessee's notice.

9. **Authorized Representatives.** Any consent, approval, authorization or other action required or permitted to be given or taken under this **Exhibit "E"** by Lessor or Lessee, as the case may

be, shall be given or taken by one or more of the authorized representatives of each. For purposes of this Exhibit "E": (i) the authorized representatives of Lessor shall be any one or more of the following – \_\_\_\_\_ or \_\_\_\_\_; and (ii) the authorized representatives of Lessee shall be any one or more of the following - \_\_\_\_\_ or \_\_\_\_\_. Either party hereto may from time to time designate in writing other or replacement authorized representatives to the other party hereto. The written statements and representations of any authorized representative of Lessor or Lessee shall be binding upon the party for whom such person is an authorized representative, and the other party hereto shall have no obligation or duty whatsoever to inquire into the authority of any such representative to take any action which he proposes to take.

10. **Supplemental to Lease.** The provisions of this Exhibit "E" are intended to supplement and to be a part of the body of this Lease and not to be in substitution for any related provisions in the body of this Lease.

#### **SCHEDULES ATTACHED**

Schedule 1 - Design Documents

Schedule 1  
Design Documents

EXHIBIT "F"

Depiction of Building Common Area

EXHIBIT "G"

Depiction of North Parcel Retail Space

EXHIBIT "H"

Approved Form of Subordination, Non-Disturbance and Attornment Agreement

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

---

Space Above This Line for Recorder's Use

**SUBORDINATION, NON-DISTURBANCE, AND  
ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT (this "Agreement") is made as of this \_\_\_ day of \_\_\_\_\_, 20\_\_, by and among \_\_\_\_\_, a \_\_\_\_\_ (together with its successors and assigns, "Lender"), **Sandy Springs City Center, LLC**, a Georgia limited liability company ("Lessee"), and **City of Sandy Springs Public Facilities Authority**, a political subdivision of the State of Georgia ("Lessor").

RECITALS

A. Lessee is the lessee under that certain Master Lease with Lessor dated as of \_\_\_\_\_ (the "Lease"), covering approximately \_\_\_\_\_ square feet of space (the "Premises"), in \_\_\_\_\_ (the "Building"), located on that certain real property more particularly described on Exhibit A (the "Real Estate"), all as more particularly described in the Lease.

B. This Agreement is being entered into in connection with a first mortgage loan (the "Loan") which Lender is making to Lessor. The Loan is evidenced by a Note (the "Note") and secured by a Deed to Secure Debt (the "Security Instrument"), recorded in the Official Records of Fulton County in Deed Book \_\_\_, page \_\_\_ (the Note, Security Instrument and all other documents executed and delivered in connection with the Loan are hereinafter collectively referred to as the "Loan Documents").

C. The Security Instrument constitutes a first lien upon, among other things, the Real Estate and the current and future improvements situated thereon, including, but not limited to, the Building and the Premises (collectively, the "Property").

NOW THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

## AGREEMENTS

1. Subordination. Subject to the terms, provisions and limitations of this Agreement, the Lease is and at all times shall be subordinate to the lien and charge of the Security Instrument and all terms and conditions contained therein, and to all substitutions, renewals, modifications and amendments thereto (including, without limitation, any of the foregoing which increase the indebtedness secured thereby).

2. Non-Disturbance; Continuation of Lease. Except as expressly provided in the Lease by reason of the occurrence of an "Event of Default" under the Lease, neither the Lease, Lessee's tenancy, nor Lessee's rights under the Lease shall be disturbed, terminated or otherwise adversely affected, nor shall the Lease otherwise be affected, by any default under the Security Instrument. In the event of foreclosure of the Security Instrument (by judicial process, power of sale or otherwise), or other enforcement of the Security Instrument, or conveyance in lieu of foreclosure (collectively, a "Foreclosure"), Lender agrees (which agreement shall be binding on itself, its successors and assigns, and any other person or entity which acquires the Premises or the Building pursuant to such Foreclosure (the person or entity which acquires the Premises or the Building pursuant to a Foreclosure, the "Transferee")), that; (i) the Transferee shall be bound to Lessee for the term of the Lease (including renewals and extensions thereof, whether by agreement of Lessor and Lessee, or option of Lessee to renew or extend the Lease theretofore exercised or thereafter arising); (ii) the Transferee shall be deemed, without any further agreement between the parties, to have assumed and agreed to carry out any and all of the covenants and obligations of Lessor under the Lease during the period commencing on and after the date such party acquires the Premises or Building, as provided in Section 16.7(a) of the Lease; (iii) the rights of Lessee under the Lease shall expressly survive such Foreclosure; and (iv) the Lease shall in all respects continue in full force and effect after and notwithstanding such Foreclosure. Further, notwithstanding anything to the contrary set forth in the Security Instrument, Lender shall be obligated to make Proceeds and Awards (as such terms are defined in the Lease) available for Restoration (as such terms is defined in the Lease) in accordance with the Lease. The foregoing is not intended to expand any existing rights of Lessee under the Lease or limit Transferee's right to exercise any or all remedies under the Lease in the event Lessee fails to comply with and perform its obligations under the Lease.

3. Attornment. In the event of a Foreclosure, Lessee shall attorn to the Transferee and recognize the Transferee as Lessor under the Lease. Such attornment as provided herein shall be self-operative without further aid or execution of further instruments by parties to the Agreement immediately upon the Transferee succeeding to the interest of Lessor under the Lease.

4. Limitation of Liability. Notwithstanding anything to the contrary contained herein or in the Lease, in the event of a Foreclosure, the Transferee shall in no event or to any extent be subject to, bound by, or liable for any of the following:

(a) any act or omission of any prior Lessor, provided, however, that this provision shall not relieve the Transferee or its successors or assigns, from any obligations under the Lease from and after the date such party acquires title to the Premises or the Building, with respect to matters which are ongoing in nature, and which relate to physical aspects of the Premises or Building which are the obligation of "Lessor" under the Lease;

(b) any offsets, credits, claims or defenses which Lessee may have against Lessor or any prior landlord based on any act, omission, event or occurrence before the Foreclosure;

(c) any payment of rent under the Lease by Lessee more than thirty (30) days in advance of its due date;

- (d) any security deposits which are not actually received by the Transferee;
- (e) any amendment, cancellation, modification, or surrender of the Lease made without the express written consent of Lender; or
- (f) any agreement not expressly set forth in the Lease or in an amendment or modification of the Lease made with the express written consent of Lender.

5. Further Documents. The foregoing provisions shall be self-operative and effective without the execution of any further instruments on the part of any party hereto. Lessee agrees, however, to execute and deliver to Lender or to any person to whom Lessee herein agrees to attorn such other instruments as either shall reasonably request in order to confirm said provisions.

6. Notice and Cure. Lessee agrees that if there occurs a default by Lessor under the Lease:

(a) A copy of each notice of a default or event of default given to Lessor pursuant to the Lease shall also be given to Lender; and

(b) If Lessor shall fail to cure any default within the time prescribed by the Lease (or within a reasonable time if no such time period is provided), Lessee shall give further notice of such default to Lender. Lender shall have an additional thirty (30) days after the expiration of Lessor's cure period (or after the giving of such notice to Lender if no Lessor cure is provided) within which to cure such default (if curable by Lender) or, if such default cannot reasonably be cured within that time, then such additional time as may be necessary if, within the initial thirty (30) day cure period, Lender shall have commenced and shall be diligently pursuing the remedies necessary to cure such default including, without limitation, commencement of foreclosure proceedings or otherwise acquiring title to the Property, if necessary to effect such cure. The foregoing rights to cure a Lessor default shall be exercisable in the sole discretion of Lender, and, Lender shall have no obligation to cure any default by Lessor.

7. Notices. All notices, demands and requests given or required to be given hereunder shall be in writing and shall be deemed to have been properly given when personally served or if sent by U.S. registered or certified mail, postage prepaid, addressed as follows when received:

Lender:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attn: \_\_\_\_\_

Lessee:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attn: \_\_\_\_\_

Lessor:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attn: \_\_\_\_\_

8. Payment of Rent. Lessee hereby acknowledges that the Lease and the rents and all other sums due thereunder have been assigned to Lender as security for the Loan evidenced and secured by the Note and secured by the Security Instrument. If Lender notifies Lessee of the occurrence of a default under the Note, Security Instrument or any other document, instrument or agreement evidencing or securing the indebtedness and/or demands that Lessee pay rents and all other sums due or to be become due under the Lease directly to Lender, Lessee shall pay rent and all other sums due under the Lease directly to Lender or as otherwise directed in writing by Lender without the need on the part of Lender to document or otherwise establish any default. Lessor hereby irrevocably authorizes and directs Lessee to make the foregoing payments to Lender upon such notice and demand without the need to inquire of Lessor as to the validity of such notice or any contrary notice or direction from Lessor.

9. Binding Effect. The terms, covenants and conditions hereof shall inure to the benefit of and be binding upon the Lender, Lessee, Lessor, any Transferee, and their respective heirs, executors, administrators, legal representatives, successors and assigns.

10. Modification. This Agreement may not be modified orally or in a manner other than by an agreement signed by the parties hereto or their respective successors in interest.

11. Choice of Law. This Agreement shall be governed by the internal law (and not the law of conflicts) of the State in which the Property is located.

12. Counterparts. This Agreement may be executed in two or more counterparts which, when taken together, shall constitute one and the same original.

[signatures begin on the following page]

WITNESS the due execution of this instrument by the parties hereto the day and year first above written.

Signed sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

MY COMMISSION EXPIRES:

\_\_\_\_\_  
(Notary Seal)

LENDER:

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[signatures continue on the following page]

Signed sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

MY COMMISSION EXPIRES:

\_\_\_\_\_  
(Notary Seal)

LESSEE:

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[signatures continue on the following page]

Signed sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

MY COMMISSION EXPIRES:

\_\_\_\_\_  
(Notary Seal)

LESSOR:

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY SPRINGS  
DECLARATION OF PARKING EASEMENTS  
AND COST SHARING AGREEMENT**

Upon recording, please return to:

Wendell K. Willard  
Law Office of Wendell K. Willard  
7840 Roswell Rd, Suite 330  
Sandy Springs, Georgia 30350

**CITY SPRINGS  
DECLARATION OF PARKING EASEMENTS  
AND COST SHARING AGREEMENT**

THIS CITY SPRINGS DECLARATION OF PARKING EASEMENTS AND COST SHARING AGREEMENT ("Declaration") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by the CITY OF SANDY SPRINGS PUBLIC FACILITIES AUTHORITY, a political subdivision of the State of Georgia ("Declarant").

**WITNESSETH:**

WHEREAS, Declarant intends, by recording of this Declaration, to establish a general parking plan for the planned mixed-use development presently commonly known as City Springs (the "City Springs Project") located in the City of Sandy Springs, Georgia, on that certain real property more particularly described on Exhibit "A-3" attached hereto (the "Property").

WHEREAS, Declarant intends to create certain surface, sub-surface and air rights parcels within the Property, as more particularly depicted on that certain master plan for the City Springs Project, a copy of which is attached hereto as Exhibit "A-1" (the "Master Plan") and that certain parking plan for the City Springs Project, as copy of which is attached hereto as Exhibit "A-2" (the "Parking Plan"), as both may be amended from time to time in accordance with the Master Declaration.

WHEREAS, Declarant will cause to be constructed a two (2) level underground parking garage and facilities relating thereto (collectively, the "City Garage Improvements") on that certain parcel designated as the "City Parking Parcel" on the Parking Plan and more particularly described on Exhibit "B-1" attached hereto (the "City Parking Parcel"), which City Garage Improvements are to be for the shared use of visitors and employees of the non-residential portions of the City Springs Project, which construction shall be completed by Declarant as set forth in certain plans and specifications mutually acceptable to Developer (as defined below) and Declarant relating thereto;

WHEREAS, Declarant will convey to Sandy Springs City Center, LLC ("Developer") that certain parcel designated as the "North Parcel" on the Master Plan and more particularly described on Exhibit "B-2" attached hereto (the "North Parcel");

WHEREAS, Declarant will additionally convey to Developer that certain fee simple and air rights parcel designated as the "South Developer Parcel" on the Master Plan and more particularly described on Exhibit "B-3" attached hereto (the "South Developer Parcel"), with Developer to develop its proposed residential and commercial real estate project (collectively, "Developer's Project") on the North Parcel and South Developer Parcel (collectively, the "Developer Parcels");

WHEREAS, Declarant is to retain the surface and sub-surface rights in and to that certain parcel located beneath the air rights portion of the South Developer Parcel designated as the "South City Parcel" on the Master Plan and more particularly described on Exhibit "B-4" attached hereto (the "South City Parcel");

WHEREAS, Declarant will cause to be constructed a six (6) level integrated, subterranean and above-grade structured parking deck and facilities relating thereto (collectively, the “South Deck Improvements”) to be located on portions of the South Developer Parcel and South City Parcel designated as the “South Parking Parcel” on the Parking Plan and more particularly described on Exhibit “B-5” attached hereto (the “South Parking Parcel”);

WHEREAS, the portion of the South Deck Improvements to be constructed on the South City Parcel (collectively, the “South Deck Shared Improvements”), designated as the “South Deck Shared Improvements” on the Parking Plan, are to be for the shared use of Declarant and the Owner of the Developer Parcels;

WHEREAS, the portion of the South Deck Improvements to be constructed on the South Developer Parcel (collectively, the “South Deck Private Improvements”), designated as the “South Deck Private Improvements” on the Parking Plan, are to be conveyed in fee simple, as an air rights parcel, to Developer, and reserved for the exclusive use and benefit of, the Owner of the Developer Parcels;

WHEREAS, Declarant will develop a mixed-use building designated as the “Mixed-Use Building” on the Master Plan, to include, without limitation municipal offices and meeting spaces for the City of Sandy Springs, retail space, a performing arts facility (the “PAC”) and multi-purpose space (the “Mixed-Use Building”).

WHEREAS, pursuant to that certain Master Lease between Declarant, as lessor, and Developer, as lessee (“Master Lessee”), dated of even date herewith (as the same may be amended from time to time in accordance therewith, the “Master Lease”), the City will lease to Developer a portion the Mixed-Use Building designated as the “Master Lease Premises” on the Master Plan and being more particularly described therein (the “Master Lease Premises”) for further leasing to commercial tenants;

WHEREAS, Declarant intends that there will be developed on the “Outparcel” on the Master Plan and more particularly described on Exhibit “B-6” attached hereto (the “Outparcel”) restaurant or food and drink facilities; and

WHEREAS, Declarant desires to provide for the overall development, administration, maintenance and operation of the parking areas located or to be located within the City Springs Project and to allocate the cost and expenses to be incurred in connection therewith.

NOW, THEREFORE, Declarant, with the consent of Developer, does hereby declare, establish, grant and create the easements and agreements set forth herein. Unless otherwise provided in this Declaration, the easements set forth herein shall be deemed effective upon recordation of this Declaration in the Public Records.

## **ARTICLE 1** **DEFINITIONS**

The terms in this Declaration and the exhibits hereto shall generally be given their natural, commonly accepted definitions except as otherwise specified. Any capitalized term not otherwise defined herein shall have the meaning ascribed to the same in the Master Declaration,

as the same now exists or hereafter may be modified or amended. The capitalized terms are defined as set forth below:

1.1 **“Access Control Equipment”** shall mean barriers, fencing, gates, access control arms, ticketing machines, RFID readers, barriers and/or other similar fixtures or equipment, including, without limitation, all mechanical or other equipment, structures, devices, and related items associated with the segregation of particular Parking Spaces from the remainder of the Parking Improvements.

1.2 **“Access Controlled Parking Spaces”** shall mean and include any Parking Spaces, which are now or hereafter physically segregated from other Parking Spaces by the use of Access Control Equipment in accordance with this Declaration, and which shall be for the exclusive use of an Owner and its lessees, guests and invitees.

1.3 **“Access Device”** shall mean an access card, transmitter, RFID, application or other device utilized for entry to or exit from Access Controlled Parking Spaces.

1.4 **“Applicable Law”** shall mean any law, regulation, rule, order, policy or ordinance of any governmental or quasi-governmental entity, now in effect or hereafter promulgated, that is applicable to all or any portion of City Springs.

1.5 **“Association”** shall mean the property owners association for the Property organized pursuant to the Master Declaration.

1.6 **“attached hereto”** shall mean “attached hereto and by this reference made a part hereof”.

1.7 **“Business Day”** shall mean any Day excluding any Saturday, any Sunday, and any legal holiday observed by the State of Georgia.

1.8 **“City”** shall mean the City of Sandy Springs, Georgia.

1.9 **“City Garage Improvements”** shall have the meaning set forth in the Recitals.

1.10 **“City Parking Areas”** shall mean those certain areas located within the City Garage Improvements, designated on the Parking Plan as the “City Parking Areas”.

1.11 **“City Parking Parcel”** shall have the meaning set forth in the Recitals.

1.12 **“City Parking Spaces”** shall mean those certain Parking Spaces located within the City Parking Areas.

1.13 **“City Springs Project”** shall have the meaning set forth in the Recitals.

1.14 **“Day”** shall mean any calendar day; provided, however, if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday or legal holiday in the State of Georgia, then such time period shall be automatically extended to the close of business on the next regular Business Day.

1.15 **“Declarant”** shall mean the City of Sandy Springs Public Facilities Authority, a political subdivision of the State of Georgia, in its capacity as Declarant under this Declaration and not in its separate individual capacity, and its successors and assigns, and shall include any assignee of Declarant Interest pursuant to Section 8.3, and any successor to Declarant Interest pursuant to Section 8.3.

1.16 **“Declarant Interest”** shall mean Declarant Powers, together with all of the right, title, interest, privileges, benefits and options of the “Declarant” under this Declaration.

1.17 **“Declarant Obligations”** shall mean all of the duties, obligations, liabilities and responsibilities of the “Declarant” under this Declaration.

1.18 **“Declarant Powers”** shall mean all of the rights, reservations, power and authority of Declarant pursuant to this Declaration.

1.19 **“Declaration”** shall have the meaning set forth in the introductory paragraph.

1.20 **“Developer”** shall have the meaning set forth in the Recitals.

1.21 **“Developer Parcels”** shall have the meaning set forth in the Recitals.

1.22 **“Developer’s Project”** shall have the meaning set forth in the Recitals.

1.23 **“Developer Retail Parties”** shall mean: (a) the Owner of the retail portion of the North Parcel and its successors, assigns and Permittees; (b) the Master Lessee and its successors, assigns and Permittees; and (c) a Space Tenant occupying space in the retail portion of the North Parcel or the Master Lease Premises. **“Developer Retail Party”** shall mean any one of the Developer Retail Parties.

1.24 **“Easement Areas”** shall mean any portion of the Parking Area whereon, wherein, or wherever is located any of the Easements declared and established by this Declaration.

1.25 **“Easement Effective Date”** shall mean the date of the issuance of the temporary certificate of occupancy for the Parking Improvements.

1.26 **“Easements”** shall mean, collectively, the easements declared and established by this Declaration.

1.27 **“Eligible Holder”** shall have the meaning given to it in Section 6.1.

1.1 **“Event”** or **“Events”** shall mean art shows, farmers’ markets, community programs, concerts and other educational, cultural, artistic, musical, entertainment, seasonal and holiday, promotional, charitable, sporting and other events authorized by Declarant utilizing the Public Park, the PAC and/or any other designated Event Area.

1.2 **“Event Area”** or **“Event Areas”** shall mean those certain areas within the Property, including, but not limited to, the Public Park and the PAC, that shall be available for

use by Event Holders and to which access during Events may be limited to Ticket Holders or paid admittees for such Event, at the discretion of the Event Holder.

1.3 **“Event Holder”** shall mean any Person conducting an Event.

1.4 **“Event Schedule”** shall mean an advance schedule of all proposed Events (including the designation of any “Major Events”) for the upcoming month to be posted on the official website designated by Declarant for communication regarding Events at the City Springs Project.

1.5 **“EV Parking Spaces”** shall have the meaning set forth in Section 2.3(b)(iv).

1.6 **“Foreclosure”** shall mean, without limitation: (i) the judicial foreclosure of a Mortgage or a lien arising pursuant to Section 3.5; (ii) the exercise of a power of sale contained in any Mortgage; (iii) conveyance of the property encumbered by a Mortgage or by a lien arising pursuant to Section 3.5 in lieu of foreclosure thereof; or (iv) any action commenced or taken by a lessor to regain possession or control of property leased under a sale/leaseback.

1.7 **“Georgia Condominium Act”** shall mean O.C.G.A. §44-3-70, et seq., as amended from time to time.

1.8 **“Governing Documents”** shall mean this Declaration, the Master Declaration, the Design Guidelines and the Zoning Conditions, now or hereafter existing, and all additional covenants governing any portion of the Property, or any of the above, as each may be supplemented and amended from time to time.

1.9 **“Improvement”** or **“Improvements”** shall mean, with respect to any Parcel, any building, structure or other improvement of any kind or nature whatsoever in, on, over, under, through or across such Parcel, whether permanent or temporary, stationary or moveable, or above, on or below ground level, including all buildings (whether fully or partially enclosed), parking structures, walls, exterior screening, poles, towers, antenna, lighting, utility facilities and Signage.

1.10 **“including”** shall mean “including without limitation”.

1.11 **“Major Events”** shall mean those Events which are designated as Major Events on the Event Schedule (or otherwise indicated as such to the Owners in writing at least forty-eight (48) hours prior to the Event) because of the number of additional people they are expected to bring to the City Springs Project.

1.12 **“Master Declaration”** shall mean that certain Master Declaration of Covenants, Conditions and Restrictions for City Springs dated of even date herewith, as the same may be amended, modified, and/or restated from time to time in accordance therewith.

1.13 **“Master Lease”** shall have the meaning set forth in the Recitals.

1.14 **“Master Lease Premises”** shall have the meaning set forth in the Recitals.

- 1.15 “**Master Lessee**” shall have the meaning set forth in the Recitals.
- 1.16 “**Master Plan**” shall have the meaning set forth in the Recitals.
- 1.17 “**Mortgage**” shall mean any deed of trust, deed to secure debt, mortgage, or any other form of security instrument affecting title (fee simple or leasehold) to any Parcel.
- 1.18 “**Mortgagee**” shall mean a beneficiary or holder of a Mortgage and the indebtedness or other obligation secured thereby, whether the initial holder thereof or their heirs, legal representatives, successors, transferees and assigns of such initial holder.
- 1.19 “**Mortgagor**” shall mean the grantor of any Mortgage.
- 1.20 “**Mixed-Use Building**” shall have the meaning set forth in the Recitals.
- 1.21 “**North Parcel**” shall have the meaning set forth in the Recitals.
- 1.22 “**North Parcel Access Easement**” shall have the meaning set forth in Section 2.4.
- 1.23 “**O.C.G.A.**” shall mean the Official Code of Georgia Annotated.
- 1.24 “**Office Hours**” shall mean regular business hours during Business Days, which shall initially be deemed to be Monday through Friday from 7:00 a.m. until 5:30 p.m.
- 1.25 “**Outparcel**” shall have the meaning set forth in the Recitals.
- 1.26 “**Owner**” shall mean the owner of fee simple title to a Parcel, as shown in the Public Records. Notwithstanding the foregoing:
- (a) any Mortgagee shall not be deemed an Owner with respect to the property encumbered by the Mortgage held by such Mortgagee, unless such Mortgagee shall have excluded the Mortgagor from possession by appropriate legal proceedings following a default under such Mortgage or shall have acquired the interest encumbered by such Mortgage through Foreclosure;
  - (b) a Space Tenant shall not be deemed an Owner with respect to the property demised by the Space Lease held by such Space Tenant;
  - (c) as to any Parcel owned under a condominium structure or similar form of ownership, the Owner Association responsible for governing such Parcel shall be deemed the sole Owner of such Parcel;
  - (d) any Person holding or owning any easements, rights-of-way or licenses that pertain to or affect any such real property shall not be deemed an Owner of such real property solely by virtue of such easements, rights-of-way or licenses;
  - (e) in the event an Owner of any Parcel consists of more than one Person (other than a Parcel owned under the condominium or cooperative form of ownership),

such Persons shall, within thirty (30) Days after the date of their acquisition of such Parcel, execute and deliver to Declarant a written instrument, including a power of attorney, appointing and authorizing one of the such Persons comprising such Owner as their designated agent to receive all notices and demands to be given to an Owner of a Parcel pursuant to this Declaration, and to cast all votes and to take any and all actions required or permitted to be taken by an Owner under this Declaration. Such owning Persons may change their designated agent by written notice to Declarant, but such change shall be effective only after actual receipt by Declarant of such written notice and a replacement instrument or instruments, including a power of attorney from all Persons or entities comprising the Owner of a Parcel appointing and authorizing one of such Persons comprising such Owner to act as attorney-in-fact pursuant to such power of attorney; and

(f) Declarant, the City, and any other public entity will be considered an Owner with respect to any Parcel that they own.

1.27 **“Owner Association”** shall mean any mandatory membership nonprofit corporation incorporated under the laws of the State of Georgia for the purpose of governing one or more Parcels at the Property, including, but not limited to, any condominium association that may be created for condominium units established at the Property and any board of representatives required.

1.28 **“PAC”** shall have the meaning set forth in the Recitals.

1.29 **“Parcel”** shall mean each portion of the Property (which may consist of surface, subsurface or air rights, or any combination thereof), as owned by Declarant or as conveyed by Declarant to the Owner thereof other than Declarant (including the City or any other public entity), which is intended for development, use, and occupancy as set forth on the Master Plan and/or the Parking Plan, subject to compliance with this Declaration.

The following provisions shall apply to the term Parcel:

(a) Each separately platted tract of land shall be deemed to be a separate Parcel, regardless of the number of uses or businesses operated on such Parcel.

(b) Notwithstanding anything to the contrary contained herein, any portion of the Property subject to the jurisdiction of an Owner Association shall be deemed a single Parcel except as otherwise provided herein.

1.30 **“Parking Area”** or **“Parking Areas”** shall mean: (a) all Parking Spaces (b) all paved entranceways, driveways, drive lanes, ramps, curbs, traffic and directional signs, traffic striping and markings serving the Parking Spaces; and (c) all sidewalks, stairways, and walkways serving the Parking Spaces.

1.31 **“Parking Assessments”** shall mean the amounts payable by an Owner under this Declaration in accordance with Article 3.

1.32 **“Parking Improvements”** shall mean, collectively, those Improvements located within the Parking Area.

1.33 **“Parking Plan”** shall have the meaning set forth in the Recitals.

1.34 **“Parking Spaces”** shall mean, collectively, all spaces for the parking of Passenger Vehicles within the City Springs Project, as depicted on the Parking Plan.

1.35 **“Passenger Vehicles”** shall mean passenger vehicles, including electric powered cars and vehicles, mini vans, sports utility vehicles, motorcycles, motor scooters, bicycles, vans, light trucks, and pickup trucks, but, excluding buses, trucks with a load capacity of one (1) ton or more not included within the “car” or “passenger vehicle” classification by the Georgia Department of Motor Vehicles, full size vans, motor homes, campers, trailers, boats, golf carts, and motorized go carts.

1.36 **“Permittee”** shall mean any Person that is any of the following: (a) an Owner of a portion of a Parcel (such as a Person which owns title to an individual condominium unit); (b) Master Lessee, (c) a tenant or subtenant of an Owner, Master Lessee, or of an Owner of a portion of a Parcel (such as a Person which owns title to an individual condominium unit); and (d) any officer, agent, employee, licensee, guest, invitee, or independent contractor of (i) an Owner, (ii) Master Lessee, (iii) an Owner of a portion of a Parcel (such as a Person which owns title to an individual condominium unit), or (iv) a tenant or subtenant of an Owner, Master Lessee, or of an Owner of a portion of a Parcel (such as a Person which owns title to an individual condominium unit). An Owner is not a Permittee.

1.37 **“Person”** shall mean a natural person, corporation, partnership, limited liability company, association, trust, or other legal entity, or any combination thereof.

1.38 **“Prime Rate”** shall mean the U.S. prime rate as defined by the Wall Street Journal.

1.39 **“Property”** shall have the meaning set forth in the Recitals.

1.40 **“Public Park”** shall mean that portion of the Property depicted on the Master Plan as the “Public Park”.

1.41 **“Public Records”** shall mean the records of the Clerk of the Superior Court of Fulton County, Georgia.

1.42 **“Residential Parking Hours”** shall mean all times other than Office Hours.

1.43 **“Retail Parking Easements”** shall have the meaning set forth in Section 2.3(a).

1.44 **“Retail Parties”** shall mean: (a) the Owner of the retail portions of the North Parcel and its successors, assigns and Permittees; (b) the Owner of the retail portions of the Mixed-Use Building and its successors, assigns and Permittees; (c) the Owner of the Outparcel and its successors, assigns and Permittees; (d) the Master Lessee and its successors, assigns and Permittees; and (e) a Space Tenant occupying space in the retail portions of the North Parcel, the

retail portions of the Mixed-Use Building (including the Master Lease Premises) or the Outparcel **“Retail Party”** shall mean any one of the Retail Parties.

