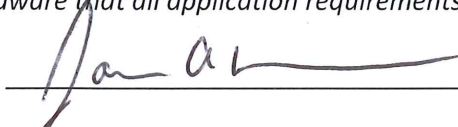




BOARDS & COMMISSIONS APPLICATION

132 North Elmwood Avenue
330-722-9038
www.medinaoh.org

Application Number 224-06

GENERAL	<p>Date of Application <u>February 21, 2024</u></p> <p>Property Location <u>1105 North Court Street, Medina Ohio 44256</u></p> <p>Description of Project <u>The Applicant is seeking a subdivision which creates two lots that do not have frontage on a public right of way but which have reciprocal easment agreements which permit access over the abutting property.</u></p>
CONTACT INFORMATION	<p>Applicant Name <u>Benderson Development Company, LLC</u> Address <u>570 Delaware Ave</u> City <u>Buffalo</u> State <u>NY</u> Zip <u>14202</u> Phone <u>716-878-9626</u> Email <u>jmb@benderson.com</u></p> <p>Property Owner Name <u>DEL 570 II, LLC</u> Address <u>570 Delaware Ave</u> City <u>Buffalo</u> State <u>NY</u> Zip <u>14202</u> Phone <u>716-878-9626</u> Email <u>jmb@benderson.com</u></p>
APPLICATION TYPE	<p>Planning Commission Site Plan <input type="checkbox"/> Conditional Zoning Certificate <input type="checkbox"/> Code or Map Amendment <input type="checkbox"/> Preliminary Plan <input type="checkbox"/> Final Plat <input type="checkbox"/> Conditional Sign (EMC/Shopping Ctr) <input type="checkbox"/> Cert. of Appr. (TCOV) <input type="checkbox"/> Other <input type="checkbox"/></p> <p>Historic Preservation Board Certificate of Appropriateness <input type="checkbox"/> Conditional Sign <input type="checkbox"/></p> <p>Board of Zoning Appeals Variance <input checked="" type="checkbox"/> Appeal <input type="checkbox"/></p>
APPLICANT SIGNATURE	<p><i>By signing this application, I hereby certify that:</i></p> <p>1) <i>The information contained in this application is true and accurate to the best of my knowledge;</i></p> <p>2) <i>I am authorized to make this application as the property owner of record or I have been authorized to make this application by the property owner of record;</i></p> <p>3) <i>I assume sole responsibility for correspondence regarding this application; and</i></p> <p>4) <i>I am aware that all application requirements must be submitted prior to the formal acceptance of my application.</i></p> <p>Signature <u></u> Date <u>02-21-2024</u></p>
OFFICIAL USE	<p>Zoning District <u>C-3</u> Fee (See Fee Sheet) \$ <u>200</u></p> <p>Meeting Date <u>3-6-24</u> Check Box when Fee Paid <input checked="" type="checkbox"/></p>

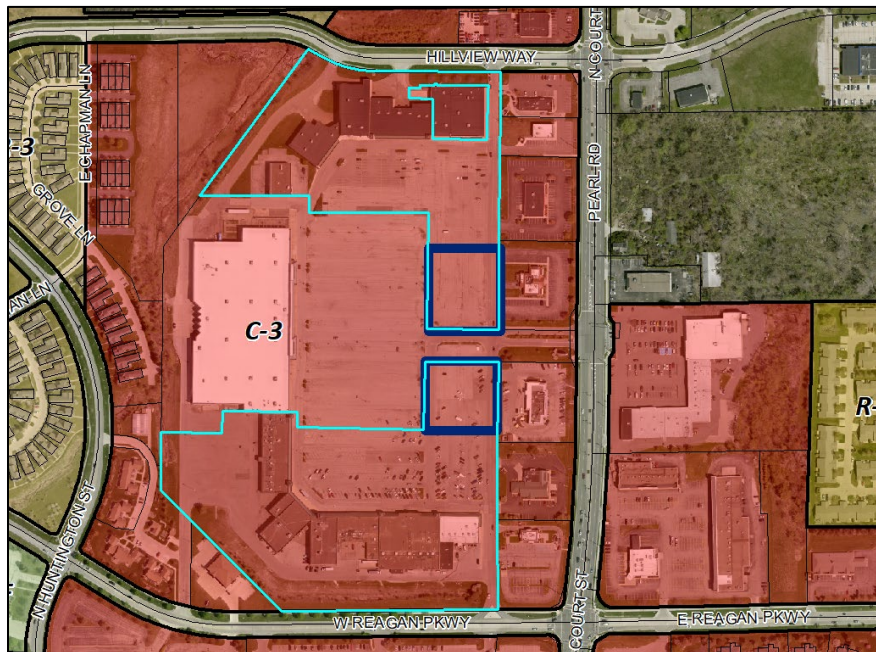
Z24-06 Medwick Plaza Outlot Frontage

Property Owner: Medwick Marketplace LLC
Applicant: James Boglioli
Location: West of 1069 and 1201 North Court Street with parcel numbers 028-19A-04-112 and 028-19A-09-076
Zoning: C-3 (General Commercial)
Request: Area Variance to Section 1137.05 to allow parcels without frontage on a public right-of-way

LOCATION AND SURROUNDING USES

The subject site is composed of 22 existing acres located on the west side of North Court Street. Adjacent properties are zoned C-3 and contain single-family residences.

- North – Service & Vacant
- South – Retail & Office
- East – Retail & Restaurant
- West – Residential/Institutional



BACKGROUND & PROPOSED APPLICATION

The subject site is part of the redevelopment of the Medwick Plaza, which includes the demolition of the existing K-Mart building and the construction of a Meijer. To accommodate the redevelopment, the reconfiguration of properties to the north and east of the existing K-Mart building is necessary.

The applicant is proposing to create two new parcels of 0.8654 acres and 1.1181 acres between the existing K-Mart building and the existing Dragon Buffet and McDonald's restaurants, respectively. At this time, the use of the proposed parcels has not been determined.

LOT FRONTAGE (SECTION 1137.05)

Section 1137.05 requires that all parcels must have a minimum of 40 ft. of frontage on a public right-of-way.

The proposed 0.8654 acre and 1.1181 acre parcels do not have frontage on a public right-of-way. However, as noted by the applicant, an easement currently exists providing the subject parcels access to public rights-of-way.

Information has also been provided regarding a parcel in the area at 1095 North Court Street that currently contains Marshalls. The parcel was subdivided in 1999 without any frontage on a public right-of-way. There is no record of a variance for the creation of the parcel, however, it was approved by the City of Medina Engineer.

STANDARDS FOR VARIANCES AND APPEALS (SECTION 1107.08(i))

Factors applicable to area or size-type variances ("practical difficulty"). The applicant shall show by a preponderance of the evidence that the variance is justified, as determined by the Board. The Board shall weigh the following factors to determine whether a practical difficulty exists and an area or size-type variance should be granted:

- A. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
- B. Whether the variance is substantial;
- C. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;
- D. Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);
- E. Whether the property owner purchased the property with knowledge of the zoning restrictions;
- F. Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and/or
- G. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance.

APPLICANT'S RESPONSES TO STANDARDS FOR VARIANCES AND APPEALS

The applicant's responses to the Standards for Variances and Appeals include but are not limited to the following:

- The proposed parcels are necessary for the redevelopment to yield a reasonable return.
- The variance is not substantial and the parcels will be accessed by existing drives.
- The parcels cannot be created without the proposed variance.
- The spirit and intent of the requirement will be observed as an access easement currently exists and the creation of the parcels will not result in impacts on the area.

FACTORS APPLICABLE TO AREA OR SIZE-TYPE VARIANCES ("PRACTICAL DIFFICULTY")

The applicant shall show by a preponderance of the evidence that the variance is justified, as determined by the Board. The Board shall weigh the following factors to determine whether a practical difficulty exists and an area or size-type variance should be granted:

A. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

This property is a former vacant K-mart which is to be redeveloped as a Meijer grocery store. As part of the redevelopment two lots are being created to allow for further development of out parcel buildings. In order for the redevelopment to work financially, these out-parcels are necessary and a reasonable return cannot be realized without the variance relief.

B. Whether the variance is substantial;

The variance relief is not substantial. The overall former K-Mart property only maintains a driveway onto North Court Street. The subdivision does result in any substantial changes to the property.

C. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;

The variance relief will not alter the essential character of the neighborhood. In fact, the variance relief will permit the redevelopment of the former K-Mart property with a new Meijer grocery store and future commercial development on the new lots being created which will be consistent with the area.

D. Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);

The variance relief will not adversely effect the delivery of governmental services.

E. Whether the property owner purchased the property with knowledge of the zoning restrictions;

The property owner purchased the property with the intent of redevelopment. The configuration of the property is unique which necessitates the variance relief.

F. Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and/or

There is no way to create the lots without the sought-after variance relief.

G. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance.

Yes, the spirit and intent behind the zoning requirement will be observed. There is a reciprocal easement agreement between the lots being created and the main parcel. For all intents and purposes, granting the variance will not create any impact as it simply creates new lot lines and different ownership.

