
**RECIPROCAL COVENANTS, EASEMENTS,
MAINTENANCE AND USE AGREEMENT**

ALPHA B BLOOMINGTON PROJECT

THIS RECIPROCAL COVENANTS, EASEMENTS, MAINTENANCE AND USE AGREEMENT (this “**Agreement**”) is made and entered into as of September ____, 2015 (the “**Effective Date**”) by SOUTH LOOP INVESTMENTS, LLC, a Minnesota limited liability company (“**Developer**”), SOUTH LOOP INVESTMENTS 2, LLC, a Minnesota limited liability company (“**SLI2**”) and the PORT AUTHORITY OF THE CITY OF BLOOMINGTON, a public body politic and corporate organized under the laws of Minnesota, (“**Port Authority**”). The Developer and Port Authority are sometimes referred to as “**Parties**”.

RECITALS

A. Developer owns certain real property located in the City of Bloomington, Hennepin County, Minnesota, legally described in Exhibit A attached hereto and identified as “**Parcel 1**”, SLI2 owns certain real property located in the City of Bloomington, Hennepin County, Minnesota, legally described in Exhibit A attached hereto and identified as “**Parcel 2,**” and Port Authority owns certain real property located in the City of Bloomington, Hennepin County, Minnesota, legally described in Exhibit A attached hereto and identified as “**Parcel 3**” and “**Parcel 4.**”

B. The Parties desire that Parcels 1, 2, 3, and 4 be developed pursuant to a general plan of improvement to form a commercial center as contemplated by the Purchase and Redevelopment Contract by and among Developer, the City of Bloomington, Minnesota (the “**City**”), and Port Authority, dated December 10, 2014, as amended by the First Amendment to Purchase and Redevelopment Contract, dated September ____, 2015 (collectively, the “**Redevelopment Contract**”). Pursuant to the Redevelopment Contract, Developer has proposed to complete certain Minimum Improvements in two phases. The first phase will include the construction of an approximately 74,000 square foot hotel, including approximately 140 units, an approximately 1,500 square foot coffee shop, an approximately 9,500 square foot restaurant, approximately 81 surface parking spaces, a public plaza area, and the Parking Structure to be located on Parcels 1, 2, and 4 (the “**Phase I Minimum Improvements**”). The second phase of the Minimum Improvements is expected to include construction of an approximately 14,500 square foot grocery or pharmacy to be located on Parcel 3 (the “**Phase II Minimum Improvements**”, together with the Phase I Minimum Improvements, are collectively the “**Minimum Improvements**”).

C. The Parties desire to subject Parcels 1, 2, 3, and 4 and all present and future Owners and

Occupants thereof to various easements, conditions, restrictions and covenants set forth herein, for the purpose of preserving the value, desirability, amenities and functionality of the Project (as defined herein), and to provide for the shared use of portions of the Project.

NOW, THEREFORE, in consideration of the easements, covenants, conditions and restrictions contained in this Agreement, the Parties hereby declare that the Project and all present and future Owners and Occupants of the Project shall be and hereby are subject to the terms, covenants, easements, restrictions and conditions hereinafter set forth, so that the Project shall be maintained, kept, sold and used in full compliance with and subject to this Agreement:

1. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

1.1 Agreement. “**Agreement**” means this Agreement, including the following exhibits attached hereto and made a part hereof:

<u>Exhibit A:</u>	Legal Description of Project
<u>Exhibit B:</u>	Project Site Plan
<u>Exhibit C:</u>	Project Signs and Sign Criteria
<u>Exhibit D:</u>	Project Design Criteria
<u>Exhibit E:</u>	Rules for Common Area
<u>Exhibit F:</u>	General Use Restrictions
<u>Exhibit G:</u>	Common Area Facilities

1.2 Building. “**Building**” means any enclosed structure placed, constructed or located on a Parcel, which for the purpose of this Agreement shall include any storage areas, patios exclusively serving a Building, appurtenant canopies, supports, loading docks, truck ramps and other outward extensions, whether now existing or to be constructed in the future. If used in the plural form in this Agreement, the term shall mean more than one Building, as the context indicates. For the avoidance of doubt, the Parking Structure is a Building.

1.3 City. “**City**” means the City of Bloomington, Minnesota.

1.4 Common Area. “**Common Area**” means all above and below ground areas within the boundaries of the Project that are outside of exterior walls of any Buildings located on the Project from time to time, that are exclusively used by any single Occupant. The Common Area includes without limitation parking areas, the Parking Structure, stormwater ponds, sidewalks, sidewalk easements, public plaza, landscaped areas, walkways, curbing, paving, entrances, driveways, exits, signs and other similar exterior site improvements, Utility Facilities or areas intended for the common use of all Occupants.

1.5 Common Area Costs. “**Common Area Costs**” means the costs related to the installation, operation, management, repair, replacement, security and maintenance of the Common Area (and all utilities, facilities, and improvements located thereon and thereunder), the costs Developer incurs in the initial construction of the Common Area and the facilities thereon and thereunder, the costs Developer incurs in the initial construction of the Parking Structure to the extent such costs exceed \$5,749,739, all Taxes related to Parcel 4, all insurance attributable to

the Common Area and all other costs and expenses associated with the Common Area, including and all utilities, facilities, and improvements located thereon and thereunder.

1.6 Constant Dollars. “**Constant Dollars**” shall mean the value of the U.S. dollar to which such phrase refers, as adjusted from time to time. An adjustment shall occur on the 1st day of January, 2020, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The “**Base Index Number**” shall be the Index for January 2015; the “**Current Index Number**” shall be the Index for January of the adjustment year; the “**Index**” shall be the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (1982-84=100), or any successor index thereto as hereinafter provided. By way of example, if in January 2020, the amount of \$500 is to be converted to Constant Dollars, then \$500 shall be multiplied by the following fraction:

$$\frac{\text{Current Index Number for January 2020}}{\text{Base Index Number for January 2015}} = \text{Constant Dollars}$$

If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Operator shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result that would have been achieved by the Index.

1.7 Floor Area. “**Floor Area**” shall mean the aggregate number of square feet of space contained on each floor within a Building regardless of whether such Floor Area is built-out, rented or occupied (including without limitation, the Floor Area of any interior loading and trash areas within the Building lines, any mezzanine area, and any patios or other outdoor seating areas) measured from the exterior surface of exterior walls and from the center of interior demising partitions, excluding arcades, bump-outs, stairs, staircases, elevator shafts, leave outs, and other architectural elements. Except as set forth above, Floor Area shall not include any areas used for exterior truck parking, exterior loading or unloading, trash storage or sidewalks unless used as outdoor sales area.

1.8 Ground Lessee. “**Ground Lessee**” or “**Ground Lessees**” shall mean a present or future lessee pertaining to all or any portion of the Project. A Ground Lessee of any portion of the Project shall be deemed an Owner thereof for purposes of this Agreement if the Owner of such portion of the Project and Ground Lessee agree in writing that Owner will assign, and Ground Lessee will assume, all of Owner’s rights and obligations contained in this Agreement. Following such assignment and assumption, Ground Lessee shall inure and succeed to the rights and benefits of such Owner, including without limitation, with respect to the following: (i) obligation to make and perform repairs, maintenance, and the like as set forth herein; (ii) liability for its portion of the maintenance costs of the drives as set forth herein; (iii) enforcement of the liens as set forth herein; (iv) liability for the indemnification obligations and maintaining insurance as set forth herein; and (v) enforcement of the rights and remedies as set forth herein and/or available at law or in equity. Such written assignment shall be recorded in the real property records in the Office of the Hennepin County Registrar of Titles. Notwithstanding anything to the contrary, Ground Lessee shall only be deemed an Owner for purposes of this Agreement so long as the ground lease between Owner, as landlord, and Ground Lessee, as tenant is in full force and effect and immediately following the expiration or earlier termination of such ground lease, Ground Lessee’s rights and obligations as Owner under this

Agreement shall be automatically reassigned back to Owner without the requirement of further documentation. To the extent an Owner assigns and a Ground Lessee assumes Owner's rights and obligations of this Agreement, Owner and Ground Lessee shall be jointly and severally liable for the full payment and performance of all Owner's obligations hereunder.

1.9 Governmental Authorities. "**Governmental Authorities**" means all federal, state, county, municipal and local governments, and all departments, commissions, boards, bureaus and officers thereof, having jurisdiction over a Building or the Project or portion thereof.

1.10 Hazardous Substances. "**Hazardous Substances**" means any substance, chemical, waste, contaminant, pollutant or other material that is or becomes regulated by any federal, state or local governmental authority because of its toxicity, infectiousness, radioactivity, explosiveness, ignitability, corrosiveness or reactivity, including, without limitation, those substances regulated by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et. seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et. seq.*; the Toxic Substances Control Act, 15 U.S.C. § 2601 *et. seq.*; the Clean Water Act, 33 U.S.C. § 1321 *et. seq.*; and the Clean Air Act, 42 U.S.C. § 7401 *et. seq.*

1.11 Insurance Requirements. "**Insurance Requirements**" means all terms of any insurance policy covering or applicable to a Parcel.

1.12 Legal Requirements. "**Legal Requirements**" means all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, directions and requirements of all Governmental Authorities, which now or at any time hereafter may be applicable to or required in connection with the Project, the Project, a Parcel or a Building or any part thereof, or any of the adjoining sidewalks, or any use or condition of a Building or any part thereof, or any construction required or permitted by this Agreement.

1.13 Lender. "**Lender**" means any holder of a mortgage secured by any Parcel or Building, or portions thereof.

1.14 Occupant. "**Occupant**" means any person, individual, entity or organization from time to time entitled to the use and occupancy of any portion of the Project or a Building under an ownership right, or any lease, sublease, license, concession, or other similar agreement.

1.15 Operator. "**Operator**" means Developer or the person designated by Developer from time to time to maintain and operate the Common Area, so long as Developer owns any Parcel or any portion of a Parcel, and thereafter the person or entity designated from time to time by the Owner of Parcel 1 to maintain and operate the Common Area.

1.16 Owner. "**Owner**" means the then current owner of fee simple title to a Parcel or a Ground Lessee that has been assigned and has assumed an Owner's rights and responsibilities as provided in Section 1.7. If a Parcel is owned by more than one person, then absent separate written agreement of such persons, the person holding the highest percentage ownership shall designate one of their number to represent all owners of the Parcel and such designated person shall be deemed the Owner for purposes of communications and notices in connection with this Agreement. Used in the plural form, the term shall mean more than one of the Owners, as the context indicates. Each Owner shall be liable for the performance of all covenants, obligations and undertakings set forth in this Agreement with respect to the Parcel owned by it that accrue during the period of such ownership.

1.17 Parcel. “**Parcel**” means initially each of four (4) separate areas within the Project shown on the Project Site Plan and designated thereon as “**Parcel 1**”, “**Parcel 2**”, “**Parcel 3**”, and “**Parcel 4**” or any future subdivisions thereof or of the Project, as the context indicates. If used in the plural form in this Agreement, the term shall mean more than one Parcel, as the context indicates.

1.18 Parcel 1. “**Parcel 1**” means the portion of the Project on which a portion of the Phase I Minimum Improvements will be constructed and designated as “**Hotel**” on the Project Site Plan.

1.19 Parcel 2. “**Parcel 2**” means the portion of the Project on which the Phase I Minimum Improvements will be constructed and as designated as “**Restaurant, Coffee Shop, and Patio**” on the Project Site Plan.

1.20 Parcel 3. “**Parcel 3**” means the portion of the Project on which a portion of the Phase II Minimum Improvements will be constructed and as designated as “**Market/Pharmacy**” on the Project Site Plan.

1.21 Parcel 4. “**Parcel 4**” means the portion of the Project on which a portion of the Phase I Minimum Improvements will be constructed and designated as “**Parking Structure**” on the Project Site Plan.

1.22 Parking Lease. “**Parking Lease**” means the Parking Lease and Management Agreement, dated September _____, 2015, between the Developer, the City, and the Port Authority.

1.23 Parking Structure. “**Parking Structure**” shall mean the parking structure located on Parcel 4.

1.24 Permissible Building Area. “**Permissible Building Area**” shall mean the limited areas of the Project within which Buildings or other designated structures may be constructed, placed or located and within which shall be located all Building appurtenances such as stairs leading to or from a door, trash containers or compactors, canopies, supports, loading docks, truck ramps, and other outward extensions of such structure. Permissible Building Areas are designated substantially in the locations specified on the Project Site Plan set forth in Exhibit B. One or more Buildings may be located within a Permissible Building Area.

1.25 Permittee. “**Permittee**” means all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and subleasees of Owners and Occupants insofar as their activities relate to the development or permissible use and occupancy of any portion of the Project.

1.26 Project. “**Project**” means collectively, Parcel 1, Parcel 2, Parcel 3, and Parcel 4, and the Buildings, including the Parking Structure.

1.27 Project Site Plan. “**Project Site Plan**” means the site plan for the Project substantially in the form and locations attached hereto as Exhibit B.

1.28 Project Sign Plan. “**Project Sign Plan**” means the sign plan setting forth the initial location, design, type, size, method of illumination, color, dimensions, allocation among Owners and Occupants, and total available permitted sign area within the Project as reasonably determined by Developer, subject to conformance with Legal Requirements.