1.45 **“Shared Residential Parking Areas”** shall mean those certain areas located within the South Deck Shared Improvements and the City Garage Improvements, designated on the Parking Plan as the **“Shared Residential Parking Areas”**.

1.46 **“Shared Residential Parking Easements”** shall have the meaning set forth in Section 2.2(a).

1.47 **“Shared Residential Parking Spaces”** shall mean those certain two hundred five (205) Parking Spaces located within the Shared Residential Parking Areas.

1.48 **“Signage”** shall mean any sign, structure, device, or other marketing, media, temporary or permanent, portable or stationary, which is erected, placed, held, displayed and/or used, by or upon which any numbers, lettering, printing, painting, symbols (including pictorial symbols), or other communication is placed or created, including, without limitation, flags, banners, streamers, balloons, sculptures, inflated figures and objects, video monitors or screens, and kiosks.

1.49 **“South City Parcel”** shall have the meaning set forth in the Recitals.

1.50 **“South Deck Improvements”** shall have the meaning set forth in the Recitals and shall be comprised of the South Deck Shared Improvements and the South Deck Private Improvements.

1.51 **“South Deck Private Improvements”** shall have the meaning set forth in the Recitals.

1.52 **“South Deck Private Improvements Access Easement”** shall have the meaning set forth in Section 2.1(b).

1.53 **“South Deck Shared Improvements”** shall have the meaning set forth in the Recitals.

1.54 **“South Developer Parcel”** shall have the meaning set forth in the Recitals.

1.55 **“South Parking Parcel”** shall have the meaning set forth in the Recitals.

1.56 **“Space Lease”** shall mean any tenancy, leasing, sub-tenancy, sub-leasing, concession, rental, occupancy or other possessory or space use agreement entered into by an Owner or Parcel Lessee, and providing for the use, occupancy and enjoyment of space within a Parcel or any other portion of a Parcel or the Improvements thereon.

1.57 **“Space Tenant”** shall mean the tenant under a Space Lease.

1.58 **“Structural Supports”** shall mean those construction elements located on any portion of the Property which are load bearing with respect to the Improvements or which are

necessary for the structural integrity of the Improvements, including, without limitation, foundations, footings, slabs, caissons, girders, columns, beams, bed plates, piling caps, braces and trusses, and any replacement, substitution or modification thereof.

1.59 “**Valet Parking Areas**” shall have the meaning set forth in Section 2.3(c).

1.60 “**Valet Parking Easements**” shall have the meaning set forth in Section 2.3(c).

1.61 “**Valet Parking Plan**” shall have the meaning set forth in Section 2.3(c).

1.62 “**Valet Parking Services**” shall mean valet parking operations serving the retail portions of the City Springs Project.

1.63 “**Visitor Parking Areas**” shall mean those certain areas located within the South Deck Shared Improvements and the City Garage Improvements, designated on the Parking Plan as the “Visitor Parking Areas”.

1.64 “**Visitor Parking Spaces**” shall mean those certain Parking Spaces located within the Visitor Parking Areas.

## **ARTICLE 2**

### **EASEMENTS; USE OF PARKING SPACES**

#### **2.1 Private Residential Parking.**

(a) **South Deck Private Improvements.** Immediately following the recording of this Declaration, the South Deck Private Improvements will be conveyed in fee simple, as an air rights parcel, by Declarant to Developer. The Parking Spaces within the South Deck Private Improvements will be Access Controlled Parking Spaces reserved for the exclusive use and benefit of the Owner of the Developer Parcels. Declarant shall have no rights to the Parking Spaces within the South Deck Private Improvements. The costs of installing, maintaining and operating all Access Control Equipment for the Parking Spaces within the South Deck Private Improvements will be exclusively borne by the Owner of the Developer Parcels.

(b) **South Deck Private Improvements Access Easement.** Declarant hereby declares, establishes, creates, grants, and/or conveys to and for the benefit of the Owner of the Developer Parcels and its successors, assigns and Permittees, a perpetual, non-exclusive easement appurtenant to the Developer Parcels (the “South Deck Private Improvements Access Easement”) in, on, over, and across the paved entranceways, driveways, drive lanes, and/or ramps located within the South Deck Improvements for the purpose of vehicular and pedestrian access to, ingress to and egress from the South Deck Private Improvements.

#### **2.2 Shared Residential Parking Areas.**

(a) **Shared Residential Parking Easements.** Declarant hereby declares, establishes, creates, grants, and/or conveys to and for the benefit of the Owner of the Developer Parcels and its successors, assigns and Permittees the following (the “Shared Residential Parking”

Easements”): (i) a perpetual, non-exclusive (except as set forth in Section 2.2(b)(ii) easement appurtenant to the Developer Parcels, for the use and enjoyment of the Shared Residential Parking Spaces for the purpose of parking Passenger Vehicles thereon for residential purposes in accordance with Section 2.2(b); and (ii) a non-exclusive, perpetual easement appurtenant to the Developer Parcels, in, on, over, and across the paved entranceways, driveways, drive lanes, and/or ramps located within the South Deck Shared Improvements and the City Garage Improvements for vehicular and pedestrian access to and from the Shared Residential Parking Areas. No fee or charge shall be payable by the Owner of the Developer Parcels or its Permittees in connection with the use and enjoyment by the Owner of the Developer Parcels and its Permittees of the Shared Residential Parking Easements.

(b) **Use of Shared Residential Parking Spaces.**

(i) The Shared Residential Parking Areas shall be segregated from the remainder of the Parking Improvements by Access Control Equipment and reserved for the exclusive use of residential tenants of Developer’s Project during Residential Parking Hours. The cost of initially installing the Access Control Equipment for the Shared Residential Parking Areas will be exclusively borne by the Owner of the Developer Parcels.

(ii) The Owner of the Mixed-Use Building and its Permittees shall be permitted to park in the Shared Residential Parking Spaces during Office Hours. The Access Control Equipment for the Shared Residential Parking Areas shall permit the Owner of the Mixed-Use Building and its Permittees who park in the Shared Residential Parking Spaces during Office Hours to exit the Shared Residential Parking Areas during Residential Parking Hours and shall permit the Owner of the Developer Parcels and its Permittees who park in the Shared Residential Parking Spaces during Residential Parking Hours to enter and exit the Shared Residential Parking Areas during Office Hours. Furthermore, and in no way limiting the foregoing, the Access Control Equipment for the Shared Residential Parking Areas shall permit anyone parked in the Shared Residential Parking Areas who does not have an Access Device to leave the Shared Residential Parking Areas at any time.

(iii) Reasonable enforcement measures (such as ticketing and towing, but not booting) may be utilized by the Owner of the Mixed-Use Building and the Owner of the Developer Parcels, as necessary, to ensure that the use of the Shared Residential Parking Spaces is available to the Owner of the Mixed-Use Building and its Permittees during Office Hours and to the Owner of the Developer Parcels and its Permittees during Residential Parking Hours; provided, however, that a minimum grace period of twenty-four (24) hours shall be given before such enforcement measures are utilized.

(iv) Declarant may, in its sole election, establish and maintain hourly rates for parking of visitors of the retail and public components of the City Springs Project within the Shared Residential Parking Areas, during Office Hours only, in accordance with Section 2.3(b).

(v) The designation of any of the Shared Residential Parking Spaces as EV Parking Spaces, parking for low emission Passenger Vehicles, parking for compact sized

Passenger Vehicles, or any other such parking designations, must be mutually agreed upon by the Owner of the Mixed-Use Building and the Owner of the Developer Parcels.

(vi) The Owner of the Developer Parcels and the Owner of the Mixed-Use Building agree to open the gates to the Access Control Equipment for the Shared Residential Parking Areas at the scheduled conclusion of all Major Events, and to keep the gates open for a maximum of 45 minutes thereafter in order to allow for the orderly egress of Passenger Vehicles, provided that the Owner of the Event Area must provide (or cause the Event Holder to provide), at its sole cost and expense, such additional security personnel as is reasonably necessary during such time to monitor the Shared Residential Parking Areas and direct traffic to the exits.

### 2.3 Visitor Parking Areas and City Parking Areas.

(a) **Retail Parking Easements.** Declarant hereby declares, establishes, creates, grants, and/or conveys to and for the benefit of the Retail Parties, and their respective successors, assigns and Permittees the following (the "Retail Parking Easements"): (i) a non-exclusive easement, appurtenant to the retail portions of the North Parcel, the retail portions of the Mixed-Use Building (including the Master Lease Premises) and the Outparcel, for the use and enjoyment of the Visitor Parking Spaces and any unreserved City Parking Spaces for the purpose of the Retail Parties and their respective Permittees parking Passenger Vehicles thereon on a non-reserved basis in accordance with Section 2.3(b); and (ii) a non-exclusive easement appurtenant to the retail portions of the North Parcel, the retail portions of the Mixed-Use Building (including the Master Lease Premises) and the Outparcel, in, on, over, and across the paved entranceways, driveways, drive lanes, and/or ramps located within the South Deck Shared Improvements and the City Garage Improvements for vehicular and pedestrian access to and from the Visitor Parking Spaces. Other than as set forth in Section 2.3(b), no fee or charge shall be payable by the Retail Parties or their respective Permittees in connection with the use and enjoyment by the Retail Parties and their respective Permittees of the Retail Parking Easements.

#### (b) **Use of Visitor Parking Spaces and City Parking Spaces.**

(i) Declarant shall install, maintain and replace as necessary, Signage designed to encourage people that are visiting the retail establishments within the City Springs Project to park in the Visitor Parking Spaces and also to discourage long term parking in such Visitor Parking Spaces by people that are not visiting the retail establishments within the City Springs Project, which Signage shall be substantially in the form attached hereto as Exhibit "D" (the "Form of Visitor Parking Area Signage").

(ii) Declarant may, in its sole election, establish and maintain hourly rates for parking of visitors of the retail and public components of the City Springs Project within the Visitor Parking Areas and the City Parking Areas or for parking within the Shared Residential Parking Areas during Office Hours only; provided, however, that in no event shall the hourly rates charged to any of the Developer Retail Parties for their use of the Parking Spaces within such areas be greater or otherwise less favorably imposed than those applicable to any other users of such Parking Spaces.

(iii) Notwithstanding Section 2.3(b)(ii), all parking charges for the Developer Retail Parties and their Permittees and patrons shall be waived for the first five (5) years following the Easement Effective Date. Thereafter, the Developer Retail Parties and their Permittees and patrons shall be entitled to two (2) hours of free parking; provided, however, that if at any time a study prepared in good faith by or for Declarant and certified to the then current Developer Retail Parties of the parking arrangements for comparable retail projects within a one-half (1/2) mile radius of the City Springs Project discloses that a substantial majority of such comparable projects provide retail patrons with less than two (2) hours of free parking, Declarant will have the option to reduce the two (2) hours of free parking in conformity with the parking arrangements provided in connection with such comparable projects. Developer and Declarant shall work together in good faith to incorporate a mutually acceptable validation system in order to implement the provisions described in this Section 2.3(b)(iii).

(iv) The Visitor Parking Areas and the City Parking Areas may include the installation of electric plug-in stations at select Parking Spaces ("EV Parking Spaces") for the convenience of users parking in such EV Parking Spaces to charge electric Passenger Vehicles; provided, however, that the establishment of any such EV Parking Spaces shall not interfere with or prevent any Owner from utilizing and realizing the full benefit of the Easements granted to such Owner herein. Declarant shall regulate the usage of the EV Parking Spaces, including, without limitation, determining the length of time that any vehicle may park in an EV Parking Space. To the extent permitted by Applicable Law, any user of an EV Parking Space may be charged (a) an additional hourly convenience fee to park in such EV Parking Space regardless of whether such user actually utilizes the electric charging station, or (b) the actual kilowatt-hours consumed at the electric charging station for such EV Parking Space.

(v) Declarant may designate or otherwise reserve portions of the City Parking Areas for the exclusive use and/or primary benefit of certain Owners, groups of Owners and/or Permittees; provided, however, any such designation shall not interfere with or prevent any Owner from utilizing and realizing the full benefit of the Easements granted to such Owner herein. Such designations may be made on a temporary or permanent basis and may include reserving certain portions of the City Parking Areas for: (i) use of the municipal facilities; (ii) valet parking; (iii) parking by or for Persons with handicaps, couriers or other delivery Persons; (iv) employee parking; (v) emergency vehicle parking; (vi) parking for Passenger Vehicles participating in car and van pooling; (vii) parking for low emission Passenger Vehicles; (viii) EV Parking Spaces; (ix) parking for compact sized Passenger Vehicles; and (x) other parking designations required by Applicable Law. Any such designation shall be accomplished by posting of signs in the applicable portions of the City Parking Areas and by written notice to any Owner affected by such designation.

(c) **Valet Parking Easements**. Declarant hereby agrees to work diligently and in good faith with the Developer Retail Parties to agree upon and establish a plan (the "Valet Parking Plan") setting forth certain areas within the City Garage Improvements and South Deck Shared Improvements for the parking of valet parked Passenger Vehicles in connection with the Valet Parking Services (the "Valet Parking Areas"). Upon the establishment of the Valet Parking Plan, Declarant will promptly amend this Declaration to establish, create, grant, and/or convey to and for the benefit of the Developer Retail Parties, and their respective successors, assigns and Permittees, a perpetual, non-exclusive easement appurtenant to the retail portions of the North

Parcel and the retail portions of the Mixed-Use Building (including the Master Lease Premises), during the operation of Valet Parking Services, for the use and enjoyment of the Parking Spaces within the Valet Parking Areas for the purpose of parking valet parked Passenger Vehicles thereon in connection with the Valet Parking Services and for the location of ropes, cones and other barriers around the Valet Parking Areas in order to preserve the Parking Spaces therein for parking valet parked Passenger Vehicles in connection with the Valet Parking Services (the “Valet Parking Easements”). The Valet Parking Easements shall include, without limitation, the right to enter and exit the City Garage Improvements and South Deck Shared Improvements in order to valet park Passenger Vehicles, access and retrieve valet parked Passenger Vehicles, and otherwise utilize the City Garage Improvements and South Deck Shared Improvements for the purpose of operating the Valet Parking Services in a manner that is customary for retail valet parking operations.

2.4 **North Parcel Access Easement.** Declarant hereby declares, establishes, creates, grants, and/or conveys to and for the benefit of the Owner of the North Parcel and its respective successors, assigns and Permittees a perpetual, non-exclusive easement appurtenant to the North Parcel (the “North Parcel Access Easement”) in, on, over, and across the paved entranceways, driveways, drive lanes, and/or ramps located within the Parking Area for the purpose of vehicular and pedestrian access to, ingress to and egress from the North Parcel.

2.5 **Code Compliance.** The number of Parking Spaces contained within the City Springs Project shall at all times be in compliance with any and all applicable code requirements.

2.6 **Easement Effective Date.** The Easements created hereunder shall commence on the Easement Effective Date.

### **ARTICLE 3** **MAINTENANCE; PARKING ASSESSMENTS**

#### 3.1 **Maintenance and Parking Assessments.**

(a) **South Deck Private Improvements.** The Owner of the South Deck Private Improvements shall have the responsibility and obligation, at its sole cost and expense, to repair, maintain and operate the South Deck Private Improvements, in good order and repair.

(b) **Shared Residential Parking Areas.** The Owner of the Developer Parcels shall have the responsibility and obligation, at the shared cost and expense of itself and the other Owners as more particularly set forth below, to repair, maintain and operate the Shared Residential Parking Areas (the “Shared Residential Parking Areas Maintenance”) in good order and repair such that they may be utilized in accordance with this Declaration. The Owner of the Developer Parcels shall have the right to charge a Parking Assessment to the Owner of the Mixed-Use Building for a portion of the costs of the Shared Residential Parking Areas Maintenance in accordance with the following formula: the Owner of the Developer Parcels will be responsible for the payment of seventy percent (70%) of the cost of the Shared Residential Parking Areas Maintenance; and the Owner of the Mixed-Use Building will be responsible for the payment of thirty percent (30%) of the cost of the Shared Residential Parking Areas Maintenance.

(c) **Visitor Parking Areas.** The Owner of the City Garage Improvements shall have the responsibility and obligation, at the shared cost and expense of itself and the other Owners as more particularly set forth below, to repair, maintain and operate the Visitor Parking Areas (the “Visitor Parking Areas Maintenance”) in good order and repair such that they may be utilized in accordance with this Declaration. The Owner of the City Garage Improvements shall have the right to charge a Parking Assessment to the Owner of the retail portions of the North Parcel and the Master Lessee for their portion of the cost of the Visitor Parking Areas Maintenance in accordance with the following formula: The Owner of the City Garage Improvements will be responsible for the payment of seventy-five percent (75%) of the cost of the Visitor Parking Areas Maintenance; and the Owner of the retail portions of the North Parcel and the Master Lessee shall, collectively, be responsible for the payment of twenty-five percent (25%) of the Visitor Parking Areas Maintenance. In addition, upon the development of the Outparcel, the Owner of the City Garage Improvements shall have the right to charge a Parking Assessment to the Owner of the Outparcel based on the Outparcel Permittees’ proportional use of the Visitor Parking Areas. Furthermore, in the event that the City Garage Improvements and the Mixed-Use Building should ever cease to be under common ownership, the Owner of the City Garage Improvements shall have the right to charge a Parking Assessment to the Owner of the Mixed-Use Building based on the Mixed-Use Building Permittees’ proportional use of the Visitor parking Areas. Any such additional Parking Assessments shall be memorialized in an amendment to this Parking Declaration.

(d) **City Parking Areas.** The Owner of the City Garage Improvements shall have the responsibility and obligation, at its sole cost and expense, to repair, maintain and operate the City Parking Areas in good order and repair.

(e) **Structural Repairs; Capital Improvements.** Each Owner shall have the responsibility and obligation, at such Owner’s sole cost and expense, to make any and all required structural repairs, replacements and/or capital improvements to that portion of the Parking Area located on its respective Parcel. Each Owner must maintain the Structural Supports of that portion of the Parking Area located on its respective Parcel in good order and repair such that they can and will provide continued support to any and all Improvements that rely on such Structural Supports for their structural integrity.

3.2 **Maintenance Easements.** Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant rights and easements in favor of each Owner to access all Easement Areas, including any Access Controlled Parking Spaces, as necessary to perform their respective maintenance, repair, and/or replacement obligations under Section 3.1.

3.3 **Maintenance Self-Help Rights.** In addition to any other enforcement rights provided for herein, if an Owner obligated to perform maintenance hereunder fails to properly perform any of its maintenance responsibilities as set forth herein, such Owner shall be deemed to be in default and another Owner may perform such maintenance responsibilities on the defaulting Owner’s behalf and assess all costs incurred in connection therewith against the defaulting Owner and such defaulting Owner’s Parcel in accordance with this Article 3; provided, however, that prior to utilizing such self-help right, the defaulting Owner must first be provided with reasonable notice and an opportunity to cure the default, except in the event of an emergency situation. For purposes of this Section 3.3 “reasonable notice and an opportunity to

cure” means that the defaulting Owner must first be given written notice of the default and fifteen (15) Days to commence the cure of the same. If the defaulting Owner does not commence the cure of the default within such fifteen (15) Day period, a second written notice shall be given to the defaulting Owner, which notice shall provide the defaulting Owner with an additional five (5) Days to commence the cure of the default. If the defaulting Owner still does not commence the cure of the default within such additional five (5) Day period, the Owner that gave the written notice of such default may proceed in performing such maintenance responsibilities on the defaulting Owner’s behalf in accordance with this Section 3.3. In addition, if the defaulting Owner commences the cure of the default within the provided cure period but fails to diligently pursue the completion of the same, the Owner that provided the written notice of such default may provide the defaulting owner with one final written notice of such failure and five (5) Days to complete the cure of the default. If the defaulting Owner does not complete the cure of the default within such five (5) Day period, the Owner that gave the written notice of such default may proceed in performing such maintenance responsibilities on the defaulting Owner’s behalf in accordance with this Section 3.3. Entry by an Owner or its designee under this Section 3.3 shall not constitute a trespass.

3.4 **Specific Parking Assessments.** Each Owner shall have the right to specifically assess another Owner for the reasonable costs and expenses incurred in repairing any damage to the Parking Improvements if such damage is attributable solely and directly to such Owner or its Permittees, as the case may be.

3.5 **Priority of Lien.** All sums assessed against any Owner pursuant to this Declaration, together with court costs, reasonable attorneys’ fees, late charges, and interest as provided herein, shall be secured by an equitable charge and continuing lien on such Owner’s Parcel in favor of the party to whom the Parking Assessment is owed. Such lien shall be superior to all other liens and encumbrances on such Parcel except only for: (i) liens of ad valorem taxes; and (ii) a lien for all sums unpaid on a first priority Mortgage, on any secondary purchase money Mortgage, or on any Mortgage to Declarant, and all amounts advanced pursuant to any such Mortgage and secured thereby in accordance with the terms of such instrument. The subordination of the lien for Parking Assessments to the foregoing Mortgages shall apply only to Parking Assessments that have become due and payable prior to a sale or transfer of the mortgaged interest in and to such Parcel pursuant to a Foreclosure. From and after the date the holder of a Mortgage, or its successor, assignee or designee, or the acquirer upon Foreclosure, takes possession of the Parcel or succeeds to the Owner’s interest in the Parcel, whether by Foreclosure or otherwise, such holder or its successor, assignee or designee, or the acquirer upon Foreclosure, shall be deemed an Owner of the Parcel and liable for all Parking Assessments on that Parcel assessed after, accruing after, or allocable to periods of time after that date. All Persons acquiring Mortgages, liens or encumbrances on any Parcel after the effective date of this Declaration shall be deemed to have subordinated such Mortgages, liens or encumbrances to liens for post-Foreclosure Parking Assessments as provided in the immediately preceding sentence, whether or not such subordination shall be specifically set forth in such Mortgages or other instruments creating such liens or encumbrances.

3.6 **Nonpayment of Parking Assessments.** Any Parking Assessments or any portion thereof that are not paid when due shall be delinquent. Any Parking Assessment delinquent for a period of more than fifteen (15) Days shall incur a late charge in an amount equal to five percent

(5%) thereof and interest on the principal amount due, from the date due until paid at the lesser of the Prime Rate, as it may change from time to time, plus four (4) percentage points, or the maximum rate allowable under the laws of the State of Georgia. The continuing lien and equitable charge of such Parking Assessment shall include the late charge and interest described above, all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by Applicable Law. If the Parking Assessment remains unpaid for forty-five (45) Days after its original due date, provided that any Eligible Holder whose interest is subject to such Parking Assessment has been provided with a minimum of fifteen (15) Days advance notice of such delinquency in order to afford them an opportunity to cure the same, the Owner to whom the Parking Assessment is owed may institute suit to collect such amounts and to foreclose its lien.

3.7 **Personal Liability for Parking Assessments.** Parking Assessments shall be the personal and individual indebtedness of the Owner of the Parcel upon or against which such Parking Assessments are levied, assessed or imposed. No Owner shall be exempt from such personal liability for Parking Assessments. Upon any transfer, conveyance or assignment of the interest of the Owner in and to such Parcel, any then unpaid Parking Assessments shall become the joint and several obligation of such Owner and of such Owner's successors-in-title, whether or not expressly assumed by them. Declarant shall have the right to bring suit against the Owner to recover a money judgment for all such amounts without foreclosing or waiving the liens securing same.

3.8 **Waiver of Use.** No Owner may exempt itself from liability for any Parking Assessments duly levied pursuant to this Declaration, nor release the Parcel or other property owned by it from the liens and charges hereof, by non-use or waiver of the use and enjoyment of the Parking Area or by abandonment of its Parcel or any other property owned by such Owner within the Property.

3.9 **Audit of Parking Assessments.** Each Owner agrees to keep, at its principal office, records relating to Parking Assessments charged to other Owners hereunder. An Owner that is charged a Parking Assessment hereunder shall have the right to audit the assessing Owner's records for the sole purpose of ascertaining the correctness of said Parking Assessment. Such audit shall be made during normal business hours; shall not unreasonably interfere with office operations; and shall be performed only by a qualified financial officer of the auditing Owner or the auditing Owner's management company, or a certified public accountant selected by the auditing Owner, provided that any such accountant selected by the auditing Owner shall not utilize a contingency fee based audit system. If an Owner that is charged a Parking Assessment desires to audit the assessing Owner's records as aforesaid, the auditing Owner shall notify the assessing Owner no later than thirty (30) Days after receipt of the Parking Assessment and at least thirty (30) Days in advance of the date on which the auditing Owner proposes to perform such audit, commence said audit within sixty (60) Days of said notice, and once the audit has commenced, diligently complete the same. If an Owner that is charged a Parking Assessment hereunder fails to provide the assessing Owner with notice of its desire to audit the assessing Owner's records within such thirty (30) Day period, then the Parking Assessment shall be deemed conclusive absent manifest error.

## **ARTICLE 4** **OWNER RIGHTS**

4.1 **Improvements.** An Owner shall have the right, in its discretion, to add, withdraw or change any Improvements to the Easement Areas owned by such party; provided, however, that in no instance may such Owner add, withdraw or change any Improvements which would or could foreseeably have a materially adverse impact on the structural integrity of any Improvements or which would or could foreseeably have a materially adverse impact on the use of any Easement Areas without the prior written consent of the beneficiary of any Easement over such Easement Area.

### 4.2 **Obstructions; Unauthorized Persons; Closures.**

(a) No structure or other obstruction of any kind (except as may be specifically permitted herein) shall be placed, kept, permitted or maintained upon the Parking Area without the prior written approval of the Owner of the applicable Parcel.

(b) Each Owner hereby reserves the right to eject from its owned portion of the Parking Area any Persons not authorized to use the same. In addition, each Owner reserves the right to close off its owned portion of the Parking Area subject to the Easements granted herein, for such reasonable periods of time: (i) if necessary because of fire or other casualty, civil commotion, governmental regulations or orders, security considerations or other similar causes rendering the use of the Parking Area or parts thereof, dangerous, unfit or inappropriate for normal use, provided that any such closure or restriction shall be terminated after any other Owner has taken steps to mitigate against any loss or damages resulting from such use; (ii) during any period of restoration, alteration, or other construction activity that renders the Parking Area, or parts thereof, affected by such work dangerous, unfit or inappropriate for normal use, provided that any such closure or restriction shall be terminated after such work is complete; (iii) during any emergency or other period in which the health and safety of Owners and their Permittees utilizing the Parking Area are in jeopardy; (iv) to conduct maintenance; or (v) as legally necessary to prevent the acquisition of prescriptive rights by anyone; provided, however, before closing off any part of the Parking Areas for such purposes, each Owner shall utilize reasonable efforts to give notice to the other Owners of its intention to do so (except in the case of emergency) and shall utilize reasonable efforts to coordinate its closing with the activities of the other Owners so that no material interference with the use of the Parking Area occurs.

## **ARTICLE 5** **ENFORCEMENT**

5.1 **Responsibility of Owners.** Each Owner shall be responsible for compliance with the terms, provisions, and conditions of this Declaration by itself, and any Parcel Lessee, Space Tenant and Permittee claiming by, through or under such Owner, and their respective agents, employees, customers, invitees and licensees.

5.2 **Failure to Pay Parking Assessments.** If any Parking Assessment is not paid when due, the Owner and such Owner's Parcel shall be subject to the provisions of Article 3.

5.3 **Nonmonetary Violations.** Violation or breach of any term, provision, or condition contained herein (other than a failure to pay when due an Assessment) shall give to each Owner the right to prosecute a proceeding at law or in equity against the Owner who has violated, is attempting to violate, or is permitting (or is allowing or suffering to exist) the violation or breach, either on its Parcel or by any of its Permittees, of any term, provision, or condition contained herein or in any other document promulgated pursuant hereto. The right to prosecute such proceeding shall include, without limitation, the right to bring actions to enjoin or prevent such violating Owner from committing such violation or breach or to cause said violation or breach to be remedied, each Owner of a Parcel (including any purchaser at Foreclosure), by acceptance of a deed, lease, sublease or other instrument granting or conveying title to, or a leasehold estate in or to, such Parcel, whether or not it shall be so expressed in any such deed, lease, sublease or other instrument, thereby acknowledging that no adequate remedy exists at law to cure such violations or breaches.

5.4 **Ticketing and Towing.** Each Owner shall have the right to ticket or tow (but not boot), as necessary, any vehicle improperly parked in the Parking Spaces located within its owned portion of the Parking Area or blocking access to such Parking Spaces; provided, however, that a minimum grace period of twenty-four (24) hours shall be given before such measures are utilized and that the right to ticket and tow vehicles parked in the Shared Residential Parking Areas shall be governed by Section 2.2(b)(iii).

5.5 **Failure to Enforce Not a Waiver.** The failure an Owner to enforce any provision contained herein shall in no event be deemed to be a waiver of the right to do so, nor of the right to enforce any other restriction. Except as may otherwise be expressly provided herein, no suit shall lie against an Owner for any failure, refusal, or omission to institute or join in any action or proceeding for the enforcement hereof or to restrain the violation of any of the provisions hereof.