CREATING MEDINA CITY LOT NUMBERS 9416, 9417, 9418, 9419 & 9420

*BEING A REPLAT OF THE WHOLE OF MEDINA CITY LOT 5760 & PARTS OF MEDINA CITY LOTS 5677 & 5678
SITUATED IN THE CITY OF MEDINA, COUNTY OF MEDINA AND STATE OF OHIO*

PLANS PREPARED BY:
CUNNINGHAM & ASSOCIATES, INC.
CIVIL ENGINEERING and SURVEYING
203 W. LIBERTY ST. MEDINA, OHIO 44256 (330) 725-5980

ACCEPTANCE

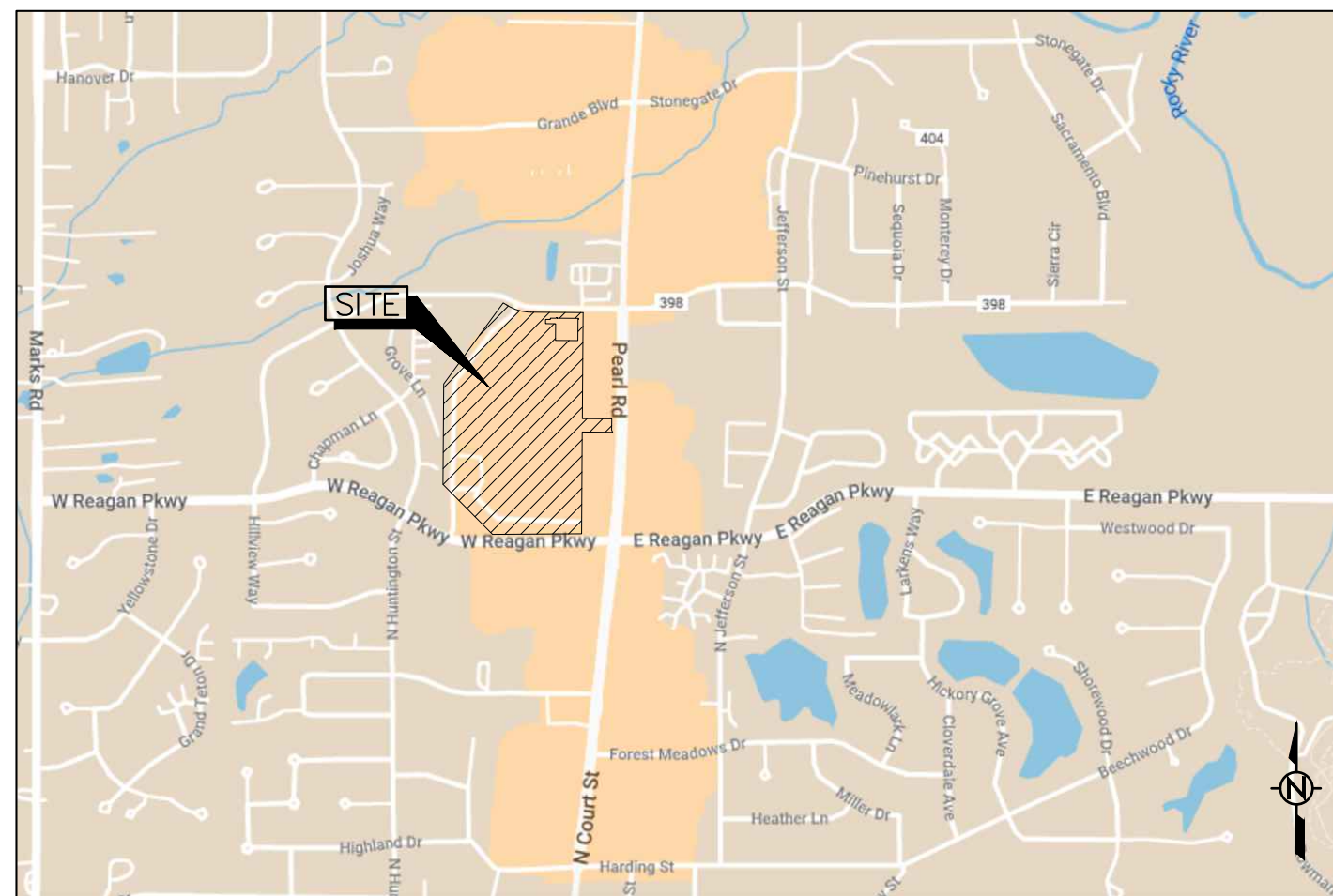
KNOW ALL MEN BY THESE PRESENTS, THAT _____, OWNER OF THE LANDS EMBRACED WITHIN THIS REPLAT HEREBY ACKNOWLEDGE THIS REPLAT TO BE MY FREE ACT AND DEED. I HEREBY CERTIFY THAT THERE ARE NO DELINQUENT TAXES OR ASSESSMENTS AGAINST THE LANDS WITHIN THIS REPLAT.

MEDWICK MARKETPLACE, LLC.

XXXXXX _____ DATE _____
TITLE:

COUNTY OF _____)
STATE OF OHIO) S.S.

BEFORE ME A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED THE ABOVE NAMED _____, WHO ACKNOWLEDGED THE MAKING OF THE FOREGOING INSTRUMENT AND THE SIGNING OF THIS PLAT TO BE HIS OWN FREE ACT AND DEED. IN TESTIMONY WHEREOF I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL AT _____, OHIO THIS _____ DAY OF _____, 2024.



LOCATION MAP

APPROVALS

THIS PLAT APPROVED THIS _____ DAY OF _____, 2024
BY MEDINA CITY PLANNING COMMISSION.

CHAIRMAN _____

APPROVED FOR TRANSFER THIS _____ DAY OF _____, 2024.

TAX MAP DRAFTSMAN _____

RECEIVED FOR TRANSFER THIS _____ DAY OF _____, 2024.

MEDINA COUNTY AUDITOR _____

RECEIVED AND RECORDED THIS _____ DAY OF _____, 2023
AT _____ A.M./P.M.
RECORDED IN PLAT DOCUMENT NO. _____
FEE: \$ _____

MEDINA COUNTY RECORDER _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____, OWNER OF THE LANDS EMBRACED WITHIN THIS REPLAT HEREBY ACKNOWLEDGE THIS REPLAT TO BE MY FREE ACT AND DEED. I HEREBY CERTIFY THAT THERE ARE NO DELINQUENT TAXES OR ASSESSMENTS AGAINST THE LANDS WITHIN THIS REPLAT.

DEL 570 II, LLC

XXXXXX _____ DATE _____
TITLE:

COUNTY OF _____)
STATE OF OHIO) S.S.

BEFORE ME A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED THE ABOVE NAMED _____, WHO ACKNOWLEDGED THE MAKING OF THE FOREGOING INSTRUMENT AND THE SIGNING OF THIS PLAT TO BE HIS OWN FREE ACT AND DEED. IN TESTIMONY WHEREOF I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL AT _____, OHIO THIS _____ DAY OF _____, 2024.

ACCEPTANCE

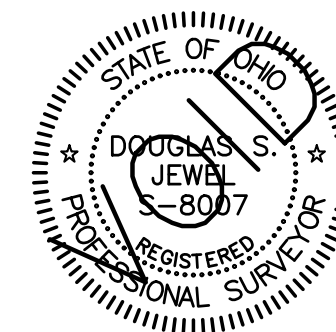
KNOW ALL MEN BY THESE PRESENTS, THAT _____, OWNER OF THE LANDS EMBRACED WITHIN THIS REPLAT HEREBY ACKNOWLEDGE THIS REPLAT TO BE MY FREE ACT AND DEED. I HEREBY CERTIFY THAT THERE ARE NO DELINQUENT TAXES OR ASSESSMENTS AGAINST THE LANDS WITHIN THIS REPLAT.

TKMO, LLC.

XXXXXX _____ DATE _____
TITLE:

COUNTY OF _____)
STATE OF OHIO) S.S.