1.29 Project Signs. “**Project Signs**” means all signs within the Project except additional Building signs and directional signs constructed and paid for by individual Owners or Occupants pursuant to Section 4.5.

1.30 Project Sign Costs. “**Project Sign Costs**” means the costs to construct, maintain, insure, repair and replace the Project Signs.

1.31 Rules. “**Rules**” means the rules and regulations from time to time established for the Common Area of the Project by the Owners pursuant to Section 13.

1.32 Project Signage Easement Areas. “**Project Signage Easement Areas**” means those portions of the Common Area containing those certain pylon or monument signs as shown in the Project Sign Plan, as it may be amended from time to time, and more particularly described in Section 4, below.

1.33 Taxes. “**Taxes**” shall mean real property taxes, assessments, and other governmental levies and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature (including any interest on such assessments whenever such assessments are permitted to be paid in installments) which may accrue, be imposed, levied, assessed, or confirmed by any lawful taxing authorities or which may become a lien or charge upon or against the whole or any part of a Parcel or the Project, or any taxes in lieu thereof, and also all costs and fees (including but not limited to attorneys’ fees) incurred by Operator in contesting any such taxes, levies, charges, or assessments and/or in negotiating with the public authorities as to the same.

1.34 Term. “**Term**” shall mean the term of this Agreement in accordance with Section 16 hereof.

1.35 Unavoidable Delays. “**Unavoidable Delays**” means delays in the performance of obligations under this Agreement due to causes beyond the control of the Owner performing the obligation, including but not limited to acts of God, acts of the public enemy, acts of terrorism, the direct result of strikes, walkouts and lockouts, fire, floods, epidemics, quarantines, restrictions, unavailability of power, unavailability of materials, acts of governmental entities including legislative or administrative actions taken by any entity, unusually severe weather or delays of contractors and subcontractors due to such causes, other casualty to a Building or a portion thereof, or litigation commenced by third parties which by injunction or other similar judicial action directly results in delays, but excluding in all cases, failure to pay any sum due under the Agreement an Owner.

1.36 Utility Facilities. “**Utility Facilities**” means utility delivery systems and facilities providing a Building or Parcel with support, sanitary sewers, storm sewers and drains, drainage, use, detention and retention of stormwater run-off and stormwater collection, retention, detention and distribution lines, utility, telecommunications, heating, ventilating, or air conditioning services, including without limitation, water and gas mains and feeder lines, steam mains and feeder lines, electrical power trunk lines and feeder lines, telephone trunk lines and feeder lines, lines and facilities providing steam and chilled water, monitoring and control devices and lines for energy and utility consumption as well as for fire, other emergency and security, and any other utility lines, ducts, shafts, machinery and equipment, and including all meters, pumps, switches, generators, chutes, shafts, rooms or other enclosures and component parts of such systems, together with all related improvements and replacements of such facilities and all such facilities as are relocated as provided in this Agreement.

2. GENERAL PROVISIONS AND USE RESTRICTIONS

2.1 Run with Land. The Parties hereby declare that the Project is and will be held, transferred, sold, conveyed, used and occupied subject to the restrictions and covenants of this Agreement, which restrictions and covenants: (i) are for the purpose of protecting the value, desirability, amenities and functionality of the Project as a whole; and (ii) will operate as equitable covenants, restrictions and reservations that will run with the Parcels, be binding on all present and future Owners, Occupants and Permittees having any right, title or interest in the same, their heirs, successors and assigns, and inure to the benefit of each of such other Owners and Occupants; and (iii) are imposed upon the Parcels and the Buildings.

2.2 Owner of Parcel 4. Developer, Port Authority and the City are parties to the Parking Lease, pursuant to which Developer, as the Ground Lessee of the Parking Structure, will operate and maintain the Parking Structure for a term of twenty-five (25) years. During the term of the Parking Lease, the Parties agree that Developer shall be deemed the Owner of Parcel 4 for the purposes of this Agreement; provided however, that all rights and obligations among the Developer, Port Authority, and the City relating to the Parking Structure shall be governed by said Parking Lease during the term of the Parking Lease.

2.3 Specific Use Restrictions. Each Parcel shall be used for lawful purposes in conformance with all restrictions imposed by all applicable Governmental Authorities and this Agreement.

2.4 General Use Restrictions. In addition to the Specific Use Restrictions set forth above in Section 2.3, no portion of the Project may be used for any of the uses described on Exhibit F attached hereto and by this reference made a part hereof.

2.5 Parking Structure. While the Parking Structure is for public parking in connection with the business and operations conducted in the Project, the Operator (which at the time of this Agreement is Developer pursuant to the Parking Lease) of Parcel 4 shall have the sole and exclusive right to operate and manage the Parking Structure, subject to the terms of the Parking Lease. Such operation and management may include without limitation, installing traffic control devices within and around the Parking Structure, imposing commercially reasonable restrictions on access and use of the Parking Structure, designating and/or reserving any number of parking stalls within the Parking Structure for purposes such as temporary parking, handicap parking, or parking for specific Occupants or Owners of the Project, charging and collecting a monthly parking fee in connection with an Owner or Occupant's use of reserved parking in the Parking Structure, if any such reserved parking is offered by Operator, monitoring or providing security for the Parking Structure; provided however, the Owner of Parcel 4 shall not be required to monitor or provide such security. Subject to the provisions of the Parking Lease, except for the gross negligence and willful misconduct of the Operator, and Owner of Parcel 4, the Operator and Owner of Parcel 4 shall not be liable for any death, bodily injury, personal injury, or loss or damage to any personal property located in the Parking Structure or occurring in connection with the Parking Structure. The discretion provided the Operator in this Section 2.5 must be applied in a commercially reasonable manner to ensure that all Owners, Occupants or Permittees are treated in a substantially similar manner, taking into account such Owner's / Occupant's Floor Area.

3. EASEMENTS

3.1 General. This Section 3 sets forth the easements granted and reserved with respect to each Parcel in the Project. All easements are subject to the terms and conditions of this Agreement. The Parties hereby declare that the Parcels, and all Owners, Occupants, and Permittees of the Parcels,

shall be benefited and burdened by the following nonexclusive, perpetual and reciprocal easements that are hereby imposed upon the Project and all present and future Parcels, Owners, Occupants, and Permittees. Some but not all of the initial easements contemplated by this Section 3 are specified on the Project Site Plan.

3.2 Reciprocal Easements for Ingress and Egress. A non-exclusive easement for reasonable vehicular and pedestrian access, ingress and egress purposes over the driveways, accessways and walkways constituting a part of the Common Area of the Parcels as the same may from time to time be constructed and maintained for such use, for the passage of motor vehicles and pedestrians between all portions of the Common Area intended for such purposes, and to and from all abutting streets or rights of way furnishing access to the Project.

3.3 Reciprocal Easements for Parking. A non-exclusive easement for the parking of vehicles over and across the surface parking located within the Common Area on each Parcel and the Parking Structure as the same may from time to time be constructed and maintained for such use. Subject to Section 16.1, once constructed, the parking areas, excluding those parking areas within the Parking Structure, located within the Common Area on each Parcel may not be altered or modified without the prior written consent of Owners owning a seventy five percent (75%) of the Floor Area of the Project; provided however, that no alteration or modification shall result in the ongoing material and adverse change in pedestrian and vehicular access, ingress and egress to a Parcel without the consent of the Owner of such Parcel. Notwithstanding anything herein to the contrary, Developer and / or Operator shall have the authority to designate up to 50% of the surface parking stalls as exclusive parking for certain Occupants.

3.4 Common Area Maintenance. Each Owner hereby establishes and grants a perpetual easement to Operator in, to, over, under, along and across those portions of the Common Area located on its respective Parcel(s) for the installation, operation, maintenance, repair and replacement of said Common Area by Operator. Operator may hire third parties to perform the installation, operation, maintenance, repair and replacement of the Common Area, and the foregoing easement shall run in favor of such third parties for purposes of the maintenance, repair and replacement of the Common Area.

3.5 Reciprocal Easement for Utility Facilities. A non-exclusive easement in, under, over, upon, through and across the Common Area (including the Parking Structure but not within or under any other Building except the Parking Structure) for the installation, maintenance, repair, replacement and use of the Utility Facilities and any other utility facilities necessary for the orderly development and operation of the Project, the Common Area and each Building from time to time located within the Project, together with reasonable access therefore, including access for emergency or unexpected maintenance and repair to forestall or correct inadequate delivery of services. No Owner shall be liable to any person or entity for any (a) direct damages for any interruption in any services provided through Utility Facilities that is caused by the activities of the utility service provider or another third party or which is caused by events beyond the control of the Owner; (b) consequential damages for any interruption in any services provided through Utility Facilities, regardless of cause. The rights granted pursuant to this Section 3.5 shall be subject to the following: (a) at all times such right shall be exercised in such a manner as not to interfere materially with the normal operation of a Parcel and the businesses conducted thereon, (b) the exact location of any utilities shall at all times be subject to the reasonable approval of the Owner(s) of the burdened Parcel(s), and (c) except in an emergency, the right of any Owner to enter upon the Parcel of another Owner for the exercise of any rights pursuant to such utility easements shall be conditioned upon providing advance written notice to the Owner as to

the proposed time and manner of entry. All such systems, structures, mains, sewers, conduits, lines and other public utilities shall be installed and maintained below the ground level or surface of the Parcel (except for such parts thereof that cannot and are not intended to be placed below the surface, such as transformers and control panels, which shall be placed in such location as approved by the Owner of the affected Parcel).

3.6 Easements for Maintenance, Operation, Repair and Replacement. Subject to the terms and conditions of this Agreement, each Owner hereby grants to each other Owner such reasonable easements over, upon and under their respective Parcels to permit an Owner to operate, repair and replace the improvements located on the Owner's Parcel, provided such easements shall be exercised in a manner to minimize disruption to the burdened Parcel. If the work to be performed in connection with the maintenance, operation, repair and replacement contemplated by this Section 3.6 will be more intrusive than routine maintenance, unless in the case of emergency repairs, the Owner performing the work shall, at least thirty (30) days prior to exercising the rights granted herein, first provide each burdened Owner with a written statement describing the need for such use and identifying the nature of the work to be done and the anticipated commencement and completion dates for the work. The Owner responsible for the work shall: (a) cause the work to be completed as quickly as possible and in a manner so as to minimize interference with the use of the applicable Parcel, and (b) be obligated to use commercially reasonable efforts to perform such activities on its own Parcel before using the easements granted by this Section 3.6 over another Parcel; and (c) restore at its expense the disturbed area of the Project back to the conditions that existed prior to the disturbance.

3.7 No Obstruction of Easements. Except for temporary obstructions necessary in connection with construction, maintenance or repair, each Owner agrees that no permanent or temporary structures or obstacles will be erected or permitted anywhere within a Parcel that interferes with the use and enjoyment of the easements granted to other Owners, Occupants and Permittees pursuant to this Agreement.

4. **PROJECT SIGNAGE.**

4.1 Easement. Subject to any conditions, limitations or reservations contained herein, the Parties hereby grant, establish, and covenant for the benefit of the Project and each Owner and their Occupants, a perpetual, non-exclusive easement in, on, over, under and across those portions of the Common Area as may be reasonably necessary for the use, operation, maintenance, repair, relocation, construction and replacement of the Project Signs for the Project. The initial locations of the Project Signage Easement Areas are shown on the Project Sign Plan set forth in Exhibit C.

4.2 Construction. On or prior to the date the Phase I Minimum Improvements are completed, Developer shall have determined, in Developer's commercially reasonable discretion, the location, design, type, size, method of illumination, allocation of signage among Project Owners and Occupants based on Floor Area, and color of all signage within the Project and designated the same on the Project Sign Plan. Except as provided in Section 4.5, Developer shall construct all signage and related sign facilities in the locations shown on the Project Sign Plan. Subject to its receipt of appropriate approvals from the City, Developer shall construct, or cause to be constructed all Project Signs in accordance with the Project Sign Plan.

4.3 Maintenance and Allocation. The Owners of Parcels 1, 2 and 3 shall pay the costs to construct, maintain, insure, repair and replace the Project Signs, and such costs and expenses (collectively, the "**Project Sign Costs**") shall be paid in accordance with the provisions and cost

allocations set forth in Section 6.3.7 for the payment of Common Area Costs. Each Owner of Parcels 1, 2 and 3 shall be allocated panel space upon each Project Sign per the Project Sign Plan. Each Owner shall have the right to assign its proportionate share of panel space upon each Project Sign to its Occupants, and all Owners and Occupants must comply with the signage criteria for the Project attached hereto as Exhibit C. If the business of any Owner or Occupant identified on a Project Sign permanently closes, upon thirty (30) days' notice from Developer or any other Owner, the Owner whose (or whose Occupant's) business has closed is obligated to replace all panels on the applicable Project Sign(s) identifying such business with blank panels of a color approved by Developer or its designee, failing which Developer or Owner(s) shall have the right, but not the obligation, to do so at the expense of the Owner whose business (or whose Occupant's business) has closed.