5.6 **Attorneys' Fees.** Each Owner or Permittee shall be obligated to pay the actual attorneys' fees (which shall be reasonable in amount) of the Person bringing an action against such Owner or Permittee for the enforcement of the provisions of this Declaration, provided such Person bringing said action has obtained a judgment in its favor by a court of record and such judgment has become final.

5.7 **Parking Assessments for Violations.** All sums expended by an Owner in enforcing this Declaration shall be immediately due and payable by the defaulting Owner and shall be a Parking Assessment against such defaulting Owner.

5.8 **Remedies Cumulative.** The remedies provided herein shall be in addition to and not in substitution for any rights and remedies now or hereafter existing at law or in equity. The remedies provided herein or otherwise available shall be cumulative and may be exercised concurrently. The failure to exercise any one of the remedies provided herein shall not constitute a waiver thereof, nor shall use of any of the remedies provided hereof prevent the subsequent or concurrent resort to any other remedy or remedies.

5.9 **Nuisance.** Every violation of this Declaration or any part thereof is hereby declared to be and constitute a nuisance, and every public or private remedy allowed therefor by

law or in equity against an Owner or Permittee shall be applicable against every such violation and may be exercised by any Owner.

## **ARTICLE 6** **MORTGAGEE PROVISIONS**

The following provisions are for the benefit of Mortgagees that are the beneficiary or holder of a first Mortgage on a Parcel or Parcels within the Property.

6.1 **Notices to an Eligible Holder.** A Mortgagee that is the beneficiary or holder of a first Mortgage on a Parcel or Parcels within the City Springs Project and who provides a written request to Declarant and all Owners (Declarant to timely provide a list of the Owner and their notice addresses upon written request therefor) stating the name and address of such Mortgagee and the street address of the Parcel or Parcels to which its Mortgage relates, shall become an “**Eligible Holder**” and will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Parcel that is subject to such Eligible Holder’s Mortgage;

(b) Any delinquency in the payment of Parking Assessments or other amounts owed by the Owner of a Parcel that is subject to such Eligible Holder’s Mortgage, where such delinquency has continued for a period of thirty (30) Days, or any other violation of this Declaration by the Mortgagor under such Eligible Holder’s Mortgage or relating to a Parcel that is subject to such Eligible Holder’s Mortgage, or the Owner or Occupant thereof, which is not cured within thirty (30) Days; provided, however, that the provisions of Article 3 and Article 5 hereof shall continue to govern the remedies and enforcement rights with respect to any such delinquency in the payment of Parking Assessments or other violations of this Declaration;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by Declarant; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders pursuant to Federal Home Loan Mortgage Corporation requirements.

6.2 **Notice to Declarant.** Upon request, each Owner shall be obligated to furnish to Declarant the name and address of the holder of any Mortgage encumbering such Owner’s Parcel.

6.3 **Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from Declarant to respond to or consent to any action shall be deemed to have approved such action if Declarant does not receive a written response from the Mortgagee within thirty (30) Days of the date of Declarant’s request, provided such request is delivered to the Mortgagee by overnight mail or certified or registered mail, return receipt requested.

**ARTICLE 7**  
**ADDITIONAL TERMS, COVENANTS, CONDITIONS AND OBLIGATIONS**

7.1 **Insurance.** Each Owner shall obtain and maintain at all times insurance policies in the form and amount required to be maintained pursuant to the Master Declaration.

7.2 **Casualty and Condemnation.** In the event of damage to or destruction of all of any portion of the Parking Improvements by fire, other casualty or sudden destructive occurrence, or condemnation, the applicable provisions of the Master Declaration shall govern.

7.3 **Indemnity.** To the fullest extent permitted by Applicable Law, each Owner shall, and does hereby covenant and agree to, indemnify, defend and hold harmless the other Owners, from, against and in respect of any and all claims, demands, actions, causes of action, suits, liabilities, damages, losses, costs and expenses of any kind or nature whatsoever (including reasonable attorneys' fees and court costs incurred in enforcing this indemnity and otherwise): (i) (A) which any such Person may suffer or incur, or (B) which may be asserted against such Person, whether meritorious or not; and (ii) which arise out of, by reason of or in connection with the exercise by such Owner, any Parcel Lessee, Space Tenant and Permittee claiming by, through or under such Owner, and their respective agents, employees, customers, invitees and licensees, of the rights and privileges under the Easements.

7.4 **Limitation of Liability.**

(a) No Owner shall be responsible for any loss or damage to any private property used, placed or stored on the Easement Areas unless due to the willful misconduct, gross negligence or bad faith of such Owner or its respective officers, employees, contract employees or agents, as the case may be. Further, any Person entering any portion of the Parking Area assumes all risk of loss associated with such entry.

(b) Without limiting the foregoing, any Person parking a vehicle in the Parking Area assumes all risk of loss with respect to such Person's vehicle and/or the contents thereof in such area. Further, some Parking Spaces may be framed by columns or other obstructions that may interfere with the use and operation of a vehicle's doors. It may be necessary to let passengers out of a vehicle before pulling the vehicle into the Parking Space. No Owners shall be held liable for any loss or damage resulting from such columns or other obstructions.

(c) Water may drip onto any vehicle from a level above the level on which the vehicle is parked or located. Such dripping water may include calcium deposits which may cause damage to the vehicle. Damage to a vehicle may be limited if the owner of the vehicle immediately washes off any calcium deposits situated on the vehicle. No Owner shall be held liable for any loss or damage resulting from such calcium deposits to any vehicle.

(d) Elevators serving the Parking Area may malfunction from time to time and become stuck between levels for temporary periods. No Owner shall be liable for any such malfunctions.

7.5 **Parking Manager(s)**. Each Owner may, at its option, engage a third party management company to manage those portions of the Parking Area and/or Parking Spaces that it is responsible for and Valet Parking Services, which management arrangement may be accomplished by virtue of a management agreement, a lease, or other document; provided, however, that such management agreement, lease or other document shall be subject and subordinate in all respects to this Declaration.

7.6 **Security Measures**. Each Owner may, at their option, from time to time, provide measures or take actions which directly or indirectly improve security or safety within those portions of the Parking Area that they own; provided, however, that such measures do not interfere with the Easements set forth herein. Notwithstanding the foregoing, each other Owner acknowledges and agrees that such Owner is not a provider of safety or security and shall not have a duty to provide security or safety. It shall be the responsibility of each Person to protect his or her person and property. During Major Events, and for a reasonable amount of time before and after the same, the Owner of the Event Area must provide, at its sole cost and expense, such additional security personnel as is reasonably necessary to monitor the Parking Area and to direct traffic in, through and out of the same.

7.7 **Rights of Permittees**. Each party hereto shall be entitled to designate from time to time which, if any, of its Permittees shall be entitled to utilize and enjoy the easements granted herein; it being the intent of this Declaration that no independent rights shall be created by this Declaration as to any such Permittees, except for those which may be terminated or withdrawn at any time by the party through whom such rights were derived.

7.8 **Private Easements**. The Easements set forth in this Declaration are solely for the benefit of the parties hereto and the Mortgagees and successors-in-title thereof, subject to and in accordance with the terms and conditions hereof, and no third-party beneficiary rights are created or implied. Each party hereto agrees not to grant to any third party, other than a Mortgagee or a successor-in-title, any interest in such Easements, provided each Owner shall each have the right to allow its respective Permittees to utilize such Easements as set forth herein.

## **ARTICLE 8** **DECLARANT INTEREST**

8.1 **Function of Declarant**. Declarant shall perform its functions in accordance with the Governing Documents and the laws of the State of Georgia, and Declarant has an affirmative duty to act reasonable, in good faith and in a non-discriminatory manner.

8.2 **Creation of Association**. In the event that an Association for the Property is organized pursuant to the Master Declaration, Declarant Interest shall automatically vest in the Association and the Association shall be deemed to have assumed, and Declarant shall be relieved from, all Declarant Obligations arising from and after the organization of the Association.

8.3 **Assignment of Declarant Interest**.

(a) Declarant Interest may be assigned by Declarant, in whole or in part, to any Person that (i) owns the City Garage Improvements, and (ii) agrees, to the extent of such

assignment, to assume Declarant Obligations arising from and after the date of such assignment. Notwithstanding the foregoing, in the event that Declarant is planning to assign all or any portion of Declarant's Interest to anyone other than the Owner of the Mixed-Use Building, Declarant shall be required to provide the Owner of the North Parcel with at least forty-five (45) Days advance written notice of the same and the Owner of the North Parcel shall have the right, within such forty-five (45) Day period, to elect to become the assignee of Declarant's Interest, or portion thereof, as the case may be. Such election shall be made by written notification to Declarant on or prior to the expiration of the forty-five (45) Day period. If the Owner of the North Parcel does not provide Declarant with written notification of its election to become the assignee of Declarant's Interest, or portion thereof, as the case may be, on or prior to the expiration of such forty-five (45) Day period, the Owner of the North Parcel will be deemed to have waived this right. To be effective, such assignment must be in writing and in recordable form, and specifically refer to Declarant Interest, or portion thereof, which is being assigned. Upon acceptance of such assignment, such assignee shall, to the extent of such assignment, assume Declarant Obligations arising from and after the date of such assignment and shall have Declarant Powers. Upon such assignment, and to the extent thereof, the assigning Declarant shall be relieved from all Declarant Obligations arising from and after the date of such assignment. The term "Declarant", as used herein, includes all such assignees and their heirs, successors and assigns. Notwithstanding anything to the contrary set forth herein, the mere conveyance or transfer of ownership of or any other interest or estate in land within the Property by Declarant to any Person, whether by deed, lease, sublease or other instrument, shall in no way convey all or any portion of Declarant Interest.

(b) Declarant Interest may be collaterally assigned by Declarant to any first priority Mortgagee of any portion of the Property owned by Declarant. In the event of any such collateral assignment and the Foreclosure of the Mortgage in respect of which Declarant Interest has been collaterally assigned, the successor-in-title, upon such Foreclosure, to the portion of the Property encumbered by such Mortgage shall be the successor Declarant hereunder.

8.4 **Delegation of Declarant Obligations.** In performing Declarant Obligations hereunder, Declarant shall have the authority to delegate to Persons of its choice (including, without limitation, Persons affiliated with Declarant) any such Declarant Obligations as may be determined by Declarant.

## **ARTICLE 9** **GENERAL**

### 9.1 **Duration.**

(a) Unless terminated as provided in Section 9.1(c), the provisions of this Declaration shall run with, bind the Property and remain in effect perpetually to the extent permitted by Georgia law; provided, however, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land for so long as permitted by Georgia law. To the extent that Georgia law limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each. Notwithstanding the

above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) This Declaration shall be deemed incorporated in all deeds, leases and conveyances of the Property or any portion thereof hereafter made by any Owner. Every Person, including a Mortgagee, acquiring or holding any interest or estate in any portion of the Property shall take or hold such interest or estate, or the security interest with respect thereto, with notice of the terms and provisions of this Declaration; and in accepting such interest or estate in, or a security interest with respect to, any portion of the Property, such Person shall be deemed to have consented or assented to this Declaration, whether or not such Person shall have executed any document or instrument evidencing the same.

(c) Unless otherwise provided by Georgia law, this Declaration may be terminated at any time by recordation of an instrument signed by all of the Owners subject to this Declaration and their first Mortgagees agreeing to terminate this Declaration. Such instrument shall comply with the requirements of O.C.G.A. § 44-5-60(d) and shall be recorded in the Public Records.

(d) Notwithstanding the foregoing: (i) the easements granted in this Declaration shall run with the land perpetually, except that dedication to and acceptance by an appropriate governmental authority of the facilities that are the subject of any such easements shall terminate those easements if such dedication so provides; and (ii) upon the expiration or earlier termination of this Declaration, all rights and privileges derived from, and all duties and obligations created and imposed by, the provisions of this Declaration other than the easements granted herein shall be terminated and of no further force and effect; provided, however, that the expiration or earlier termination of this Declaration shall not limit or affect any remedy at law or in equity that any Owner may have with respect to any liability or obligation arising or to be performed under this Declaration prior to the date of such expiration or earlier termination.

9.2 **Successors and Assigns.** Except as otherwise provided herein to the contrary, the easements described in this Declaration shall encumber the Easement Areas and shall run with said Property forever and be binding upon and inure to the benefit of and be enforceable by the heirs, legal representatives, successors and assigns of each Owner, respectively. All obligations of any Owner hereunder shall be binding upon their respective successors-in-title and assigns, provided the covenants and obligations herein are only personal to and enforceable against Owners, or their successors-in-title, as the case may be, owning title to the respective properties at the time any liability or claim arising under this Declaration shall have accrued; it being intended that upon the conveyance of title by a party, the party conveying title shall thereupon be released of any liability hereunder as to the property conveyed for any breach of this Declaration or claim arising under this Declaration accruing after the date of such conveyance. Notwithstanding the foregoing, if any Parcel is subject to the Georgia Condominium Act, the parties hereby agree that the successor-in-title of the Owner shall be deemed to be the condominium association required to be created and established pursuant to the Georgia Condominium Act and not the individual owners of units of such condominium.

### 9.3 **Amendment.**

(a) This Declaration may not be amended except by instrument in writing executed by each Owner whose rights or obligations under this Declaration will be affected by such amendment. The amendment will become effective on the recording of the amendment in the Public Records.

(b) Notwithstanding anything to the contrary contained in this Declaration, any amendment to this Declaration which would change, alter, modify or rescind any right, title, interest or privilege herein expressly granted to a Mortgagee, shall require the prior written approval of such Mortgagee.

(c) Amendments made pursuant to the provisions of this Section 9.3 shall inure to the benefit of and be binding upon all Owners and their respective Mortgagees.

9.4 **Binding Effect.** Each purchaser or grantee of any interest in any real property now or hereafter made subject to this Declaration, by acceptance of a deed or other conveyance thereof, thereby agrees that the conditions, covenants, restrictions, easements, and reservations of this Declaration may be amended, terminated, or extended as provided in Section 9.3.

9.5 **Rights of Third Persons.** This Declaration shall be recorded for the benefit of all Owners, and their respective Mortgagees as herein provided, and by such recording, no Parcel Lessee, Space Tenant or Permittee (except for easements expressly provided for their benefit), adjoining property owner or other Person shall have any right, title or interest whatsoever in the Property, this Declaration, the operation or continuation of this Declaration or the enforcement of any of the provisions hereof. This Declaration may be amended, modified or otherwise changed in accordance with its terms without the consent, permission or approval of any Parcel Lessee, Space Tenant, Permittee, adjoining owner or third Person.

### 9.6 **Dispute Resolution.**

(a) It is the intent of Declarant to encourage the amicable resolution of disputes involving the Property, and to avoid the emotional and financial costs of litigation, if at all possible. Accordingly, each Owner covenants and agrees that it shall attempt to resolve all claims, grievances or disputes involving the Property, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents through alternative dispute resolution methods, such as mediation and arbitration. To foster the amicable resolution of disputes, Declarant may adopt alternative dispute resolution procedures.

(b) Participation in alternative dispute resolution procedures shall be voluntary and confidential. Should either party conclude that such discussions have become unproductive or unwarranted, then the parties may proceed with litigation.

9.7 **Severability.** Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

9.8 **Non-Merger.** Notwithstanding the fact that Declarant is the current owner of the Property, it is the express intention of Declarant that the easements established in this Declaration for the benefit of the Property and the Owners and shall not merge into the interest of Parcels transferred by Declarant or its successor, but that the estates of Declarant and all subsequent Owners shall remain as separate and distinct estates. Any conveyance of all or a portion of the Property shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

9.9 **Grants.** The parties hereby declare that this Declaration and the easements created herein shall be and constitute covenants running with the fee simple estate of the Property. The grants and reservations of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted or reserved in this Declaration.

9.10 **Cumulative Effect; Conflict.** The provisions of this Declaration shall be cumulative with any additional recorded covenants, restrictions, and declarations applicable to all or any portion of the Property; provided, however, in the event of a conflict between the provisions of Georgia law, the Master Declaration, and this Declaration, then the provisions of Georgia law, the Master Declaration, and this Declaration (in that order) shall prevail. Further, nothing in this Section 9.10 shall preclude any recorded covenants, restrictions, and declarations applicable to any portion of the Property from containing additional covenants, restrictions or provisions that are more restrictive than the provisions of this Declaration, and in such event the more restrictive provision shall control regardless of the order set forth above.

9.11 **Conflict or Ambiguity.** In the event of any conflict or ambiguity in the terms and provisions of this Declaration, the general rules of construction relating to construction against Declarant are hereby waived by each Owner.

9.12 **Governing Law.** The laws of the State of Georgia shall govern as to the interpretation, validity and effect of this Declaration, without regard to such state's choice of law principles.

9.13 **Counterparts.** This Declaration may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same document.

9.14 **Not a Public Dedication.** Nothing contained herein shall be deemed to be a gift or dedication of any portion of the City Springs Project, or of any Parcel, or portion thereof, to the general public or for any public use or purpose whatsoever, it being the intention and understanding of the parties hereto and all Owners that this Declaration shall be strictly limited to and for the purposes herein expressed for the development, maintenance and operation of the Parking Improvements solely for the benefit of the Owners. Each Owner, by appropriate rules and regulations adopted with notice to all Owners, shall have the right to prohibit and regulate any use of its Parcel by a Person, including Permittees, for any purpose which is in compliance with the Governing Documents.

9.15 **Attorneys' Fees And Costs.** In the event of any litigation between the parties arising out of or in connection with this Declaration, the prevailing party shall be entitled to recover all reasonable costs incurred, including without limitation reasonable attorneys' and paralegals' fees and costs, whether such fees and costs are incurred at trial, on appeal or in any bankruptcy proceedings.

9.16 **Further Assurances.** Each Owner covenants and agrees to sign, execute and deliver, or cause to be signed executed and delivered and to do or make, or cause to be done or made, any and all agreement, instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, as may be reasonably requested by Declarant for the purpose of or in connection with clarifying, amending or otherwise consummating the transactions and matters set forth herein.

9.17 **Estoppel Certificates.**

(e) Each Owner and Declarant shall, from time to time, within ten (10) Days after receipt of written request from any other Owner or Declarant (which shall be no more frequent than three (3) times per calendar year), execute, acknowledge and deliver to such party or to any existing or prospective purchaser or Mortgagee designated by such party, an estoppel certificate stating, to the extent applicable:

(i) that the terms and provisions of this Declaration are unmodified and are in full force and effect or, if modified, identifying any such modifications;

(ii) whether there is any existing default hereunder (or grounds therefor after giving the requisite notice hereunder) by the requesting party and, if so, specifying the nature and extent thereof;

(iii) whether there are any sums (other than those arising out of the normal course of operation of City Springs within the previous forty-five (45) Days) which the Person executing such estoppel certificate owes as a Parking Assessment or is entitled to receive or demand from the requesting party, and if there is any such sum, specifying the nature and amount thereof;

(iv) the nature and extent of any set-offs, claims, counterclaims, and/or defenses then being asserted or capable of being asserted after giving the notice, if any, required hereunder or otherwise known by the Person executing the estoppel certificate against the enforcement of the requesting party's obligations hereunder;

(v) the total amount of all sums owed hereunder and all liens being asserted or capable of being asserted after giving notice, if any, required hereunder, describing the applicable provision or provisions and the details of any such lien claim;

(vi) the current address or addresses to which notices given to the Person executing such estoppel certificate are to be mailed; and

(vii) such other facts or conclusions as may be reasonably requested.

(f) Such estoppel certificate shall not act to estop the issuer from asserting a claim or defense against a bona fide encumbrancer or purchaser for value to the extent that such claim or defense is based upon facts known to the issuer as of the date of the estoppel certificate which are contrary to the facts contained therein, and such bona fide purchaser or encumbrancer has acted in reasonable reliance upon such estoppel certificate without knowledge of facts to the contrary. The issuance of an estoppel certificate shall in no event be construed to waive any rights of the issuer to challenge acts committed by any Owner or Declarant for which approval by the issuer was required but not sought or obtained. The issuance of an estoppel certificate shall in no event subject the party executing such estoppel certificate to any liability for the negligent or inadvertent failure of such party to disclose correct and/or relevant information.

9.18 **Jurisdiction.** This Declaration shall be construed and enforced in accordance with the laws of the State of Georgia. Declarant hereby submits to the exclusive jurisdiction and venue of the Superior Court of Fulton County, Georgia for the purposes of all legal proceedings arising out of or relating to this Declaration, and Declarant hereby irrevocably waives to the fullest extent permitted by Applicable Law, any objection which it may now or hereafter have to the venue of any such proceeding which is brought in such a court.

9.19 **Notices.** All notices, approvals or other communications required or permitted to be given under this Declaration shall be in writing and shall be considered as properly given or made: (a) on the third (3rd) Business Day after being mailed via U.S. mail by certified mail, return receipt requested, postage prepaid and addressed to the Person to whom it is intended at the address of said Person as set forth below; (b) the next Business Day after being sent via overnight commercial courier, courier fee prepaid and addressed to the Person to whom it is intended at the address of said Person as set forth below; or (c) when actually received by the Person to whom it is intended if given in any other manner. The address for an Owner shall be the most recent address of said Owner designated in writing to Declarant and given in accordance with this Section 9.19, or if not so designated, as shown on the tax rolls of Fulton County, Georgia.

If to Developer:

Sandy Springs City Center, LLC  
c/o Carter and Associates, LLC  
171 17th Street NW, Suite 1200  
Atlanta, Georgia 30363-1032  
Attention: Jerome Hagley

If to Declarant:

City of Sandy Springs Public Facilities  
Authority  
7840 Roswell Road, Building 500  
Sandy Springs, Georgia 30350  
Attention: Chairman

With copies to:

Kilpatrick Townsend & Stockton LLP  
1100 Peachtree Street NE, Suite 2800  
Atlanta, Georgia 30309-4528  
Attention: M. Andrew Kauss, Esq.

With copies to:

City of Sandy Springs, Georgia  
7840 Roswell Road, Building 500  
Sandy Springs, Georgia 30350  
Attention: City Manager

City of Sandy Springs, Georgia  
7840 Roswell Road, Building 500  
Sandy Springs, Georgia 30350  
Attention: City Attorney

Rejection or other refusal by the addressee to accept, or the inability to deliver because of a changed address of which no notice was given, shall be deemed to be receipt of the notice sent. By notice in accordance with the above to all parties hereto, the parties hereto may designate from time to time a change of address for all such notices by providing to all other applicable parties at least ten (10) Days prior written notice of the changed address.

9.20 **Exhibits**. The exhibits attached to this Declaration are incorporated herein by this reference and amendment of such exhibits shall be governed by the provisions of Section 9.3.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, DECLARANT has caused its authorized representatives to execute this Declaration on the day first above written.

**DECLARANT:**

Signed, sealed and delivered in the presence of: CITY OF SANDY SPRINGS PUBLIC FACILITIES AUTHORITY, a political subdivision of the State of Georgia

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[NOTARY SEAL]

**CONSENT OF DEVELOPER**

Developer executes this Declaration for the purpose of consenting to the execution by Declarant of this Declaration, consenting to the creation of the easements contained in this Declaration, consenting to the terms, conditions, and covenants in this Declaration, and agreeing to be bound by the provisions of this Declaration, on behalf of itself and its successors and assigns in interest for the purpose of benefiting and obligating the Owner of the Developer Parcel as set forth in this Declaration, which Developer Parcels are to be conveyed by Declarant to Developer on or about the date hereof.

**DEVELOPER:**

Signed, sealed and delivered in the presence of: SANDY SPRINGS CITY CENTER, LLC, a Georgia limited liability company

\_\_\_\_\_  
Witness

By: Carter and Associates, LLC, a Georgia limited liability company, its Managing Member

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[NOTARY SEAL]

**EXHIBIT “A-1”**

**Master Plan**

(See Attached)

**EXHIBIT "A-2"**

**Parking Plan**

(See Attached)

**EXHIBIT "A-3"**

**Legal Description of Property**

**EXHIBIT "B-1"**

**Depiction of City Parking Parcel**

**EXHIBIT "B-2"**

**Legal Description of North Parcel**

**EXHIBIT "B-3"**

**Legal Description of South Developer Parcel**

**EXHIBIT "B-4"**

**Depiction of South City Parcel**

**EXHIBIT "B-5"**

**Depiction of South Parking Parcel**

**EXHIBIT "B-6"**  
**Depiction of Outparcel**

**EXHIBIT “C”**

**Form of Visitor Parking Area Signage**

(See Attached)

**MASTER DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
CITY SPRINGS**

Upon recording, please return to:

Wendell K. Willard  
Law Office of Wendell K. Willard  
7840 Roswell Rd, Suite 330  
Sandy Springs, Georgia 30350

**MASTER DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
CITY SPRINGS**

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CITY SPRINGS (“**Declaration**”) is made this \_\_\_\_ day of \_\_\_\_\_, 2016, by the City of Sandy Springs Public Facilities Authority, a political subdivision of the State of Georgia (“**Declarant**”). All capitalized terms not defined in this preamble are defined in **Article 1**.

Declarant is the owner of fee simple title to the Property. Declarant desires to provide for separate ownership of portions of the Property. In connection therewith, Declarant desires to subject and impose upon the Property certain covenants, conditions, restrictions, reservations and easements as set forth in this Declaration for the purpose of insuring the proper use and appropriate development, administration, maintenance and improvement of the Property.

This Declaration sets forth the basic covenants, conditions and restrictions that will apply to the Property. It is contemplated that the Property will be developed as a mixed-use development comprised of various governmental, retail, commercial, residential, recreational, and other permitted uses allowed under the Zoning Conditions and this Declaration.

This Declaration is designed to help implement the Master Plan in order to, among other purposes, fulfill the following:

1. protect, enhance and preserve the value, amenities, desirability, and attractiveness of the Property;
2. carry out the vision statement for and mission of City Springs as set forth herein;
3. prevent the erection within the Property of any Improvements built of improper or unsuitable design and/or materials;
4. ensure the orderly and attractive development and use of the Property;
5. prevent any haphazard and inharmonious improvement of Parcels;
6. facilitate access to and from the Parcels and within the Property;
7. encourage the erection of attractive Improvements;
8. protect Owners against such improper use of surrounding Parcels as will depreciate the value of their Parcels;
9. create and maintain usable green space for public use and enjoyment;
10. provide for the Construction, installation, and maintenance of Common Facilities;  
and

11. preserve the architectural integrity, aesthetic appearance, and economic value of the Property and Improvements constructed thereon from time to time.

Declarant hereby declares that the Property shall be owned, held, transferred, sold, conveyed, mortgaged, hypothecated, encumbered, leased, subleased, rented, used, occupied, developed, improved, maintained and used subject to the covenants, conditions, restrictions, reservations and easements set forth in this Declaration which shall run with the title to the Property. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Property, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner of any portion of the Property.

**This document does not and is not intended to create a condominium within the meaning of O.C.G.A §44-3-70, et seq. nor a property owners' development within the meaning of O.C.G.A §44-3-220, et seq.**

## **ARTICLE 1: DEFINITIONS**

The terms in this Declaration and the exhibits hereto shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 **"Acreage"** means, with respect to a Parcel, the number of acres of area, calculated to the nearest 1/100 acre, within the boundaries of such Parcel.

1.2 **"Applicable Law"** means any law, regulation, rule, order, policy or ordinance of any governmental or quasi-governmental entity, now in effect or hereafter promulgated, that is applicable to all or any portion of City Springs.

1.3 **"Approve", "Approved" or "Approval"** means an approval that occurs by virtue of: (i) an express prior approval in a written statement signed by the approving Person or (ii) a deemed approval in accordance with the immediately following sentence. Except as may be specified otherwise herein, any matter requiring an approval under this Declaration shall be submitted in writing in accordance with this Declaration to the Person with the approval right (which submission shall include an express written statement that approval or disapproval is required within fifteen (15) Days). If the Person with the approval right fails to approve or disapprove such matter in writing within fifteen (15) Days following such submission, the party requesting approval shall provide the Person with the approval right with written notice of such failure (which notice shall include an express statement that approval or disapproval is required within ten (10) Days). If the Person with the approval right again fails to approve or disapprove such matter within ten (10) Days of such written notice, unless an extension of such time period has been agreed to in writing by the party requesting approval and the Person with the approval right, the Person with the approval right shall be deemed to have "Approved" such matter.

1.4 **"Assessments"** means the amounts payable by an Owner under this Declaration in accordance with **Article 7**.

1.5 **"Association"** means the property owners association for the Property organized pursuant to **Section 10.2**.

1.6 “**Attached hereto**” means “attached hereto and for all purposes incorporated herein by reference”.

1.7 “**Building**” means a building, or a group of integrated buildings, constructed on a Parcel.

1.8 “**Business Day**” means any Day excluding any Saturday, any Sunday, and any national holiday observed by the State of Georgia.