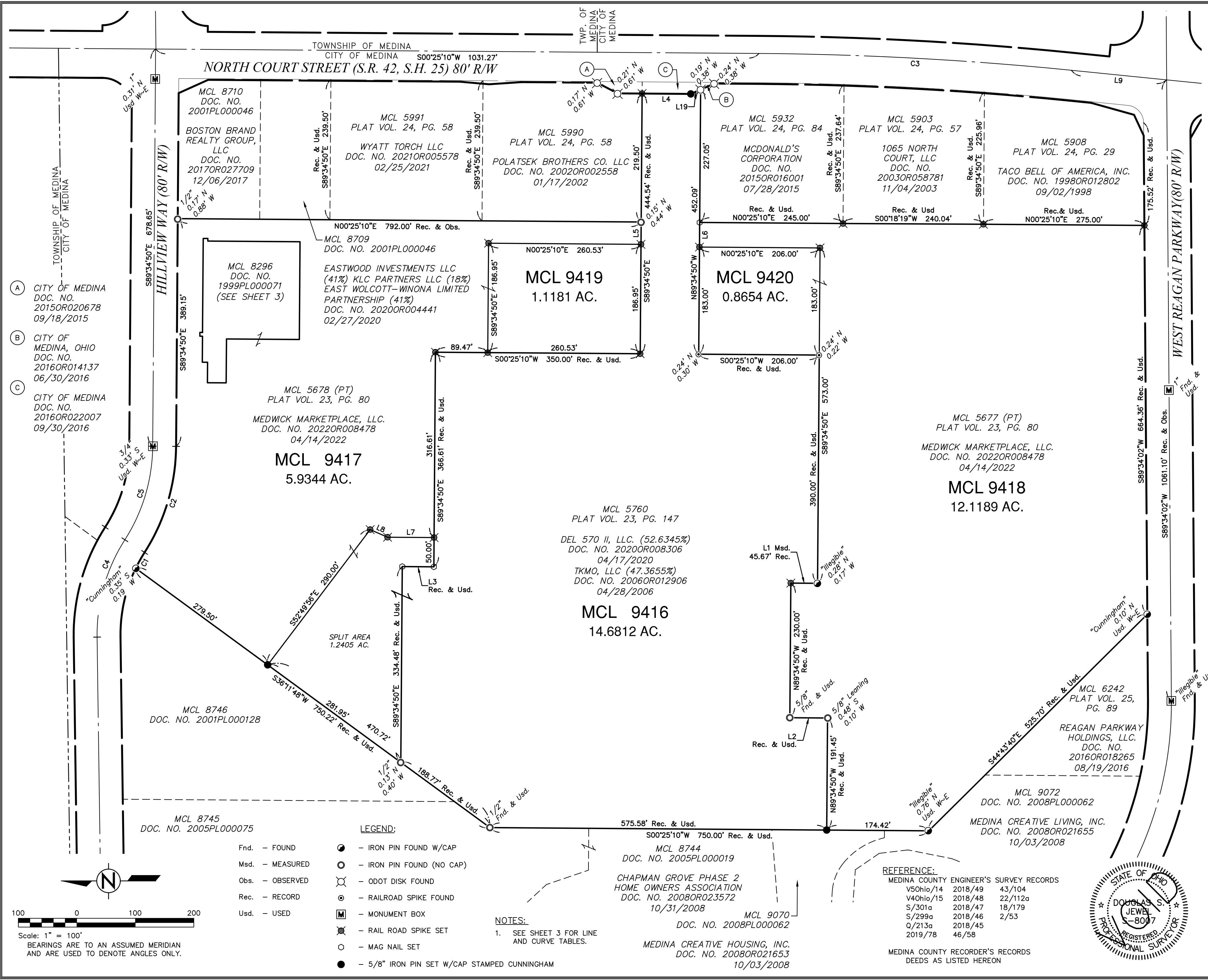
BEFORE ME A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED THE ABOVE NAMED _____, WHO ACKNOWLEDGED THE MAKING OF THE FOREGOING INSTRUMENT AND THE SIGNING OF THIS PLAT TO BE HIS OWN FREE ACT AND DEED. IN TESTIMONY WHEREOF I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL AT _____, OHIO THIS _____ DAY OF _____, 2024.



CERTIFICATION

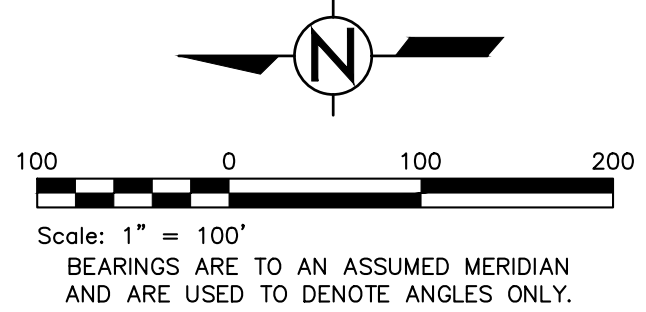
I HEREBY CERTIFY THAT I HAVE SURVEYED THE LAND ON THIS PLAT, THAT THE PLAT IS A CORRECT REPRESENTATION OF THE LAND SURVEYED, THAT THE SURVEY BALANCES AND CLOSES, THAT ALL DIMENSIONAL AND GEODETIC DETAILS ARE CORRECT, AND THAT MONUMENTS SHALL BE SET AT ALL NEW CITY LOT CORNERS.

This document was originally issued by Douglas S. Jewel on February 06, 2024.
This document is not considered a sealed document.
DOUGLAS S. JEWEL, OHIO PROFESSIONAL SURVEYOR S-8007 _____ DATE _____



- (A) CITY OF MEDINA
DOC. NO. 2015OR020678
09/18/2015
- (B) CITY OF MEDINA, OHIO
DOC. NO. 2016OR014137
06/30/2016
- (C) CITY OF MEDINA
DOC. NO. 2016OR022007
09/30/2016

- LEGEND:**
- Fnd. - FOUND
 - Msd. - MEASURED
 - Obs. - OBSERVED
 - Rec. - RECORD
 - Usd. - USED
 - - IRON PIN FOUND W/CAP
 - - IRON PIN FOUND (NO CAP)
 - ⊗ - ODOT DISK FOUND
 - ⊙ - RAILROAD SPIKE FOUND
 - - MONUMENT BOX
 - ⊕ - RAIL ROAD SPIKE SET
 - - MAG NAIL SET
 - - 5/8" IRON PIN SET W/CAP STAMPED CUNNINGHAM

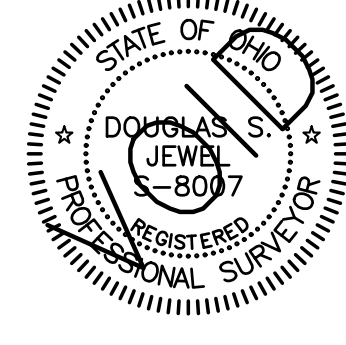


NOTES:
1. SEE SHEET 3 FOR LINE AND CURVE TABLES.

REFERENCE:

MEDINA COUNTY ENGINEER'S SURVEY RECORDS		
V50hio/14	2018/49	43/104
V40hio/15	2018/48	22/112a
S/301a	2018/47	18/179
S/299a	2018/46	2/53
Q/213a	2018/45	
2019/78	46/58	

MEDINA COUNTY RECORDER'S RECORDS
DEEDS AS LISTED HEREON



LOT SPLIT AND CONSOLIDATION PLAT
LOCATED IN
COUNTY OF MEDINA
STATE OF OHIO
CUNNINGHAM & ASSOCIATES, INC.
CIVIL ENGINEERING and SURVEYING
203 W. LIBERTY ST. MEDINA, OHIO 44256 330-725-5980

CITY: MEDINA
TOWNSHIP: MEDINA
LOT NUMBER: 5678, 5677 & 5760
PROP OWNER: MEDWICK MARKETPLACE, LLC
PROP OWNER: DEL 570 II, LLC & TKMO, LLC

DRAWN BY: SG
DATE: 01/03/2024
CHECKED BY: DSJ
DATE: 01/05/2024
PROJECT No. 22-306
ACAD FILE No. M:\22-306_Plat_01
SCALE: 1"=100'

SHEET NO.
2 / **3**

2/2344

CREATING MEDINA CITY LOT 8296

WILLIAM CHARLES SPORCK
1999OR000378
01/06/99
18.5715 Ac.

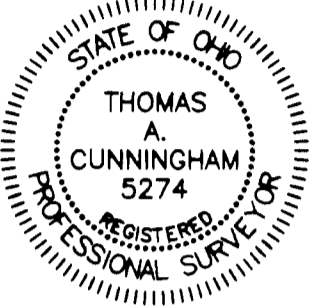
For Reference: Marshalls Property Plat

Approved Without a Variance in 1999

PLAT OF SURVEY

CITY: MEDINA CITY LOT NO: 5678
COUNTY OF MEDINA & STATE OF OHIO
PROP. OWNER: MEDINA RETAIL LIMITED PARTNERSHIP
DATE: APRIL, 1999 SCALE: 1" = 200'

BY: Thomas A. Cunningham
THOMAS A. CUNNINGHAM, REGISTERED SURVEYOR NO 5274



ACCEPTANCE

KNOW ALL MEN BY THESE PRESENT THAT MEDINA RETAIL LIMITED PARTNERSHIP BY Robert F. Stendley v.p. of G.P. OWNER OF THE LANDS EMBRACED WITHIN THIS SUBDIVISION HEREBY ACKNOWLEDGE THIS PLAT AND SUBDIVISION TO BE MY OWN FREE ACT AND DEED.

MEDINA RETAIL LIMITED PARTNERSHIP

BY: ZAROMBA MEDINA RETAIL LIMITED PARTNERSHIP, & P

BY: M.C. MEDINA CORP., G.P.

RF Stendley, v.p. Adornell 5-3-99
Robert F. Stendley, v.p. WITNESS ANGELA O'DONNELL DATE

Daniel J. Barrett
WITNESS DANIEL J. BARRETT

COUNTY OF CUYAHOGA S.S.
STATE OF OHIO

BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY COUNTY AND STATE, PERSONALLY APPEARED Robert F. Stendley WHO ACKNOWLEDGED THE MAKING OF THE FOREGOING INSTRUMENT AND THE SIGNING OF THIS PLAT TO BE HIS OWN FREE ACT AND DEED IN TESTIMONY WHEREOF I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL AT LAKELAND OHIO ON THIS 3rd DAY OF MAY 1999.



ANGELA S. RICHMOND
NOTARY PUBLIC
STATE OF OHIO
Recorded in Cuy. Cty.
My Comm. Exp. 12/14/02

Adornell (Angela S. Richmond)
NOTARY PUBLIC

MY COMMISSION EXPIRES 12-14-02

APPROVED FOR TRANSFER THIS 20 DAY OF MAY, 1999.