4.4 Design, Construction, and Maintenance of Identification Panels. Each Owner of Parcels 1, 2 and 3 shall be solely and individually responsible for the costs of designing, permitting, constructing, installing, maintaining, repairing, replacing and insuring their individual identification panel(s) placed on the applicable Project Sign. If the cabinets cannot be separately metered, the Owners of Parcels 1, 2 and 3 shall, on a monthly basis, pay that portion of the monthly charges for electricity supplied to the Project Signs that are equitably apportioned to the their individual sign cabinets (regardless of whether the panels are in use by such Owner's Occupants) for their use of such electricity (as reasonably and equitably determined by Operator) as part of its share of Project Sign Costs. Each Owner shall have the obligation to operate, maintain and repair, in a clean, sightly and safe condition, its individual identification panels, including components thereof, located upon the Project Signs pursuant to the provisions hereof and in accordance with any Legal Requirements.

4.5 Individual Signage Rights. Subject to applicable Legal Requirements, and so long as there is no material adverse effect on the availability (as to City-imposed limitations, if any) or visibility of the Project Signs, each Owner of Parcels 1, 2 and 3 may construct such additional Building signs and/or directional signage on the Buildings as such Owner deems appropriate; provided however, all such signage must be approved in advance by Operator (in Operator's commercially reasonable discretion) in writing prior to submittal for City approval, with such approval not to be unreasonably withheld, conditioned or delayed by Operator if such proposed signage is: (a) substantially consistent with other signage within the Project; (b) harmonious with the Design Criteria specified on Exhibit D; and (c) harmonious with the Sign Criteria specified on Exhibit C. The Owner or Occupant (as applicable) shall be responsible for obtaining all City approvals and permits for any signage on its Parcel, along with any sign panels to be installed on the Project Signs for the Project. All such signs must conform to all applicable Legal Requirements. No such signs attached to the exterior of a Building shall be: (a) painted on the surface of any Building; (b) flashing, moving or audible signs; (c) signs employing exposed neon tubes, exposed ballast boxes, or exposed transformers; or (d) paper or cardboard signs, temporary signs (exclusive of contractor signs), stickers or decals; provided further that: (i) the foregoing shall not prohibit business, emergency telephone numbers, acceptance of credit cards, and other similar bits of information, and (ii) nothing contained herein shall be deemed to prohibit an Owner or Occupant from installing professionally prepared window signs and window appliques consistent with its prototypical sign package. Each Owner agrees that all signs placed on any Parcel or Building within the Project shall be in full compliance with all Legal Requirements and the Project Sign Plan. Additional sign restrictions and covenants governing the Project are set forth in Exhibit C attached hereto. The discretion provided the Operator in this Section 4.5 must be applied in a commercially reasonable manner to ensure that all Owners, Occupants or Permittees are treated in a substantially similar manner, taking into account such Owner's / Occupant's Floor Area.

4.6 Relocation. If a Project Sign is no longer available for freestanding sign purposes because of a condemnation or any Legal Requirements or acts of Governmental Authorities, Operator shall designate a replacement sign area(s), with comparable visibility as close to the original location(s) as reasonably possible. Any condemnation or other award paid relating to the displaced Project Sign(s), including any relocation benefits, shall be held by the Operator in trust for the benefit of the burdened Owner(s) and shall be used for the construction of a new sign(s) to be constructed under the direction of the Owner on the replacement sign area.

5. CONSTRUCTION

5.1 Construction of Improvements. Each Owner agrees that all construction activities (including without limitation initial construction, modifications to, construction of, or removal of buildings in the Project performed by it or its Occupants within the Project) shall be performed in compliance with this Agreement and all Legal Requirements. All construction activities shall be performed in an expeditious manner, shall utilize new materials, and be completed in a good, safe and workmanlike manner. Each Owner further agrees that its construction activities shall not: (a) cause any unreasonable increase in the cost of constructing improvements upon another Parcel; (b) unreasonably interfere with construction work being performed on any other part of the Project; (c) unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Project by any other Owner, Occupants, or its Permittees; or (d) cause any Building located on another Parcel to be in violation of Legal Requirements. Every Building and all Common Area improvements, now or in the future constructed on the Project, shall be constructed, operated and maintained so that the same are in compliance with all applicable Legal Requirements and this Agreement. Upon the completion of the Phase I Minimum Improvements, each Owner and its Permittees shall only use the “**Staging Areas**” substantially in the locations designated on the Project Site Plan for its Parcel for the storage of materials and equipment when performing construction activities that warrant such use. Any Owner or Occupant undertaking construction on a Parcel shall use commercially reasonable efforts to cause the Common Area on its Parcel to remain clean and free of construction debris. The Staging Areas shall only be used during periods when actual construction or maintenance is performed and such use will be exercised so as not to unreasonably interfere with the use and operation of the Common Area. After the Owner of Parcel 1 opens the Parcel 1 Building for business to the general public, any subsequent Staging Areas of any other Owner or Occupant shall be barricaded and screened from public view to the extent possible.

5.2 Continuity; Design and Construction. All construction of, future modifications and improvements to, the Buildings and the Common Area must be completed in accordance to the Project Design Criteria set forth on Exhibit D attached hereto, which may be supplemented or amended from time to time by Operator in Operator’s commercially reasonable discretion, provided that any such modifications or amendment applies on a substantially uniform basis to all Buildings. Any improvements constructed within the Project shall be designed so that the exterior features, colors, quality, condition and elevation thereof shall be architecturally and aesthetically compatible with the other improvements within the Project. The Buildings constructed on the Project shall be designed so that building wall footings shall not encroach from one Parcel onto another Parcel. The design and construction of all Buildings shall be similar to that of other first class retail developments of comparable size in the vicinity of the Mall of America. So long as Developer is the owner of any Parcel, no modifications (including changes of materials and colors for the Buildings) or improvements shall be constructed, erected or expended or altered on any Parcel until detailed plans and specifications for the same (including the layout, exterior building materials and colors and parking) have been approved in advance and in writing by Operator. Upon Operator’s receipt of such

plans and specifications, Operator shall have thirty (30) days to review the same and to either approve the plans and specifications or disapprove the plans and specifications, if Operator determines that such plans and specifications do not conform to the requirements of this Agreement. Owner shall pay Operator a construction management fee, which shall equal one percent (1%) of the cost of the improvements or modifications proposed, including labor and materials, and all reasonable out-of-pocket costs Operator expends in reviewing any plans and specifications and inspecting and overseeing the construction of any improvement or modification to a Parcel. The maximum construction management fee (including expenses) that the Operator may receive is \$20,000. Operator's approval of any plans and specifications shall not constitute a duty to confirm or representation of Operator that the plans and specifications are in compliance with Legal Requirements. Except as explicitly stated otherwise herein, the cost of construction of Buildings, parking improvements and related improvements on any Parcel shall be at the sole cost of the Owner of such Parcel. The discretion provided the Operator in this Section 5.2 must be applied in a commercially reasonable manner to ensure that all Owners, Occupants or Permittees are treated in a substantially similar manner, taking into account such Owner's / Occupant's Floor Area.

5.3 Indemnity. Each Owner agrees to defend, indemnify and hold harmless Operator and each other Owner from all claims, losses, liabilities, actions, proceedings and costs (including, but not limited to, reasonable attorney's fees and costs of suit), including liens, and any accident, injury or loss or damage whatsoever occurring to any person, entity or organization or to the property of any person, entity or organization arising out of or resulting from any construction activities performed or authorized by such indemnifying Owner; provided however, that the foregoing shall not be applicable to either events or circumstances caused by the negligence or willful act or omission of such indemnified Owner, its agents, representatives, employees, or anyone claiming by, through, or under any of them.

5.4 Temporary Construction Easements. Each Owner hereby grants and conveys to each other Owner and to its respective contractors, materialmen and laborers a non-exclusive temporary easement for passage over and across the driveways and Common Area of a grantor's Parcel as shall be reasonably necessary for the grantee to construct or maintain improvements upon the grantee's Parcel; provided however, that such easement shall be in effect only during periods when actual construction or maintenance is being performed and provided further that the use of such easement shall not unreasonably interfere with the use and operation of the other Owner's use and businesses on its Parcel. Prior to exercising the rights granted herein, the grantee shall first provide grantor with a written statement describing the need for such easement, and shall furnish a certificate of insurance showing that its contractor has obtained at least the minimum insurance coverage required by Section 7. Any Owner availing itself of the temporary easement shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean the area, and restore or repair any damage done by its activities to a condition which is equal to or better than the condition which existed prior to the commencement of such work. In addition, in connection with the initial construction and completion of the Phase I Minimum Improvements, Developer (and its contractors and agents) is hereby granted a temporary construction easement and right of way over Parcel 3, provided however, that Developer repairs any damage to Parcel 3 as a result of its use of Parcel 3 for temporary construction activities.

5.5 Liens; Work; Restoration. Any work performed pursuant to this Agreement shall be performed, and all easements created by this Agreement (unless otherwise specifically provided herein) shall be maintained: (a) in a good, diligent and workmanlike manner, and (b) in compliance with all Legal Requirements. Any damage occasioned by work performed pursuant to this Agreement

shall be repaired and restored with due diligence at the sole cost and expense of the Owner causing the damage. Each Owner shall promptly pay for all work done on its behalf or at its direction (unless a bona fide dispute exists concerning payment) and cause to be discharged any lien affecting another Owner's Parcel arising from or relating to such work, provided that in the event that an Owner has a good faith dispute with any such lien (the "**Disputing Owner**"), then Disputing Owner may in good faith contest, by proper legal actions or proceedings, any such lien or encumbrance, provided that at the time of commencement of any such action or proceeding, and during the pendency thereof: (i) such contest operates to suspend collection of the contested amounts and is maintained and prosecuted with diligence; (ii) none of Owner's property would be subject to forfeiture or loss or a lien by reason of the institution or prosecution of such contest; and (iii) the Disputing Owner shall promptly pay or discharge such contested amounts and all additional charges, interest, penalties and expenses, and shall deliver to the other Owner(s) evidence acceptable to the other Owner(s) of such compliance, payment or discharge, if such contest is terminated or discontinued adversely to the Disputing Owner. No work done by an Owner on another Owner's Parcel shall give such Owner (or anyone doing work on behalf of such Owner) any lien claims or rights in and to the other Owner's property.

6. MAINTENANCE; COMMON AREA

6.1 General. For any times that there are no improvements constructed on a Parcel, the Owner thereof shall maintain the same in a clean and neat condition and shall take such measures as are necessary to control grass, weeds, blowing dust, dirt, litter or debris.

6.2 Buildings and Appurtenances. Each Owner covenants and agrees to: (a) keep and maintain, at its sole cost and expense, the Building(s) located from time to time on its respective Parcel in good order, condition and repair; and (b) store all trash and garbage from its Parcel in adequate enclosed containers, to locate such containers so that they are not readily visible from the parking area, and to arrange for regular removal of such trash or garbage, all in compliance with local rules and regulations. The minimum standard of operation and maintenance for the Buildings shall be comparable to the standard of operation and maintenance followed in other similar first class retail developments of comparable size and type in the Bloomington metropolitan area as reasonably determined by Operator; notwithstanding the foregoing however, the Buildings shall be operated and maintained in compliance with all applicable Legal Requirements and the provisions of this Agreement. Buildings shall only be located within the Permissible Building Areas substantially in the locations designated on the Project Site Plan. Each Owner agrees that once it has commenced construction of a Building, such Building shall be completed within a commercially reasonable time, in as short of time period as is commercially reasonable in order to minimize disturbance to Occupants of the Project.

6.3 Common Area.

6.3.1 Owner Obligations. Subject to Operator maintenance provisions set forth in this Section 6.3, each Owner of a Parcel covenants at all times during the Term to operate and maintain or cause to be operated and maintained all Common Area located on its Parcel in good order, condition and repair. The minimum standard of operation and maintenance for the Common Area shall be comparable to the standard of operation and maintenance followed in other similar first class retail developments of comparable size and type in the Bloomington metropolitan area as reasonably determined by Operator; notwithstanding the foregoing however, the Common Area shall be operated and maintained in compliance with all applicable Legal Requirements and the provisions of this Agreement.

6.3.2 General Standards. Following the construction of improvements thereon, maintenance of the Common Area shall include without limitation, maintaining and repairing all sidewalks and the surface of the parking and driveway areas, repairing and maintaining the Parking Structure, removing all paper, debris and other refuse from and periodically sweeping all parking and driveway areas to the extent necessary to maintain the same in a clean, safe and orderly condition, supervising the Common Area, security of Common Areas, maintaining appropriate lighting fixtures for the parking areas and driveways, maintaining and marking driveway and parking lines and striping as needed, maintaining landscaping, the prompt removal of snow and ice accumulation, and performing any and all such other duties as are necessary to maintain such Common Area in a clean, safe and orderly condition. Each Owner reserves the right to alter, modify, reconfigure, relocate, change the use of the Buildings (provided that the use of the Buildings shall not conflict with this Agreement) and/or remove the Buildings on its Parcel, subject to the following conditions: (i) the reciprocal easements between the Parcels pursuant to this Agreement shall not be closed, terminated or unreasonably altered or impaired; (ii) the driveways, parking areas and ingress and egress thereto and egress and ingress to and from the Parcels and adjacent streets and roads shall not be altered, modified, relocated, blocked and/or removed without the express written consent of all Owners; (iii) all Buildings must be constructed and located only within the Permissible Building Areas substantially in the locations shown on the Project Site Plan; and (vi) such Owner obtains the advance written consent of Operator as required in Section 5 of this Agreement.