1.9 “**City**” means the City of Sandy Springs, Georgia.

1.10 “**City Parcel Vertical Access Easement Area**” means that portion of the Property (including any Parcel), depicted on the Master Plan and/or the Parking Plan as the “City Parcel Vertical Access Easement Area”.

1.11 “**City Parcel Vestibule Easement Area**” means that portion of the Property (including any Parcel), depicted on the Master Plan and/or the Parking Plan as the “City Parcel Vestibule Easement Area”.

1.12 “**City Parking Parcel**” means that certain parcel designated on the Parking Plan as the “City Parking Parcel” and depicted on Exhibit D attached hereto.

1.13 “**City Springs Project**” means that certain planned mixed-use development located in the City of Sandy Springs, Georgia and presently commonly known as City Springs.

1.14 “**Common Easement Areas**” means the Drainage Easement Area, the Mechanical and Electrical Easement Areas, the Pedestrian Access Easement Areas, the Vertical Access Easement Areas and the Vestibule Easement Areas.

1.15 “**Common Easements**” means the easements in and to the Common Easement Areas declared and established pursuant to **Article 6**.

1.16 “**Common Facilities**” means all Drainage Facilities, all Mechanical and Electrical Facilities, all Pedestrian Access Facilities, all Vertical Access Facilities and all Vestibule Facilities.

1.17 “**Construction**” or “**Constructed**” means any activity normally encompassed by any of the following terms: construction, reconstruction, demolition, blasting, excavation, building, rebuilding, renovation, restoration, installation and similar and related work.

1.18 “**Crane Boom**” means the boom of any tower or other crane used to perform any Construction or maintenance activities permitted pursuant to this Declaration.

1.19 “**Day**” means any calendar day; provided, however, if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday or legal holiday in the State of Georgia, then such time period shall be automatically extended to the close of business on the next regular Business Day.

1.20 “**Declarant**” means the City of Sandy Springs Public Facilities Authority, a political subdivision of the State of Georgia (“**Original Declarant**”), in its capacity as Declarant under this Declaration and not in its separate individual capacity, and its successors and assigns, and shall include any assignee of the Declarant Interest pursuant to **Section 10.3**, and any successor to the Declarant Interest pursuant to **Section 10.3**.

1.21 “**Declarant Interest**” means the Declarant Powers, together with all of the right, title, interest, privileges, benefits and options of the “Declarant” under this Declaration.

1.22 “**Declarant Obligations**” means all of the duties, obligations, liabilities and responsibilities of the “Declarant” under this Declaration.

1.23 “**Declarant Powers**” means all of the rights, reservations, power and authority of Declarant pursuant to this Declaration.

1.24 “**Declarant Resignation Event**” means the occurrence of any of the following events: (i) if Declarant ceases to exist and has not made an assignment of the entire Declarant Interest pursuant to **Section 10.3**; or (ii) if Declarant, or the assignee of Declarant Interest pursuant to **Section 10.3**, files a written notice in the Public Records, that it has relinquished the Declarant Interest; or (iii) if Declarant, or one or more Affiliates of Declarant, cease to be an Owner of a Parcel.

1.25 “**Declaration**” means this “Master Declaration of Covenants, Conditions and Restrictions for City Springs”, as the same may be supplemented or amended from time to time as provided herein; and references to this Declaration mean and include each of the terms and provisions hereof and each of the covenants, conditions, restrictions, reservations and easements set forth herein.

1.26 “**Design Guidelines**” means the design, architectural and construction guidelines attached hereto as Exhibit C, as the same may be amended from time to time in accordance with this Declaration.

1.27 “**Drainage Easement Area**” means that portion of the Property (including any Parcel), depicted on the Master Plan as the “Drainage Easement Area”.

1.28 “**Drainage Facilities**” means all lines, equipment, facilities, and systems for drainage and retention of surface waters, constructed or installed from time to time within the Drainage Easement Area.

1.29 “**Eligible Holder**” shall have the meaning given to it in **Section 9.1**.

1.30 “**Event**” or “**Events**” means art shows, farmers’ markets, community programs, concerts and other educational, cultural, artistic, musical, entertainment, seasonal and holiday, promotional, charitable, sporting and other events authorized by Declarant utilizing the Public Park, the PAC and/or any other designated Event Area.

1.31 “**Event Area**” or “**Event Areas**” means those certain areas within the Property, including, but not limited to, the Public Park and the PAC, that shall be available for use by

Event Holders and to which access during Events may be limited to Ticket Holders or paid admittees for such Event, at the discretion of the Event Holder.

1.32 “**Event Expenses**” means any of the following costs and expenses that are related directly and exclusively to an Event Holder’s use of an Event Area: (i) wages, benefits and incidentals paid to all Event staff, including ushers, ticket-takers, ticket-sellers and fan assistance personnel; (ii) Event security; (iii) on-site first aid and ambulance service; (iv) Event publicity and marketing; (v) concession services; (vi) any licenses and permits required for such Event; (vii) Event liability insurance obtained by the Event Holder; (viii) entertainment and event production costs; (ix) public address system operations; (x) post-Event dismantling, cleaning and trash removal and costs and expenses necessary to restore all reserved portions of the Event Area to its pre-Event condition; (xi) custodial staff and maintenance personnel during an Event; (xii) any costs for the preparation and set-up for an Event, including the cost for one-time upgrades to any facility such as the provision of electricity to a particular location; and (xiii) any other costs or expenses as determined by an Event Holder to be related directly or indirectly to an Event and use of an Event Area.

1.33 “**Event Holder**” means any Person conducting an Event.

1.34 “**Event Schedule**” means an advance schedule of all proposed Events (including the designation of any “Major Events”) for the upcoming month to be posted on the official website designated by Declarant for communication regarding Events at the City Springs Project.

1.35 “**FHAA**” means the Fair Housing Amendments Act of 1988, 42 U.S.C. §3601, et seq.

1.36 “**First Class**” means at the level of quality, rental value, condition, nature or operation that is consistent with the initial Construction and comparable to the quality, rental value, condition, nature or operation found in other superior mixed-use developments in the Atlanta, Georgia, metropolitan area of comparable age, quality and Construction to the Property, considering normal wear and tear over the life of the Improvements.

1.37 “**Foreclosure**” means, without limitation: (i) the judicial foreclosure of a Mortgage or a lien arising pursuant to **Section 7.9**; (ii) the exercise of a power of sale contained in any Mortgage; (iii) conveyance of the property encumbered by a Mortgage or by a lien arising pursuant to **Section 7.9** in lieu of foreclosure thereof; or (iv) any action commenced or taken by a lessor to regain possession or control of property leased under a sale/leaseback.

1.38 “**General Property Uses**” means general categories of Property Uses, including office, retail, residential, temporary lodging, transit or parking. The permitted General Property Uses for each Parcel are specified on the Master Plan and/or the Parking Plan.

1.39 “**Governing Documents**” means this Declaration, the Parking Declaration, the Design Guidelines and the Zoning Conditions, now or hereafter existing, and all additional covenants governing any portion of the Property, or any of the above, as each may be supplemented and amended from time to time.

1.40 “**Hazardous Materials**” means and refers to the following: (A) Any “hazardous waste” as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 *et seq.*), as amended from time to time, and regulations promulgated thereunder; (B) any “hazardous substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 *et seq.*); the Superfund Amendments and Re-authorization Act of 1986, as amended from time to time, and regulations promulgated thereunder; (C) asbestos; (D) polychlorinated biphenyls; (E) underground storage tanks, whether empty, filled or partially filled with any substance; (F) any substance the presence of which on the Property is prohibited by any Applicable Law; (G) any other environmental substance which by any Applicable Law requires special handling or notification of any federal, state or local governmental entity in its collection, storage, treatment, or disposal; and (H) any item so designated by or pursuant to the Water Pollution Control Act (33 U.S.C. Section 1251 *et seq.*); Safe Drinking Water Act (42 U.S.C. Section 3000(f) *et seq.*); or Toxic Substances Control Act (15 U.S.C. Section 2601 *et seq.*).

1.41 “**Improvement**” or “**Improvements**” shall mean, with respect to any Parcel, any building, structure or other improvement of any kind or nature whatsoever in, on, over, under, through or across such Parcel, whether permanent or temporary, stationary or moveable, or above, on or below ground level, including all Buildings (whether fully or partially enclosed), parking facilities and structures, walls, exterior screening, poles, towers, antenna, lighting, utility facilities and Signage.

1.42 “**including**” means “including without limitation”.

1.43 “**Major Events**” means those Events which are designated as Major Events on the Event Schedule (or otherwise indicated as such to the Owners in writing at least forty-eight (48) hours prior to the Event) because of the number of additional people they are expected to bring to the City Springs Project.

1.44 “**Master Plan**” means the land use and development plan for City Springs, a copy of which is attached hereto as Exhibit B-1, as such plan may be amended from time to time in accordance with this Declaration, which plan includes and depicts the Property.

1.45 “**Mechanical and Electrical Easement Areas**” means those portions of the Property (including any Parcel), depicted on the Parking Plan as the “Mechanical and Electrical Easement Areas”.

1.46 “**Mechanical and Electrical Facilities**” means the mechanical and electrical equipment, facilities and systems constructed or installed from time to time within the Mechanical and Electrical Easement Areas.

1.47 “**Mixed-Use Building**” means that certain mixed-use building to be developed by Declarant, designated on the Master Plan as the “Mixed Use Building”, which will include, without limitation, municipal offices and meeting spaces for the City of Sandy Springs, retail space, a performing arts facility and multi-purpose space.

1.48 “**Mortgage**” means any deed of trust, deed to secure debt, mortgage, or any other form of security instrument affecting title (fee simple or leasehold) to any Parcel.

1.49 “**Mortgagee**” means a beneficiary or holder of a Mortgage and the indebtedness or other obligation secured thereby, whether the initial holder thereof or their heirs, legal representatives, successors, transferees and assigns of such initial holder.

1.50 “**Mortgagor**” means the grantor of any Mortgage.

1.51 “**North Parcel**” means that certain parcel designated on the Master Plan as the “North Parcel” and more particularly described on Exhibit E attached hereto.

1.52 “**North Parcel Vertical Access Easement Area**” means that portion of the Property (including any Parcel), depicted on the Master Plan and/or the Parking Plan as the “North Parcel Vertical Access Easement Area”.

1.53 “**North Parcel Vestibule Easement Area**” means that portion of the Property (including any Parcel), depicted on the Master Plan and/or the Parking Plan as the “North Parcel Vestibule Easement Area”.

1.54 “**Occupant**” means, as the context requires, the Owner of any Parcel, a Parcel Lessee, a Space Tenant, or any other lawful user or occupier of any portion of the Property or any Improvements, including guests, employees, agents, contractors, clients, customers, visitors, invitees, licensees and concessionaires of the foregoing Persons.

1.55 “**Owner**” means the owner of fee simple title to a Parcel, as shown in the Public Records. Notwithstanding the foregoing:

(a) any Mortgagee shall not be deemed an Owner with respect to the property encumbered by the Mortgage held by such Mortgagee, unless such Mortgagee shall have excluded the Mortgagor from possession by appropriate legal proceedings following a default under such Mortgage or shall have acquired the interest encumbered by such Mortgage through Foreclosure;

(b) a Space Tenant shall not be deemed an Owner with respect to the property demised by the Space Lease held by such Space Tenant;

(c) as to any Parcel owned under a condominium structure or similar form of ownership, the Owner Association responsible for governing such Parcel shall be deemed the sole Owner of such Parcel;

(d) any Person holding or owning any easements, rights-of-way or licenses that pertain to or affect any such real property shall not be deemed an Owner of such real property solely by virtue of such easements, rights-of-way or licenses;

(e) in the event an Owner of any Parcel consists of more than one Person (other than a Parcel owned under the condominium or cooperative form of ownership), such Persons shall, within thirty (30) Days after the date of their acquisition of such Parcel, execute and deliver to Declarant a written instrument, including a power of attorney, appointing and authorizing one of the such Persons comprising such Owner as their designated agent to receive all notices and demands to be given to an Owner of a

Parcel pursuant to this Declaration, and to cast all votes and to take any and all actions required or permitted to be taken by an Owner under this Declaration. Such owning Persons may change their designated agent by written notice to Declarant, but such change shall be effective only after actual receipt by Declarant of such written notice and a replacement instrument or instruments, including a power of attorney from all Persons or entities comprising the Owner of a Parcel appointing and authorizing one of such Persons comprising such Owner to act as attorney-in-fact pursuant to such power of attorney; and

(f) Declarant, the City, and any other public entity will be considered an Owner with respect to any Parcel that they own.

1.56 “**Owner Association**” means any mandatory membership nonprofit corporation incorporated under the laws of the State of Georgia for the purpose of governing one or more Parcels at the Property, including, but not limited to, any condominium association that may be created for condominium units established at the Property and any board of representatives required.

1.57 “**PAC**” means the performing arts facility to be located within the Mixed-Use Building.

1.58 “**Parcel**” means each portion of the Property (which may consist of surface, subsurface or air rights, or any combination thereof), as owned by Declarant or as conveyed by Declarant to the Owner thereof other than Declarant (including the City or any other public entity), which is intended for development, use, and/or occupancy as set forth on the Master Plan and/or the Parking Plan, subject to compliance with this Declaration.

The following provisions shall apply to the term Parcel:

(a) The term Parcel shall refer to the land, if any, which is part of the Parcel as well as any Improvements thereon.

(b) Each separately platted tract of land shall be deemed to be a separate Parcel, regardless of the number of uses or businesses operated on such Parcel.

(c) The City Parking Parcel and the South City Parcel shall constitute Parcels for purposes of this Declaration.

(d) The Public Park is a Parcel.

(e) Notwithstanding anything to the contrary contained herein, any portion of the Property subject to the jurisdiction of an Owner Association shall be deemed a single Parcel except as otherwise provided herein.

1.59 “**Parcel Lease**” means a lease whereby the Owner of such Parcel conveys to the lessee thereunder a leasehold estate and estate for years in and to a Parcel.

1.60 “**Parcel Lessee**” means the lessee under a Parcel Lease.

1.61 **“Parking Declaration”** means that certain City Springs Declaration of Parking Easements and Cost Sharing Agreement dated of even date herewith, as amended or supplemented from time to time, that addresses, among other things, issues relating to the use, operation and maintenance of the parking facility and other surface parking spaces and areas within City Springs.

1.62 **“Parking Plan”** means the parking plan for City Springs, a copy of which is attached hereto as Exhibit B-2, as such plan may be amended from time to time in accordance with this Declaration, which plan includes and depicts the areas of the Property to be utilized for parking.

1.63 **“Pedestrian Access Easement Areas”** means those portions of the Property containing Pedestrian Access Facilities.

1.64 **“Pedestrian Access Facilities”** means all sidewalks, walkways and other areas for pedestrian ingress and egress constructed or installed from time to time within areas of the Property that are not restricted to the general public by gates, fences or other means.

1.65 **“Person”** means a natural person, corporation, limited liability company, partnership, association, trust, or other legal entity, or any combination thereof.

1.66 **“Prime Rate”** means the U.S. prime rate as defined by the Wall Street Journal.

1.67 **“Property”** means that certain real property described on Exhibit A attached hereto.

1.68 **“Property Use”** or **“Property Uses”** means the intended functions of, or activities that take place on a temporary or ongoing basis on, in or with respect to any Parcel.

1.69 **“Public Park”** means that portion of the Property depicted on the Master Plan as the “Public Park”.

1.70 **“Public Records”** means the records of the Clerk of the Superior Court of Fulton County, Georgia.

1.71 **“Shared Sign”** means a monument sign to be constructed by Declarant in the City Springs Project that will contain multiple sign panels and will be utilized by more than one Owner for the advertisement of various retail establishments and/or other aspects of the City Springs Project. Each Shared Sign is depicted on the Master Plan as a “Shared Sign”.

1.72 **“Signage”** means any sign, structure, device, or other marketing, media, temporary or permanent, portable or stationary, which is erected, placed, held, displayed and/or used, by or upon which any numbers, lettering, printing, painting, symbols (including pictorial symbols), or other communication is placed or created, including, without limitation, flags, banners, streamers, balloons, sculptures, inflated figures and objects, video monitors or screens, and kiosks.

1.73 “**South City Parcel**” means that certain parcel designated on the Master Plan as the “South City Parcel” and depicted on Exhibit F attached hereto.

1.74 “**South Developer Parcel**” means that certain parcel designated on the Master Plan as the “South Developer Parcel” and more particularly described on Exhibit G attached hereto.

1.75 “**South Parcel Vertical Access Easement Area**” means that portion of the Property (including any Parcel), depicted on the Master Plan and/or the Parking Plan as the “South Parcel Vertical Access Easement Area”.

1.76 “**South Parcel Vestibule Easement Area**” means that portion of the Property (including any Parcel), depicted on the Master Plan and/or the Parking Plan as the “South Parcel Vestibule Easement Area”.

1.77 “**Space Lease**” means any tenancy, leasing, sub-tenancy, sub-leasing, concession, rental, occupancy or other possessory or space use agreement entered into by an Owner or Parcel Lessee, and providing for the use, occupancy and enjoyment of space within a Parcel or any other portion of a Parcel or the Improvements thereon.

1.78 “**Space Tenant**” means the tenant under a Space Lease.

1.79 “**Structural Supports**” means construction elements located on any of the Property which are load-bearing with respect to the Improvements or which are necessary for the structural integrity of the Improvements, including, without limitation, foundations, footings, slabs, caissons, girders, columns, beams, bed plates, piling caps, braces and trusses, and any replacement, substitution or modification thereof.

1.80 “**Ticket Holder**” means the holder of a ticket for a specified Event.

1.81 “**Vertical Access Easement Areas**” means those portions of the Property (including any Parcel), depicted on the Master Plan and/or the Parking Plan as the “North Parcel Vertical Access Easement Area”, “South Parcel Vertical Access Easement Area” and “City Parcel Access Easement Area”.

1.82 “**Vertical Access Facilities**” means the elevators and stairways and all associated equipment, facilities, and systems for vertical transportation through the various floors/levels of the Property, constructed or installed from time to time within the Vertical Access Easement Areas.

1.83 “**Vestibule Easement Areas**” means those portions of the Property (including any Parcel), depicted on the Master Plan and/or the Parking Plan as the “North Parcel Vestibule Easement Area”, “South Parcel Vestibule Easement Area” and “City Parcel Vestibule Easement Area”.

1.84 “**Vestibule Facilities**” means the walls, floors, ceilings, doors, windows, finishes, furniture and equipment, constructed or installed from time to time within the Vestibule Easement Areas.

1.85 “Zoning Conditions” means any development order, zoning category, or zoning condition related or applicable to all or any portion of City Springs and any other governmental or quasi-governmental order, permit, or approval applicable to the Property.

## ARTICLE 2: MASTER PLAN; PARKING PLAN

2.1 **Adoption of the Master Plan and the Parking Plan.** Declarant hereby adopts the initial Master Plan for the Property attached hereto as Exhibit B-1 and the initial Parking Plan for the Property attached hereto as Exhibit B-2. Full sized copies of the Master Plan and the Parking Plan shall be maintained at the offices of Declarant.

2.2 **Amendments to the Master Plan and the Parking Plan.** From time to time, Declarant may amend the Master Plan and/or the Parking Plan, subject to **Section 2.3**. Declarant shall give written notice to all Owners of any amendment to the Master Plan or the Parking Plan.

2.3 **Effect on Existing Parcels.** No amendment to the Master Plan or the Parking Plan shall: (a) negatively impact any Party or Parcel with respect to access to or use and enjoyment of the Common Easements or Common Facilities, or the Easements or Parking Areas (as both are defined in the Parking Declaration), without the consent of such Party or the Owner and Mortgagee(s) of such Parcel; (b) create or modify any Common Easement Areas or Common Facilities, or any Easements or Parking Areas (as both are defined in the Parking Declaration), on a Parcel without the consent of the Owner and Mortgagee(s) of such Parcel; (c) require any changes to existing Improvements or Property Uses on a Parcel without the consent of the Owner and Mortgagee(s) of such Parcel; or (d) change the permitted General Property Uses on a Parcel without the consent of the Owner and Mortgagee(s) of such Parcel.

## ARTICLE 3: INSURANCE AND CASUALTY LOSSES<sup>1</sup>

### 3.1 **Required Coverages.**

(a) Declarant shall obtain and maintain at all times, with a company authorized to do business in the State of Georgia:

(i) “all risk” insurance for all of the insurable Improvements on that portion of the property that Declarant owns which can be insured for a reasonable premium, in an amount consistent with full replacement value of such insurable Improvements;

(ii) commercial general liability insurance, in reasonable and customary amounts for similar properties; and

(iii) such other types of insurance required by Applicable Law.

(b) Each Owner shall obtain and maintain at all times, with a company authorized to do business in the State of Georgia:

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<sup>1</sup> Insurance provisions are subject to further risk management review and feedback.

(i) “all risk” insurance for all of the insurable Improvements on such Owner’s Parcel which can be insured for a reasonable premium, in an amount consistent with full replacement value of such insurable Improvements;

(ii) commercial general liability insurance, in reasonable and customary amounts for similar properties; and

(iii) such other types of insurance required by Applicable Law.

### 3.2 **Policy Requirements.**

(a) All Declarant policies: (i) shall provide for a certificate of insurance to be furnished to each Owner upon written request; (ii) shall list the Owners as additional insureds; and (iii) shall be endorsed to provide that each underwriter waives its right of subrogation against the property damage insurance of additional insureds.

(b) All Owner policies: (i) shall provide for a certificate of insurance to be furnished to Declarant upon written request; (ii) shall list Declarant as additional insured; and (iii) shall be endorsed to provide that each underwriter waives its right of subrogation against the property damage insurance of additional insured.

(c) All policies may contain a reasonable deductible.

(d) All policies shall provide for thirty (30) Days’ prior written notice to the insured and any additional insured of any cancellation or material change.

### 3.3 **Proof of Owner’s Insurance.**

(a) Certificates evidencing the insurance and specific endorsements required hereunder shall be furnished to Declarant prior to an Owner commencing any work within the Property.

(b) Should an Owner fail to procure or to maintain in force the insurance specified herein, Declarant may, but shall not be required to, secure insurance on behalf of the Owner and assess the cost thereof to the Owner, to be collected in the manner provided for collection of Assessments under **Article 7**.

3.4 **No Waiver.** Compliance with the provisions of this **Section 3.4** and the limit of liability shown for each of the required coverages shall not constitute a limitation of Declarant’s or an Owner’s liability for claims nor in any way limit, modify or otherwise affect Declarant’s or such Owner’s indemnification obligations herein. The insolvency, bankruptcy, or failure of any insurance company providing insurance to Declarant or an Owner or the failure of any such company to pay any claim, shall not be held to waive any of the provisions of this **Section 3.4**.

### 3.5 **Limitation of Liability.**

(a) Neither Declarant, nor their respective officers, employees, contract employees or agents, shall be liable to any Owner or Occupant for any loss, damage or injury, or

claim thereof, arising out of or in any way connected with the performance or nonperformance of Declarant's duties under this Declaration unless due to the willful misconduct, gross negligence or bad faith of Declarant or its respective officers, employees, contract employees or agents, as the case may be.

(b) Each Owner, by virtue of the acceptance of title to its Parcel, and each other Person having an interest in or right to use any portion of the Property, by virtue of accepting such interest or right to use, shall be bound by this **Section 3.5(b)** and shall be deemed to have automatically waived any and all rights, claims, demands, and causes of action against Declarant arising from or connected with any matter for which the liability of Declarant has been disclaimed under this **Section 3.5(b)**.

#### **ARTICLE 4: CONTROL AND LAND USE**

4.1 **General Restrictions and Requirements.** The Property shall be subject to the following restrictions and requirements:

(a) **Plan Approval.** Declarant shall have the sole right, power and authority to Approve and regulate the design and construction of all Improvements within the Property so as to assure compliance with the intent and purpose of this Declaration, including, without limitation, for the purpose of the overall aesthetic coordination of the Property. No Improvement shall be made, Constructed, modified, altered (by addition or deletion), demolished, rebuilt or reconstructed, maintained or permitted to remain on any Parcel unless and until the plans and specifications for such Improvement have been submitted to, and Approved by, Declarant pursuant to the provisions of **Article 5**, and except in accordance with plans and specifications submitted to, and Approved by, Declarant pursuant to the provisions of this Declaration; provided, however, that Improvements, which (i) take place completely within a Building, or (ii) do not change the exterior appearance in any material respect of such Building or alter the structural integrity of such Building, may be undertaken without the Approval of Declarant. For purposes of clause (ii) of this **Section 4.1(a)**, and only by way of example and not in limitation thereof, any change in the color or construction materials of the exterior of a Building shall be deemed "material". No Declarant Approval shall be required to repaint, refinish or repair the exterior of a structure in accordance with the currently approved color scheme or to rebuild in accordance with the currently Approved plans and specifications.

(b) **Temporary Structures.** No temporary Buildings or other temporary structure shall be permitted on any Parcel, with the exception of temporary structures required in connection with authorized Events; provided, however, that, if Approved by Declarant, trailers, temporary buildings, barricades, and the like shall be permitted for construction purposes during the construction period of a permanent Building. Such temporary structures for construction purposes shall be placed as inconspicuously as possible, shall cause no inconvenience to Owners or Occupants, and shall be removed not later than fourteen (14) Business Days after the date of substantial completion or occupancy of the Building(s), whichever is earlier, in connection with which the temporary structure was used, unless a variance is granted by Declarant. For purposes of this **Section 4.1(b)** "temporary" means not permanently affixed or attached to the land.

(c) **Zoning.**

(i) All development and use of any portion of the Property within City Springs shall be consistent with all Zoning Conditions. In the event of a conflict between a Zoning Condition and a provision contained in the Governing Documents, the more restrictive provision shall apply. All Zoning Conditions shall be binding upon all Owners and Occupants, including Declarant and any Owner or Occupant that is a public entity or governmental authority.

(ii) Declarant may apply for rezoning at any time as to any portion of the Property; provided, however, that the Owner or Owners of the portion of the Property to be rezoned must consent in writing to such rezoning application. An Owner may apply or join in an application to rezone or apply for any zoning variance or waiver as to all or any portion of the Property, without the prior written consent of Declarant, only if such action is consistent with this and all other terms and provisions of this Declaration.

(d) **Environmental Protection.** The following activities are deemed to materially disturb or destroy the vegetation or air quality within the Property or adjoining buffers or to use excessive amount of water and are therefore prohibited:

(i) Dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any buffer, drainage or irrigation ditch, swale, stream, pond, wetlands, or creek, or elsewhere within the Property or adjoining areas, except that fertilizers may be applied to landscaping on Parcels, provided care is taken to minimize runoff.

(ii) Obstruction, rechanneling or any other interference with drainage flows after location and installation of drainage swales, storm sewers, or storm drains is prohibited.

(iii) Sprinkler or irrigation systems or wells of any type which draw upon water from creeks, streams, rivers, ponds, wetlands, or other ground or surface waters within the Property are prohibited.

No Owner shall use, or permit the use of, Hazardous Materials on, about, under its Parcel or any portion of the Property, except in the ordinary course of its usual operations conducted thereon, and any such use shall be at all times in compliance with Applicable Law. To the fullest extent permitted by Applicable Law, each Owner agrees to defend, protect, indemnify and hold harmless each other Owner from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including but not limited to costs of investigation, remedial or removal response, and reasonable attorneys' fees and cost of suits, arising out of or resulting from any Hazardous Material used or permitted to be used by such Owner whether or not in the ordinary course of operations.

(e) **Landscaping.** Landscaping shall be installed within thirty (30) Days after substantial completion of Construction of the Building or other Improvements, Approved in accordance with the terms hereof, unless seasonal or exigent weather circumstances (such as

drought) exist that preclude landscaping during such time period, in which case the areas to be landscaped shall be kept in an orderly and attractive condition and landscaped as soon as reasonably practicable.

(f) **Casualty and Condemnation.** In the event of damage to or destruction of Improvements on any Parcel by fire, other casualty or sudden destructive occurrence, or condemnation, the Owner of such Parcel shall: (i) repair, restore and rebuild such Improvements to substantially their condition immediately prior to such event; or (ii) repair and restore the undamaged portion of such Improvements to a complete architectural unit; or (iii) construct new Improvements on such Parcel; or (iv) raze the damaged or destroyed Improvements and restore the Parcel to a clean, neat and safe condition. All repair, restoration and rebuilding pursuant to this **Section 4.1(f)** shall be subject to all of the terms and provisions of this Declaration. The provisions of this **Section 4.1(f)** are not intended to release or relieve any Owner from any obligation it may have to repair, restore and rebuild the Improvements on its Parcel pursuant to any Mortgage or other agreement affecting its Parcel. Notwithstanding the foregoing, each Owner shall have the responsibility and obligation, at such Owner's sole cost and expense, to repair, restore and rebuild any Structural Supports located on its respective Parcel such that they can and will provide continued support to any and all Improvements that rely on such Structural Supports for their structural integrity.