Connie Gibson
TAX MAP DRAFTER
RECEIVED FOR TRANSFER THIS 20 DAY OF May, 1999.

Michael E. Kovack K.W.
MEDINA COUNTY AUDITOR

RECEIVED FOR RECORD THIS 30th DAY OF May, 1999.

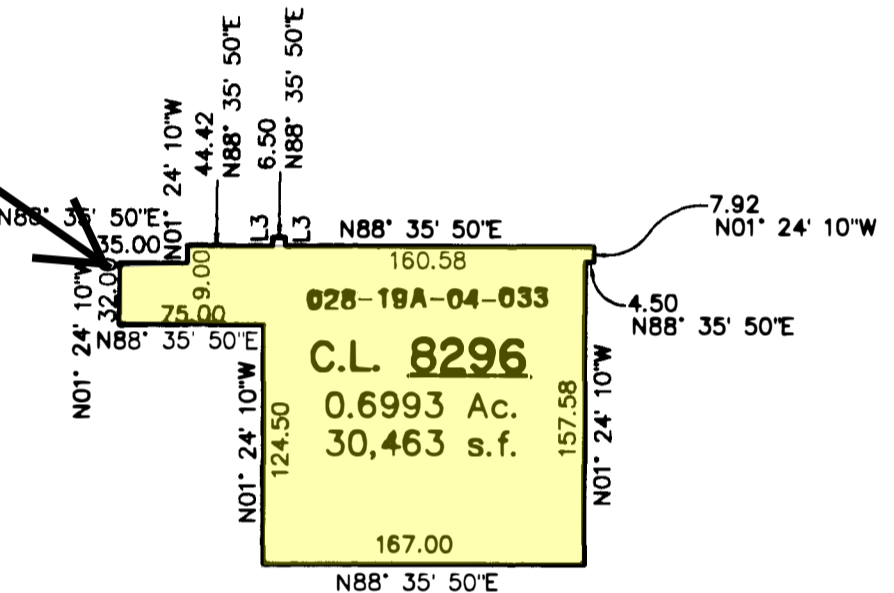
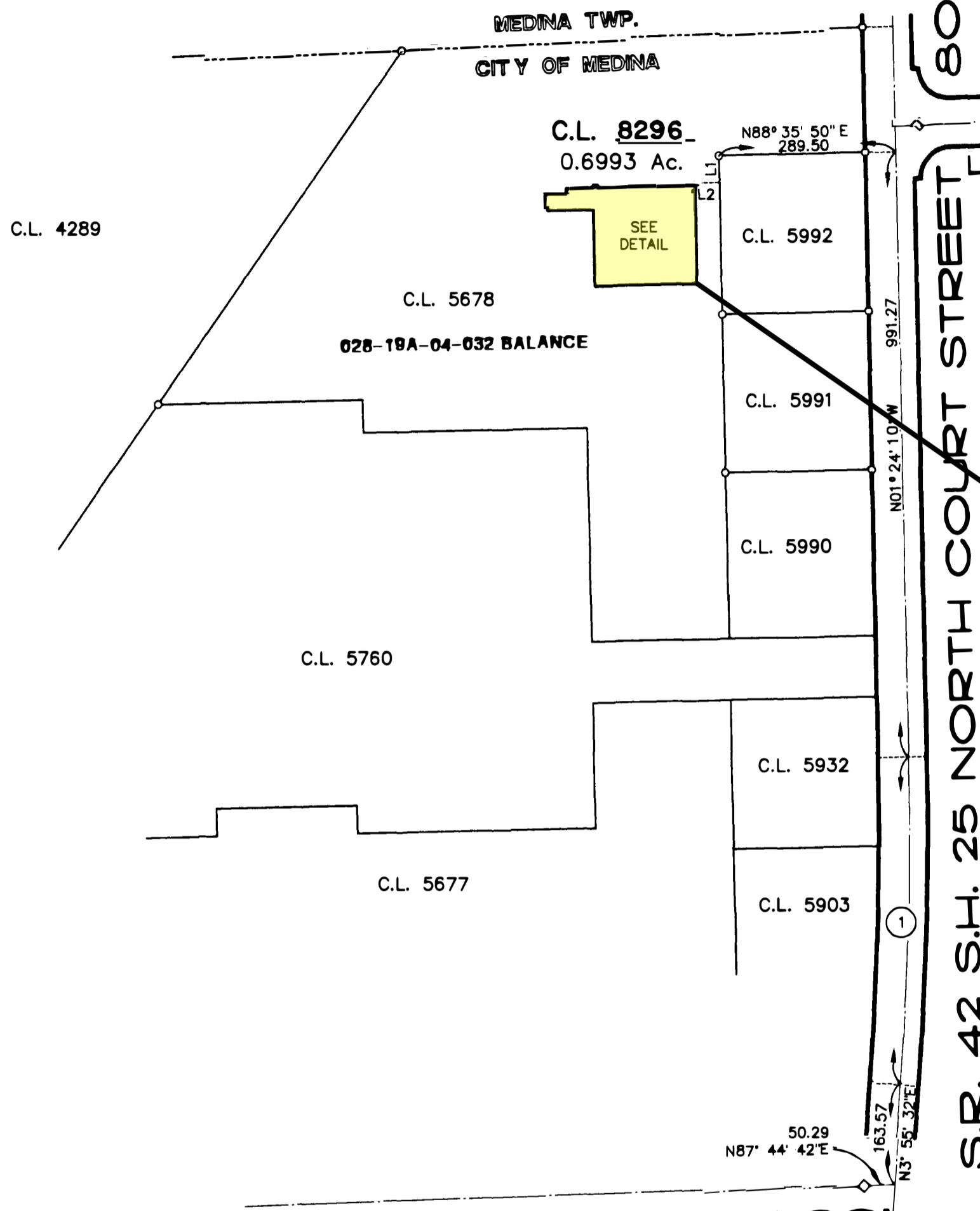
Nancy Abbott by: Michael Moller
MEDINA COUNTY RECORDER Deputy

RECORDED THIS 30th DAY OF May, 1999 AT 3:39 A.M.

IN DOCUMENT No. 1999PL000071 SIZE: 18x24 FEE: 21.60
18x24 = 21.60

CUNNINGHAM & ASSOC., INC.
CIVIL ENGINEERING & SURVEYING
203 W. LIBERTY ST. MEDINA, OH. 44256
TELEPHONE (330) 725-5980
PROJECT NO. 99-104

MEDINA COUNTY RECORDER
1999PL000071
05-20-1999 3:39 PM
PLAT FEE: 21.60



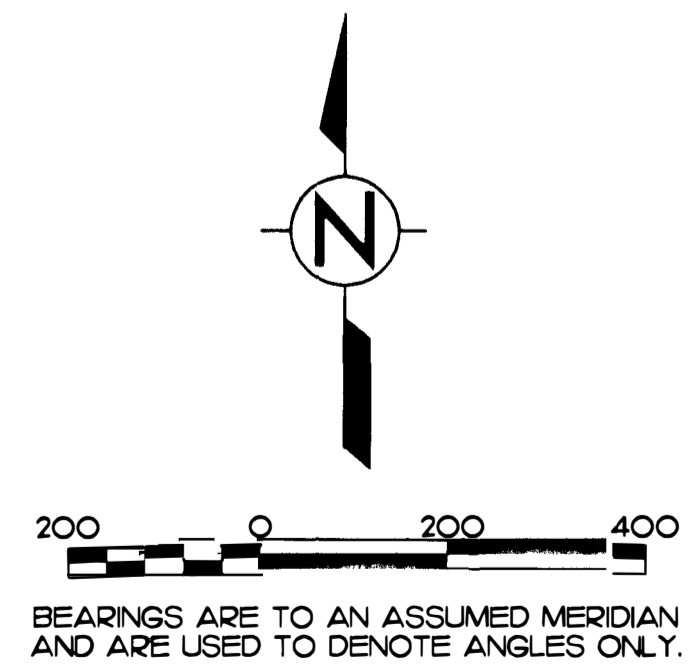
DETAIL
SCALE 1" = 100'

① R = 5752.62
Δ = 5' 19' 42"
A = 534.98
T = 267.68
C = 534.78
N01° 15' 41" E

L1 N01° 24' 10" W 43.75
L2 N88° 35' 50" E 35.50
L3 N01° 24' 10" W 4.50

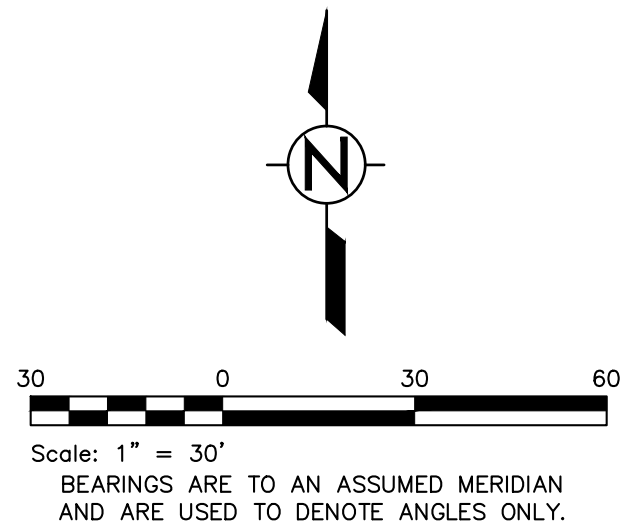
APPROVED BY CITY PLANNING
COMMISSION, NO PLAT REQUIRED;
5-11-99
DATE
CITY ENGINEER
THIS APPROVAL SHALL EXPIRE AT THE END OF SIXTY DAYS, UNLESS THIS CONVEYANCE IS RECORDED IN THE OFFICE OF THE COUNTY RECORDER DURING SUCH PERIOD.