6.3.3 Operator Obligations. Operator shall operate, maintain, repair and replace the Common Area on all Parcels of the Project and the Project Signs on behalf of Owners in accordance with the requirements of this Agreement. Operator may enter into a management contract with a management company (including without limitation a related or affiliated party) in respect of its engagement as Operator. Operator shall cause all Common Area lighting, signage and irrigation to be metered through separate meters.

6.3.4 Common Area Costs. Operator shall expend such funds as are reasonably necessary for the installation, operation, management, repair, replacement, security and maintenance of the Common Area (and all utilities, facilities, and improvements located thereon and thereunder) and the Project Signs (collectively, the “**Common Area Costs**”), and shall promptly pay such costs when incurred. In addition to the foregoing, Common Area Costs shall include without limitation the costs Developer incurs in the initial construction of the Common Area, the costs Developer incurs in the initial construction of the Parking Structure to the extent such costs exceed \$5,749,739, all Taxes with respect to Parcel 4, comprising the Project, all insurance attributable to the Common Area and all other costs and expenses associated with the Common Area, including and all utilities, facilities, and improvements located thereon and thereunder. Notwithstanding any contrary provision hereof, Operator is not obligated to advance its own funds for Common Area Costs and, notwithstanding the provisions of this Agreement, may either submit supplemental billings or require increased monthly payments for particular months in order to manage cash flow and to provide adequate funds to pay Common Area Costs and the Administration Fee (defined below) when due. Within thirty (30) days after January 1, 2016, Operator shall provide Owners with an estimated budget for Common Area Costs for the balance of the current calendar year, and each Owner agrees to pay its share of Common Area Costs actually incurred during the balance of such year pursuant to Section 6.3.7, plus an Administration Fee. Operator shall be permitted to charge to Owners an amount (the “**Administration Fee**”) computed by multiplying the Common Area Costs by fifteen percent (15%), provided however, that the Administration Fee shall be waived for the initial construction of the initial Building on Parcel 3. In addition, with respect to the initial installation of the Common Areas (and facilities located thereon and thereunder) on / under Parcel 3, Developer and the Owner of Parcel 3 agree as follows:

(a) Developer's Installation of Parcel 3 Common Area. If Developer completes all or any portion the initial installation of Common Areas on / under Parcel 3, then the costs and expenses related to such work shall be included in the calculation of Common Area Cost. If Developer purchases Parcel 3 within three (3) years of the date hereof, then Developer shall collect such costs via Common Area Costs. If Developer does not purchase Parcel 3 within three (3) years of the date hereof, then the Parcel 3 Owner shall pay to Developer, immediately upon the earlier of: (i) expiration of such three (3) year time period, or (ii) the closing of the purchase of Parcel 3 by an Owner, all of Developer's reasonable costs and expenses related to such work, as documented by written evidence, and such Parcel 3 Owner shall submit said sum to Operator, who shall issue a credit for the benefit of said Parcel 3 Owner against future Common Area Costs payable by the Owner of Parcel 3.

(b) Parcel 3 Owner's Installation of Common Area. If Developer does not complete all of the initial installation of Common Areas on / under Parcel 3, then the future Parcel 3 Owner shall, within fifteen (15) months of commencing construction of any Building or other Improvements on Parcel 3, complete such initial installation of all Common Areas on / under Parcel 3 according to the Common Area plans attached hereto as Exhibit G, and submit the reasonable costs and expenses related to such work, as documented by written evidence, to Operator, who shall issue a credit for the benefit of said Parcel 3 Owner against future Common Area Costs payable by the Owner of Parcel 3.

6.3.5 Common Area Budget. At least ninety (90) days prior to the beginning of each calendar year, Operator shall submit to Owners an estimated budget (“**Budget**”) for the Common Area Costs and the Administration Fee for operating and maintaining the Common Area for the ensuing calendar year. The Budget shall be in a commercially reasonable form and content consistent with commercial developments similar to the Project. If Owners representing more than 60% of the Floor Area of the Project disapprove the proposed Budget, they shall consult with the other Owner(s) and Operator to establish a final approved Budget. The Budget will be deemed approved unless an Owner makes a specific written objection to the Budget or any portion thereof within fifteen (15) days after delivery of the Budget. If the Owners are unable to agree on the Budget within fifteen (15) days after an Owner’s delivery of its written objections to the Owner(s), then the Owners shall submit the dispute to mediation by a mutually acceptable mediator or if the Owners cannot agree on a mutually acceptable mediator within a five (5) day period, the mediator shall be selected by Operator. While the dispute is in mediation, Operator shall operate and maintain the Common Area and the Project Signs in accordance with the Budget for the previous calendar year, as adjusted based on Constant Dollars, provided that the adjustment based on Constant Dollars shall be made on an annual basis.

6.3.6 Budget Management. Operator shall use commercially reasonable efforts to operate and maintain the Common Area, the Parking Structure, and the Project Signs in accordance with the Budget. Notwithstanding the foregoing, Operator shall have the right to make emergency repairs to the Common Area and the Project Signs to prevent injury or damage to persons or property, it being understood that Operator shall nevertheless advise each Owner of such emergency condition as soon as reasonably possible, including the corrective measures taken and the cost thereof. If the cost of the emergency action exceeds \$10,000.00 in Constant Dollars, then Operator shall submit a supplemental billing to each Owner, together with evidence supporting such cost, and each such Owner shall pay its share thereof within thirty (30) days after receipt of such billing. If the cost limitation set forth above is not exceeded then such costs shall be included as part of Common Area Costs for that year. Owners agree that the Budget may include a reserve for capital improvements, and the Owners agree to allow Operator to maintain a capital reserve consistent with the Budget.

6.3.7 General Allocation. Common Area Costs, Project Sign Costs and the Administration Fee shall be allocated among Owners of the Parcels based on the required number of parking stalls for each Occupant's use of a Parcel (excluding Parcel 4), as compared to the total number of parking stalls required for all uses of all Occupants within entire Project. As of the Effective Date, based on the proposed uses that will be located within the Project, the City of Bloomington requires that the Project include at least 436 off-street parking spaces, and such number may change from time to time based on the uses within the Project (the "**Required Project Parking**"). In determining this allocation, which shall be determined as of January 1st of each calendar year, the allocation for each Parcel (excluding Parcel 4) shall be based upon the following fraction:

Numerator = the number of parking stalls required by the City of Bloomington for each use of the Parcel by its Occupant(s) ("**Required Parcel Parking**")

Denominator = Required Project Parking.

Notwithstanding the foregoing, the Required Parcel Parking shall be determined using the required minimum off-street parking requirements set forth in Section 21.301.06 of the City of Bloomington City Code, as such section may be amended from time to time, without any offsets of such minimum off-street parking requirement afforded to Tenant by the City of Bloomington pursuant to any variance or other relief.

Notwithstanding anything to the contrary contained herein, during any period of time that the Port Authority owns Parcel 3 and it remains undeveloped, unused and vacant, but not later than December 10, 2017, the Developer shall pay the Port Authority's portion of the annual Common Area Costs which payment shall be deferred until December 10, 2017, and Project Sign Costs with respect to Parcel 3. After December 10, 2017, the Owner of Parcel 3 (whether the Port Authority or a third party) shall pay all annual Common Area Costs, and shall pay all deferred Common Area Costs attributable to the initial construction of the Phase I Minimum Improvements.

6.3.8 Reserved.

6.3.9 Payment. Each Owner shall pay to Operator in equal monthly payments, in advance, the share of the Common Area Costs and the Administration Fee attributable to such Owner's Parcel based upon the amount set forth in the Budget, in accordance with this Section 6.3.89 and Section 4.3. Within one hundred twenty (120) days after the end of each calendar year, Operator shall provide each Owner with a statement, together with supporting invoices, setting forth the actual Common Area Costs paid by Operator for the operation and maintenance of the Common Area (such statement and supporting data are collectively called the "**Reconciliation**"), the Administration Fee, and the share of the aggregate thereof that is attributable to each Owner's Parcel. If the amount paid with respect to a Parcel for such calendar year shall have exceeded the share allocable to such Parcel, Operator shall credit such excess to the Owner of such Parcel at the time the Reconciliation is delivered against Common Area Costs due in the next calendar year, or if the amount paid with respect to a Parcel for such calendar year shall be less than the share allocable to such Parcel, the Owner of such Parcel at the time such Reconciliation is delivered shall pay the balance of such Owner's share to Operator within thirty (30) days after receipt of such Reconciliation. Within one year after the date of receipt of the Reconciliation, each Owner shall have the right to audit Operator's books and records pertaining to the operation and maintenance of the Common Area for the calendar year covered by such Reconciliation. If such audit discloses any error in the determination of the Common Area Costs or the Administration Fee or any allocation thereof to a particular Parcel, the auditing Owner shall

provide Operator with a copy of the audit, and an appropriate adjustment shall be made forthwith. If an Owner fails to audit Operator's books within said one-year period following the date of receipt, then said Owner waives any right to an audit, or an adjustment of the Common Area Costs or the Administration Fee. The cost of any audit shall be assumed by the auditing Owner. Operator shall retain the right to dispute the results of such audit for a period of six (6) months following receipt of such audit, and Operator's election not to contest the results of such audit during the 6-month period shall be deemed acceptance of such audit.

6.3.10 Mechanic's Liens. Subject to receipt of payment from Owners pursuant to Section 6, Operator agrees to defend, indemnify and hold each Owner harmless from and against any mechanic's, materialmen's and/or laborer's liens, and all costs, expenses and liabilities directly related thereto, including reasonable attorney's fees and court costs, directly related to such liens arising from the maintenance and operation activities engaged in by Operator for the Common Area and of which Owners pay their proportionate share, and if any Parcel shall become subject to any such lien, Operator shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting such bond or other security as shall be required by law to obtain such release and discharge. Operator may also purchase and pay for such separate insurance policies and premiums as are reasonable to cover Operator's liability exposure related to its obligations to operate, maintain, repair and replace, as appropriate, the Common Area.

6.3.11 Port Authority's Duties and Responsibilities. As owner of Parcel 3 during the period of time it remains undeveloped, the Port Authority agrees to pay Operator the actual fees related to maintenance of Parcel 3 (mowing and snow removal) without an Administrative Fee. Pursuant to the Parking Lease, the Operator is responsible for paying all costs of operating, maintaining and insuring the Parking Structure and Parcel 4.

7. INSURANCE

7.1 Individual Parcel Insurance. Each Owner shall obtain and maintain in full force and effect full-replacement cost property insurance and general liability insurance coverage within commercially reasonable standards and with such coverages as may be required by this Agreement and each Owner's lender(s) with respect to the Owner's Parcel and the improvements thereon, including without limitation any Buildings and Common Area, if any. Such insurance shall also cover improvements and betterments, additions and alterations, business interruption, loss assessment, personal liability and any other coverage obtainable to the extent and in the amounts that is commercially reasonable for the Project.

7.2 Builder's Risk Insurance. During construction, removal, reconstruction or expansion of any improvements or Buildings on any Parcel, the Owner carrying out the improvements shall obtain and maintain builder's risk insurance covering the full replacement value of such improvements and the aggregate costs of construction thereof.

7.3 Worker's Compensation Insurance. The Owners shall each procure worker's compensation insurance to meet the requirements of the laws of the State of Minnesota if such coverage is warranted.

7.4 Operator's Insurance Requirements. In addition to the insurance Operator deems reasonably necessary to obtain for the Common Area, during the period Operator is maintaining the Common Area, Operator shall maintain in full force and effect commercial general liability insurance

with a combined single limit of liability of Five Million Dollars (\$5,000,000.00) in Constant Dollars for bodily injury, personal injury and property damage, arising out of any one occurrence. Each Owner shall be an “additional insured” under such policy applied as to Operator’s operation and maintenance obligations under this Agreement. The insurance provided herein shall be considered “primary” insurance with respect to the Common Area and all limits of such policy shall be exhausted before insurance of another Owner carried pursuant to this Agreement is considered.

7.5 Additional Requirements. Each commercial general liability policy required by Owners hereunder shall list as additional insureds the Owner(s) of the other Parcel(s), Operator, and any managing agents as may from time to time be designated by the Owners of the Parcels in writing. Each Owner shall maintain a policy of commercial general liability insurance, with a broad form contractual liability endorsement, covering each Owner’s indemnification obligations under this Agreement. The insurance required pursuant to this Section 7 shall provide that such policies shall not expire or be canceled or substantially modified without such provider endeavoring to give at least twenty (20) days’ prior written notice to the named insureds and the additional insureds. All insurance required under this Section 7 shall be procured from companies authorized to do business in the State of Minnesota and shall be rated by Best’s Insurance Reports not less than A-X or better. Within ten (10) days after written request by an Owner, the other Owner(s) shall provide to the requesting Owner a certificate of insurance evidencing that insurance has been obtained consistent with this Section 7.

7.6 Waiver of Subrogation. All policies of physical damage insurance required under this Section 7 shall contain waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured.