(g) **Fuel Storage and Dispensing.** On site storage and dispensing of gasoline, heating, or other fuels is prohibited, except that Owners shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground or above ground fuel tank used for storage of fuels used in connection with the following: (i) cooking operations in connection with the operation of a restaurant or other food service facility; (ii) a reasonable amount of fuel as necessary for the operation of any generator located on a Parcel; or (iii) by the City or its employees, agents or assigns in connection with the use of the Public Park, provided that operation and installation of such facilities shall be according to Applicable Laws, including without limitation the Zoning Conditions.

(h) **Animals and Pets.**

(i) Raising, breeding or keeping of animals, of any kind is restricted within the Parcels to the keeping of a reasonable number of dogs, cats, or other usual and common household pets.

(ii) Pets shall be kept on a leash or otherwise confined and shall not be permitted to roam free, make objectionable noise, endanger the health or safety of, or constitute a nuisance to the Owners or Occupants, their invitees, or Persons utilizing any portion of the Property. Pets shall be registered, licensed and inoculated as required by Applicable Law. The owners of the pet shall be responsible for all of the pet's actions. Pet waste shall be promptly removed and disposed of in proper receptacles.

(iii) Nothing herein contained shall interfere with any provision under the Americans with Disabilities Act or other Applicable Law.

(i) **Unmanned Aerial Vehicles.** The use of unmanned aerial vehicles (UAVs) and drones within the Property is prohibited.

(j) **Firearms.** To the extent such prohibition is permitted by the laws of the State of Georgia and the United States of America, the carrying and discharge of firearms within the Property is prohibited. Declarant may impose fines and exercise other enforcement remedies as set forth in this Declaration, but shall have no obligation to exercise self-help to prevent or stop any violation of such prohibition. The term “firearms” includes without limitation “B-B” guns, pellet guns, and firearms of all types.

(k) **Portable Stalls and Kiosks.** Selling, or offering for sale, or operating any motor vehicle, push cart, portable stall, kiosk, catering or food truck for sale of, or conducting any business for the purpose of causing the sale or resale of, goods, merchandise, food, and/or beverages from any motor vehicle, push cart, portable stall, kiosk or catering or food truck parked, stopped, or standing upon any portion of the Property or any dedicated roadways or other public property within City Springs shall require the prior Approval of Declarant. Prior to any Approval, Declarant may each require the submittal of information, the issuance of permits, the payment of fees, and compliance with reasonable operational guidelines. Approval by Declarant shall not supersede any requirement for Approval by, or permits as may be required by, Applicable Law and shall not serve as a representation or warranty by Declarant that such approvals and/or permits may be obtained pursuant to Applicable Law. This provision shall not apply to the activities of an Event Holder during an Event.

(l) **Parking.** Parking within the Property shall be in accordance with and governed by the Parking Declaration.

(m) **Views.** The Owners of the Public Park, any Event Areas, and any sidewalks, streets and other right of way areas shall have the right, in each Owner’s reasonable discretion, to add trees and other landscaping or to install Improvements (including, without limitation, Buildings) to such areas from time to time in accordance with this Declaration; provided, however, that no additions or installations shall be made that would substantially impair the view of any retail space from the public rights of way within and surrounding the City Springs Project. Any such additions or installations that may diminish or obstruct the view from a Parcel over the Public Park or any Event Areas and any express or implied easements for view over the Public Park or any Event Areas are hereby expressly disclaimed. Each Owner, by acceptance of a Deed, acknowledges that any view of the Public Park or any Event Areas the Parcel may enjoy as of its date of the purchase may be impaired or obstructed by the natural growth of existing landscaping, the installation of additional trees, other landscaping or other types of Improvements (including, without limitation, Buildings). Declarant shall not have any liability whatsoever to any Owner for any claim based on degradation or impairment of any view from a Parcel over the Public Park or any Event Areas, including, without limitation, claims for loss of value.

(n) **Impacts from Use of Public Park and Event Area.** All Owners and Occupants acknowledge that the operation of the Public Park and the use of the Event Area will produce light, noise, and/or odors in excess of levels typically occurring in mixed use developments, including, without limitation, light, noises and odors from Events and related

activities. Discharge of firecrackers and other fireworks, lights and lasers may be utilized in connection with Events, provided that such activities are conducted pursuant to Applicable Law. Firework displays may include sudden noise, bright light, smoke and other similar effects associated with the use of incendiary devices. Crowd noises, music, loudspeakers, horns, whistles, bells, and/or other sound devices may be audible to Owners and Occupants of other Parcels in connection with the use of the Public Park and the Event Area. Notwithstanding the foregoing, all scheduled uses of the Public Park and outdoor Events shall end at or before 11:00 pm on weekdays and 12:00 midnight on Saturdays, Sundays and national holidays, unless the City has issued a special event permit for such Event. Furthermore, during Major Events, and for a reasonable amount of time before and after the same, the Owner of the Event Area must provide (or cause the Event Holder to provide), at its sole cost and expense, such additional security personnel in and around the Event Area as is reasonably required for safety and crowd/traffic control.

(o) **Owners' Acknowledgment and Notice to Purchasers.**

(i) All Owners and Occupants of Parcels and purchasers are given notice that the specific operational use or uses of each Parcel is limited by the provisions of this Declaration. Each Owner, by acceptance of a Deed or entering into a contract for the purchase of a Parcel, acknowledges the use restrictions set forth in this Declaration and agrees to abide thereby.

(ii) Each Owner further acknowledges that certain uses on one Parcel may impact the use of another Parcel. For example, the use of a retail space for a bar and restaurant may impact the use of another retail space due to governmental rules and regulations. Each Owner shall be responsible for determining the impact of such uses on its Parcel.

(p) **Occupants Bound.** All provisions of the Governing Documents, including but not limited to any provisions governing the conduct of Owners and/or establishing sanctions against the Owners, shall also apply to all Occupants even though Occupants are not specifically mentioned. Any lease on any portion of any Parcel shall provide that the lessee and all Occupants of the leased property shall be bound by the terms of the Governing Documents.

4.2 **Specific Use Guidelines.**

(a) **Permitted Property Uses.** The Property and each Parcel shall be used only for Property Uses permitted by the Zoning Conditions and consistent with this Declaration and with the permitted General Property Uses for each Parcel as specified on the Master Plan and/or the Parking Plan.

(b) **Prohibited Property Uses.** The following Property Uses are prohibited on the Property:

(i) **Fire Hazard.** Any use which produces or is accompanied by any unusual fire, explosive or other damaging or dangerous hazards, including the storage, display or sale of explosives or fireworks other than professional fireworks shows for special Events, provided that ordinary use of heating implements in accordance with all applicable governmental requirements (including ordinary use of grills and ovens and similar cooking appliances or

structures in accordance with all applicable governmental requirements in restaurants, grocery stores or other retail facilities), shall not violate this provision;

(ii) Gun-Related Uses. Any shooting gallery, gun range, or gun shop;

(iii) Amusement Uses. Any amusement gallery, video game arcade, or “virtual reality” establishment (an “**Amusement Use**”); provided, however, that any Amusement Use which is an ancillary use within a restaurant, movie theatre, or other retail operation shall be permitted and that the demonstration of video games in connection with an electronic store or video game seller shall not be considered an Amusement Use in violation of this **Section 4.2** so long as it is an ancillary use of the business;

(iv) Nuisance; Flashing Lights. Any use that: (i) constitutes a public or private nuisance; or (ii) except as otherwise set forth herein in connection with an Event, emits or generates an obnoxious odor, noise, litter, dust or dirt, or flashing or “strobe” lights that can be heard, smelled or seen outside of any Improvements; for the purposes of this provision: (A) ordinary odors of food and beverage preparation emanating from restaurants and other retail establishments shall not be considered obnoxious; (B) grease trap odors, dumpster odors and the like that are perceptible from inside a Building shall be considered obnoxious; and (C) music that cannot be heard inside a Building on a floor above street level shall not be considered obnoxious;

(v) Fire Sales. Any “fire sale”, “going out of business” sale or bankruptcy sale (except as may be required by court order) or auction sale, except for auctions of fine art, fine jewelry, fine books, fine furnishings, and the like;

(vi) Funeral Parlors. Any funeral parlor, mortuary or funeral home;

(vii) Pawn Shops. Any pawn shop, cash for title or “payday lender”;

(viii) Tattoo Parlors. Any tattoo parlor;

(ix) Massage Parlors. Any massage parlor; provided, however, that massage facilities in health clubs, spas and the like are permitted;

(x) Adult Entertainment Uses. Any theater, bar, nightclub, establishment, equipment or system which: (A) shows, previews, sells, rents, distributes, displays, depicts or promotes in any way “adult” movies, films, motion pictures, videos, television shows, cable media, magazines, books or other medium, media or electronic experience (whether now or hereafter developed); provided, however, that the foregoing restriction shall not prohibit the showing, sale, or rental of movies or similar media that are being shown, offered for sale, or rented nationally to general audiences or in nationally recognized stores or live theatrical performance that contain incidental nudity or similar adult entertainment; (B) provides entertainment featuring strip tease, topless or nude performers or other similar entertainment; or (C) sells, rents, or distributes sexually explicit games, toys, devices, or similar merchandise (provided that nothing herein is intended to require the blocking of access to the same from any personal computer or internet access point or any future technological equivalent). For the purposes of the foregoing, the term “adult” shall mean and refer to any material that is (Y) obscene, sexually explicit or pornographic, or (Z) rated X or NC-17 or its

equivalent by the movie production industry (or any successor rating established by the movie production industry);

(xi) Paraphernalia for Illegal Drug Use. Any establishment that sells paraphernalia for illegal drug use;

(xii) Alcohol Sales. Any establishment selling alcoholic beverages as its primary source of revenues; provided, however, that the foregoing restriction shall not prohibit (A) bars, taverns, restaurants or other business establishments whose actual or reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption is less than fifty percent (50%) of the gross revenues of such business; (B) alcohol sales as typically carried out by grocery or convenience stores; (C) stores or bars specializing in the sale and/or service of wine and/or craft beer (including in “growlers”); or (D) the sale of alcoholic beverages in connection with concessions for Events;

(xiii) Industrial Uses. Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, refining, smelting, industrial, drilling or mining operation and any distilling operation, except for a distilling operation incidental to a restaurant or a brewpub;

(xiv) Vehicle Repair Shop. An automobile, truck or other vehicle repair shop;

(xv) Agricultural Uses. Any agricultural use; provided, however, that a greenhouse operation or the sale of food or agricultural products grown elsewhere shall be permitted;

(xvi) Flea Markets. A flea market, pawn shop or thrift store;

(xvii) Stockyards. Any stockyard, slaughterhouse, livestock sales pavilion, or any other facility for the raising, breeding, keeping, grooming or sale of animals; provided, however, that pet shops are permitted;

(xviii) Junkyard. Any junkyard, dumping, disposal, incineration or reduction of garbage, sewerage, dead animals or refuse except for disposal, incineration or reduction of garbage, sewerage, or refuse generated on the Property to the extent permitted by Applicable Law, rules and regulations;

(xix) Dry Cleaning Plants; Certain Laundry Facilities. Any commercial laundry, dry cleaning plant, or laundromat, unless Declarant, in its absolute discretion, provides written Approval; provided, however, that the prohibition against a commercial laundry, or laundromat shall not be applicable to (i) facilities for on-site drop-off and pickup service for dry-cleaning performed off-site; (ii) laundry facilities provided in a residential building for the residents of such building; (iii) laundry facilities within a hotel or temporary lodging facility;

(xx) Gambling. Any gambling facility or operation, including, but not limited to, off-track or sports betting parlor, table games such as black-jack or poker, slot machines, video poker/black-jack/keno machines or similar devices or a bingo hall; provided,

however, that the prohibition shall not apply to governmental sponsored gambling activities, or charitable gambling activities, so long as such activities are incidental to the business operation being conducted by the applicable lessee, or to activities which might be associated with gambling but whereby no money changes hands;

(xxi) Detention Facilities. Any jail, detention facility or other holding facility for the long or short term involuntary holding or housing of individuals by a law enforcement or other governmental agency;

(xxii) Conflict with Restrictions of Record. Notwithstanding any other provision herein, no Property Use is allowed to the extent that it conflicts with a restriction affecting the Property that is of record in the Public Records as of the date of this Declaration, including, but not limited to, those restrictions set forth in (i) that certain Limited Warranty Deed dated December 17, 2008 and recorded on December 23, 2008 in Deed Book 47446 at Page 259 of the Public Records and (ii) that certain Easement and Covenants Agreement between Fidelity Bank and The City of Sandy Springs dated March 8, 2016 and recorded on March 10, 2016 in Deed Book 55936 at Page 686 of the Public Records; and

(xxiii) Conflict with Zoning Conditions. Notwithstanding any other provision herein, no Property Use is allowed to the extent that it is in conflict with the Zoning Conditions.

(c) Obnoxious or Offensive Activity. The following obnoxious or offensive activities shall be prohibited:

(i) No accumulation of rubbish, trash, or garbage shall be made, except between regular garbage pick-ups, and then only in approved containers and screened from view from streets and other Improvements.

(ii) The use, enjoyment and occupancy of the Property shall be in such a manner so as not to cause or produce any of the following effects discernible outside any Building located thereon, or affect any portion of the Property by its volume, duration, pounding beat, frequency or shrillness; smoke, dust, or dirt; unusual fire or explosive hazards; or vibration or light.

(iii) No use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device shall be audible to Occupants of other Parcels from the enclosed interior of the Improvements on such Parcel, except for sounds arising in connection with alarm devices used exclusively for security purposes (provided, however, that nothing in this **Section 4.2(c)(iii)** shall limit any rights in connection with Events).

(iv) Discharge of firecrackers and other fireworks is prohibited except in connection with fireworks, laser shows or similar displays under a license or permit issued for that purpose and approved in advance by Declarant.

(v) To the extent such prohibition is permitted by Applicable Law, picketing, protest marches, sit-in demonstrations, protest speeches, and other forms of public protest or conduct, including, without limitation, displaying signs or placards on any Parcel or

any vehicle, apparatus or otherwise within public view in the Property, which tends to vilify, ridicule, denigrate, or impugn the character of Declarant, the City, or any Owner or Occupant shall be prohibited. Each Owner, by acceptance of the Deed to any Parcel, shall be deemed to have accepted the foregoing prohibitions as reasonable limitations on such Owner's constitutional right of free speech.

## **ARTICLE 5: APPROVAL OF PLANS; ARCHITECTURAL STANDARDS**

5.1 **Plan Approval Required.** Declarant shall have the sole right, power and authority to Approve and regulate the design and construction of all Improvements within the Property so as to assure compliance with the intent and purpose of this Declaration, including, without limitation, for the purpose of the overall aesthetic coordination of the Property. Subject to the provisions of **Section 4.1(a)**, no Improvement shall be made, Constructed, modified, altered (by addition or deletion), demolished, rebuilt or reconstructed, maintained or permitted to remain on any Parcel, except in accordance with plans and specifications submitted to, and Approved by, Declarant. Any Approval or disapproval by Declarant of any plans and specifications for Improvements shall be made in Declarant's reasonable judgment and discretion and Declarant's Approval of any plans and specifications shall not be withheld arbitrarily or in a discriminatory manner.

5.2 **Application for Approval.** No activities within the scope of this **Article 5** shall commence on any portion of the Property until an application for Approval of the proposed work, plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed Improvements have been submitted to and Approved by Declarant. Declarant may require the submission of application forms and information as it deems necessary to consider any submission of an application for Approval and may require multiple stages of application and review for any use, construction or modification.

(a) If Declarant disapproves an application submitted by any Person, Declarant, on the request of such Person, shall provide a written statement of the reasons for rejection, shall suggest revisions that meet Declarant's requirements, and shall otherwise make reasonable efforts to aid the submitting Person in preparing an application for re-submission that would be acceptable to Declarant.

(b) Approval of any application with regard to Improvements on a Parcel shall be final as to the Parcel for which they have been submitted, provided that the Improvements on such Parcel are constructed and maintained in substantial conformity with the Approved plans and specifications.

(c) Subject to the provisions of **Section 4.1(a)**, under no circumstances shall a Person submit its plans and specifications to the governmental authority having jurisdiction for review and approval unless and until it shall have received Declarant's Approval of such plans and specifications. Declarant shall have the right and standing to take action to suspend or enjoin processing of any request for review or approval by a governmental authority submitted prior to Declarant's Approval being granted hereunder.

(d) Approval under this **Article 5** is not a substitute for any approvals or reviews required by the City or any municipality or governmental agency or entity having jurisdiction over architectural or construction matters. If a reviewing governmental authority requests changes to plans and specifications previously approved under this **Article 5**, and such changes on their own would require the Approval of Declarant pursuant to the terms of this Declaration, such changes shall be resubmitted for review by Declarant prior to the commencement of construction.

5.3 **Failure of Declarant to Act.** If Declarant fails to Approve or disapprove in writing any application submitted to it in accordance with this **Article 5** within fifteen (15) Days following such submission, the applicant that submitted such application shall provide Declarant with written notice of such failure. If Declarant again fails to Approve or disapprove such application within ten (10) Days of such written notice, unless an extension of such time period has been agreed to in writing by Declarant and the applicant, Declarant shall be deemed to have Approved such application.

5.4 **Design Guidelines.** The Design Guidelines attached hereto as Exhibit C, together with any other criteria adopted by Declarant in accordance with **Section 5.5**, shall be used by Declarant to determine the suitability of all proposed Improvements in or on the Property.

5.5 **Additional Design Guidelines.** Declarant shall have the right, power and authority, in its reasonable judgment and discretion, to amend, modify, supplement and replace the Design Guidelines set forth on Exhibit C in a manner that is not materially inconsistent with the Design Guidelines set forth in this **Article 5** and that implements the statement of purpose set forth herein; provided, however, that no such amendment, modification, supplement or replacement of the Design Guidelines shall apply to plans and specifications for Improvements previously Approved by Declarant or operate to revoke any Approval previously given by Declarant with respect to plans and specifications for Improvements.

5.6 **No Waiver of Future Approvals.** Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring Approval, shall not be deemed to constitute a waiver of the right to withhold Approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for Approval.

5.7 **Commencement and Completion.**

(a) Any Owner who has obtained Declarant Approval shall perform its construction: (i) substantially in accordance with its Approved plans and specifications; (ii) with due diligence and in a good and workmanlike manner in accordance with good construction practices; (iii) in accordance with practices observed in a First-Class mixed-use project; and (iv) in compliance with all Applicable Laws and the Governing Documents.

(b) After commencement of construction of any Improvement within the Property, the Owner shall diligently prosecute the work thereon, to the end that the Improvement shall not remain in a partly finished condition any longer than reasonably and normally necessary for completion thereof.

(c) As used herein, commencement of construction shall mean that: (i) all plans for such construction have been approved by Declarant; (ii) a permit has been issued for construction by the City; and (iii) construction has physically commenced beyond site preparation.

5.8 **Waivers and Variances.** It is the intent of this Declaration that the Design Guidelines be strictly adhered to. Notwithstanding that intent, it is recognized that particular circumstances may from time to time necessitate the waiving or varying of certain of the Design Guidelines. Accordingly, Declarant may grant waivers or variances from compliance with any of the Design Guidelines; provided, however that any such waivers or variances may not be granted or withheld arbitrarily or in a discriminatory manner. In determining whether to grant a waiver or variance, Declarant may consider circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations, and advancements in technology or products. No waiver or variance shall be effective unless in writing. The Approval of any plans or the granting of any waivers or variances by Declarant shall not supersede any requirement for approval of such plans by the applicable governmental authority and shall not serve as a representation or warranty by Declarant that such plans shall be approved by any such governmental authority.

5.9 **Limitation of Liability.** The standards and procedures established pursuant to this **Article 5** are intended to provide a mechanism for maintaining and enhancing the overall plan and aesthetics of the Property only, and shall not create any duty to any Person. Declarant shall not bear any responsibility for ensuring the marketability of a Parcel, structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all Improvements are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property Owners. Declarant shall not be liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Parcel.

## **ARTICLE 6: EASEMENTS**

6.1 **Common Easement Areas.** The Drainage Easement Area, the Mechanical and Electrical Easement Areas, Pedestrian Access Easement Areas, the Vertical Access Easement Areas and the Vestibule Easement Areas, and the Common Facilities therein, shall be used and enjoyed, for their intended purposes, in common by all Owners, subject to this Declaration and the rules and regulations established in accordance with this Declaration.

6.2 **Common Easements.** The following Common Easements are established for the benefit of all Owners for the use of the Common Easement Areas and the Common Facilities therein for their intended purposes. Each Owner shall have the authority to allow their respective Occupants and invitees the use of the Common Easement Areas and the Common Facilities therein for their intended purposes, subject to this Declaration.

(a) There is hereby established, declared and reserved a nonexclusive, permanent, perpetual, reciprocal, appurtenant easement, right and privilege for the use and

enjoyment of the Drainage Facilities for the drainage and retention of surface waters within the Drainage Easement Area for the benefit of all Owners.

(b) There is hereby established, declared and reserved a nonexclusive, permanent, perpetual, reciprocal, appurtenant easement, right and privilege, in favor of each Owner, for the location, maintenance and use and enjoyment of those certain Mechanical and Electrical Facilities that serve such Owner's Parcel located within the Mechanical and Electrical Easement Areas and for access on, over, across, and through all Mechanical and Electrical Easement Areas in connection with the same.

(c) There is hereby established, declared and reserved a nonexclusive, permanent, perpetual, reciprocal, appurtenant easement, right and privilege of pedestrian ingress, egress, access, passage, use and enjoyment on, over, across, and through all Pedestrian Access Easement Areas for the benefit of all Owners.

(d) There is hereby established, declared and reserved a nonexclusive, permanent, perpetual, reciprocal, appurtenant easement, right and privilege of pedestrian ingress, egress, access, passage, use and enjoyment, on, over, across, and through all Vertical Access Easement Areas for the benefit of all Owners.

(e) There is hereby established, declared and reserved a nonexclusive, permanent, perpetual, reciprocal, appurtenant easement, right and privilege of pedestrian ingress, egress, access, passage, use and enjoyment, on, over, across, and through all Vestibule Easement Areas for the benefit of all Owners.

(f) There is hereby established, declared and reserved in favor of each Owner to which Declarant grants the right to make use of a panel or panels on a Shared Sign, a nonexclusive, permanent, perpetual, reciprocal, appurtenant easement, right and privilege for the location, maintenance and use and enjoyment of such Owner's panel or panels on the Shared Sign and for access to the Shared Sign in connection therewith.

6.3 **Terms of Exercise of Common Easements.** Each and every Owner (and any Parcel Lessee, Space Tenant and Occupant claiming by, through or under such Owner) exercising their respective rights under the Common Easements agree to, with and for the benefit of the other Owners as follows:

(a) Any and all Construction, repair, replacement, relocation and maintenance pursuant to any of the Common Easements: (i) shall be done only upon reasonable prior written notice to Declarant and the Owner of any Parcel that utilizes such Common Easement, except in emergency situations, when such Person shall give written notice to Declarant and the Owner of any such Parcel that utilizes the Common Easement thereby as soon as reasonably practicable; and (ii) shall be done in a manner so as to not cause any permanent interruption of or interference with the Owners in the normal operation of their Parcels and the Improvements thereon and in a manner to minimize any temporary interruption of and interference with the Owners in the normal operation of their Parcels and the Improvements thereon. After the completion of any such Construction, repair, replacement, relocation and maintenance, the areas upon which such work was done shall be left in a safe, clean and good condition, with all debris removed

therefrom, with trenches and cuts properly filled, with any Improvements and any plants, shrubbery or other landscaping which may have been disturbed by such work restored to their former condition and with reseeding of all areas within which dirt has been exposed.

(b) To the fullest extent permitted by Applicable Law, each Owner shall, and does hereby covenant and agree to, indemnify, defend and hold harmless the other Owners, from, against and in respect of any and all claims, demands, actions, causes of action, suits, liabilities, damages, losses, costs and expenses of any kind or nature whatsoever (including reasonable attorneys' fees and court costs incurred in enforcing this indemnity and otherwise): (i) (A) which any such Person may suffer or incur, or (B) which may be asserted against such Person, whether meritorious or not; and (ii) which arise out of, by reason of or in connection with the exercise by such Owner, any Parcel Lessee, Space Tenant and Occupant claiming by, through or under such Owner, and their respective agents, employees, customers, invitees and licensees, of the rights and privileges under the Common Easements.

6.4 **Encroachment Easement.** There is hereby established, declared and reserved a nonexclusive, permanent, perpetual, reciprocal, appurtenant easement, right and privilege for the benefit of all Owners, for encroachment, and for maintenance, use and enjoyment of any permitted encroachment, between adjacent Parcels and between any parking structure and adjacent Parcel due to: (a) the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon; (b) minor variations from the plans in the construction of the Improvements occurring due to construction accuracy, methods and/or techniques; or (c) canopies, overhangs, door swings, signs, foundations, balconies or similar encroachments, together with any replacements thereof. Such easement for the maintenance of encroachments shall exist, as to a particular encroachment, only as long as the encroaching portion of the Improvement shall remain standing and in existence. However, in no event shall an easement for any encroachment be created or maintained in favor of one Parcel if such encroachment materially and adversely interferes with the use, operation and enjoyment of another Parcel by an Owner or its Occupants. Nothing herein contained shall in any manner be construed as diminishing or be deemed to constitute a waiver of any rights of an Owner resulting from another Owner's failure to construct its Improvements as herein required, and this **Section 6.4** shall not relieve or excuse an Owner from exercising all due diligence to construct its Improvements within the boundaries of such Owner's Parcel.

6.5 **Easement for Structural Support.** There is hereby established, declared and reserved a nonexclusive, permanent, perpetual, reciprocal, appurtenant easement, right and privilege for the benefit of all Owners, in and to the Structural Supports located in any portion of the Property necessary for the structural integrity of adjacent Improvements presently located or to be located in the future on the Property, and any replacement, substitution or modification thereof as permitted by this Declaration. Declarant hereby disclaims any representation or warranty, whether express or implied, concerning any matter with regard to the adequacy or sufficiency of the design, specifications, installation and/or construction of the Structural Supports (including any defect(s), omission(s) or error(s) in the design, specifications, installation and/or Construction thereof) for the purposes herein provided or contemplated; and each Owner hereby acknowledges that it has satisfied or will satisfy itself as to the adequacy and sufficiency of the design, specifications, installation and/or construction of the Structural

Supports. The foregoing disclaimer shall not be construed to affect any contractual arrangement that otherwise may exist with respect to the matters included in the foregoing disclaimer.

#### 6.6 Easements for Construction.

(a) There is hereby established, declared and reserved a nonexclusive, temporary reciprocal, appurtenant easement, right and privilege for the benefit of all Owners, in, on, over, under, through and across the areas adjacent to the common boundary lines of adjacent Parcels for the benefit of all Owners for reasonable temporary access and reasonable temporary encroachments during Construction of any Improvements on such adjacent Parcels, to the extent reasonably necessary to Construct, reconstruct or renovate such Improvements and to the extent that any such encroachment does not substantially interfere with the property encroached upon.

(b) There is hereby established, declared and reserved a nonexclusive, temporary reciprocal, appurtenant easement, right and privilege for the benefit of all Owners, to allow or cause any Crane Boom to swing temporarily over any portion of the Property. Any Owner who allows or causes a Crane Boom to swing over a public street, or the property of another Owner shall comply with all Applicable Law in connection therewith and shall, to the fullest extent permitted by Applicable Law, indemnify the other Owners from any loss, cost, damage, expense or liability which such Person may suffer or incur as a consequence of the swing of the Crane Boom. In no event shall an easement for any Crane Boom be created or maintained in favor of one Parcel if the Crane Boom materially and adversely interferes with the use, operation and enjoyment of a public street or of a Parcel by an Owner or its Occupants.

(c) The easements rights and privileges established pursuant to this **Section 6.6** are temporary, and shall terminate automatically when construction of the area for which such easement is granted or retained is completed.

6.7 Easements for Lighting. Subject to Applicable Law, There is hereby established, declared and reserved a nonexclusive, temporary reciprocal, appurtenant easement, right and privilege for the benefit of all Owners, to install and maintain, at the individual expense (including the cost of electricity used in the operation thereof) of each such Owner, accent lights to illuminate Owner's Improvements in accordance with the Design Guidelines.

(a) Declarant reserves for itself, its successors, assigns and designees, an easement over the Property for the purpose of permitting reasonable lighting in connection with the Public Park, including exterior lights illuminating the Public Park and light produced in connection with any Event in accordance with this Declaration and with Applicable Law, including fireworks and laser shows, and seasonal or holiday-related lights.