LEGEND.
○ 5/8" REBAR / CAP STAMPED
"CUNNINGHAM-5274" FD. & USED
◇ MON. BOX / 5/8" REBAR
FD. & USED



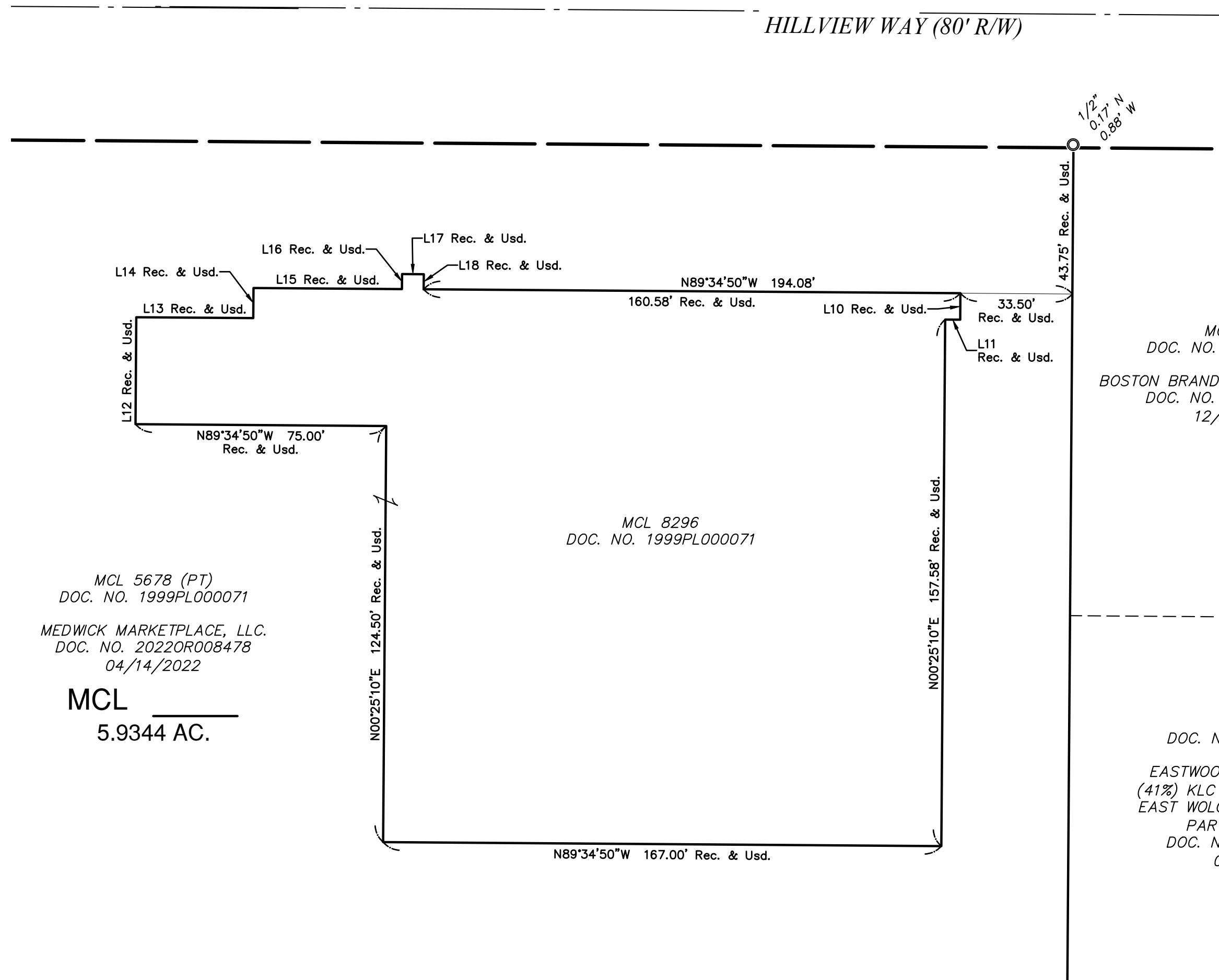
For Reference: Marshalls Property Plat

Approved Without
a Variance in 1999



Line Table		
Line #	Direction	Length
L1	N0°25'10"E	45.68
L2	S0°25'10"W	64.40
L3	S0°25'10"W	54.00
L5	S89°34'50"E	38.09
L6	S89°34'50"E	42.04
L7	S0°25'10"W	79.50
L8	S23°35'09"W	32.35
L9	N5°44'52"E	163.57
L10	N0°25'10"E	7.92
L11	S89°34'50"E	4.50
L12	N0°25'10"E	32.00
L13	S89°34'50"E	35.00
L14	N0°25'10"E	9.00
L15	S89°34'50"E	44.42
L16	N0°25'10"E	4.50
L17	S89°34'50"E	6.50
L18	S0°25'10"W	4.50

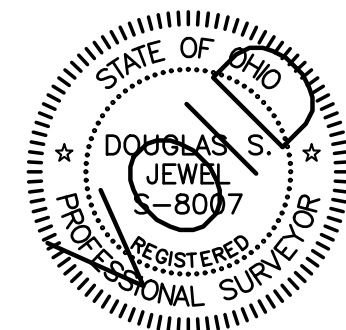
Curve Table					
Curve #	Radius	Delta	Chord Bearing	Chord Length	Arc Length
C1	260.00	006°50'48"	N60°43'53"W	31.05	31.07
C2	340.00	032°16'21"	S73°26'39"E	188.99	191.51
C3	5752.62	005°19'42"	N3°05'01"E	534.78	534.98
C4	300.00	033°29'43"	N74°03'20"W	172.89	175.38
C5	300.00	032°16'21"	S73°26'39"E	166.75	168.98



LOT SPLIT AND CONSOLIDATION PLAT
 LOCATED IN
 COUNTY OF MEDINA
 STATE OF OHIO
CUNNINGHAM & ASSOCIATES, INC.
 CIVIL ENGINEERING and SURVEYING
 203 W. LIBERTY ST. MEDINA, OHIO 44256 330-725-5980

CITY: MEDINA
 TOWNSHIP: MEDWICK MARKETPLACE, LLC
 LOT NUMBER: 5678, 5677 & 5760
 PROP OWNER: MEDWICK MARKETPLACE, LLC
 PROP OWNER: DEL 570 II, LLC & TRMO, LLC

DRAWN BY: SG
 DATE: 01/03/2024
 CHECKED BY: DSJ
 DATE: 01/04/2024
 PROJECT No.
 22-306
 ACAD FILE No.
 M:\22-306_Plat_01
 SCALE: 1"=300'



SHEET NO.

3 / 3

Prepared by and after recording return to:

Meijer

Attn: Brandon Duckworth, Atty.

2929 Walker Avenue, NW

Grand Rapids, MI 49544

TRI-PARTY AGREEMENT

THIS TRI-PARTY AGREEMENT (this “**Agreement**”), is entered into as of [REDACTED], 2024 (“**Effective Date**”), by and among MEDWICK MARKETPLACE, LLC, an Ohio limited liability company (“**Developer**”); DEL 570 II, LLC, a New York limited liability company (“**Meijer Parcel Owner**”); MEIJER STORES LIMITED PARTNERSHIP, a Michigan limited partnership (“**Meijer**”); [REDACTED], a [REDACTED] limited liability company (“**New Parcel 1 Owner**”); and [REDACTED], a [REDACTED] limited liability company (“**New Parcel 2 Owner**”), Developer, Meijer Parcel Owner, New Parcel 1 Owner, and New Parcel 2 Owner are each individually referred to as a “Party” and collectively referred to as the “Parties.”

R E C I T A L S

A. Developer is the owner of that certain land located in the City and County of Medina, as more particularly described on the attached **Exhibit A**, and depicted on the attached Site Plan (as defined below) (the “**Developer Parcel**”).

B. Meijer Parcel Owner is the owner of that certain land located in the City and County of Medina, as more particularly described on the attached **Exhibit B**, and depicted on the Site Plan (the “**Meijer Parcel**”).

C. New Parcel 1 Owner is the owner of that certain land located in the City and County of Medina, as more particularly described on the attached **Exhibit C**, and depicted on the Site Plan (the “**New Parcel 1**”).

D. New Parcel 2 Owner is the owner of that certain land located in the City and County of Medina, as more particularly described on the attached **Exhibit D**, and depicted on the Site Plan (the “**New Parcel 2**”).

E. The Developer Parcel, Meijer Parcel, New Parcel 1 and New Parcel 2 are each individually referred to as a “**Parcel**” and collectively referred to as the “**Shopping Center**.”