7.7 Waiver of Claims. Anything herein to the contrary notwithstanding, each Owner waives any and all claims and rights of action it may have against the other Owner(s) and any of the other Owner’s Occupants with respect to any losses or claims arising out of any damage to its portion of a Building or its Parcel covered by a commonly available “all risk” or “special perils” form of insurance policy or its equivalent, including flood and earthquake, whether or not such damage was caused by the negligence or other act or omission of the other Owner(s) or the other Owner’s Occupants, and whether or not any such damage to its portion of a Building or its Parcel was caused by or a result of an occurrence on any other portion of a Building or its Parcel.

7.8 Indemnification. Each Owner agrees to indemnify, defend and hold Operator and the other Owners and Occupants harmless for, from and against all claims, costs, liabilities and expenses (including reasonable attorneys’ fees and costs) relating to, arising out of, or in connection with bodily injury, death or property damage relating to the use by the indemnifying Owner or its Occupants of any of the easements granted herein or the exercise of any right granted in this Agreement, except as may result from the negligence or intentional misconduct of the Owner whose property is subject to the easement or such Owner’s Occupants.

8. FIRE OR OTHER CASUALTY

8.1 Common Area. Promptly upon any loss or damage to all or any part of the Common Area located within the Project, Operator shall proceed with diligence to repair, restore, and rebuild the Common Area and all components thereof necessary for the easements granted herein to the same design as existed prior to the damage or loss or to an equivalent or better design that is at least as functional for the Owners and Permittees benefited by the Common Area and said easements. Notwithstanding the foregoing, the expenses and costs Operator incurs in repairing, restoring and

rebuilding the Common Area and related easements shall be funded: (a) first using the proceeds of the insurance policies carried by Operator for the Common Area and any insurance deductible arising from such loss or damage shall be included in the Common Area Costs and paid by Owners in accordance with this Agreement, and (b) second, using the proceeds of the insurance policies of the Owner whose Parcel was damaged or of the Owner or Permittee who caused the damage. If the proceeds from said policies are not sufficient to cover such damage or loss in its entirety, then the remaining costs and expenses shall be paid by the Owners as Common Area Costs in accordance with this Agreement. If any damage or destruction of the Common Area on a Parcel is caused in whole or in part by another Owner or its Permittee, the Operator reserves and retains the right to proceed against such other Owner or Permittee for indemnity, contribution and/or damages.

8.2 Buildings. In the event of any loss or damage to any Buildings (or portion thereof), each Owner shall be obligated to promptly: (a) rebuild and replace such damaged Buildings (or portion thereof) on its Parcel, to substantially the same quality, size, construction standards, use and features as existed prior to the damage or loss, and pursuant to the terms and conditions of this Agreement; and (b) clean up the land, raze any damaged portion of the Building(s), remove all debris, and return the land and any salvageable portions of a Building that they elect to retain to a safe and usable condition. With respect to such re-building, such Owner shall diligently pursue such repair and restoration to completion. Nothing contained in this Section 8.2 shall be deemed to allow an Owner to avoid a more stringent obligation for repair, restoration and rebuilding contained in a lease or other written agreement between an Owner and such Owner's Permittee or between an Owner and an Owner's Lender, and nothing contained herein shall be construed to limit or impair the rights of a Lender with respect to the control or application of insurance proceeds or the repair, restoration or rebuilding of any Building on a Parcel subject to the mortgage in favor of such Lender.

9. CONDEMNATION

The Owners agree that: (a) the use and operation of the Parcels are unified in that the Common Area and all easement rights hereunder are necessary for the use, profitable operation, and convenience of the activities and businesses located on the respective Parcels and without the availability of such easements and Common Areas, the use and operation of the Parcels would be extremely limited; and (b) as a result of the unity of use and ownership among the Parcels in the Project, the loss of all or a portion of the Common Area will likely result in loss or damage to one or more Owners. In the event any portion of the Project shall be condemned, or conveyed under threat of condemnation, the award shall be paid to Owners according to their respective interests in the Project. Notwithstanding the foregoing, if any portion of the Common Area is condemned, or conveyed under threat of condemnation, and such portion of the Common Area can be relocated, replaced or restored, then the award allocable thereto shall be paid to a fund and used by Operator in such relocation, replacement or restoration of the Common Area. The excess award, if any, shall be paid to Owners pro rata in accordance with their respective interests in the award. Except to the extent they burden the land taken, no easement or license set forth in this Agreement shall expire or terminate based solely upon such taking. Each Owner grants the other Owners a temporary construction easement to be exercised in the same manner as the temporary construction easements set forth in Section 5.4 to the extent necessary to complete the restoration necessitated by the taking. This temporary easement shall terminate upon completion of the restoration. Notwithstanding the above, if: (a) a portion of the Common Area is taken by condemnation, and (b) such portion of Common Area is within fifteen (15) feet of the exterior boundary of any Parcel; and (c) Operator determines in good faith and in writing that such condemned land: (i) benefits only the Owner of the Parcel on which the condemnation occurs; and (ii) does not benefit other Occupants of the Project, then upon satisfaction of parts (a) – (c) above, the

condemnation award shall be paid to the Owner of the Parcel where the condemnation occurred.

10. DEFAULT; REMEDIES; WAIVER

10.1 Notice and Cure. If any Owner defaults in any obligation under this Agreement that can be cured by the payment of money and the default is not cured within fifteen (15) days after written notice thereof, or if any Owner defaults in any other obligation in this Agreement and the default continues for thirty (30) days after written notice thereof (or such longer period as may be necessary to cure the default provided that the defaulting Owner commences to cure within the thirty (30) day period and thereafter diligently prosecutes such cure to completion), then the Operator or the non-defaulting Owner(s), may exercise any one or more of the remedies set out in this Section 10. If requested in writing by a Lender of any Owner, the Lender of any Owner in default under this Agreement shall be entitled to receive a concurrent notice of said default in the same manner that other notices are required to be given under this Agreement; provided however, the Lender has prior to the time of the default, delivered written notice of Lender's mailing address to the Operator.

10.2 Remedies. No breach of any provision contained in this Agreement shall entitle any party to this Agreement or Owner to cancel, rescind or otherwise terminate this Agreement. Except as aforesaid, any alleged, actual or threatened breach of any Owner's obligations under this Agreement shall entitle Operator and the other Owners to exercise any and all rights and remedies then available at law or in equity, all such rights and remedies intended to be cumulative and non-exclusive, including without limitation: (a) upon the expiration of any period to cure without a curing of the default, the non-defaulting Owner(s) shall be entitled to cure the default and charge the cost thereof and a late fee of \$200 in Constant Dollars to the defaulting Owner, all such costs to be payable on demand; (b) specific enforcement, injunctive relief, or damages, or (c) the closing of, or terminating the right to use the Common Areas with respect to the defaulting Owner, and its Occupants. In the event of any litigation hereunder, the prevailing Operator/Owner(s) shall be entitled to reimbursement of its reasonable costs of litigation, including without limitation reasonable attorney's and expert's fees.

10.3 Failure to Pay Common Area Costs, Project Sign Costs, and Administration Fee. In the event any Owner fails or refuses at any time to pay when due its share of Common Area Costs, Project Sign Costs, and the Administration Fee, as provided in above (a "**Delinquent Assessment**"), then upon ten (10) days written notice: (a) Operator may record and file a lien on a Parcel of a defaulting Owner, which lien shall be superior to any lien of any Lender; or (b) any other Owner may pay such Delinquent Assessment. The defaulting Owner shall promptly reimburse the curing Owner for the amount of the Delinquent Assessment so paid, together with interest at the rate of twelve percent (12%) per annum plus a service charge of ten percent (10%) of the Delinquent Assessment, from the original due date until paid. The curing Owner shall have the right to record a lien on any one or more Parcels of the defaulting Owner for the amount of the Delinquent Assessment, plus interest and the service charge; or (c) Operator or any other Owner may avail itself of the remedies in Section 10.2. In the event that no other Owner has elected to pay such Delinquent Assessment, Operator shall have the same right granted herein to a curing Owner to record a lien against the defaulting Owner's Parcel.

10.4 Other Remedies. In addition to the foregoing, if Developer or any Owner defaults in the performance of any other material provision of this Agreement, which default continues after the cure period, if any, with respect thereto, Operator or any other Owner may institute legal action against the defaulting Owner for specific performance, declaratory relief, damages or other suitable legal or

equitable remedy. The remedies and liens provided in this Section 10 and the enforcement thereof as herein provided shall be in addition to and not in substitution for or exclusion of any other rights and remedies which the parties may have under this Agreement or at law or in equity.

10.5 Liens. The lien provided for in Section 10.3 shall only be effective when filed for record as a claim of lien in the Office of the County Recorder of the County in which the Parcel of the defaulting Owner is located, signed and verified as true and correct by the party executing same, which claim of lien shall contain the following as well as any other information required by law in order to make the lien effective.

- (i) A statement of the unpaid amount of costs and expenses;
- (ii) A description sufficient for identification of the Parcel of the defaulting Owner which is the subject of the lien;
- (iii) The last known name and address of the Owner or reputed Owner of the Parcel which is the subject of the alleged lien; and
- (iv) The name and address of the lien claimant.

The right to record a lien as provided herein shall not be impaired by an intervening sale or other disposition of the affected Parcel by the defaulting Owner. The lien shall be for the use and benefit of Operator or the curing Owner, and may be enforced by any remedies afforded mechanic's lien claimants under applicable law or otherwise, including without limitation, causing a notice of default, to be recorded against the defaulting Owner's Parcel and thereafter causing the Parcel to be sold in the manner provided by applicable law. The Operator or curing Owner shall have the power to bid on the Parcel of the defaulting Owner at such foreclosure sale and thereafter to hold, lease, mortgage and convey the same. Upon payment in full (prior to such a foreclosure) of the Delinquent Assessment, together with all applicable interest and service charges due thereon and attorney's fees relating thereto, the Operator or Curing Owner shall promptly cause to be recorded a further notice stating the satisfaction and release of the lien against the defaulting Owner's Parcel.

10.6 Waiver. Any action seeking one or more forms of relief shall not be a bar to an action at the same or subsequent time seeking other forms of relief. Any delay in realizing, or failure to realize, on any remedy provided herein for a default hereunder shall not be deemed a waiver of that default or any subsequent default of similar or different kind, and no waiver of any right or remedy hereunder shall be effective unless in writing and signed by the person against whom the waiver is claimed.

10.7 Indemnity. An Owner that breaches or violates this Agreement shall indemnify, defend and hold the damaged Owner(s) harmless from and against any and all claims, liabilities, losses, costs and expenses (including but not limited to reasonably attorneys' fees and costs) arising from such Owner's breach or violation of this Agreement. All remedies in this Agreement are cumulative, not exclusive, of any other remedies available at law or in equity.

11. SELF-HELP; EMERGENCY

Each Owner hereby grants to the other Owner(s) an easement to enter upon a Parcel of the other Owner(s) for the purpose of performing an obligation that the other Owner(s) is required to perform under this Agreement but fails or refuses to do and that the non-defaulting Owner then has the

right, but not the obligation, to perform with at least seven (7) days' notice; provided however, that if the default shall constitute an emergency condition, the non-defaulting Owner, acting in good faith, shall have the right to cure the default upon such advance notice as is reasonably possible under the circumstances or, if necessary in the case of emergency, without advance notice, so long as notice is given as soon as possible thereafter. If an Owner takes curative measures, the defaulting Owner shall, upon demand, immediately pay to the non-defaulting Owner(s) its pro rata share of all reasonable costs and expenses actually incurred by the non-defaulting Owner(s) with respect to such curative action. Written demand for payment shall include a statement of costs and reasonable detail of expenses.

12. HAZARDOUS SUBSTANCES

No Owner shall use (or permit any other person to use) or store (or permit any other person to store) or release (or permit any other person to release) any Hazardous Substances in, on or about its Parcel, except in the ordinary course of its business operations, and any such use shall at all times be in strict compliance with all Legal Requirements and Insurance Requirements. Each Owner agrees to defend, protect, indemnify and hold harmless the Operator, other Owner(s) and all Occupants from and against any and all claims, costs and liabilities (including without limitation, reasonable attorneys' fees and costs, investigation and cleanup costs, governmental response costs, natural resource damages, containment, or other remediation costs) arising from a breach of the foregoing covenant, or from Hazardous Substances released or allegedly released by the indemnifying Owner or any other person for whose conduct the indemnifying Owner is or may be held responsible.

13. RULES

Developer, Operator and Owners may establish, and modify, amend or supplement from time to time, mutually acceptable and reasonable Rules for use of the Common Area, provided that: (a) such Rules shall not prohibit the use of the Common Area for its intended purpose; and (b) such Rules shall, in all material respects, apply uniformly to all Owners, Occupants, and Permittees. The Owners shall comply, and shall cause their respective Occupants and Permittees to comply, with the Rules. The initial Rules for the Common Area are attached hereto as Exhibit E.

14. ESTOPPEL CERTIFICATES

Each Owner agrees, within ten (10) business days after receipt of a written request, to execute and deliver a factually accurate estoppel certificate addressed to the Operator or other Owner(s) or its Lenders as the requesting Owner may specify stating whether this Agreement is in effect, whether it has been amended (and if so, identifying the amendments) and whether, to the knowledge of the certifying Owner, any Owner is in default hereunder (and if so, identifying the defaults).