#### 6.8 Easements for Events.

(a) Subject to the terms and conditions of this Declaration, each Event Holder shall have, and there is hereby reserved by Declarant for the benefit of Event Holder, an exclusive easement over the reserved Event Area for the duration of such Event for the purpose of conducting Events in the Public Park and the Event Areas as described in this Declaration. Each Event Holder shall have the right to install and maintain during Event periods temporary physical barriers in the Event Area to limit and/or control any and all use, ingress, egress and

access in and to the Event Area to Ticket Holders. The physical barriers may consist of turnstiles, fences, gates, rolling curbs, removable bollards or other reasonable means of controlling entry and exit by pedestrians and vehicles. All such physical barriers shall be removed at the conclusion of each Event. Notwithstanding the foregoing, at no time shall any Owner or its Occupants or invitees be restricted from accessing such Owner's Parcel, any public streets or any of the Common Easement Areas as a result of any such physical barriers.

(b) Subject to such limitations as may be imposed by an Event Holder, such as classes of admission tickets, all Ticket Holders shall be provided ingress and egress to the Event Area.

(c) All ticket proceeds shall be collected by the Event Holder and shall be the sole and exclusive property of the Event Holder.

(d) The Event Holder shall be responsible for and shall promptly pay all Event Expenses relating to an Event. Declarant shall be responsible for ensuring the prompt payment of all Event Expenses by the Event Holder and in no event shall any Event Expenses be assessed to any Owners.

(e) In connection with an Event Holder's activities in the Event Area during Events, each Event Holder shall provide: (i) any and all licenses and permits required for such Events; (ii) Event liability insurance, including host liquor liability in commercially reasonable amounts; (iii) all preparation and set up for Events; and (iv) all post Event cleaning, maintenance, repair and restoration required to promptly restore the Event Area to the condition existing prior to the Event, including the restoration of grass and/or landscaping if necessary.

(f) Each Owner acknowledges that Events may result in increased noise, light, odors, traffic levels and other effects as a result thereof and that such effects shall not constitute a nuisance or interference with Owners or their Occupants, provided that they are in compliance with the Governing Documents and in accordance with Applicable Law. Notwithstanding the foregoing, at no time shall any Owner or its Occupants or invitees be restricted from accessing such Owner's Parcel, any public streets or any of the Common Easement Areas as a result of any such Events and all outdoor Events shall end on or before 11:00 pm on weekdays and 12:00 midnight on Saturdays, Sundays and national holidays, unless the City has issued a special event permit for such Event.

## **ARTICLE 7: MAINTENANCE; ASSESSMENTS**

### **7.1 Owner Responsibilities.**

(a) At all times, including any periods of Construction, renovation or demolition of any Improvements on a Parcel, each Owner and Occupant shall be responsible for keeping the portion of the Property that it owns (whether or not improved), Buildings and other Improvements, and any Common Facilities located on or within such portion of the Property, in a safe, clean, neat, orderly and First Class condition consistent with all Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned pursuant to this Declaration, the Parking Declaration or other covenants applicable to such portion of the Property, including, but not limited to, the Design Guidelines and the Zoning Conditions.

Furthermore, if in the course of and as a result of any Construction activity, including activity to establish a utility hook-up to such portion of the Property, any existing utility lines, streets, curbs or other Improvements are damaged in any way, the Owner conducting such Construction shall restore or repair such lines, streets, curbs or other Improvements to a condition at least as good as existed prior to the damage, and shall pay any cost or expenses, including actual and reasonable attorneys' fees, incurred by any Person other than such Owner arising from or as a result of such damage.

(b) Such maintenance includes, but is not limited to the following, unless otherwise provided in the Design Guidelines:

(i) Removal of all litter, trash, refuse and waste at least once a week and keeping lawn areas in a neat condition;

(ii) Landscaping maintenance, tree and shrub pruning;

(iii) Keeping exterior lighting, Signage, structures, fixtures, equipment and mechanical facilities in working order;

(iv) Keeping plant materials within lawn and garden areas alive;

(v) Promptly removing and replacing any dead plant material;

(vi) Maintaining, operating, and repairing drainage swales, drainage lines, catch basins and other equipment on such portion of the Property, including the exercise of practices, such as mowing, removal of debris and erosion repair, which allow the drainage swales, drainage lines, catch basins and other equipment to provide drainage, water storage, conveyance, or other storm water management capabilities subject to any applicable requirements; and

(vii) Keeping exterior Improvements in good repair.

(c) Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement as necessary.

7.2 **Security.** Each Owner and Occupant and their respective employees, lessees, invitees, clients, customers and guests, shall be responsible for their own personal safety and the security of that portion of the Property that they own. Notwithstanding the foregoing, security in connection with the Public Park shall be coordinated with the City.

### 7.3 **Party Walls and Similar Structures.**

(a) **General Rules of Law to Apply.** Each wall, fence, sidewalk, driveway or similar structure built as a part of the original construction on the Parcels which serves, connects and/or separates any two adjoining Parcels shall constitute a party structure. To the extent not inconsistent with the provisions of this **Section 7.3**, the general rules of law regarding party walls

and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equitably by the Owners who make use of the party structure in accordance with each Owner's relative use of and benefit from the party structure.

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost equitably in accordance with such Owner's relative use of and benefit from the party structure.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this **Section 7.3** shall be appurtenant to the land and shall pass to such Owner's successors in title.

#### 7.4 Maintenance of Common Easement Areas.

(a) With respect to the Drainage Easement Area, Declarant shall have the responsibility and obligation to perform routine maintenance and repairs to the Drainage Facilities on, in, and under the Drainage Easement Area (the "**Drainage Facilities Maintenance**") (provided, however, that any of the foregoing actions by Declarant shall be done in a manner so as to not cause any extended interruption of or interference with the Owners in the normal operation of their Parcels and the Improvements thereon and in a manner to minimize any temporary interruption of and interference with the Owners in the normal operation of their Parcels and the Improvements thereon), and to grant and convey to any appropriate governmental authority easements in, on, over, under, through or across the Drainage Easement Area for the foregoing purposes. In addition to the foregoing Drainage Facilities Maintenance, Declarant shall have the responsibility and obligation, at Declarant's sole cost and expense, to replace any Drainage Facilities on, in, and under the Drainage Easement Area that become in need of replacement.

(b) With respect to the Mechanical and Electrical Easement Area, each Owner shall have the responsibility and obligation, at such Owner's sole cost and expense, to repair, maintain, and replace those certain Mechanical and Electrical Facilities located within the Mechanical and Electrical Easement Area that serve such Owner's Parcel.

(c) With respect to the Pedestrian Access Easement Areas, each Owner shall have the responsibility and obligation, at such Owner's sole cost and expense, to repair, maintain, and replace any Pedestrian Access Facilities on, in, and under that portion of the Pedestrian Access Easement Areas located on such Owner's Parcel. In addition to the foregoing, each Owner shall have the responsibility and obligation, at such Owner's sole cost and expense, to sweep, remove trash from and maintain the landscaping within the public sidewalks located directly adjacent to such Owner's Parcel; provided, however, that no Owner shall be responsible for any repair or replacement of any portion of such public sidewalks.

(d) With respect to the Vertical Access Easement Areas:

(i) The Owner of the North Parcel shall have the responsibility and obligation to repair, maintain, and replace (as necessary) any Vertical Access Facilities on, in, and under the North Parcel Vertical Access Easement Area (the “**North Parcel Vertical Facilities Maintenance**”);

(ii) The Owner of the South Developer Parcel shall have the responsibility and obligation to repair, maintain, and replace (as necessary) any Vertical Access Facilities on, in, and under the South Parcel Vertical Access Easement Area (the “**South Parcel Vertical Facilities Maintenance**”); and

(iii) The Owner of the City Parking Parcel shall have the responsibility and obligation to repair, maintain, and replace (as necessary) any Vertical Access Facilities on, in, and under the City Parcel Vertical Access Easement Area.

(e) With respect to the Vestibule Easement Areas:

(i) The Owner of the North Parcel shall have the responsibility and obligation to repair, maintain, and replace (as necessary) any Vestibule Facilities on, in, and under the North Parcel Vestibule Easement Area (the “**North Parcel Vestibule Facilities Maintenance**”);

(ii) The Owner of the South Developer Parcel shall have the responsibility and obligation to repair, maintain, and replace (as necessary) any Vestibule Facilities on, in, and under the South Parcel Vestibule Easement Area (the “**South Parcel Vestibule Facilities Maintenance**”); and

(iii) The Owner of the City Parking Parcel shall have the responsibility and obligation to repair, maintain, and replace (as necessary) any Vestibule Facilities on, in, and under the City Parcel Vestibule Easement Area.

(f) Declarant shall have the responsibility and obligation to repair, maintain and replace (as necessary) each Shared Sign and the Owner with the easement right to make use of a panel or panels on the Shared Sign shall have the responsibility and obligation to repair, maintain and replace (as necessary) such panel or panels.

#### 7.5 Assessments for Maintenance of Common Easement Areas.

(a) With respect to the Drainage Easement Area, Declarant shall have the right to charge an Assessment to the Owners of the North Parcel and the South Developer Parcel for a portion of the cost of the Drainage Facilities Maintenance in accordance with the following formula:

(i) As to the Owner of the North Parcel: such Owner’s portion of the Drainage Facilities Maintenance shall be a fraction, expressed as a percentage, the numerator of which is the total acreage of the North Parcel, and the denominator of which is the total acreage of the Property; and

(ii) As to the Owner of the South Developer Parcel: such Owner's portion of the Drainage Facilities Maintenance shall be a fraction, expressed as a percentage, the numerator of which is the total acreage of the South Developer Parcel, and the denominator of which is the total acreage of the Property.

(b) With respect to the Vertical Access Easement Areas:

(i) The Owner of the North Parcel shall have the right to charge an Assessment to the Owner of the City Parking Parcel for fifty percent (50%) of the cost of the North Parcel Vertical Access Facilities Maintenance; and

(ii) The Owner of the South Developer Parcel shall have the right to charge an Assessment to the Owner of the City Parking Parcel for fifty percent (50%) of the cost of the South Parcel Vertical Access Facilities Maintenance.

(c) With respect to the Vestibule Easement Areas:

(i) The Owner of the North Parcel shall have the right to charge an Assessment to the Owner of the City Parking Parcel for fifty percent (50%) of the cost of the North Parcel Vestibule Facilities Maintenance; and

(ii) The Owner of the South Developer Parcel shall have the right to charge an Assessment to the Owner of the City Parking Parcel for fifty percent (50%) of the cost of the South Parcel Vestibule Facilities Maintenance.

(d) The due date for payment of the foregoing Assessments shall be as specified in writing by the party charging such Assessment, but shall not be less than fifteen (15) Days following the date of such written notification of the Assessment. Any and all requests for payment of Assessments shall be provided to the party being charged in writing along with written evidence of the total cost of the maintenance performed and a breakdown of the calculation of such Assessment based on the formulas set forth above.

7.6 **Maintenance Self-Help Rights.** In addition to any other enforcement rights provided for herein, if an Owner obligated to perform maintenance hereunder fails to properly perform any of its maintenance responsibilities as set forth herein, another Owner may perform such maintenance responsibilities and assess all costs incurred in connection therewith against the defaulting Owner and such defaulting Owner's Parcel in accordance with this **Article 7; provided, however,** that prior to utilizing such self-help right, the defaulting Owner must first be provided with reasonable notice and an opportunity to cure the default prior to entry, except when entry is required due to an emergency situation. For purposes of this **Section 7.6** "reasonable notice and an opportunity to cure" means that the defaulting Owner must first be given written notice of the default and fifteen (15) Days to commence the cure of the same. If the defaulting Owner does not commence the cure of the default within such fifteen (15) Day period, a second written notice shall be given to the defaulting Owner, which notice shall provide the defaulting Owner with an additional five (5) Days to commence the cure of the default. If the defaulting Owner still does not commence the cure of the default within such additional five (5) Day period, the Owner that gave the written notice of such default may proceed in performing such maintenance responsibilities on the defaulting Owner's behalf in accordance with this

**Section 7.6.** In addition, if the defaulting Owner commences the cure of the default within the provided cure period but fails to diligently pursue the completion of the same, the Owner that provided the written notice of such default may provide the defaulting owner with one final written notice of such failure and five (5) Days to complete the cure of the default. If the defaulting Owner does not complete the cure of the default within such five (5) Day period, the Owner that gave the written notice of such default may proceed in performing such maintenance responsibilities on the defaulting Owner's behalf in accordance with this **Section 7.6**. Entry by an Owner or its designee under this **Section 7.6** shall not constitute a trespass.

7.7 **Maintenance Easements.** Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant rights and easements in favor of each Owner to access all Common Easement Areas as necessary to perform their respective maintenance, repair, and/or replacement obligations under this **Article 7**.

7.8 **Limitation on Assessments.** Notwithstanding anything in this Declaration to the contrary, no Assessments may be levied against any Owner for the initial construction of any component or element of the Common Easement Areas and Common Facilities.

7.9 **Priority of Lien.** All sums assessed against any Owner pursuant to this Declaration, together with court costs, reasonable attorneys' fees, late charges, and interest as provided herein, shall be secured by an equitable charge and continuing lien on such Owner's Parcel in favor of the party to whom the Assessment is owed. Such lien shall be superior to all other liens and encumbrances on such Parcel except only for: (i) liens of ad valorem taxes; and (ii) a lien for all sums unpaid on a first priority Mortgage, on any secondary purchase money Mortgage, or on any Mortgage to Declarant, and all amounts advanced pursuant to any such Mortgage and secured thereby in accordance with the terms of such instrument. The subordination of the lien for Assessments to the foregoing Mortgages shall apply only to Assessments that have become due and payable prior to a sale or transfer of the mortgaged interest in and to such Parcel pursuant to a Foreclosure. From and after the date the holder of a Mortgage, or its successor, assignee or designee, or the acquirer upon Foreclosure, takes possession of the Parcel or succeeds to the Owner's interest in the Parcel, whether by Foreclosure or otherwise, such holder or its successor, assignee or designee, or the acquirer upon Foreclosure, shall be deemed an Owner of the Parcel and liable for all assessments on that Parcel assessed after, accruing after, or allocable to periods of time after that date. All Persons acquiring Mortgages, liens or encumbrances on any Parcel after the effective date of this Declaration shall be deemed to have subordinated such Mortgages, liens or encumbrances to liens for post-Foreclosure Assessments as provided in the immediately preceding sentence, whether or not such subordination shall be specifically set forth in such Mortgages or other instruments creating such liens or encumbrances. Any Mortgagee affected by an Assessment lien may, but shall not be required to, pay any unpaid Assessment and, upon such payment, such Mortgagee shall be assigned the debt and lien securing same, said assignment to be without recourse or warranty.

7.10 **Nonpayment of Assessments.** Any Assessments or any portion thereof that are not paid within ten (10) Days of the specified due date shall be delinquent. Any Assessment delinquent for a period of more than ten (10) Days shall incur a late charge in an amount equal to five percent (5%) thereof and interest on the principal amount due, from the date due until paid at

the lesser of the Prime Rate, as it may change from time to time, plus four (4) percentage points, or the maximum rate allowable under the laws of the State of Georgia. The continuing lien and equitable charge of such Assessment shall include the late charge and interest described above, all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by Applicable Law. If the Assessment remains unpaid for forty-five (45) Days after its original due date, provided that any Eligible Holder whose interest is subject to such Assessment has been provided with a minimum of fifteen (15) Days advance notice of such delinquency in order to afford them an opportunity to cure the same, the Owner to whom the Assessment is owed may institute suit to collect such amounts and to foreclose its lien.

7.11 **Personal Liability for Assessments.** Assessments shall be the personal and individual indebtedness of the Owner of the Parcel upon or against which such Assessments are levied, assessed or imposed. No Owner shall be exempt from such personal liability for Assessments. Upon any transfer, conveyance or assignment of the interest of the Owner in and to such Parcel, any then unpaid Assessments shall become the joint and several obligation of such Owner and of such Owner's successors-in-title, whether or not expressly assumed by them. An Owner owed an Assessment hereunder shall have the right to bring suit against another Owner to recover a money judgment for all such amounts without foreclosing or waiving the liens securing same.

7.12 **Waiver of Use.** No Owner may exempt itself from liability for any Assessments duly levied pursuant to this Declaration, nor release the Parcel or other property owned by it from the liens and charges hereof, by non-use or waiver of the use and enjoyment of the Common Facilities or by abandonment of its Parcel or any other property owned by such Owner within the Property.

7.13 **Audit of Assessments.** Each Owner agrees to keep, at its principal office, records relating to Assessments charged to other Owners hereunder. An Owner that is charged an Assessment hereunder shall have the right to audit the assessing Owner's records for the sole purpose of ascertaining the correctness of said Assessment. Such audit shall be made during normal business hours; shall not unreasonably interfere with office operations; and shall be performed only by a qualified financial officer of the auditing Owner or the auditing Owner's management company, or a certified public accountant selected by the auditing Owner, provided that any such accountant selected by the auditing Owner shall not utilize a contingency fee based audit system. If an Owner that is charged an Assessment desires to audit the assessing Owner's records as aforesaid, the auditing Owner shall notify the assessing Owner no later than thirty (30) Days after receipt of the Assessment and at least thirty (30) Days in advance of the date on which the auditing Owner proposes to perform such audit, commence said audit within sixty (60) Days of said notice, and once the audit has commenced, diligently complete the same. If an Owner that is charged an Assessment hereunder fails to provide the assessing Owner with notice of its desire to audit the assessing Owner's records within such thirty (30) Day period, then the Assessment shall be deemed conclusive absent manifest error.

## ARTICLE 8: ENFORCEMENT

8.1 **Responsibility of Owners.** Each Owner shall be responsible for compliance with the terms, provisions, and conditions of this Declaration by itself, and any Parcel Lessee, Space Tenant and Occupant claiming by, through or under such Owner, and their respective agents, employees, customers, invitees and licensees.

8.2 **Failure to Pay Assessments.** If any Assessment is not paid when due, the Owner and the Parcel shall be subject to the provisions of **Article 7**.

8.3 **Nonmonetary Violations.** Violation or breach of any term, provision, or condition contained herein or of any rules or regulations promulgated pursuant hereto or in any other document promulgated pursuant hereto (other than a failure to pay when due an Assessment) shall give to each Owner the right to prosecute a proceeding at law or in equity against the Owner who has violated, is attempting to violate, or is permitting (or is allowing or suffering to exist) the violation or breach, either on its Parcel or by any of its Occupants, of any term, provision, or condition contained herein or in any other document promulgated pursuant hereto. The right to prosecute such proceeding shall include, without limitation, the right to bring actions to enjoin or prevent such violating Owner from committing such violation or breach or to cause said violation or breach to be remedied, each Owner of a Parcel (including any purchaser at Foreclosure), by acceptance of a deed, lease, sublease or other instrument granting or conveying title to, or a leasehold estate in or to, such Parcel, whether or not it shall be so expressed in any such deed, lease, sublease or other instrument, thereby acknowledging that no adequate remedy exists at law to cure such violations or breaches.

8.4 **Failure to Enforce Not a Waiver.** The failure of any Owner to enforce any provision contained herein shall in no event be deemed to be a waiver of the right to do so, nor of the right to enforce any other restriction. Except as may otherwise be expressly provided herein, no suit shall lie against any Owner for any failure, refusal, or omission to institute or join in any action or proceeding for the enforcement hereof or to restrain the violation of any of the provisions hereof.

8.5 **Attorneys' Fees.** Every Owner or Occupant shall be obligated to pay the actual attorneys' fees (which shall be reasonable in amount) of the Person bringing an action against such Owner or Occupant for the enforcement of the provisions of this Declaration, provided such Person bringing said action has obtained a judgment in its favor by a court of record and such judgment has become final.

8.6 **Assessments for Violations.** All sums expended by an Owner in enforcing this Declaration shall be immediately due and payable by the Owner in violation and shall be an Assessment against such Owner.

8.7 **Remedies Cumulative.** The remedies provided herein shall be in addition to and not in substitution for any rights and remedies now or hereafter existing at law or in equity. The remedies provided herein or otherwise available shall be cumulative and may be exercised concurrently. The failure to exercise any one of the remedies provided herein shall not constitute

a waiver thereof, nor shall use of any of the remedies provided hereof prevent the subsequent or concurrent resort to any other remedy or remedies.

8.8 **Nuisance.** Every violation of this Declaration or any part thereof is hereby declared to be and constitute a nuisance, and every public or private remedy allowed therefor by law or in equity against an Owner or Occupant shall be applicable against every such violation and may be exercised by any Owner.

## **ARTICLE 9: MORTGAGEE PROVISIONS**

The following provisions are for the benefit of Mortgagees that are the beneficiary or holder of a first Mortgage on a Parcel or Parcels within the Property.

9.1 **Notices to an Eligible Holder.** A Mortgagee that is the beneficiary or holder of a first Mortgage on a Parcel or Parcels within the City Springs Project and who provides a written request to Declarant and all Owners (Declarant to timely provide a list of the Owners and their notice addresses upon written request therefor) stating the name and address of such Mortgagee and the street address of the Parcel or Parcels to which its Mortgage relates, shall become an “**Eligible Holder**” and will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Parcel that is subject to such Eligible Holder’s Mortgage;

(b) Any delinquency in the payment of Assessments or other amounts owed by the Owner of a Parcel that is subject to such Eligible Holder’s Mortgage, where such delinquency has continued for a period of thirty (30) Days, or any other violation of this Declaration by the Mortgagor under such Eligible Holder’s Mortgage or relating to a Parcel that is subject to such Eligible Holder’s Mortgage, or the Owner or Occupant thereof, which is not cured within thirty (30) Days; provided, however, that the provisions of **Article 7** and **Article 8** hereof shall continue to govern the remedies and enforcement rights with respect to any such delinquency in the payment of Assessments or other violations of this Declaration;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by Declarant; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders pursuant to Federal Home Loan Mortgage Corporation requirements.

9.2 **Notice to Declarant.** Upon request, each Owner shall be obligated to furnish to Declarant the name and address of the holder of any Mortgage encumbering such Owner’s Parcel.

9.3 **Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from Declarant to respond to or consent to any action shall be deemed to have approved such action if Declarant does not receive a written response from the Mortgagee within thirty

(30) Days of the date of Declarant's request, provided such request is delivered to the Mortgagee by overnight mail or certified or registered mail, return receipt requested.

## **ARTICLE 10: DECLARANT INTEREST**

10.1 **Function of Declarant.** Declarant shall perform its functions in accordance with the Governing Documents and the laws of the State of Georgia and Declarant has an affirmative duty to act reasonable, in good faith and in a non-discriminatory manner.

### 10.2 **Declarant Resignation Event; Creation of Association.**

(a) Upon the occurrence of any Declarant Resignation Event: (i) Declarant shall be relieved of all Declarant Powers; and (ii) Declarant (or, if Declarant fails to do so or is unable to do so, any Owner or group of Owners) shall immediately organize the Association, and, upon the organization of the Association and the election of the board of directors of the Association as set forth in this **Section 10.2**, the Declarant Interest shall automatically vest in the Association and the Association shall be deemed to have assumed the Declarant Obligations arising from and after the organization of the Association and Declarant shall be relieved of the same (however, Declarant shall remain liable for all Declarant Obligations arising prior to the organization of the Association).

(b) The Association shall have as its members all of the Owners and no other Persons shall be permitted membership in the Association. Each Owner by acceptance of a deed to such Owner's Parcel acknowledges and agrees that: (i) membership in the Association is an appurtenance to such Owner's Parcel; and (ii) the Owner's membership in the Association may not be resigned and may not be transferred or conveyed except in conjunction with the transfer or conveyance of the Owner's Parcel. Each Owner shall have the number of votes in such association equal to the Acreage of such Parcel (rounded to the nearest whole number). The board of directors of the Association shall consist of not less than three (3) members and each board member shall be a member of the Association or shall be an authorized officer or employee of a member of the Association. The initial board members shall be elected by a majority of votes cast at the first meeting of the Association, and subsequent elections shall be held at the annual meeting of the Association as more particularly set forth in the Bylaws adopted by the Association. This **Section 10.2** may not be amended without the prior written consent of all Owners.

### 10.3 **Assignment of Declarant Interest.**

(a) The Declarant Interest may be assigned by Declarant, in whole or in part, to any Owner that agrees, to the extent of such assignment, to assume the Declarant Obligations arising from and after the date of such assignment. Notwithstanding the foregoing, in the event that Declarant is planning to assign all or any portion of Declarant's Interest to anyone other than the Owner of the Mixed-Use Building, Declarant shall be required to provide the Owner of the North Parcel with at least forty-five (45) Days advance written notice of the same and the Owner of the North Parcel shall have the right, within such forty-five (45) Day period, to elect to become the assignee of Declarant's Interest, or portion thereof, as the case may be. Such election shall be made by written notification to Declarant on or prior to the expiration of the forty-five

(45) Day period. If the Owner of the North Parcel does not provide Declarant with written notification of its election to become the assignee of Declarant's Interest, or portion thereof, as the case may be, on or prior to the expiration of such forty-five (45) Day period, the Owner of the North Parcel will be deemed to have waived this right. To be effective, such assignment must be in writing and in recordable form, and specifically refer to the Declarant Interest, or portion thereof, which is being assigned. Upon acceptance of such assignment, such assignee shall, to the extent of such assignment, assume the Declarant Obligations arising from and after the date of such assignment and shall have the Declarant Powers. Upon such assignment, and to the extent thereof, the assigning Declarant shall be relieved from all Declarant Obligations arising from and after the date of such assignment. The term "Declarant", as used herein, includes all such assignees and their heirs, successors and assigns. Notwithstanding anything to the contrary set forth herein, the mere conveyance or transfer of ownership of or any other interest or estate in land within the Property by Declarant to any Owner or Person, whether by deed, lease, sublease or other instrument, shall in no way convey all or any portion of the Declarant Interest.

(b) The Declarant Interest may be collaterally assigned by Declarant to any first priority Mortgagee of any portion of the Property owned by Declarant. In the event of any such collateral assignment and the Foreclosure of the Mortgage in respect of which the Declarant Interest has been collaterally assigned, the successor-in-title, upon such Foreclosure, to the portion of the property encumbered by such Mortgage shall be the successor Declarant hereunder.

10.4 **Additional Covenants, Conditions, Restrictions, Reservations and Easements**. Declarant may from time to time, unilaterally and at its sole discretion, submit and subject any portion of the Property with respect to which Declarant is the Owner to additional covenants, conditions, restrictions, reservations, easements, charges and liens by filing in the Public Records, a supplemental declaration. No additional covenants shall affect a Parcel with respect to which Declarant is not the Owner at the time of such filing (unless the Owner thereof joins therein).

10.5 **Delegation of Declarant Obligations**. In performing Declarant Obligations hereunder, Declarant shall have the authority to delegate to Persons of its choice (including, without limitation, Persons affiliated with Declarant) any such Declarant Obligations as may be determined by Declarant.

## ARTICLE 11: GENERAL

### 11.1 **Duration**.

(a) Unless terminated as provided in **Section 11.2**, the provisions of this Declaration shall run with, bind the Property and remain in effect perpetually to the extent permitted by Georgia law; provided, however, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land for so long as permitted by Georgia law. To the extent that Georgia law limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each. Notwithstanding the

above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) This Declaration shall be deemed incorporated in all deeds, leases and conveyances of the Property or any portion thereof hereafter made by any Owner. Every Person, including a Mortgagee, acquiring or holding any interest or estate in any portion of the Property shall take or hold such interest or estate, or the security interest with respect thereto, with notice of the terms and provisions of this Declaration; and in accepting such interest or estate in, or a security interest with respect to, any portion of the Property, such Person shall be deemed to have consented or assented to this Declaration, whether or not such Person shall have executed any document or instrument evidencing the same.

(c) Unless otherwise provided by Georgia law, this Declaration may be terminated at any time by recordation of an instrument signed by all of the Owners subject to this Declaration (including Declarant, if Declarant owns any portion of the Property, irrespective of whether Declarant is an Owner of any Parcel) and their first mortgagees agreeing to terminate this Declaration. Such instrument shall comply with the requirements of O.C.G.A. § 44-5-60(d) and shall be recorded in the Public Records.

(d) Notwithstanding the foregoing: (i) the easements granted in this Declaration shall run with the land perpetually, except that dedication to and acceptance by an appropriate governmental authority or conveyance or grant to an appropriate public utility of the facilities that are the subject of any such easements shall terminate those easements if such dedication, conveyance, or grant so provides; and (ii) upon the expiration or earlier termination of this Declaration, all rights and privileges derived from, and all duties and obligations created and imposed by, the provisions of this Declaration other than the easements granted herein shall be terminated and of no further force and effect; provided, however, that the expiration or earlier termination of this Declaration shall not limit or affect any remedy at law or in equity that any Owner may have with respect to any liability or obligation arising or to be performed under this Declaration prior to the date of such expiration or earlier termination.