F. Pursuant to that certain Ground Lease Agreement dated September 13, 2023, by and between Meijer Parcel Owner, as landlord, and Meijer, as tenant, Meijer leases the Meijer Parcel from Meijer Parcel Owner (as may be amended, the “**Meijer Lease**”).

G. The Parties desire to establish easements, covenants and rights as described herein, to provide for the maintenance of certain improvements within the Shopping Center and to subject the Shopping Center, to certain covenants, restrictions and conditions as set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the execution of this Agreement by the Parties hereto, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, it is agreed as follows:

ARTICLE I

AGREEMENT; DEFINITIONS

1.1 **Agreement**. The Shopping Center is subject to (i) that certain Easement, Restriction and Operation Agreement dated August 8, 1990, recorded in the real property records for Medina County, Ohio (the "**Official Records**") in Volume 567, Page 406, as amended by that certain Amendment to Easement, Restriction and Operation Agreement dated August 9, 1991, recorded in the Official Records in Volume 540, Page 392, and by that certain Second Amendment to Easement, Restriction and Operation Agreement dated January 24, 2002, recorded in the Official Records as instrument number 2002OR008690 (collectively, the "**Original REA**"). Subject to the foregoing, it is the express intent of the Parties that from and after the recordation of this Agreement in the Official Records, each Parcel shall be subject the Original REA, as well as this Agreement; provided, however, that in no event shall Meijer have any obligation under the Original REA which have accrued prior to the Effective Date of this Agreement (and such obligations and liabilities shall remain binding upon Meijer Parcel Owner).

1.2 **Definitions**. Except as otherwise defined, as used in this Agreement, the following terms shall have the respective meanings indicated:

a. "**Approving Party**" or "**Approving Parties**" shall mean the party designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this Agreement. There shall be one Approving Party representing each Parcel. Developer shall be the initial Approving Party for the Developer Parcel, Meijer and Meijer Parcel Owner shall collectively be the initial Approving Party for the Meijer Parcel (but upon expiration or sooner termination of the Meijer Lease, Meijer shall no longer be an Approving Party), New Parcel 1 Owner shall be the initial Approving Party for New Parcel 1, and New Parcel 2 Owner shall be the initial Approving Party for New Parcel 2. In the event that the Meijer Parcel or the Developer Parcel are further subdivided, the current Approving Party shall remain the Approving Party until, (i) with respect to the Developer Parcel, Medwick Marketplace, LLC (or its affiliate) no longer has an interest in the Shopping Center at which time Medwick Marketplace, LLC's final transferee shall be an Approving Party unless Medwick Marketplace, LLC separately designates another Owner of all or a portion of the Developer Parcel as an Approving Party by recording such designation in the Official Records of Medina, Ohio, and (ii) with respect to the Meijer Parcel, Del 570 II, LLC (or its affiliate) no longer has an interest in the Shopping Center at which time Del 570 II, LLC's final transferee shall be an Approving Party unless Del 570 II, LLC separately designates another Owner of all or a portion of the Meijer Parcel as an Approving Party by recording such designation in the Official Records of Medina, Ohio. Notwithstanding the foregoing, Meijer shall remain an Approving Party for the Meijer Parcel until the expiration or sooner termination of the Meijer Lease.

b. "**Blackout Period**" shall mean the period commencing on November 15 of any year and continuing through and including January 30 of the following calendar year.

c. "**Building**" or "**Buildings**" shall mean any building, structure or other similar improvement

from time to time existing on each Parcel consisting of at least four (4) walls and an enclosed roof.

d. “**Building Area**” shall mean the limited portions of the Shopping Center designated on the Site Plan as the location for Buildings.

e. “**Common Area**” shall mean the portions of the Shopping Center existing from time to time that are intended for the nonexclusive use by the Owners and their Occupants, employees, vendors, customers, and business invitees, in common with other users as permitted by this Agreement. Common Area shall include, but not be limited to, Parking Areas, access roads, driveways, walkways, sidewalks, bike paths and landscaping. The Common Area shall include all items of Common Area shown on the Site Plan. Common Area shall not include (i) any Floor Area, (ii) any drive-through area leading to a drive-up service window or machine (such as a drive-up pharmacy, automated teller machine or food ordering/dispensing facility), (iii) any truck docks or loading docks and the concrete apron or ramp leading to such loading facilities, but will include any asphalt paved areas immediately adjacent to and adjoining such concrete apron or ramp area, or (iv) the Access Drives.

f. “**Environmental Law**” shall mean all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

g. “**Floor Area**” shall mean the aggregate number of square feet of floor space in any Building or other enclosed structure, whether or not actually occupied, measured from the exterior faces of the exterior walls and to the centerline of any shared wall of a Building or other structure. The term “Floor Area” shall not include the following: (i) basement space, subterranean areas or balcony or mezzanine space within any Building; (ii) any outdoor area appropriated for use to display and/or sell merchandise as permitted hereunder; (iii) shelving or the upper levels of any multi-deck stock areas created for convenience to increase the usability of space for stock purposes; (iv) any truck and/or exterior loading dock areas or the concrete apron or ramp leading to such areas, truck tunnels, truck parking, and turn around areas; and (v) all Common Areas.

h. “**Hazardous Materials**” shall mean petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous wastes, pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law.

i. “**Hypermarket**” or “**Supercenter**” shall mean a retail store combining a (1) a supermarket and (2) a general merchandise discount store, Specialty Store or other retail store in which the sale of groceries and foodstuffs (including meat, produce, deli, bakery and the like, if offered) constitute more than 10,000 square feet of floor space, including adjacent aisles. An example would be the type of store currently operated by Meijer under the “*Meijer*” trade name.

j. “**Main Trunk Line**” shall mean all mean the main trunk line running through a portion of the Meijer Parcel and serving the Storm Water System.

k. “**Meijer Building**” shall mean any Building located on the Meijer Parcel.

l. “**Meijer Remodel**” shall mean any new improvement to the Meijer Parcel, or any significant or material alteration, remodel, expansion, reduction or relocation of any improvements on or to the Meijer Parcel, including, without limitation, the Meijer Building and Common Areas within the Meijer Parcel, following the Effective Date and which may be conducted from time to time. For the avoidance of doubt, a Meijer Remodel may include the complete demolition and reconstruction of the Meijer Building

and Common Areas within the Meijer Parcel.

m. “**Membership Warehouse Club**” shall mean a retail store which sells a broad variety of general merchandise, including softgoods and hardgoods, which advertises having low prices, and which requires customers to have a membership (usually acquired for a fee) to purchase products at the marked price without paying an extra charge. This type of store is sometimes known as a “club” store. Examples of such membership general merchandise discount store would include retail stores operating as of the Effective Date under the tradename “*Sam’s Club*” or “*Price/Costco*.”

n. “**Mortgage**” shall mean any first or second mortgage, indenture of first or second mortgage, or first or second deed of trust on the interest, whether fee or leasehold, of an Owner in a Parcel and, to the extent applicable, a “Sale and Leaseback” or “Assignment and Subleaseback” transaction as herein contemplated.

o. “**Mortgagee**” shall mean a mortgagee, or trustee and beneficiary under a deed of trust and to the extent applicable, a fee owner or lessor or sublessor of any Parcel which is the subject of a lease under which any Owner becomes a lessee in a so-called “Sale and Leaseback” or “Assignment and Subleaseback” transaction.

p. “**Occupant**” shall mean any Person from time to time entitled to the use and occupancy of any portion of a Parcel or Building in the Shopping Center under an ownership right or any lease, sublease, license, concession, or other similar agreement.

q. “**Operation**” shall mean not only the Building but also, the Parking Areas, drives, entries, truck docks, or any other improvements used in connection with or to support such a store or to support a shopping center of which such a store is a part;

r. “**Development Standard**” shall mean with respect to each Owner’s respective Parcel, the maintenance, repair and replacement of the exterior of all Buildings, all Common Areas and all related improvements, including all landscaping and improvements thereon, (i) in a slightly, safe condition, (ii) in a good state of repair and in a manner that is at least comparable to the standard of maintenance for other first class shopping centers within metropolitan area in which the Shopping Center is located, and (iii) in compliance with all Regulations.

s. “**Owner**” and “**Owners**” as used in this Agreement shall mean the Parties, or their successors in interest as hereinafter provided, as shown by the real property records for the Shopping Center, as of the date of the exercise of powers or rights or the performance by such Owners of obligations created by this Agreement. The reference to an Owner shall include any party designated in writing by any of the Owners to act in the manner and at the time provided herein with complete authority and in the place of such Owner in the matter for which action is taken, powers exercised or performance required, provided such written authority shall be recorded in the Official Records.

t. “**Parcel**” or “**Parcels**” shall mean individually or collectively, the Developer Parcel, the Meijer Parcel, New Parcel 1, and New Parcel 2.

u. “**Parking Area**” shall mean those portions of the Common Area used for the parking of motor vehicles, including incidental and interior roadways, pedestrian stairways, walkways, curbs and landscaping within or adjacent to areas used for parking of motor vehicles, together with all related improvements to the Common Area that are from time to time erected thereon. Such areas shall not include truck and/or loading dock areas or the concrete aprons or ramps leading to such areas.