15. TERM

The Term of this Agreement and the rights and obligations under this Agreement shall be perpetual except to the extent specifically provided herein and except to the extent that any easement or other right under this Agreement shall terminate or expire under Minnesota law due to discontinued use of such easement or right. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, tenants, successors, successors-in-title and assigns. Each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall bind every person, entity or organization having any fee, leasehold or other

interest in the Project.

16. GENERAL TERMS

16.1 Amendment.

16.1.1 Except as otherwise provided in this Section 16.1 below, this Agreement may be amended or terminated only by the written consent or agreement of all Owners.

16.1.2 Notwithstanding Section 16.1.1, during the thirty (30) month time period after the Effective Date, Developer may amend Sections 3 and 4 and Exhibits B, and C hereof with the written consent of Owners representing seventy-five percent (75%) of the Floor Area of the Project, provided that: (i) Developer owns any Parcel; (ii) the amendment applies to all Parcels on a substantially uniform basis, and all Owners and Occupants are treated in similar manner, taking into account such Owner's / Occupant's Floor Area, and (iii) all of the requirements of Section 16.1.3 are complied with.

16.1.3 Notwithstanding Sections 16.1.1 and 16.1.2 above, Developer may make the following amendments hereto without the written consent of Owners: (a) any amendments allowed pursuant to the terms of this Agreement; (b) to modify by less than five percent (5%) any surface parking stalls available to the Project; or (c) to eliminate an access to any Parcel, or eliminate any access point into the Project, if a substantially comparable replacement access to the Parcel or Project is provided.

16.2 Attorney's Fees. If Operator or an Owner brings an action to enforce or interpret this Agreement, the prevailing Party (or its assignee) in such action shall be entitled to recover reasonable attorney's fees and court costs, in addition to any other relief granted.

16.3 Commercially Reasonable. With respect to matters arising under this Agreement, each Owner shall act in a commercially reasonable manner except when another standard is expressly provided. Whenever the consent or approval of an Owner is expressly required hereunder, such consent or approval shall not be unreasonably withheld, conditioned or delayed, unless a different standard is expressly set forth herein. If an Owner does not respond to a request for consent or approval within a reasonable time, not to exceed thirty (30) days, either giving its consent or approval or specifying its reasons for disapproval in reasonable detail, such consent or approval shall be deemed given.

16.4 Construction. The rules of strict construction shall not apply to this Agreement. This Agreement shall not be interpreted in favor of or against any Owner merely because of its respective efforts in preparing it. Whether or not expressly provided, the term "include" and any variation thereof as used in this Agreement is not limiting and instead means "including but not limited to", and the term "sole" or "absolute" discretion means an Owner's sole, unqualified and absolute discretion. The Exhibits referred to throughout this Agreement are attached to this Agreement and incorporated into this Agreement. Unless the context clearly indicates otherwise, when used in this Agreement "or" shall mean "and/or".

16.5 Entire Agreement. This Agreement embodies the entire agreement and supersedes any prior oral or written agreements with respect to the matters stated herein; provided however, with respect to the Operator's operation, maintenance and insuring of the Parking Structure, the Parking Lease shall supersede this Agreement if there is a conflict between this Agreement and the Parking

Lease.

16.6 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Minnesota.

16.7 Headings. The section headings in this Agreement are inserted for convenience of reference only and shall not in any way affect the meaning or construction of this Agreement.

16.8 Merger Not Intended. Common ownership of any Parcels or Buildings shall not cause this Agreement to be extinguished by operation of merger in whole or in part.

16.9 Not a Public Dedication. Nothing contained herein shall be deemed to be a gift or declaration of all or any portion of the easements created hereby to the general public, and the grantor of an easement or license shall be entitled to make such temporary closures as may be reasonably necessary to avoid creation of any public rights.

16.10 Notices. All notices, requests, demands and other communications required or permitted to be given hereunder must be in writing and deposited in the United States Mail, postage prepaid, with an overnight courier, or personally delivered, to the appropriate address set forth above, or at such other address as an Owner may, from time to time, designate in writing. The date of such notice will be deemed to have been the date on which such notice is delivered or attempted to be delivered as shown by the certified mail return receipt or a commercial delivery service record. All notices shall be addressed to the current address of record for an Owner, as indicated on the property tax records maintained by the Hennepin County Assessor's office.

16.11 Rights Reserved. Except for rights expressly granted to Owners herein, each Owner: (a) reserves all rights in and to its Parcel and Building(s); and (b) shall continue to enjoy the use of the easement areas granted pursuant to this Agreement for any and all purposes that do not interfere with the other Owners' use of the easement areas. The rights reserved herein are expressly limited by those actions that might damage the easement areas or prevent easy access thereto.

16.12 Severability; Singular or Plural; Time. If any term of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of the Agreement and any other application of such term shall not be affected thereby; provided that: (i) each party receives the substantial benefit of its bargain with respect to the transaction contemplated hereby; and (ii) the ineffectiveness of such provision would not result in such a material change as to cause completion of the transactions contemplated hereby to be unreasonable for either party. Whenever required by the context of this Agreement, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa. Time is of the essence of this Agreement and each and all of its provisions.

16.13 Release. Upon the assignment, conveyance, sale or other transfer by an Owner ("**Transferor**") of its Parcel of its entire right, title and interest in such property (a "**Transfer**"), the Transferor shall be released from the obligations of this Agreement arising after the date on which the instrument effectuating such Transfer is recorded in the official records of Hennepin County, Minnesota (the "**Record Date**"); provided however, Transfer shall not result in the release of Transferor from any obligations of Transferor arising under this Agreement prior to the Record Date, including without limitation, payment of any amounts which may then be due and owing hereunder.

16.14 Transfer. Upon such Transfer, Transferee shall execute and file in the appropriate land

records in Hennepin County, Minnesota, a statement setting forth the name of Transferee, the address of Transferee to which all notices for the purposes of this Agreement shall be sent, the nature of the interest held by Transferee, and the date that such interest was acquired. Contemporaneously with such filing, Transferee shall also send by certified mail, return receipt requested, a copy of such filing to all other Owners. In addition, upon such Transfer, Transferor shall give notice to all other Owners of such Transfer and shall include at least the following information with said notice: (a) the name and address of the new Owner; and (b) a copy of the legal description of the Parcel transferred. The Transferee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent owner of such Parcel, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein, and this Agreement shall be referenced in such deed or contract. By such acceptance, any such Transferee shall for itself and its successors and assigns, covenant, consent, and agree to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the Parcel so acquired by such Transferee.

16.15 Taxes. Each Owner shall pay before delinquency all Taxes or any other charges of any type levied or made by any governmental body or agency with respect to its Parcel. Nothing contained in this Section 16.5 shall prevent any Owner from contesting at its cost and expense any such taxes and assessments with respect to its property in any manner such Owner elects, so long as such contest is maintained with reasonable diligence and in good faith. At the time as such contest is concluded (allowing for appeal to the highest appellate court) or earlier if required by law, the contesting Owner shall pay all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

16.16 Inapplicability of MCIOA. Developer hereby declares that: (a) this Agreement is being filed primarily for the purpose of creating rights with respect to access, parking, signage and utilities, and (b) does not intend or elect to have the Project or any part thereof governed by the Minnesota Common Interest Ownership Act (“MCIOA”), Minnesota Statutes Chapter 515B. Accordingly, the terms and provisions of MCIOA shall have no applicability to the Project.

16.17 Rights of Lenders. Any mortgage affecting any portion of the Project shall at all times be subject and subordinate to the terms of this Agreement and any person foreclosing any such mortgage or acquiring title by reason of a deed in lieu of foreclosure shall acquire title to the premises affected thereby subject to and subordinate to all of the terms of this Agreement. No provision of this Agreement shall in any way defeat or render invalid the lien of any mortgage, deed of trust, or other similar consensual security instrument entered into in good faith and for valuable consideration, whether presently in existence or recorded in the future against any part of the Project; however, any lien of this type will be subordinate and subject to the provisions of this Agreement. If any portion of the Project is purchased in connection with a foreclosure of the mortgage or security instrument or is conveyed to the party so secured in lieu of foreclosure, any person so acquiring or purchasing and its successors and assigns will hold any and all real property so purchased or acquired subject to the provisions of this Agreement.

[Signature pages follow]

CONSENT

The undersigned, the holder of that certain _____ which is secured, in part, by that certain _____ dated as of _____, 201__ and recorded _____, 201__ as Document No. _____ in the Office of the Registrar of Titles for Hennepin County, Minnesota, and together with any and all other documents, amendments and/or instruments evidencing or securing the loans evidenced by said notes (the “**Security Instruments**”), for itself and its successors and assigns, hereby consents to the execution and recording of the foregoing Reciprocal Covenants, Easements, Maintenance and Use Agreement dated as of _____, 2015 (the “**Agreement**”). This Consent is binding upon the successors and assigns of the undersigned, including the holder at any time of any portion of the indebtedness secured by the Security Instruments. The undersigned does hereby consent to and agree to be bound by the foregoing Agreement.

Dated: _____, 2015

By: _____

Name: _____

Its: _____

STATE OF _____)
) ss:
COUNTY OF _____)

On this, the _____ day of _____, 2015, before me, a Notary Public, the undersigned officer, personally appeared _____, _____ of _____, a _____, on behalf of said _____.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

(SEAL)

**EXHIBIT A
TO
RECIPROCAL COVENANTS, EASEMENTS, MAINTENANCE AND USE AGREEMENT**

LEGAL DESCRIPTION OF PROJECT

Parcel 1 (Hotel):

Lot 1, Block 1, Lindau Link 2ND Addition according to the recorded plat thereof, Hennepin County, Minnesota.

Parcel 2 (Restaurant, Coffee Shop, and Patio):

Lot 2, Block 1, Lindau Link 2ND Addition according to the recorded plat thereof, Hennepin County, Minnesota.

Parcel 3 (Market/Pharmacy):

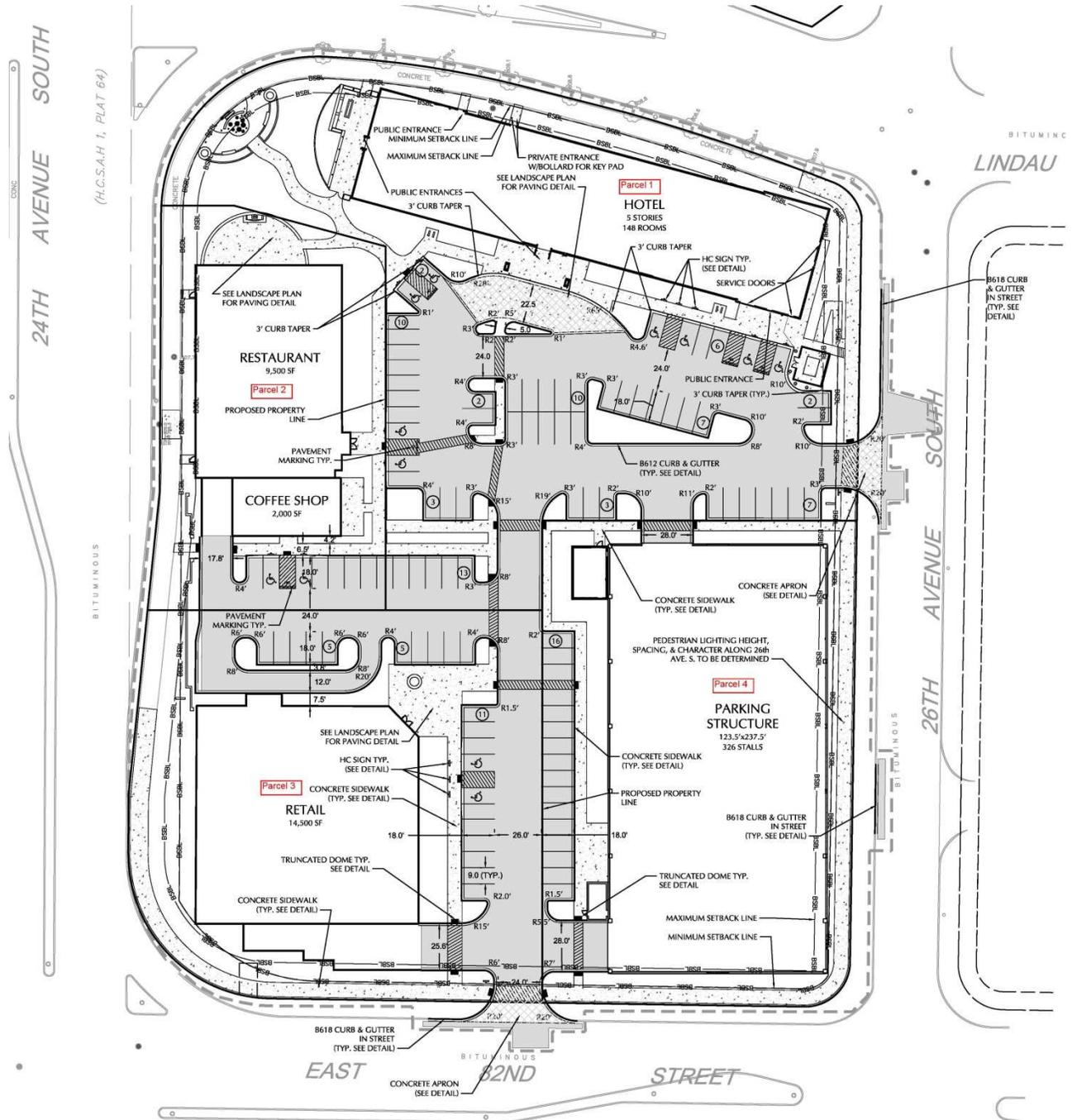
Lot 3, Block 1, Lindau Link 2ND Addition according to the recorded plat thereof, Hennepin County, Minnesota.