## 11.2 Amendment.

(a) **By Declarant.** Provided the same shall not (i) adversely affect the title to any Parcel, (ii) materially alter or change any Owner's right to the use and enjoyment of its Parcel and the Common Facilities, or (iii) otherwise make any material change in this Declaration, each Owner agrees that this Declaration may be amended unilaterally by Declarant if: (A) such amendment is necessary to bring any provision hereof into compliance or conformity with, or remove any conflict or inconsistency with, the provisions of any applicable governmental requirement; (B) such amendment is required by any governmental requirement applicable to or promulgated by a governmental lender or purchaser of mortgage loans, to enable such lender or purchaser to make or purchase mortgage loans on any portion of the Property; (C) such amendment is necessary to enable any governmental authority to insure mortgage loans on any portion of the Property based on any governmental requirement; (D) such amendment is required by any title insurance company; or (E) such amendment is to facilitate the operation and

management of the Property. The authority of Declarant in this **Section 11.2** shall be cumulative of and in addition to, and not restrictive of or in lieu of, any authority of Declarant to amend this Declaration, the Master Plan or the Parking Plan in accordance with the other terms and provisions of this Declaration. All amendments to this Declaration, the Master Plan or the Parking Plan shall be effected by an instrument in writing executed by Declarant and placed of record in the Public Records.

(b) **By Owners.**

(i) In the case of an amendment that cannot be made unilaterally by Declarant because it does not meet the requirements of **Section 11.2(a)**, this Declaration may be amended upon the approval of all Owners whose rights or obligations will be affected by such amendment. Each such amendment of this Declaration will be evidenced by an instrument in writing, signed and acknowledged by all required Owners, setting forth the full text of such amendment, the appropriate recording data of this Declaration, and certifying that such amendment has been approved by the affirmative vote of all required Owners. The amendment will become effective on the recording of the amendment in the Public Records.

(ii) After the occurrence of a Declarant Resignation Event, this Declaration may be amended at any regular or special Association meeting, called and convened in accordance with the provisions of the then-current bylaws or other governing documents of the Association, upon the affirmative vote of a majority of the total voting interests in the Property, unless a different vote is required by the specific provisions of this Declaration. Each such amendment of this Declaration will be evidenced by an instrument in writing, signed and acknowledged by any two (2) officers of the Association, setting forth the full text of such amendment, the appropriate recording data of this Declaration, and certifying that such amendment has been approved by the affirmative vote of the necessary amount of votes. The amendment will become effective on the recording of the amendment in the Public Records.

(c) **Mortgagee Approval.** Notwithstanding anything to the contrary contained in this Declaration, any amendment to this Declaration which would change, alter, modify or rescind any right, title, interest or privilege herein expressly granted to a Mortgagee, shall require the prior written approval of such Mortgagee.

(d) **Amendments Binding.** Amendments made pursuant to the provisions of this **Section 11.2** shall inure to the benefit of and be binding upon all Owners and Occupants and their respective Mortgagees.

11.3 **Successors and Assigns.** Except as otherwise provided herein to the contrary, the easements described in this Declaration shall encumber the Easement Areas and shall run with said Property forever and be binding upon and inure to the benefit of and be enforceable by the heirs, legal representatives, successors and assigns of each Owner, respectively. All obligations of any Owner hereunder shall be binding upon their respective successors-in-title and assigns; provided the covenants and obligations herein are only personal to and enforceable against Owners, or their successors-in-title, as the case may be, owning title to the respective properties at the time any liability or claim arising under this Declaration shall have accrued; it being intended that upon the conveyance of title by a party, the party conveying title shall thereupon be

released of any liability hereunder as to the property conveyed for any breach of this Declaration or claim arising under this Declaration accruing after the date of such conveyance. Notwithstanding the foregoing, if any Parcel is subject to the Georgia Condominium Act, the parties hereby agree that the successor-in-title of the Owner shall be deemed to be the condominium association required to be created and established pursuant to the Georgia Condominium Act and not the individual owners of units of such condominium.

11.4 **Binding Effect.** Each purchaser or grantee of any interest in any real property now or hereafter made subject to this Declaration, by acceptance of a deed or other conveyance thereof, thereby agrees that the conditions, covenants, restrictions, easements, and reservations of this Declaration may be amended, terminated, or extended as provided in **Section 11.2** above.

11.5 **Governmental Interests.** With the approval of the applicable governmental authority, Declarant may designate sites within the Property that Declarant owns for fire, police and utility facilities, streets and other public or quasi-public facilities.

11.6 **Rights of Third Persons.** This Declaration shall be recorded for the benefit of all Owners, and their respective Mortgagees as herein provided, and by such recording, no Parcel Lessee, Space Tenant or Occupant (except for easements expressly provided for their benefit), adjoining property owner or other Person shall have any right, title or interest whatsoever in the Property, this Declaration, the operation or continuation of this Declaration or the enforcement of any of the provisions hereof. This Declaration may be amended, modified or otherwise changed in accordance with its terms without the consent, permission or approval of any Parcel Lessee, Space Tenant, Occupant, adjoining owner or third Person.

11.7 **Severability.** Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

11.8 **Fair Housing Amendments Act.** The provisions of the Governing Documents shall be subordinate to the FHAA, and shall be applied so as to comply with the FHAA. In the event that there is a conflict between or among the Governing Documents and the FHAA, the FHAA shall prevail. Notwithstanding anything to the contrary contained herein, in the event that any provision of this Declaration conflicts with the FHAA, Declarant shall have the unilateral right to amend this Declaration for the purpose of bringing this Declaration into compliance with the FHAA.

11.9 **Dispute Resolution.**

(a) It is the intent of Declarant to encourage the amicable resolution of disputes involving the Property, and to avoid the emotional and financial costs of litigation, if at all possible. Accordingly, each Owner covenants and agrees that it shall attempt to resolve all claims, grievances or disputes involving the Property, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents through alternative dispute resolution methods, such as mediation and arbitration. To foster the amicable resolution of disputes, Declarant may adopt alternative dispute resolution procedures.

(b) Participation in alternative dispute resolution procedures shall be voluntary and confidential. Should either party conclude that such discussions have become unproductive or unwarranted, then the parties may proceed with litigation.

11.10 **Non-Merger**. Notwithstanding the fact that Declarant is the current owner of the Property, it is the express intention of Declarant that the easements established in this Declaration for the benefit of the Property and the Owners and shall not merge into the interest of Parcels transferred by Declarant or its successor, but that the estates of Declarant and the Owners shall remain as separate and distinct estates. Any conveyance of all or a portion of the Property shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

11.11 **Grants**. The parties hereby declare that this Declaration and the easements created herein shall be and constitute covenants running with the fee simple estate of the Property. The grants and reservations of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted or reserved in this Declaration.

11.12 **Cumulative Effect; Conflict**. The provisions of this Declaration shall be cumulative with any additional recorded covenants, restrictions, and declarations applicable to the Property, and Declarant may, but shall not be required to, enforce such covenants, restrictions, and declarations; provided, however, in the event of a conflict between or among this Declaration and such covenants, restrictions, or declarations, policies, or practices adopted or carried out pursuant thereto, this Declaration shall prevail. Nothing in this **Section 11.12** shall preclude any supplemental declaration or other recorded covenants, restrictions, and declarations applicable to any portion of the Property from containing additional covenants, restrictions or provisions which are more restrictive than the provisions of this Declaration, and Declarant shall have the standing and authority to enforce the same. In addition, in the event of a conflict between or among the provisions of this Declaration and any supplemental declaration to any portion of the Property that create exceptions to, or otherwise modify the terms of this Declaration in compliance with **Section 11.2**, the provisions of such supplemental declaration shall prevail over this Declaration.

11.13 **Compliance**. Every Owner and Occupant of any Parcel shall comply with the Governing Documents.

11.14 **Conflict or Ambiguity**. In the event of any conflict or ambiguity in the terms and provisions of this Declaration, the general rules of construction relating to construction against Declarant are hereby waived by each Owner.

11.15 **Governing Law**. The laws of the State of Georgia shall govern as to the interpretation, validity and effect of this Declaration, without regard to such state's choice of law principles.

11.16 **Not a Public Dedication**. Nothing contained herein shall be deemed to be a gift or dedication of any portion of the City Springs Project, or of any Parcel, or portion thereof, to

the general public or for any public use or purpose whatsoever, it being the intention and understanding of the parties hereto and all Owners that this Declaration shall be strictly limited to and for the purposes herein expressed for the development, maintenance and operation of the Improvements solely for the benefit of the Owners. Each Owner, by appropriate rules and regulations adopted with notice to all Owners, shall have the right to prohibit and regulate any use of its Parcel by a Person, including Permittees, for any purpose which is in compliance with the Governing Documents.

11.17 **Attorneys' Fees and Costs.** In the event of any litigation between the parties arising out of or in connection with this Declaration, the prevailing party shall be entitled to recover all reasonable costs incurred, including without limitation reasonable attorneys' and paralegals' fees and costs, whether such fees and costs are incurred at trial, on appeal or in any bankruptcy proceedings.

11.18 **Further Assurances.** Each Owner covenants and agrees to sign, execute and deliver, or cause to be signed executed and delivered and to do or make, or cause to be done or made, any and all agreement, instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, as may be reasonably requested by Declarant for the purpose of or in connection with clarifying, amending or otherwise consummating the transactions and matters set forth herein.

11.19 **Estoppel Certificates.**

(a) Each Owner and Declarant shall, from time to time, within ten (10) Days after receipt of written request from any other Owner or Declarant (which shall be no more frequent than three (3) times per calendar year), execute, acknowledge and deliver to such party or to any existing or prospective purchaser or Mortgagee designated by such party, an estoppel certificate stating, to the extent applicable:

(i) that the terms and provisions of this Declaration are unmodified and are in full force and effect or, if modified, identifying any such modifications;

(ii) whether there is any existing default hereunder (or grounds therefor after giving the requisite notice hereunder) by the requesting party and, if so, specifying the nature and extent thereof and whether all Improvements located on the requesting party's Parcel are in compliance with this Declaration;

(iii) whether there are any sums (other than those arising out of the normal course of operation of City Springs within the previous forty-five (45) Days) which the Person executing such estoppel certificate owes as an Assessment or is entitled to receive or demand from the requesting party, and if there is any such sum, specifying the nature and amount thereof;

(iv) the nature and extent of any set-offs, claims, counterclaims, and/or defenses then being asserted or capable of being asserted after giving the notice, if any, required hereunder or otherwise known by the Person executing the estoppel certificate against the enforcement of the requesting party's obligations hereunder;

(v) the total amount of all sums owed hereunder and all liens being asserted or capable of being asserted after giving notice, if any, required hereunder, describing the applicable provision or provisions and the details of any such lien claim;

(vi) the current address or addresses to which notices given to the Person executing such estoppel certificate are to be mailed; and

(vii) such other facts or conclusions as may be reasonably requested.

(b) Such estoppel certificate shall not act to estop the issuer from asserting a claim or defense against a bona fide encumbrancer or purchaser for value to the extent that such claim or defense is based upon facts known to the issuer as of the date of the estoppel certificate which are contrary to the facts contained therein, and such bona fide purchaser or encumbrancer has acted in reasonable reliance upon such estoppel certificate without knowledge of facts to the contrary. The issuance of an estoppel certificate shall in no event be construed to waive any rights of the issuer to challenge acts committed by any Owners or Declarant for which approval by the issuer was required but not sought or obtained. The issuance of an estoppel certificate shall in no event subject the party executing such estoppel certificate to any liability for the negligent or inadvertent failure of such party to disclose correct and/or relevant information.

11.20 **Jurisdiction.** This Declaration shall be construed and enforced in accordance with the laws of the State of Georgia. Declarant hereby submits to the exclusive jurisdiction and venue of the Superior Court of Fulton County, Georgia for the purposes of all legal proceedings arising out of or relating to this Declaration, and Declarant hereby irrevocably waives to the fullest extent permitted by Applicable Law, any objection which it may now or hereafter have to the venue of any such proceeding which is brought in such a court.

11.21 **Notices.** All notices, Approvals or other communications required or permitted to be given under this Declaration shall be in writing and shall be considered as properly given or made: (a) on the third (3rd) Business Day after being mailed via U.S. mail by certified mail, return receipt requested, postage prepaid and addressed to the Person to whom it is intended at the address of said Person as set forth below; (b) the next Business Day after being sent via overnight commercial courier, courier fee prepaid and addressed to the Person to whom it is intended at the address of said Person as set forth below; or (c) when actually received by the Person to whom it is intended if given in any other manner. The address for an Owner shall be the most recent address of said Owner designated in writing to Declarant and given in accordance with this **Section 11.21**, or if not so designated, as shown on the tax rolls of Fulton County, Georgia.

If to Declarant:

City of Sandy Springs Public Facilities  
Authority  
7840 Roswell Road, Building 500  
Sandy Springs, Georgia 30350  
Attention: Chairman

With copies to:

City of Sandy Springs, Georgia  
7840 Roswell Road, Building 500  
Sandy Springs, Georgia 30350  
Attention: City Manager

City of Sandy Springs, Georgia  
7840 Roswell Road, Building 500  
Sandy Springs, Georgia 30350  
Attention: City Attorney

Rejection or other refusal by the addressee to accept, or the inability to deliver because of a changed address of which no notice was given, shall be deemed to be receipt of the notice sent. Declarant may change its address or name an agent for receipt of notices, by filing a written instrument in the Public Records stating its new address and providing notice to all Owners in accordance with this **Section 11.21**.

11.22 **Exhibits**. The exhibits attached to this Declaration are incorporated herein by this reference and amendment of such exhibits shall be governed by the provisions of **Section 11.2**.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Declarant has executed this Master Declaration of Covenants, Conditions and Restrictions for City Springs this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

**CITY OF SANDY SPRINGS PUBLIC FACILITIES AUTHORITY**, a political subdivision of the State of Georgia

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
Witness

STATE OF GEORGIA       §  
                                  §  
COUNTY OF FULTON     §

The foregoing instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of the CITY OF SANDY SPRINGS PUBLIC FACILITIES AUTHORITY, a political subdivision of the State of Georgia. He/She is personally known to me and did/did not take an oath.

\_\_\_\_\_  
Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Notary Seal

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B-1  
MASTER PLAN

EXHIBIT B-2  
PARKING PLAN

EXHIBIT C  
DESIGN GUIDELINES

EXHIBIT D

DEPICTION OF CITY PARKING PARCEL

EXHIBIT E

LEGAL DESCRIPTION OF NORTH PARCEL

EXHIBIT F

DEPICTION OF SOUTH CITY PARCEL

EXHIBIT G

LEGAL DESCRIPTION OF SOUTH DEVELOPER PARCEL

**CITY IMPROVEMENTS  
COMPLETION AND ESCROW AGREEMENT**

This **CITY IMPROVEMENTS COMPLETION AND ESCROW AGREEMENT** (this “**Agreement**”) is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2016 (the “**Effective Date**”), by and among **SANDY SPRINGS CITY CENTER, LLC**, a Georgia limited liability company (“**Developer**”); **CITY OF SANDY SPRINGS GEORGIA**, a public body politic and corporate of the State of Georgia (“**City**”); and **CHICAGO TITLE INSURANCE COMPANY** (“**Escrow Agent**”).

**WITNESSETH:**

**WHEREAS**, Developer, as purchaser, and City, as seller, have entered into the Acquisition Agreement, a copy of which has been delivered to Escrow Agent;

**WHEREAS**, all capitalized terms used in this Agreement and not defined in this Agreement to have the meanings as defined in the Acquisition Agreement; and

**WHEREAS**, pursuant to the Acquisition Agreement, City has agreed to complete the City Improvements in accordance with the Approved City Improvements Plans; and

**WHEREAS**, pursuant to the Acquisition Agreement, City has entered into the City Improvements Construction Contract for the completion of the City Improvements;

**WHEREAS**, pursuant to the Acquisition Agreement, Developer has deposited the “Developer’s Construction Deposit” in the amount of **Three Million Two Hundred Twenty Seven Thousand Four Hundred Thirty Eight Dollars (\$3,227,438.00)**;

**WHEREAS**, the City Improvements are not Substantially Completed as of the date hereof;

**WHEREAS**, to secure its obligation to complete the City Improvements, pursuant to the Acquisition Agreement, City has agreed to deposit at Closing with Escrow Agent the City Improvements Escrow Deposit and the City Improvements Completion Bonds to be held in escrow, subject to the terms and conditions of the Acquisition Agreement and this Agreement;

**WHEREAS**, pursuant to the Acquisition Agreement, Developer has agreed to deposit at Closing with Escrow Agent the Developer Private Parking Escrow, representing the portion of the cost of City Improvements allocable to the Private Parking Improvements to be paid by Developer pursuant to the Acquisition Agreement;

**WHEREAS**, City and Developer desire to more completely describe City’s obligations with respect to the City Improvements; and

**WHEREAS**, Escrow Agent is willing to hold the City Improvements Escrow Deposit, the City Improvements Completion Bonds and the Developer Private Parking Escrow pursuant to the terms of this Agreement.

NOW, THEREFORE, it is hereby agreed as follows:

1. **Definitions.**

“**Acquisition Agreement**” means that certain Real Estate Acquisition Agreement dated as of September 8, 2015, as amended by that certain First Amendment to Real Estate Acquisition Agreement dated as of \_\_\_\_\_, 2016.

“**Approved City Improvements Budget**” means the budget for the City Improvements set forth on **Exhibit A** attached hereto.

“**Approved City Improvements Construction Schedule**” shall mean the schedule for the completion of the City Improvements set forth on **Exhibit C** attached hereto.

“**Approved City Improvements Plans**” means the plans and specifications for the City Improvements scheduled and identified on **Exhibit B** attached hereto.

“**Architect**” means the Design Professional engaged by City as the principal architect for the City Improvements, to perform or provide Design Services, which is **Rosser International, Inc.**

“**Architect Agreement**” means the agreement between City and Architect for the performance of Design Services.

“**Business Day**” shall mean any day of the week other than: (a) Saturday and Sunday; (b) a day on which banking institutions in Atlanta, Georgia, are obligated or authorized by law or executive action to be closed to the transaction of normal banking business; or (c) a day on which governmental functions in Atlanta, Georgia, are interrupted because of extraordinary events such as hurricanes, blizzards, power outages or acts of terrorism.

“**Change Order**” means a written document agreed upon and executed by City and Developer, authorizing a change in the Project Services, and the adjustment in the City Improvements Costs, City Improvements Construction Contract, and the Approved City Improvements Construction Schedule.

“**Change Order Cost**” means the amount set forth in an executed Change Order representing the net increase or decrease in City Improvements Costs associated with the change in the Project Services identified in the Change Order.

“**City Improvements**” means the improvements provided to be constructed and installed pursuant to the Approved City Improvements Plans, and include the North Parcel City Improvements, the South Parcel City Improvements, and the Private Parking Improvements.

“**City Improvements Completion Bonds**” means those bonds delivered by City scheduled and identified on **Exhibit D** attached hereto.

“**City Improvements Costs**” means the total cost of the Project Services for the design, construction and installation of the City Improvements.

“**City Improvements Construction Contract**” means that certain Contract for Construction of City of Sandy Springs, GA City Center Project between City and Contractor dated June 30, 2015.

“**City Improvements Escrow Deposit**” means the sum of \$ [REDACTED] deposited by City with Escrow Agent on and as of the Effective Date.

“**City Party**” means any Design Professional, Construction Party, Subcontractor or other Person performing or providing any of the Project Services or furnishing or supplying goods, materials or services in connection with the Project Services.

“**Construction Agreements**” means any agreement between City and any Construction Party for the performance of any of the Work, including, without limitation, the City Improvements Construction Contract.

“**Construction Party(ies)**” means Contractor or any other Person that is engaged directly by City to perform any of the Work.

“**Contractor**” means the Construction Party that City has engaged as the general contractor for the City Improvements, which is **Holder Construction Group, LLC**.

“**Contract Documents**” shall be composed of the following-described documents, as amended from time to time: (a) this Agreement; (b) all Construction Agreements; (c) all Design Documents; and (d) all written or graphic interpretations, clarifications, amendments and changes to any of the foregoing documents (including Change Orders).

“**Design Agreements**” means any agreement between City and any Design Professional for the performance of any Design Services, including, without limitation, the Architect Agreement.

“**Design Professional**” means Architect or any other Person hired, retained or engaged by, through or under City or Architect to provide any Design Services.

“**Design Services**” means all architectural, engineering, design or other services required for the design and engineering of the City Improvements and the administration of the Work, to be performed by Architect and other Design Professionals.

“**Developer’s Allocated Share**” shall mean the City Improvements Costs allocated to the Private Parking Improvements as set forth in the Approved City Improvements Budget.

“**Developer Private Parking Escrow**” means the sum of **Three Million Two Hundred Twenty Seven Thousand Four Hundred Thirty Eight Dollars (\$3,227,438.00)**, representing the portion of the cost of the Private Parking Improvements

to be paid by Developer pursuant to the South Parking Deck Cost Allocation set forth in the Acquisition Agreement, deposited by Developer with Escrow Agent on and as of the Effective Date. The Developer Private Parking Escrow is comprised of the same funds that have heretofore constituted the "Developer's Construction Deposit" under the Acquisition Agreement.

**"Environmental Laws"** means all Governmental Requirements relating to the environment and or the use, generation, storage disposal, treatment, transportation, recycling, sale or release of Hazardous Materials.

**"Final Completion"** means: (a) the occurrence of Substantial Completion; (b) the completion of all Punch List Items; and (c) the delivery of all items required by the Contract Documents.

**"Governmental Authority"** means any federal, state, county or municipal governmental authority, including all executive, legislative, judicial and administrative bodies thereof.

**"Governmental Requirement"** means all federal, state, county, municipal and other governmental constitutions, statutes, ordinances, codes, regulations, resolutions, rules, requirements and directives promulgated by a Governmental Authority and applicable to the City Improvements or the performance by City of its duties and obligations under this Agreement.

**"Hazardous Materials"** means any material or substance, or combination of materials or substances, which by reason of quantity, concentration, composition, or characteristic is or in the future becomes regulated under any federal, state or local environmental or common law, rule, regulation, ordinance or requirement, displaying any explosive, volatile, radioactive, toxic, corrosive, flammable, ignitable or reactive characteristic or which may cause a nuisance, injury, harm or degradation to human health, welfare or the environment.

**"Lien"** means any liens for services or labor performed or rendered, or for materials delivered, supplied or furnished, to or in connection with the Project Services, and any other lien, encumbrance or charge against the City Improvements arising by reason of the Project Services or arising by, through or under City or any City Party.

**"Minor Change to the Work"** means a change in the Work that: (a) will not result in an increase in the City Improvements Costs or an extension of the Substantial Completion Deadlines or the Approved City Improvements Construction Schedule; (b) will not have a material impact on Developer's project; and (c) will not have a material aesthetic or functional impact on the City Improvements or Developer's project.

**"North Parcel City Improvements"** means the elements of the City Improvements designated as such on Exhibit B attached hereto.

“**Person**” means any individual, firm, corporation, partnership, limited liability company, trust, unincorporated business association or Governmental Authority.

“**Private Parking Improvements**” means the elements of the City Improvements designated as such on **Exhibit B** attached hereto, comprised of levels 3 through 6 of the parking structure to be constructed on the South Parcel, which are to be owned by Developer and to be for the exclusive use of Developer’s residential project.

“**Project Services**” means, collectively, the Design Services and the Work.

“**Proposed Change Order**” means a written request for a Change Order submitted by either City or Developer for review, discussion and approval prior to its becoming agreed upon and executed by both City and Developer. At the time a Proposed Change Order is agreed upon and executed by City and Developer, it shall be deemed to be a Change Order.

“**Punch List Items**” means items of Work on the City Improvements that are incomplete but, in the aggregate, do not materially interfere with the use or enjoyment of the City Improvements for their intended purposes.

“**South Parcel City Improvements**” means the elements of the City Improvements designated as such on **Exhibit B** attached hereto.

“**Subcontractor**” means any person, firm or entity having a direct contract with any Construction Party or with any other Subcontractor for the performance of any part of the Work.

“**Substantial Completion**” and derivations thereof (e.g., “**Substantially Complete**” or “**Substantially Completed**”) shall have the meanings ascribed to such terms in the City Improvements Construction Contract.

“**Substantial Completion Deadline**” means the deadlines for Substantial Completion of each element of the City Improvements, which is:

- (a) **April 22, 2016**, for Phase I of the North Parcel City Improvements;
- (b) **April 22, 2017**, for Phase II of the North Parcel City Improvements;
- (c) **August 22, 2016**, for Phase I of the South Parcel City Improvements; and
- (d) **August 22, 2017**, for Phase II of the South Parcel City Improvements.

The Substantial Completion Deadlines shall be extended as and to the extent that the Contractor is entitled to an extension of time in respect of the Work under the City Improvements Construction Contract.

“**Title Agent**” means Calloway Title and Escrow, LLC.

“**Work**” means the construction, installation and completion of the City Improvements, in accordance with the Approved City Improvements Plans.

2. **City Improvements Escrow Deposit / Developer Private Parking Escrow.**

(a) Escrow Agent hereby acknowledges receipt of: (i) the City Improvements Completion Bonds; and (ii) the City Improvements Escrow Deposit. In the event of an increase in cost to complete the City Improvements, City shall promptly deposit such additional amount with Escrow Agent for disbursement in accordance with this Agreement.

(b) Escrow Agent hereby acknowledges receipt of the Developer Private Parking Escrow.

(c) The City Improvements Escrow Deposit and the Developer Private Parking Escrow shall be invested by the Escrow Agent in such investments as City and Developer shall each direct with respect to the City Improvements Escrow Deposit and Developer Private Parking Escrow, respectively. All interest earned on the City Improvements Escrow Deposit shall be for the benefit of City. All interest earned on funds deposited in the Developer Private Parking Escrow shall be for the benefit of Developer.

3. **City Obligation to Complete City Improvements.**

(a) **Covenants of City.** City hereby agrees to provide or procure the services related to the design, development and construction of the City Improvements. City hereby agrees that it shall cause the City Improvements to be completed in accordance with the City Improvements Construction Contract, the Approved City Improvements Plans and the terms of this Agreement. City further acknowledges and agrees as follows:

(i) **Scope of Obligation.** The scope of City’s responsibilities to cause the completion of the City Improvements shall include providing or procuring the performance of: (A) the design, construction and installation of the City Improvements; and (B) site development, permitting, approvals, testing, surveying, geotechnical investigations, environmental assessments, architectural, engineering, landscaping, construction, post-construction, threshold inspections, accounting and control, coordination and management to completion of the City Improvements.

(ii) **Nature of Responsibility.** To the extent permitted by law, City shall be responsible to Developer for all matters pertaining to the design, construction and installation of the City Improvements and for the performance of

all City Parties, and for all services, work and materials performed, provided and/or furnished by City or by any City Party, including, without limitation: (A) the design, construction and installation of the City Improvements; (B) the preparation of the Approved City Improvements Plans, and the design, architectural and engineering services related thereto; (C) the compliance of the City Improvements with all applicable Governmental Requirements of all Governmental Authorities having jurisdiction with respect thereto; (D) the compliance of the construction of the City Improvements with the Design Documents; (E) the quality, integrity and freedom from defects of the workmanship and materials incorporated into the City Improvements; and (F) the professional quality, technical adequacy and accuracy of the Design Documents and the Work.

(iii) No Responsibility of Developer. Nothing contained in this Agreement shall create, and Developer does not assume, any duty, obligation, liability or responsibility of any kind or nature whatsoever to any City Party either in contract, tort, law, or equity. Specifically, and without limitation, Developer assumes no duty, obligation, liability or responsibility to pay any part or all of the compensation owed to any City Party. This Agreement is not, either in whole or in part, entered into for the benefit of any one or more City Parties, none of whom shall have third-party beneficiary status under this Agreement. City shall include or cause to be included in all agreements with City Parties a provision which states, in substance, the terms of this **Section 3(a)(iii)**. Developer hereby confirms that it has approved the Approved City Improvements Plans.

(iv) Conflict with Other Documents. This Agreement is the principal document governing the relationship between City and Developer and in connection with such relationship, in the event of any conflict between this Agreement and any other agreement between City and Developer.

(b) Additional Covenants of City.

(i) Design and Construction Agreements. City shall enforce the duties, obligations, liabilities and responsibilities of the other parties to all of the Design Agreements and the Construction Agreements. City shall provide Developer with copies of all such Agreements.

(ii) Inspection of Construction. City shall permit Developer and its agents, employees, representatives or consultants, and any interested Governmental Authority, from time to time to inspect the same and all materials used in the construction or stored on the Property, and to examine and copy: (A) all plans, shop drawings and work details which are or may be kept on the Property; (B) all of City's books, records and accounts relating to the Project Services and all disbursements and accounts payable in connection with the City Improvements; (C) certificates and reports of inspecting architects, engineers and public officials; and (D) all subcontracts, bills, bank accounts, payroll records,

employment records and other records pertaining to the City Improvements. City shall maintain such records in a single, consolidated, easily accessible location.

(iii) No Liens. City shall not permit or suffer to exist any Lien, encumbrance or charge against the City Improvements or the land upon which the City Improvements are constructed, and City shall at all times maintain the City Improvements and the land upon which the City Improvements are constructed free and clear of all Liens.