v. **“Person”** or **“Persons”** shall mean and include individuals, partnerships, firms, associations, limited liability companies, government agencies, joint ventures, corporations, or any other form of business entity.

w. **“Regulations”** shall mean all applicable governmental laws, rules, regulations, orders, and ordinances exercising jurisdiction over the Shopping Center.

x. **“Site Plan”** shall mean that certain plan attached as **Exhibit E** and made a part hereof by this reference. Any revisions, modifications or other changes to the Site Plan requested by an Owner shall require the prior written approval of the Approving Parties for the Meijer Parcel and Developer Parcel, which approval may be granted or withheld in the sole and absolute discretion of such parties.

y. **“Specialty Store”** shall mean a retail store which sells primarily goods in a few specific product categories such as furniture, clothing, home improvements, appliances, electronics, and computers, whether or not such a store advertises having low prices. Examples would include those retail operations as of the Effective Date operating under the tradenames *“Home Depot,” “Best Buy,” “Bed, Bath & Beyond,” “TJX,” “Men’s Warehouse,” “Kohl’s department store,” “Micro Center,” “World Market,” “PetSmart,” “Dick’s,” “Old Navy,” “Nordstrom Rack,” “Burlington Coat Factory”* and *“Toys ‘R’ Us.”*

z. **“Storm Water System”** shall mean the storm water system consisting of catch basins, storm water lines conveying storm water from multiple Parcels (including the Main Trunk Line), detention/retention ponds and related facilities, to accommodate the drainage of storm water generated on the Shopping Center.

ARTICLE II EASEMENTS; MAINTENANCE OBLIGATIONS

2.1 **Project Signs.**

a. Each Owner may place such sign or signs on the exterior of the Building(s) on its Parcel(s) as shall be permitted by applicable governmental requirements, which identify the Owner or Occupant of a Parcel. All such signage shall be maintained in accordance with the Development Standard. Notwithstanding the foregoing, neither exterior identification signs attached to Buildings nor freestanding signs on any portion of the Shopping Center shall have the following characteristics: (i) be flashing, moving or audible signs, other than time, temperature signs and temporary signs announcing a grand opening; (ii) be signs employing exposed raceways, exposed neon tubes, exposed ballast boxes, or exposed transformers; (iii) be constructed of paper, cardboard or plastic signs, temporary signs (exclusive of contractor signs, grand opening signs and temporary event or promotional signs of limited duration), stickers or decals; (iv) be painted on the surface of any Building; (v) installed on the roof of any building or which projects above the top of any parapet wall or roof line or (vi) constitute a portable sign to be held or displayed by an individual outside any Building (exclusive of contractor signs, grand opening signs and temporary event or promotional signs of limited duration).

i. Notwithstanding anything above to the contrary, an Owner shall be permitted to place within its Parcel, within the interior of the front windows of a Building (and not taped to the front windows) professionally prepared, temporary paper, cardboard or plastic signs which relate to the business conducted in the Building, temporary display of leasing information, directional signs and informational signs such as handicapped parking placement at the entrance of each Building a sticker or decal, indicating hours of business, emergency telephone numbers, and other similar information provided same shall meet the Development Standard, and the temporary erection of one sign identifying each contractor working on a construction job.

b. Following receipt of all necessary approvals to construct the Pylon Sign (as hereinafter defined), Meijer Parcel Owner hereby grants to Meijer the right to (i) demolish the existing pylon sign situated on the Meijer Parcel as of the Effective Date, and (ii) construct a new pylon sign (the “**Project Sign**”) in the area designated on the Site Plan as the “**Project Sign Easement Area**”). The Project Sign shall be consistent with the plan depicted on **Exhibit F** (the “**Project Sign Plan**”) and shall include cabinets for identification panels, internal illumination seven days a week from dusk to dawn, and wiring for power.

i. Upon completion of the construction of the Project Sign, Meijer Parcel Owner shall grant to Meijer (for so long as the Meijer Lease is in effect), Developer Parcel Owner, New Parcel 1 Owner and New Parcel 2 Owner, a perpetual, non-exclusive easement under, through and across the Project Sign Easement Area for the installation, operation, maintenance, repair and replacement of sign panels advertising (i) no more than one (1) Occupant of the Meijer Parcel, (ii) a minimum of one (1) Occupant of New Parcel 1, (iii) a minimum of one (1) Occupant of New Parcel 2, and (iv) a minimum of four (4) Occupants of the Developer Parcel 1 (each a “Sign Panel”; collectively, the “Sign Panels”) as depicted on Project Sign Plan.

ii. The Project Sign shall be utilized exclusively for the identification of Occupants of the Meijer Parcel, Developer Parcel, New Parcel 1 and New Parcel 2 (and/or “For Lease/Available” type panels for its Parcel). During the term of the Meijer Lease, Meijer’s Sign Panel (and thereafter, Meijer Parcel Owner’s Sign Panel) shall be located in the top and most predominant position on the Project Sign as shown on the Project Sign Plan. Developer’s panels shall be directly below Meijer identified as Tenant A, B, C and D on the Amended Project Sign Plan depicted on Exhibit “F”, and panels for New Parcel 1 and New Parcel 2 are identified as Tenant E and F on Exhibit “F”.

iii. Upon completion of the construction of the Project Sign, The Project Sign, including, without limitation, the main structure, each individual cabinet, ballast and related electric components and lighting shall be maintained in good condition and repair by Developer at Developer’s sole cost and expense, in conformity with all governmental regulations and the Development Standard. Developer shall perform any construction, maintenance, repair, replacement, or other work upon, the Project Sign in an expeditious and workmanlike manner so as to minimize interference with the use of the Project Sign Easement Area. Except to the extent required to perform any of the foregoing activities, Meijer (for so long as the Meijer Lease is in effect, and thereafter, Meijer Parcel Owner) and Developer shall not block, close or otherwise materially interfere with any access drives serving any Parcel in connection with the performance of the foregoing and shall promptly after completing such activity, restore the Project Sign Easement Area to substantially the same condition as existed prior to the commencement of such activity. Meijer (for so long as the Meijer Lease is in effect, and thereafter, Meijer Parcel Owner) shall, at its sole cost and expense, (i) maintain any electrical control box that controls the Project Sign (the “**Panel**”), provided that such Panel is situated in the Building to be constructed on the Meijer Parcel, and (ii) illuminate the Project Sign (including illumination from dusk until dawn of the Meijer sign panel via photocell).

iv. Each Owner shall, at its sole cost and expense, (i) obtain all permits and approvals required for the installation of its individual sign panels, (ii) fabricate its identification panels, install the panels, and (iii) maintain and/or replace its individual sign panels pursuant to all governmental regulations, and in a safe condition and good state of repair.

v. If the Project Sign is no longer available for freestanding sign purposes because of a condemnation or any governmental requirements, Meijer (for so long as the Meijer Lease is in effect, and thereafter, Meijer Parcel Owner) shall designate a replacement Project Sign area with comparable visibility

as close to the original location as is reasonably possible and each Party's signage rights granted herein shall transfer to such replacement Project Sign.

vi. Except in accordance with subparagraph (v) above, upon completion of the construction of the Project Sign, the Project Sign shall not be relocated or reconfigured without first obtaining the written approval of the Approving Parties, which may withhold in its sole discretion.

2.2 Access Drives.

a. The Parties hereby grant to each other for the benefit of the Parcels encompassing the Shopping Center, a perpetual, nonexclusive easement over those portions of the Shopping Center depicted on the Site Plan for the ingress and egress of pedestrian and vehicular traffic to and from each Party's respective Parcel to all public rights of way adjacent to any portion of the Shopping Center (the "**Access Drives**"). The Access Drives shall be for the benefit of each Party's respective Parcel but shall not be used for (i) vehicular parking, (ii) the parking or idling of delivery vehicles, or (iii) the backing up/turning around of delivery vehicles.

b. The perpetual easements granted in this Section 2.2 shall be for the benefit of, but not restricted solely to, the Owners benefited by such easements and each such Owner may grant the benefit of such easements to Occupants for the duration of such occupancy, and to the customers, employees, agents and business invitees thereof; but such grant is not intended nor shall it be construed as creating any rights in or for the benefit of the general public nor, except as otherwise specifically set forth in this Agreement, shall it affect any real property outside of the Shopping Center.

c. The foregoing easements shall not be construed as permitting the following activities on the Parcel of another Owner by any Occupant, employee, agent, business invitee or any member of the public: (i) exhibiting any placard, signs (other than any signage which is expressly permitted pursuant to this Agreement); (ii) distributing any circular, handbill, placard, or booklet; (iii) soliciting membership or contributions; and (iv) parading, picketing, or demonstrating; provided, however, (A) Occupants of a Parcel may distribute circulars, handbills or booklets relating to their business within the occupied Parcel and may solicit memberships relating to its business in the occupied Parcel so long as such activities do not interfere with use of the foregoing easements, and (B) the foregoing activities shall not be prohibited when conducted within the inside of any Building.

d. Each Party hereby reserves to itself the right to grant additional easements on their respective Parcel affecting the Access Drives for any other purposes which do not interfere with access easements set forth in Section 2.2(a). The Access Drives encompass the main entry drives servicing the Shopping Center and the use of the Access Drives, including, without limitation, such main entry drives, does not and will not constitute an interference with or over-burdening of the Access Drives irrespective of the amount of traffic generated by the businesses conducted upon the Shopping Center.