Parcel 4 (Parking Structure):

Lot 4, Block 1, Lindau Link 2ND Addition according to the recorded plat thereof, Hennepin County, Minnesota.

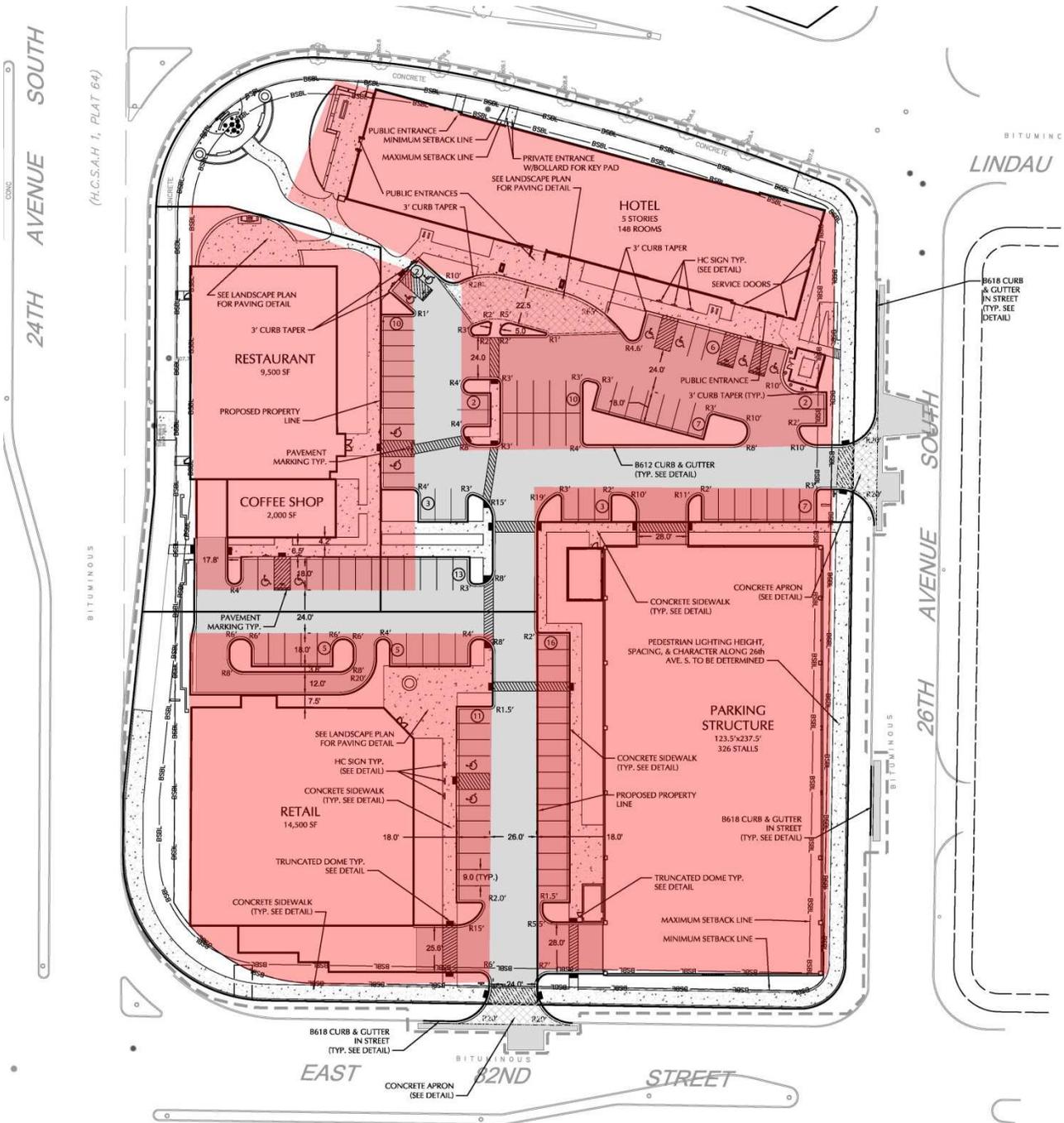
**EXHIBIT B
TO
RECIPROCAL COVENANTS, EASEMENTS, MAINTENANCE AND USE AGREEMENT**

PROJECT SITE PLAN



**EXHIBIT B
TO
RECIPROCAL COVENANTS, EASEMENTS, MAINTENANCE AND USE AGREEMENT**

PROJECT SITE PLAN – CONSTRUCTION STAGING AREA



**EXHIBIT C
TO
RECIPROCAL COVENANTS, EASEMENTS, MAINTENANCE AND USE AGREEMENT**

PROJECT SIGNS AND SIGN CRITERIA

Sign Criteria:

1. Signs shall be identity signs only and shall be limited to the Occupant's proper name and major product or service offered.
2. Occupant signs shall be limited to face-illuminated letters attached to a raceway. Letter returns shall be painted with a finish to match the color of the sign face or other color approved by the Operator. All mounting devices/raceways shall be 8" x 8" and painted to match the color of the signboard.
3. Corporate logos, emblems, and shields will be permitted, provided they are contained entirely within the sign space allocated to the Occupant and are approved by the Operator. When individual letters are used, logos, emblems, and shields are limited to 25% of the individual sign area.
4. Signs shall be placed on the Project Signs as indicated by Operator. The maximum letter size including letter strokes and/or punctuation shall not exceed 24 inches high.
5. The face-illuminated letters must have lamps that are wholly contained within the depth of the letter. The letters must be capped with colored lens. Transparent lenses are not allowed.
6. The maximum brightness shall not exceed 300 NITS.

Prohibited Signs Include:

1. Any type of illuminated sign composed of electrical components other than those specified by the City, especially those components that flash, revolve, rotate or make noise.
2. Any type of individual or plaque sign or exposed neon.
3. Any type of cabinet signage, provided however, that cabinet signage for an Occupant shall be allowed with Developer's approval thereof.
4. Signs employing un-edged or uncapped letters molded or formed letters or letters with no returns or exposed fastenings. Cloth, wood, banners, paper or cardboard signs, stickers, decals, letters, symbols, advertisements or identifications fastened or painted directly on the surfaces of the Buildings or the Common Area.
5. Signs on any rooftop of any Building or the Common Area (other than the Project Signage Easement Area); provided however, that the identification rooftop signage for an Occupant shall be allowed with Developer's approval thereof. Operator may erect entrance, exit and stop signs to facilitate the free flow of traffic. Such signage, with the exception of identification signage of an Occupant, shall be part of Common Area Costs.

Sign Approvals:

While Developer owns any Parcel, all signage must be approved by Developer in writing prior to submittal for City approval. So long as the signage submitted to Developer for approval satisfies the requirements of the Project Signs and Sign Criteria set forth in this Exhibit C, Developer's approval of such signage shall not be unreasonably withheld. The Owner, Occupant or Permittee (as applicable) shall be responsible for obtaining all City approvals and permits for any signage on its Parcel, along with any sign panels to be installed on the Project Signs for the Project. All signs must conform to all applicable Legal Requirements.

EXHIBIT D
TO
RECIPROCAL COVENANTS, EASEMENTS, MAINTENANCE AND USE AGREEMENT

Project Design Criteria

The general design intent for the Lindau Mixed-Use (LX) District and the South Loop District within which this project lies is to create a vibrant, walkable, and transit-supportive district. Proposed project buildings should embrace these elements and proposed construction should:

- Create a safe and inviting pedestrian environment.
- Promote an attractive streetscape through building placement and design.
- Utilize sustainable best practices in building design.
- Ensure that lighting, sounds, and smells from proposed buildings do not directly interfere with the uses of other project businesses.

Proposed user buildings should meet all current City and governmental codes and building standards. Some of these standards include:

- Building setbacks
- Building height requirements or limitations.
- Building sound STC requirements
- Site landscaping requirements
- Building parking requirements
- Building signage requirements
- Building exterior materials requirements or restrictions.
- Building window transparency requirements.

Beyond the district and governmental requirements and expectations, the proposed building should:

- Incorporate reasonably compatible materials and colors with the existing buildings in the project.
- Reasonably ensure that the proposed building exterior exhibit levels or architectural interest compatible and comparable with existing project buildings.

**EXHIBIT E
TO
RECIPROCAL COVENANTS, EASEMENTS, MAINTENANCE AND USE AGREEMENT**

RULES FOR COMMON AREA

1. All construction activities performed within the Common Area shall be performed in compliance with all Legal Requirements. All construction shall be performed in a good, safe, workmanlike manner.
2. The Owner(s) and/or the Operator shall periodically remove paper, debris, filth, and refuse, including sweeping of paved areas to the extent necessary, to keep the Common Area in a first class, clean and orderly condition. All sweeping shall be at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Area by Permittees.
3. The Public Plaza and sidewalk easements shall be for the public use and benefit, and all rights of assembly, civic, public, or political activities shall be permitted to the extent allowed by applicable law. For the remaining areas of the Common Area, such activities may be prohibited to the extent allowed by applicable law. Such activities shall include, but not be limited to, the following: (a) exhibiting any placard, sign or notice; (b) distributing any circular, handbill, placard or booklet; (c) soliciting signatures or contributions for private, civic, public, charitable or political purposes; and (d) parading, picketing or demonstrating.
4. The Common Area may not be used for outdoor storage, except to the extent that such storage is an accessory use, as defined and provided in the Bloomington City Code.
5. Operator may amend these rules from time to time so long as such rules apply on a substantially uniform basis to all Owners/Occupants.