(iv) Compliance. City shall cause the City Improvements to be developed, designed, constructed and installed in compliance with all applicable Governmental Requirements, including, without limitation, all Environmental Laws.

(v) Completion. City shall cause Substantial Completion of the City Improvements to be achieved on or before the Substantial Completion Deadlines, and shall otherwise cause Substantial Completion and Final Completion to be achieved in accordance with this Agreement and the City Improvements Construction Contract.

(vi) Correction of Work. City shall cause to be corrected promptly all Work that is defective or is not in accordance with the Design Documents, whether observed before or after Substantial Completion, and whether or not fabricated, installed or completed.

(vii) Responsible for City Parties. To the extent permitted by law, City shall be responsible to Developer for acts and omissions of City, all City Parties, and their respective agents and, employees.

(viii) Property Development Tests and Inspections. City shall procure and furnish all structural, mechanical, chemical, electrical, geotechnical, materials and other laboratory or on-site tests, inspections and reports obtained and necessary for completion of the City Improvements. Such testing services shall include, as required, applicable test borings, test pits, soil-bearing values, percolation tests, air and water pollution tests, pressurization tests and other necessary operations for determining subsoil, air, water, and materials conditions, with reports and appropriate professional recommendations.

(ix) Environmental Matters. Neither City nor any City Party shall violate any Environmental Laws in the performance of the Project Services.

(x) Reports. Upon request, City will transmit to Developer copies of all reports received by City from Contractor pertaining to the City Improvements.

(c) **Construction.** City has the responsibility and obligation to and shall engage the Construction Parties to perform the Work and enforce the Construction Agreements for the benefit of Developer.

(i) **General.** City has engaged, has executed and entered into the City Improvements Construction Contract with, and shall engage, execute and enter into the other necessary Construction Agreements with, Contractor and the other Construction Parties. The City Improvements shall be constructed by the Construction Parties pursuant to the Construction Agreements and the Design Documents, under the supervision and direction of City and as observed and reviewed by Architect.

(ii) **Construction Schedule.** Throughout construction of the City Improvements, City shall keep Developer informed of the status of adherence to the Approved City Improvements Construction Schedule.

(iii) **Commencement of the Work; Time for Completion.**

(A) City represents that, as of the date hereof, Contractor has commenced the Work.

(B) Time being of the essence, City shall use its best efforts to cause the Construction Parties to prosecute the Work diligently, using such means and methods of construction as will maintain the progress of the Work substantially in accordance with the Approved City Improvements Construction Schedule, and to cause Substantial Completion in accordance with the requirements of the Contract Documents not later than the Substantial Completion Deadlines.

(iv) **Developer as Beneficiary.** Developer shall be a third party beneficiary of the duties and obligations of all Construction Parties and Subcontractors under the Construction Agreements and otherwise with respect to the Work, and shall have the Self-Help Remedy as provided in **Section 5(b)**.

(v) **Inspection.**

(A) Developer shall have access to the Work during all working hours, and shall have the right to observe the Work and all facilities where the Work or any part thereof is being fabricated or stored; **provided, however,** that Developer shall not delay, hinder or interfere with the performance of the Work.

(B) Failure on the part of Developer to reject defective or nonconforming Work shall not be construed to imply an acceptance of such Work.

(vi) **Minor Changes to the Work.** In the event City or Developer desires to make a Minor Change to the Work, City or Developer shall have the

right to issue supplemental instructions ordering same with the consent of the other party, which consent shall not be unreasonably withheld.

(vii) Change Orders.

(A) Changes in the quantity or character of the Project Services which are not properly the subject of supplemental instructions shall be authorized only by a Change Order.

(B) As soon as practicable after receipt of a Proposed Change Order from Developer, and taking into account the magnitude of such Proposed Change Order, City shall notify Developer in writing of the appropriate proposed Change Order Cost, if any, by reason of such Proposed Change Order and the effect, if any, on the Substantial Completion Deadlines. Any Proposed Change Order initiated by City shall contain similar information. City shall submit with each Proposed Change Order all documentation confirming the Change Order Cost, including but not limited to each written bid, proposal and invoice. The parties may issue both additive and/or deductive Proposed Change Orders.

(C) In light of the priority the parties have established for timely completion of the City Improvements, in responding to or initiating any Proposed Change Order, City shall assume that Developer requires the completion of the City Improvements to be accomplished as then scheduled and that City shall take such measures in order to incorporate into the Project Services the requirements of the Proposed Change Order while preserving the then-established Approved City Improvements Construction Schedule, and the Change Order Cost shall be calculated accordingly.

(D) The parties shall respond to a request for a Change Order within **five (5) Business Days**. In the event that the parties are unable to resolve a dispute with respect to a request for a Change Order within **ten (10) Business Days**, either party may submit the dispute to mediation in accordance with this **Section 3(c)(vii)(D)**. Disputes as to Change Orders submitted to mediation shall be administered by JAMS pursuant to its applicable Mediation Rules and Procedures and in accordance with the Expedited Procedures in those Rules. The mediator must be an expert in construction having at least ten (10) years of experience and having served as a mediator in at least ten (10) mediations. Costs of mediation and the fees of the mediator shall be borne equally by City and Developer. The pendency of mediation shall not affect the right of either party to pursue its other remedies under this Agreement or at law or in equity.

(E) Upon the approval of a Change Order, the Change Order Cost shall be added to or deducted from the City Improvements Costs, the party requesting the Change Order shall deposit the Change Order Cost

with Escrow Agent (which shall be held as either a part of the City Improvements Escrow Deposit or the Developer Private Parking Escrow, as appropriate) and the Approved City Improvements Construction Schedule shall be equitably adjusted to reflect the additional time, if any, required for the performance of the Project Services by reason thereof.

(F) Upon approval of any Change Order requiring an increase in the City Improvements Costs, City shall pay the amount of such additional costs into the City Improvements Escrow Deposit and cause the City Improvements Completion Bonds to be increased in an amount reflecting the net increase.

(G) Upon approval of any Change Order requiring an increase in the Developer's Allocated Share, Developer shall pay the amount of such increase into the Developer Private Parking Escrow.

(H) A Change Order shall not be further changed, modified, altered or amended except by a further Change Order.

(viii) Progress Payments for Construction Costs.

(A) City may request disbursements of the City Improvements Escrow Deposit and/or from the Developer Private Parking Escrow, at intervals of not more than once per month during the progress of construction. Each request (an "**Application for Payment**") shall: (I) be executed by City and Contractor; (II) be certified for payment by Architect; (III) be accompanied by those documents concerning the stage of construction to which the Application for Payment relates (and shall specifically allocate the costs attributable to Developer's Allocated Share if disbursement from the Developer Private Parking Escrow is requested) as are required by the City Improvements Construction Contract to be submitted by the Construction Party with any applications for payment presented by the Construction Party pursuant thereto; and (IV) shall provide for such retainage as shall be provided for in the Contract Documents, which shall be subject to disbursement in accordance with the Contract Documents. All Applications for Payment shall be delivered simultaneously to Escrow Agent and Developer.

(B) The issuance of an Application for Payment will constitute a representation by City (to the best of the City's knowledge) and the Construction Party to Developer that the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents and that the Construction Party and Subcontractors are entitled to payment in the amount certified.

(C) Developer shall have the right (but not the obligation) to send a written notice ("**Objection Notice**") objecting to the issuance of

any disbursement hereunder to the extent reasonably necessary to protect Developer from loss because of any of the following:

(I) defective Work not remedied;

(II) claims (which have not been bonded in accordance with applicable law) of any Persons supplying labor, materials or services to City or any Construction Party or any Subcontractor for the Work;

(III) failure of City or any Construction Party to make payments due and owing to Subcontractors or for labor and materials or equipment;

(IV) failure of City to make payments to any Construction Party; or

(V) reasonable evidence that the Work cannot be completed for the unpaid balance of the City Improvements Costs.

(D) Upon the delivery of a signed Application for Payment from City and accompanied by the documents required by **Section 3(c)(viii)(A)** acceptable to Escrow Agent in its reasonable judgment (with a copy thereof to be simultaneously delivered to Developer), Escrow Agent shall remit the amount of such requested disbursement from the City Improvements Escrow Deposit and/or the Developer Private Parking Escrow to Title Agent, for further remittance by Title Agent as directed by the Application for Payment to the Contractor at any time after the date **fifteen (15) Business Days** after the receipt of such request, unless Escrow Agent shall have received an Objection Notice pursuant to **Section 3(c)(viii)(C)** from Developer objecting to such disbursement prior to the expiration of said **fifteen (15) Business Day** period.

(E) Upon receipt of an Objection Notice, Escrow Agent may disburse such portions of the Application for Payment that are not objected to in the Objection Notice and shall retain all other amounts requested subject to a joint direction letter issued by both City and Developer. Such disbursements shall take place no more frequently than monthly.

**4. City Events of Default.** Each of the following shall be an event of default by City (a “**City Default**”):

(a) City fails to pay or perform any of its duties, obligations, liabilities or responsibilities under this Agreement, or fails to comply with any term, covenant, condition, agreement, requirement, provision or restriction of this Agreement, and does

not cure such failure within **ten (10) Business Days** after Developer gives City written notice thereof; or

(b) City fails to cause either the North Parcel City Improvements or the South Parcel City Improvements to progress and proceed in accordance with the Approved City Improvements Construction Schedule, and does not cure such failure within **ten (10) Business Days** after Developer gives City written notice thereof; or

(c) City fails to cause either the North Parcel City Improvements or the South Parcel City Improvements to be Substantially Completed in accordance with the Approved City Improvements Plans by the applicable Substantial Completion Deadline; or

(d) City initiates or authorizes a Change Order which affects the Private Parking Improvements or increases Developer's Allocated Share of the Private Parking Improvements without Developer's prior written consent; or

(e) City defaults in its obligations of the City Improvements Construction Contract (other than a default caused by Developer's failure to timely pay for Developer's Allocated Share of the Private Parking Improvements); or

(f) The occurrence of any of the events enumerated in **Section 3(c)(viii)(C)**.

**5. Developer's Remedies.** Upon the occurrence of a City Default, Developer may pursue any one or more of the following remedies, separately or concurrently or in any combination:

(a) Upon the occurrence of any City Default, Developer may bring an action against City to enforce City's duties, obligations, liabilities and responsibilities under this Agreement.

(b) Upon the occurrence of a City Default under either **Section 4(b)** or **Section 4(c)**, Developer may exercise the remedy set forth in this **Section 5(b)** (the "**Self-Help Remedy**"):

(i) Developer shall have the right to give City a written notice to City and Escrow Agent that it intends to complete all or portions of the City Improvements or otherwise cure the City Default (the "**Self-Help Notice**", and the date of the giving of a Self-Help Notice, the "**Self-Help Notice Date**"). A Self-Help Notice shall: (A) specify a date not earlier than the date **fifteen (15) Business Days** after the Self-Help Notice Date upon which Developer intends to commence exercise of the Self-Help Remedy (the date so specified, the "**Self-Help Commencement Date**"); (B) contain the following heading in bold, full capitalized and conspicuous font "**SANDY SPRINGS CITY CENTER, LLC NOTICE OF INTENTION TO EXERCISE SELF-HELP**"; and (C) include an explicit statement that such notice is being delivered pursuant to this **Section 5(b)**. If within **five (5) Business Days** of the Self-Help Notice Date, City provides

written notice to Developer indicating that it disputes Developer's use of the Self-Help Remedy, such dispute shall be submitted to mediation in accordance with **Section 3(c)(vii)(D)**.

(ii) City shall have until the Self-Help Commencement Date in which to cure the City Default.

(iii) If City fails to cure the City Default on or before the Self-Help Commencement Date, then, from and after the Self-Help Commencement Date, Developer may cause to be performed any and all work and labor and supply or cause to be supplied any and all materials, equipment and improvements for the purposes of pursuing construction and installation of, and achieving completion of, the City Improvements. City hereby constitutes and appoints Developer as its true and lawful attorney-in-fact, with full power of substitution, for the purpose of doing, and with full power and authority to do, any and all of the actions that Developer may deem necessary, desirable or proper in order to pursue construction and installation of, and achieve completion of, the City Improvements, including, without limiting the general nature of such appointment, the power to:

(A) take possession of the property upon which the City Improvements are to be constructed and installed, and complete the City Improvements;

(B) draw upon and use the City Improvements Escrow Deposit and the Developer Private Parking Escrow to pay the costs and expenses of the construction, installation and completion of the City Improvements; and

(C) do any or all other acts which City might do to complete the City Improvements.

The foregoing power of attorney granted to Developer by City shall be deemed to be coupled with an interest, and it cannot be revoked by insolvency, bankruptcy, death, dissolution or otherwise.

(iv) In furtherance of the exercise of the Self-Help Remedy, Developer may deliver signed requisition requests to Escrow Agent accompanied by copies of invoices and supporting documentation acceptable to Escrow Agent in its reasonable judgment (with a copy thereof to be simultaneously delivered to City) in connection with the curing of the City Default (including, without limitation, reasonable attorneys' fees actually incurred), whereupon Escrow Agent shall promptly remit the amount of such requested disbursement pursuant to Developer's direction without any inquiry as to the propriety, effectiveness or timeliness of such notice and without the requirement of any further authorization, direction or instruction from either Developer or City. City covenants and agrees not to delay, hinder or impede in any manner whatsoever the disbursement of the

City Improvements Escrow Deposit and/or the Developer Private Parking Escrow as set forth in this **Section 5(b)**; **provided, however**, that City shall retain all of its rights and remedies against Developer in the event that it objects to Developer's exercise of the Self-Help Remedy. Such disbursements shall take place no more frequently than monthly.

(v) To the extent that the amount of the City Improvements Escrow Deposit is insufficient to pay all costs and expenses of the construction, installation and completion of the City Improvements, Developer shall additionally be entitled to draw upon the City Improvements Completion Bond for payment of such costs and expenses.

(vi) Developer shall utilize Contractor to the fullest extent possible in connection with its exercise of the Self-Help Remedy and, to the extent that it does not, shall use only such contractors, suppliers, and others to effect such City Improvements as are duly licensed in the State of Georgia and insured and who construct similar improvements in first class projects comparable to the City Improvements to be constructed in the Project.

(vii) City shall pay any and all costs actually incurred by Developer in good faith in connection with Developer's exercise of said Self-Help Remedy with respect to City's failure to cause either the North Parcel City Improvements or the South Parcel City Improvements, or any of the various elements thereof, to be Substantially Completed in accordance with the Approved City Improvements Plans by the applicable Substantial Completion Deadline.

(viii) Notwithstanding the foregoing, City shall be entitled to an extension of time to Substantially Complete the North Parcel City Improvements, the South Parcel City Improvements and the Private Parking Improvements to coincide with any extension of time to which Contractor is entitled under the City Improvements Construction Contract if any of the following events occur: (A) Georgia Power distribution work causes delay to Contractor's completion of the City Improvements; (B) governmental authorities (including the fire marshal) fail to approve the City Improvements, or any work therein, due to events not caused by City Parties; (C) Developer or its contractor fails to give Contractor sixty (60) days' access to the City Improvements, without material interference, to complete hardscape, landscape, and roadwork; or (D) Developer or its contractor causes any other delay to the work of Contractor or any Subcontractors.

## 6. Disbursement of Escrow Balances.

(a) On the date that is **ten (10) Business Days** after Escrow Agent's receipt of Architect's certification that the City Improvements have been Substantially Completed, Escrow Agent shall release to City all amounts remaining in the City Improvements Escrow Deposit (the "**Completion Balance**") and shall promptly re-deliver to City the City Improvements Completion Bond to City, provided that, prior to the expiration of

such **ten (10) Business Day** period, Developer shall not have delivered either an Objection Notice to the release of the Completion Balance or a Self-Help Notice.

(b) Upon Escrow Agent's receipt of an unconditional written statement from Architect that the Private Parking Improvements have been Substantially Completed, Escrow Agent shall release to Developer all amounts remaining in the Developer Private Parking Escrow.

7. **Suspension of Performance; Disbursement into Court.** If, at any time, (a) there will exist any dispute between Developer or City with respect to the holding or disposition of all or any portion of the City Improvements Escrow Deposit or any other obligations of Escrow Agent hereunder, (b) Escrow Agent is unable to determine, to Escrow Agent's sole satisfaction, the proper disposition of all or any portion of the City Improvements Escrow Deposit or Escrow Agent's proper actions with respect to its obligations hereunder, or (c) Developer and City have not, within **ten (10) Business Days** of the furnishing by Escrow Agent of a notice of resignation pursuant to **Section 10**, appointed a successor Escrow Agent to act hereunder, then Escrow Agent may, in its sole discretion, take either or both of the following actions:

(i) suspend the performance of any of its obligations (including without limitation any disbursement obligations) under this Agreement until such dispute or uncertainty will be resolved to the sole satisfaction of Escrow Agent or until a successor Escrow Agent will have been appointed; and/or

(ii) petition (by means of an interpleader action or any other appropriate method) the Superior Court of Fulton County, Georgia, for instructions with respect to such dispute or uncertainty, and to the extent required or permitted by law, pay into such court, for holding and disposition in accordance with the instructions of such court, the City Improvements Escrow Deposit, after deduction and payment to Escrow Agent of all reasonable fees and expenses (including court costs and attorneys' fees) payable to, incurred by, or expected to be incurred by Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder.

8. **Insurance; Casualty.**

(a) Throughout the term of this Agreement, City shall carry and maintain in force, or cause to be carried and maintained in force, the insurance described below, the premiums for all of which shall be the sole cost and expense of City.

(i) Commercial General Liability Insurance (including protective liability coverage on operations of independent contractors engaged in construction, blanket contractual liability coverage, products liability coverage, and explosion, collapse and underground hazards coverage) for the benefit of City and Developer, as an additional insured, against claims for personal injury, bodily injury and property damage, with a limit of not less than \$3,000,000 in the event of personal injury or bodily injury to any number of persons or of damage to property arising out of any one occurrence, and not less than \$3,000,000 in the

aggregate applicable to the City Improvements. Such insurance (which may be furnished under a primary policy or an “umbrella” policy or policies) shall also include coverage against liability for bodily injury or property damage arising out of use by or on behalf of City or Developer of any owned, non-owned or hired automotive equipment for a limit not less than that specified above. Such insurance shall include a cross-liability/severability of interest provision.

(ii) “All risk” builder’s risk insurance, written on a completed value basis, in an amount not less than the total replacement cost of the City Improvements under construction, including, if applicable, the coverages available under the so-called “installation floater”.

City shall, upon Developer’s request, furnish Developer with appropriate certificates evidencing the insurance required to be maintained by City hereunder. If City for any reason fails to obtain and/or maintain in force any of the insurance required under this **Section 9(a)**, then City shall, and City does hereby agree to, indemnify Developer against, and hold, save and defend Developer harmless from, any and all claims, demands, actions, causes of action, suits, liabilities, damages, losses, costs and expenses of any kind or nature whatsoever (including, without limitation, reasonable attorneys’ fees and court costs incurred in enforcing this indemnity and otherwise) which Developer may suffer or incur, or which may be asserted against Developer, whether meritorious or not, against which Developer would or should have been insured under any required insurance which City does not for any reason obtain or maintain in force.

(b) In the event of destruction or damage to the City Improvements by fire or other casualty prior to Substantial Completion, City shall restore, reconstruct and repair the City Improvements. City shall use all available insurance proceeds for restoration, reconstruction or repair, as required by this Agreement, and Developer shall consent to such use of insurance proceeds as required.

**9. Notices.** Every notice or other communication required, contemplated or permitted by this Agreement by any party, shall be in writing and shall be delivered either by personal delivery, facsimile (with confirmed receipt) or nationally recognized air courier service addressed to the party to whom intended at the following address:

(a) If to Developer: Sandy Springs City Center, LLC  
c/o Carter and Associates, LLC  
171 17th Street NW, Suite 1200  
Atlanta, Georgia 30363  
Attention: Conor McNally  
Facsimile No.: \_\_\_\_\_

With a copy to: Kilpatrick Townsend & Stockton LLP  
1100 Peachtree Street NE, Suite 2800  
Atlanta, Georgia 30309-4528  
Attention: M. Andrew Kauss, Esq.  
Facsimile No.: 404.541.3262

(b) If to City: City of Sandy Springs, Georgia  
7840 Roswell Road, Building 500  
Sandy Springs, Georgia 30350  
Attention: City Manager  
Facsimile No.: 770.206.1420

And City of Sandy Springs, Georgia  
7840 Roswell Road, Building 500  
Sandy Springs, Georgia 30350  
Attention: City Attorney  
Facsimile No.: 770.481.7111

(c) If to Escrow Agent: Chicago Title Insurance Company  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile No.: \_\_\_\_\_

or at such other address as the intended recipient previously shall have designated by written notice. All notices and communications required, contemplated or permitted by this Agreement shall be deemed to have been delivered to and received by the addressee, and shall be effective, on the date of delivery. All notices delivered hereunder by Developer, City or Escrow Agent to any other party shall concurrently be delivered to the remaining third party.

**10. Resignation of Escrow Agent.** Escrow Agent may resign and be discharged from the performance of its duties hereunder at any time by giving at least **ten (10) Business Days'** prior written notice to Developer and City specifying a date when such resignation will take effect. Upon any such notice of resignation, Developer and City jointly will appoint a successor Escrow Agent hereunder prior to the effective date of such resignation. If Developer and City fail to appoint a successor Escrow Agent within such time, Escrow Agent will have the right to petition a court of competent jurisdiction to appoint a successor Escrow Agent, and all costs and expenses (including without limitation attorneys' fees) related to such petition will be paid 50/50 by each of Developer and City. The retiring Escrow Agent will transmit all records pertaining to the Escrow Account and the City Improvements Escrow Deposit and will pay the City Improvements Escrow Deposit to the successor Escrow Agent, after making copies of such records as the retiring Escrow Agent deems advisable and after deduction and payment to the retiring Escrow Agent of all reasonable fees and expenses (including court costs and attorneys' fees) properly payable to, incurred by, or expected to be incurred by the retiring Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder. After any retiring Escrow Agent's resignation, the provisions of this Agreement will inure to its benefit as

to any actions taken or omitted to be taken by it while it was Escrow Agent under this Agreement.

**11. Legal Fees Incurred by Escrow Agent.** If Escrow Agent is required to respond to any legal summons or proceedings, or if any action of interpleader or declaratory relief is brought by Escrow Agent, or if conflicting demands or notice by parties to this Agreement or by any other party or parties are served upon Escrow Agent, the undersigned agree to pay all reasonable fees and expenses (including court costs and attorneys' fees) expended or incurred by Escrow Agent as a result of any of the above described events. The undersigned further agree to save Escrow Agent harmless as escrow holder under this Agreement from all losses and expenses, including reasonable attorney's fee and court cost incurred by reason of any claim, demand, or action filed with respect to this Agreement.

**12. No Liability of Escrow Agent.** The Escrow Agent shall not have any duties or responsibilities except those set forth in this Agreement and shall not incur any liability in acting upon any signature, notice, request, waiver, consent, receipt or other paper or document believed by the Escrow Agent to be genuine and the Escrow Agent may assume that any person purporting to give it any notice on behalf of either party in accordance with the conditions hereof has been duly authorized to do so.

**13. Amendment, Waiver and Assignment.** None of the terms or conditions of this Agreement may be changed, waived, modified, discharged, terminated or varied in any manner whatsoever unless in writing duly signed by each party to this Agreement. No course of conduct will constitute a waiver of any of the terms and conditions of this Agreement, unless such waiver is specified in writing, and then only to the extent so specified. A waiver of any of the terms and conditions of this Agreement on one occasion will not constitute a waiver of the other terms of this Agreement, or of such terms and conditions on any other occasion. Except as provided in **Section 14**, this Agreement may not be assigned by any party without the written consent of the other party.

**14. Binding Effect; Successors.** This Agreement may be assigned by City, in whole or in part, to the Sandy Springs Public Facilities Authority; this Agreement may be assigned by Developer, in whole or in part, to any successor in title to all or any portion of Developer's project on the North Parcel or the South Parcel; and, no assignment of this Agreement shall relieve either original signatory from liability and responsibility under this Agreement. This Agreement will be binding upon the respective parties hereto and their heirs, executors, successors and permitted assigns. If the Escrow Agent consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business (including the escrow contemplated by this Agreement) to another corporation, the successor or transferee corporation without any further act will be the successor Escrow Agent.

**15. Compensation of Escrow Agent.**

(a) Developer and City agree on a 50/50 basis to compensate Escrow Agent on demand for its services hereunder, each such party to promptly and timely pay one-half of any compensation due the Escrow Agent. The obligations of Developer and City

under this **Section 15** will survive any termination of this Agreement and the resignation or removal of Escrow Agent.

(b) Escrow Agent is authorized to, and may disburse to itself from the City Improvements Escrow Deposit, from time to time, the amount of any compensation and reimbursement of out-of-pocket expenses due and payable hereunder. Escrow Agent will notify Developer and City in writing of any disbursement from the City Improvements Escrow Deposit to itself in respect of any compensation or reimbursement hereunder and will furnish Developer and City copies of related invoices and other statements.

(c) Developer and City each hereby grant to Escrow Agent a security interest in, lien upon and right of offset against the City Improvements Escrow Deposit with respect to any compensation or reimbursement due any of them hereunder. If for any reason the City Improvements Escrow Deposit is insufficient to cover such compensation and reimbursement, Developer and City on a 50/50 basis will promptly pay such amounts to Escrow Agent upon receipt of a written itemized invoice.

**16. Rights Cumulative.** All rights, remedies, powers and privileges conferred under this Agreement on the parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law or in equity.

**17. Severability.** To the extent any provision of this Agreement is prohibited by or invalid under applicable law, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

**18. Jurisdiction and Venue.** The parties hereto hereby submit to the exclusive jurisdiction of the Superior Court of Fulton County, Georgia for the purposes of all legal proceedings arising out of or relating to this Agreement and the parties irrevocably waive, to the fullest extent permitted by law, any objection which they may now or hereafter have to the venue of any such proceeding which is brought in such a court.

**19. Governing Law.** This Agreement will be construed and interpreted in accordance with the internal laws of the State of Georgia without giving effect to the conflict of laws principles thereof. The parties acknowledge that this Agreement evidences a transaction involving interstate commerce.

**20. Entire Agreement, No Third Party Beneficiaries.** This Agreement constitutes the entire agreement between the parties relating to the holding, investment and disbursement of the City Improvements Escrow Deposit and sets forth in their entirety the obligations and duties of Escrow Agent with respect to the City Improvements Escrow Deposit. Nothing in this Agreement, express or implied, is intended to or will confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**21. Execution in Counterparts, Facsimiles.** This Agreement may be executed in two or more counterparts, which when so executed will constitute one and the same agreement or direction. The delivery of copies of this Agreement will constitute effective execution and

delivery as to the parties and may be used in lieu of originals for all purposes. Signatures to this Agreement, any amendment hereof and any notice given hereunder, executed and transmitted by facsimile or by copies of physically signed documents exchanged via email attachments in PDF format or equivalent shall be valid and effective to bind the party so signing. Each party agrees to deliver promptly an executed original of this Agreement (and any amendment hereto) with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this Agreement (or any amendment hereto), it being expressly agreed that each party to this Agreement shall be bound by its own telecopied or electronically transmitted signature and shall accept the telecopied or electronically transmitted signature of the other party to this Agreement.

[EXECUTION PAGE FOLLOWS]

**IN WITNESS WHEREOF**, this City Improvements Completion and Escrow Agreement has been made and entered into as of the day and year first above written.

**DEVELOPER:**

**SANDY SPRINGS CITY CENTER, LLC**, a Georgia limited liability company

By: Carter and Associates, LLC,  
its Managing Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2016

**CITY:**

**CITY OF SANDY SPRINGS, GEORGIA**, a public body politic and corporate of the State of Georgia

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2016

**ESCROW AGENT:**

**CHICAGO TITLE INSURANCE COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2016

**EXHIBIT A**

**Approved City Improvements Budget**

<b>Cost Sources</b>	<b>Budget</b>
Construction	\$180,057,353
Consulting	\$ 17,032,928
Furniture, Fixtures and Equipment	\$ 9,273,183
Special Costs	\$ 10,945,260
Owner Contingency	\$ 5,403,276
<b>Totals</b>	<b>\$222,712,000</b>

## **EXHIBIT B**

### **Schedule of Approved City Improvements Plans**

Those certain *[description of the plans (preparer, date, title, etc.) to be inserted]*, which include, without limitation, the following elements:

#### North Parcel City Improvements:

- Phase I *(list to be added)*
- Phase II *(list to be added)*

#### South Parcel City Improvements:

- Phase I *(list to be added)*
- Phase II *(list to be added)*

#### Private Parking Improvements: *(list to be added)*

**EXHIBIT C**

**Approved City Improvements Construction Schedule**

*(to be attached)*

**EXHIBIT D**

**Schedule of City Improvements Completion Bonds**