**EXHIBIT F
TO
RECIPROCAL COVENANTS, EASEMENTS, MAINTENANCE AND USE AGREEMENT**

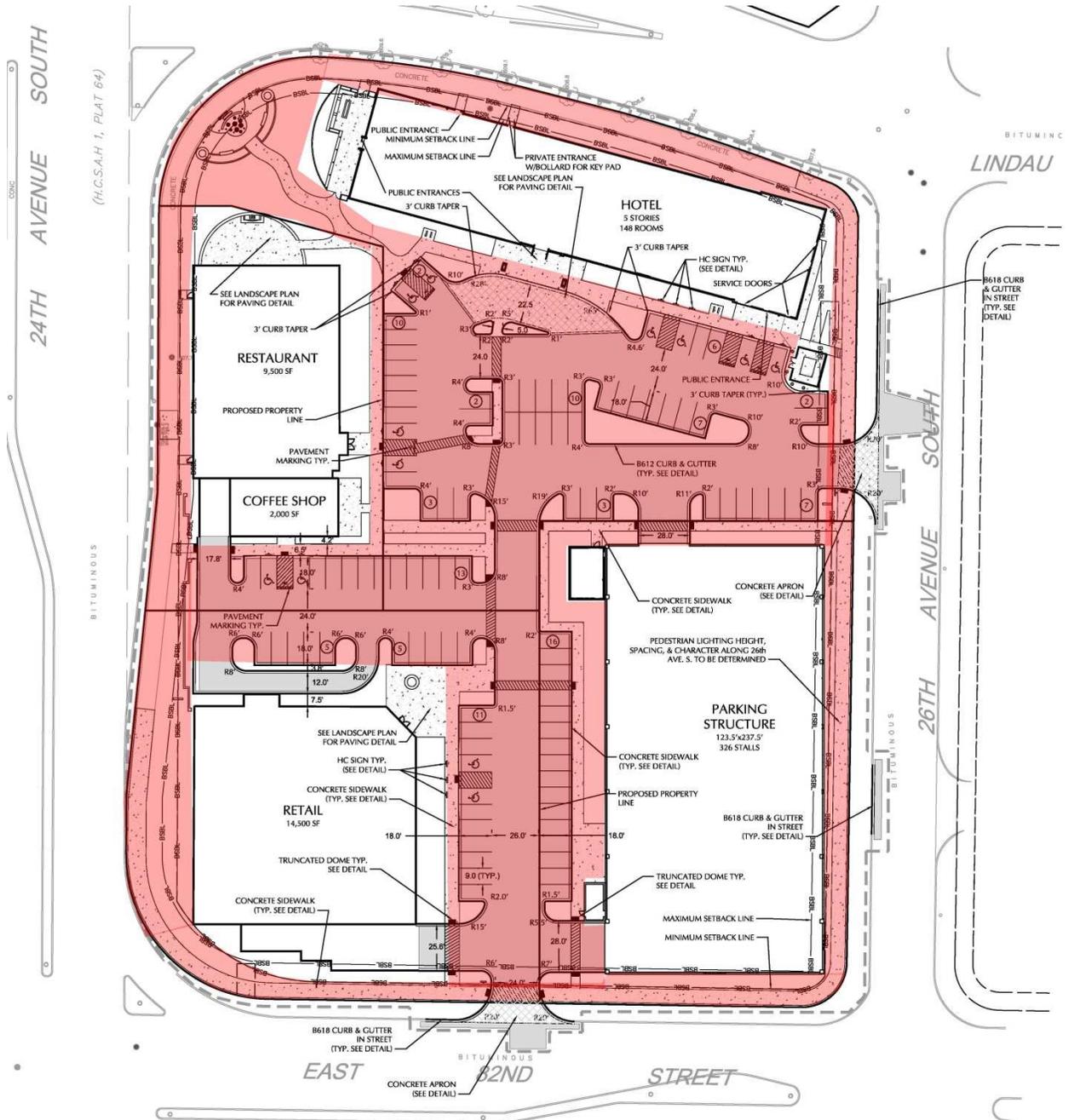
GENERAL USE RESTRICTIONS

1. Any Army, Navy, or government surplus or unclaimed merchandise store, pawn shop or flea market.
2. Any living quarters, sleeping apartments or lodging rooms (other than a hotel).
3. Any mortuary or funeral home or establishment.
4. Any trailer or truck rental establishment.
5. Any church, temple, chapel or other place of religious worship.
6. Any massage parlor (excluding therapeutic massage); any psychic, fortune teller, card reader or similar establishment; or any so-called "strip-club" or "gentlemen's club" or other similar adult operation.
7. Any casino, gambling hall, off track betting facility or gambling operation, bingo or other similar games of chance (provided this restriction shall not prohibit incidental sales of lottery tickets and other items commonly sold in retail establishments may be sold as an incidental part of business);
8. Any adult bookstore, pornography shop or other facility specializing in or exhibiting pornographic material (defined as stores with five percent (5%) or more of their inventory that is not available for sale or rental to children under 18 years of age where such inventory explicitly deals with or depicts human sexuality), provided that the sale, rental or display of such items as an incidental part of a permitted business shall be permitted.
9. Any food depository, food pantry, half-way house, homeless shelter or other similar use.
10. Any jail, penal, detention or correctional institution.
11. Gun shop or shooting range/gallery, however, the foregoing is not intended to prohibit sporting goods stores selling a wide range of sporting goods.
12. A facility whose primary business is check cashing and or providing so-called "pay day" loans.
13. A facility selling or otherwise providing drug paraphernalia.
14. Abortion clinics, plasma or blood clinics, or other similar or free clinics of any kind.
15. Any veterinarian office, animal hospital, kennel or animal shelter or other establishment that sells, keeps or boards animals. However, any veterinarian office that does not sell, keep or board animals will be allowed.

16. A facility whose primary business is the sale of tobacco and tobacco related products.
17. Used car lot, auction or bankruptcy sale (except those which are lawful and bona fide).
18. Tattoo parlor/shop.
19. Unemployment agency, government uses open to the public, or food stamp center.
20. Call center/phone bank, or amusement park.
21. Second-hand store or thrift store (provided however, the foregoing restriction shall not prohibit antique shops or stores selling high quality used merchandise such as Goodwill, Pawn America, Play it Again Sports and Game Stop).
22. Auction house or flea market.
23. Any unlawful use.
24. Any other use that conflicts with applicable parking code in the City of Bloomington.

**EXHIBIT G
TO
RECIPROCAL COVENANTS, EASEMENTS, MAINTENANCE AND USE AGREEMENT
COMMON AREA FACILITIES**

(Common Area Depiction)



**EXHIBIT G
TO
RECIPROCAL COVENANTS, EASEMENTS, MAINTENANCE AND USE
AGREEMENT
COMMON AREA FACILITIES**

(Common Area Plans)

Common Areas shall be completed within the approximate areas designated in Exhibit G (Common Area Depiction) per the plans and specifications below. Landscape areas currently not included in the plans shall be completed in substantially the same character and quality of the initial landscape improvements.

DRAWINGS

All plans sheets are dated July 7, 2015 and have been prepared by ESG Architects unless noted otherwise:

Plan sheets C0.1, C1.2, C2.1, C2.2, C2.3, C3.1, C3.2, C4.1, C4.2, C8.1, and C8.2;

Plan sheet L01;

Landscape Plan sheets dated May 27, 2015:

Plan sheets L01, L02, L03, and L04

EXHIBIT G TO RECIPROCAL COVENANTS, EASEMENTS, MAINTENANCE AND USE AGREEMENT COMMON AREA FACILITIES

(Drawings)

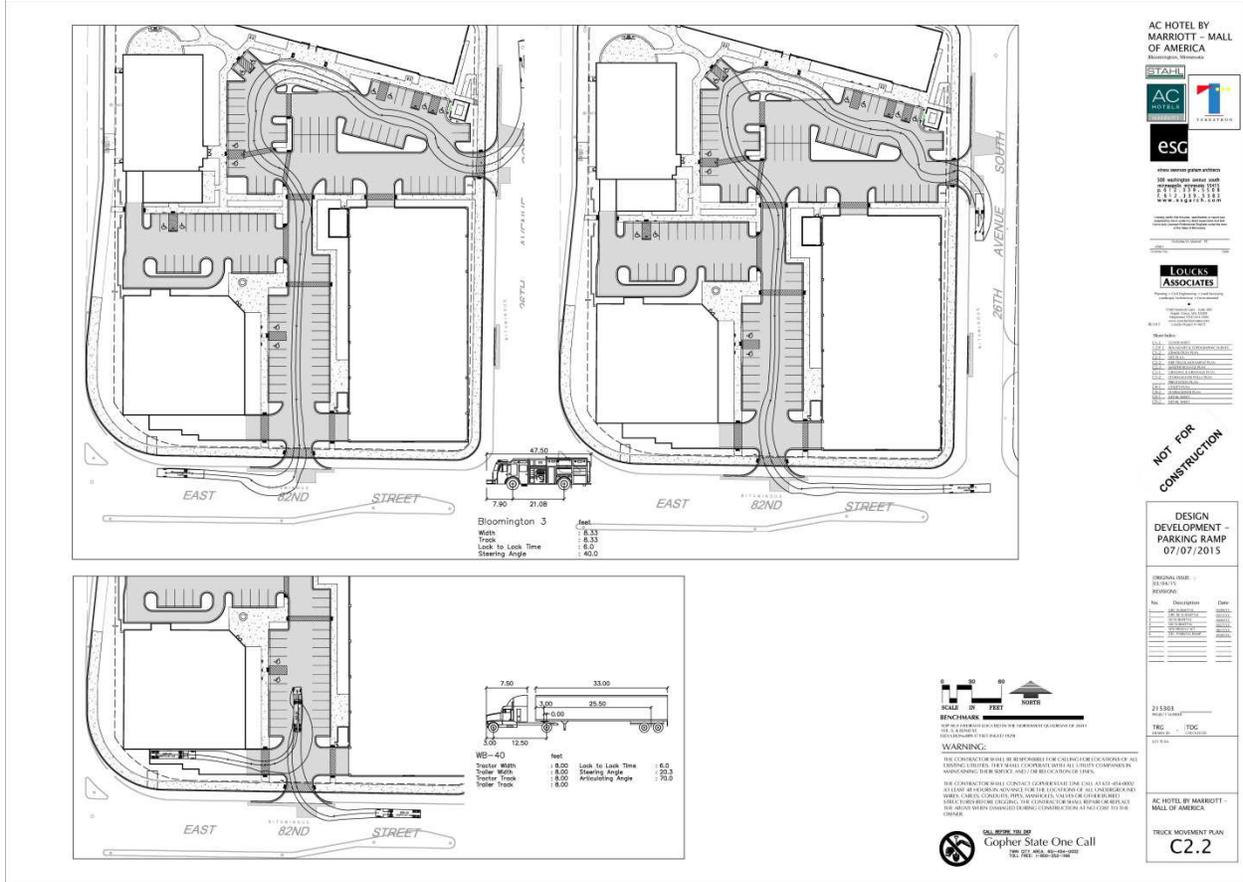


EXHIBIT G TO RECIPROCAL COVENANTS, EASEMENTS, MAINTENANCE AND USE AGREEMENT COMMON AREA FACILITIES

(Drawings)

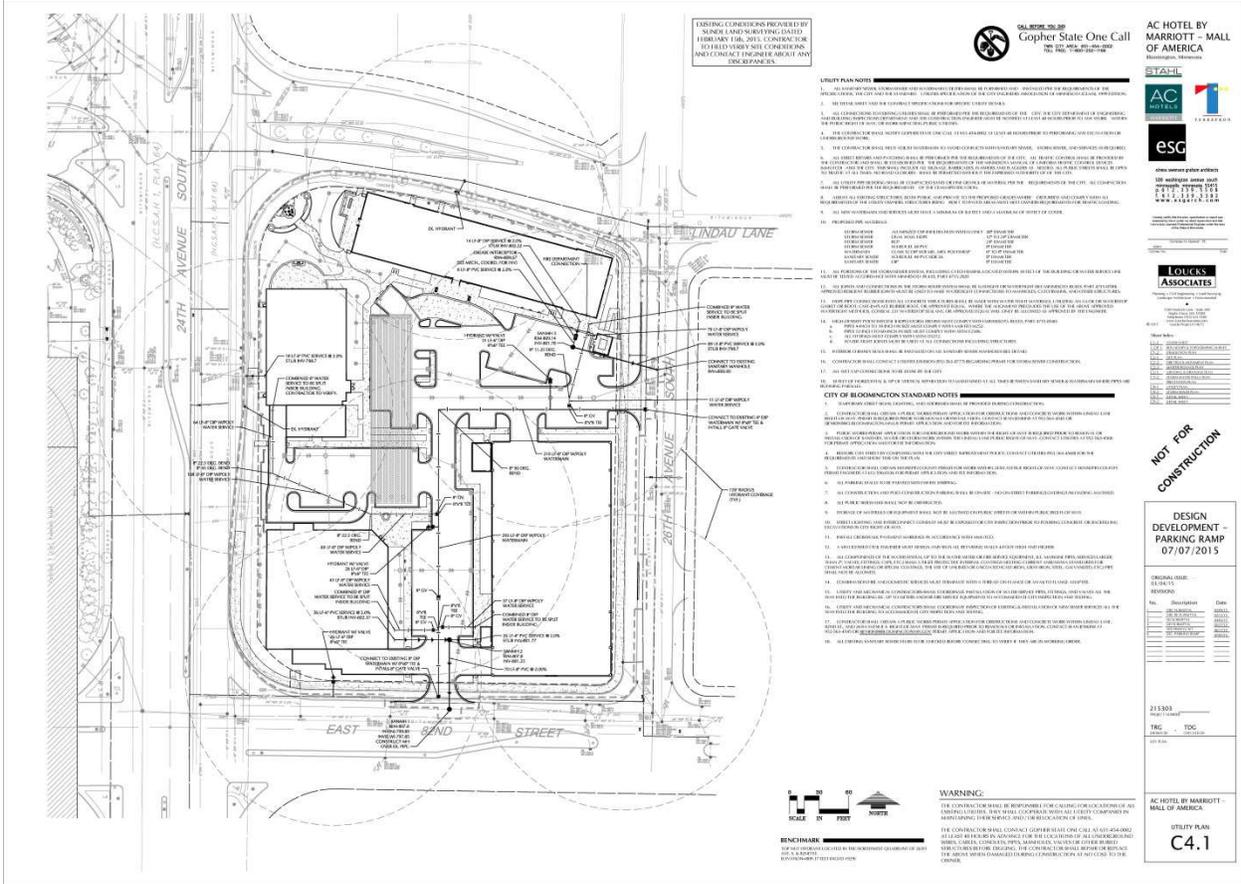


EXHIBIT G TO RECIPROCAL COVENANTS, EASEMENTS, MAINTENANCE AND USE AGREEMENT COMMON AREA FACILITIES

(Drawings)

The drawings include the following details:

- Fire Locker:** Shows a fire locker with a door and internal components, labeled 'FIRE LOCKER' and 'PART 02'.
- Stair Details:** Includes 'STAIR AND STAIR WALKWAY' and 'WOODEN FINISHED FLOOR' details showing structural and finish requirements.
- Structural Details:** Shows 'CONCRETE' and 'STEEL' components for various structural elements.
- Nonresidential Driveway Approach:** A detailed plan view showing a driveway approach with a 'BOLIVARD SIDEWALK'. It includes dimensions for 'NO PEDESTRIAN CURB RAMP UNLESS APPROVED BY ENGINEER', 'CONCRETE', 'EXPANSION JOINT', and 'SIDE OF WALK C&G'. Notes specify 'EACH DRIVEWAY PANEL NOT TO EXCEED 100 SF (9.30 m²)' and 'REINFORCEMENT BARS OR WELDED WIRE FABRIC (STEEL MESH) ARE NOT ALLOWED IN THE POST-TENSION BAY'.
- Other Details:** Includes 'TYPICAL WALL PANEL WITH BOLLARD SYSTEM', 'TYPICAL WALL PANEL', and 'TYPICAL WALL PANEL WITH BOLLARD SYSTEM'.

NOT FOR CONSTRUCTION

DESIGN DEVELOPMENT - PARKING RAMP 07/07/2015

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMIT	07/07/2015
2	ISSUED FOR CONSTRUCTION	07/07/2015
3	ISSUED FOR CONSTRUCTION	07/07/2015
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AC HOTEL BY MARRIOTT - MALL OF AMERICA
215303
TRG - TDC
07-09

AC HOTEL BY MARRIOTT - MALL OF AMERICA
DETAIL SHEET
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