e. Meijer (for so long as the Meijer Lease is in effect, and thereafter, Meijer Parcel Owner) shall maintain, repair, and replace the portion of the Access Drives identified on **Exhibit G** (the "**Main Entry**"). Such maintenance shall include, without limitation, (i) the prompt removal of snow and ice or other debris from the Main Entry; (ii) prompt repair of any potholes or other defects in the surface or curbs of the Main Entry, (iii) continuous maintenance of any landscaping associated with the Main Entry. Meijer (for so long as the Meijer Lease is in effect, and thereafter, Meijer Parcel Owner) will use its best efforts to complete any maintenance, repair, or replacement as soon as possible. Meijer (for so long as the Meijer

Lease is in effect, and thereafter, Meijer Parcel Owner) shall maintain the Main Entry in accordance with the Development Standard.

f. Developer shall maintain, repair, and replace the Access Drives (except for the Main Entry) to keep the Access Drives at all times in good, safe order, appearance and repair consistent with the Development Standard. Such maintenance shall include, without limitation, (i) the prompt removal of snow and ice or other debris from the Access Drives; (ii) prompt repair of any potholes or other defects in the surface or curbs of the Access Drives, (iii) continuous maintenance of any landscaping associated with the Access Drives, (iv) maintenance and prompt repair of all curb cuts to the Access Drives, and (v) adequately light the Access Drives during Meijer's regular business hours. Developer will use its best efforts to complete any maintenance, repair, or replacement as soon as possible. Developer shall maintain the Access Drives in accordance with the Development Standard.

g. Notwithstanding Developer's or Meijer's maintenance obligations set forth in this Section 2.2, without the consent of Meijer (during the term of the Meijer Lease) Owner of the Meijer Parcel, and Developer neither Developer nor Meijer shall interrupt access over the Access Drives, in a manner that prevents any Owner and its Occupants, tenants, licensees, customers and agents from accessing an Owner's Parcel, during Owner's business hours. Notwithstanding the foregoing, without the prior written consent of Meijer (for so long as the Meijer Lease is in effect) and Meijer Parcel Owner, no repairs or restoration of the Access Drives, other than emergency repairs, shall be performed during (i) any Blackout Period, or (ii) the one (1) week period before Memorial Day, July 4, or Labor Day.

h. No Party shall reconfigure or relocate any Access Drives located within such Party's Parcel without obtaining the prior written approval of the Approving Parties for the Meijer Parcel and for Developer Parcel, which approval may be withheld in the Approving Party's sole discretion.

2.3 Storm Water System; Main Trunk Line.

a. Each Party hereby grants to the other Party (for the benefit of the respective Parcel of each Party) the perpetual right to discharge storm water from a Party's Parcel into the Storm Water System, as it may be configured, at certain connection outlet(s).

b. Each Party shall maintain their respective Parcel in good order, appearance and repair in compliance with the Development Standard to minimize any interference with the use of the Storm Water System for proper drainage by other Parcels. Each Party shall maintain the storm water system on their respective Parcel in good order, appearance and repair and in accordance with the Development Standard at such Party's sole cost and expense and in full compliance with all applicable laws and regulations.

c. The Parties shall not diminish the capacity of the Storm Water System without obtaining the prior written approval of other Parties using the Storm Water System, which approval may be withheld in the Approving Party's sole discretion. The grade and the Storm Water System shall not be altered in a manner that increases the flow of surface water onto an adjacent Parcel or any other Parcel either in the aggregate or by directing the flow of surface water to a limited area without such Owner's consent.

d. Developer shall maintain, repair, and replace the Main Trunk Line to keep the Main Trunk Line at all times in good, safe order and repair consistent with the Development Standard.

2.4 **Utilities.** Each Parcel Owner shall maintain, repair, and replace any water lines serving their Parcel at all times in good, safe order, appearance and repair consistent with the Development Standard. Each Party shall, at its sole cost and expense, maintain their respective utilities exclusively serving their

respective Parcel in good order, appearance and repair in compliance with the Development Standard . In the event any utility line necessary to service a Party's Parcel is located across a portion of the Parcel of another Party, the Party upon whose Parcel the private utility line is located (each a "**Granting Party**"), hereby grants to the other Party (the "**Benefitted Party**"), for the benefit of the Benefitted Party's Parcel, but subject to the written approval of the Granting Party as to the location of any utility line not existing as of the Effective Date, a perpetual, nonexclusive easement under, through and across such portions of the Granting Party's Parcel for the operation, flow, passage, use, maintenance, connection, repair, relocation, removal and replacement of any such utility line (each a "**Utility Line**" and collectively, the "**Utility Lines**").

a. Except as otherwise provided in this Agreement, without the prior written consent of each Owner affected by any work, nothing contained herein shall permit an Owner, its respective mortgagees, or Occupants to enter upon the Shopping Center to maintain, repair, replace and/or to otherwise interfere with Utility Lines other than those Utility Lines which are (i) solely located within such Owner's Parcel, and (ii) solely provide utility service to, such Owner's Parcel. In addition, no Owner may eliminate or reduce the capacity of any Utility Line installed on such Owner's Parcel which does not provide exclusive utility service to such Owner's Parcel without the prior written consent of the Owner of each Parcel which is also provided utility service pursuant to such Utility Line. Notwithstanding anything to the contrary contained herein, in no event shall an Owner be liable for any disruption in utilities not caused by such Owner or such Owner's Occupants. An Owner shall have the right to relocate a Utility Line on it's Parcel upon thirty (30) days prior written notice to the Benefitted Party(s), provided that such relocation:

- i. Shall not be commenced during the months of November, December, or January;
- ii. Shall not interfere with or diminish the utility service to the Benefitted Party during the Benefitted Party's business hours; and if an electrical line/computer line is being relocated, then the Owner and the Benefitted Party shall coordinate such interruption to eliminate any detrimental effects;
- iii. Shall not reduce or unreasonably impair the usefulness or function of such Utility Line;
- iv. Shall be performed without cost or expense to the Benefitted Party;
- v. Shall be completed using materials and design standards which equal or exceed those originally used; and
- vi. Shall have been approved by the provider of such utility service and the appropriate Governmental Authorities.

Documentation of the relocated easement area, including the furnishing of a survey to all Benefitted Owner(s), shall be at the Owner's expense and shall be accomplished as soon as possible following completion of such relocation.

b. Upon the written request of a Party, the Parties shall enter into and record an amendment to this Agreement depicting the location of the Utility Lines or if no such Utility Line is constructed upon the other Party's Parcel following the completion of the initial improvements on such Party's Parcel, upon the written request of either Party, the Parties shall enter into and record an amendment to this Agreement to reflect the termination of the utility easement granted by this Section 2.4.

c. At least twenty (20) days prior to any installation, maintenance, connection, repair, relocation or removal of utility lines located on another Owner's Parcel pursuant to the easement granted herein (except in an emergency, the work may be initiated with reasonable notice), the Benefitted Party shall first provide the Granting Party with notice describing the need for such work, shall identify the proposed location of the Utility Line, the nature of the service to be provided, the anticipated commencement and completion dates for the work.

d. The easement area shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility, or five (5) feet on each side of the centerline if the easement is granted to a private party. The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the Common Area or with the normal operation of any business in the Shopping Center. The Benefitted Party shall bear all costs related to the installation, operation, maintenance, repair and replacement of such easement facilities, shall repair to the original specifications any damage to the Common Area resulting from such use within ten (10) days of the date of completion of construction of the easement facilities, and within ninety (90) days after the date of completion of construction of the easement facilities, the Benefitted Party shall provide to the Owners of all Parcels upon which such Utility Lines are located a survey showing the location of such Utility Line.

2.5 Common Areas and Parking Areas.

a. Subject to the rights of an Owner to alter or modify the Common Areas on its respective Parcel as permitted under this Agreement, the Owner's, each as grantor with respect to their respective Parcel, hereby reserves to itself and grants to the other for the benefit of the other and the others respective successors, assigns, Mortgagees, Occupants, employees, agents, vendors and customers, and each declares for the benefit of each of the respective Parcels within the Shopping Center permanent, mutual, reciprocal and non-exclusive easements and rights to use the Common Areas for the purpose for which they are provided and intended, including, but not limited to, ingress, egress, access, and parking for vehicular or pedestrian traffic, upon or across the Parking Areas, entrances, exits, driveways, walks or service drives located within the Common Areas and landscaping, public rest rooms and other public facilities, direction signs and other areas intended for common use.

b. Subject to the rights set forth in this Agreement, each Parcel and Owner shall have a nonexclusive easement in, to, over and across the Parking Area on the other Owner's Parcels, for the purpose of parking vehicles of Occupants thereon, limited, however, to purposes connected with or incidental to use of such parking for the Shopping Center purposes.

c. Each Owner shall exclusively look to the Parking Areas on their respective Parcels for purposes of satisfying any local ordinance or other similar municipal requirement pertaining to the maintenance of a specified level of parking spaces on each Owner's respective Parcel. Accordingly, notwithstanding the foregoing to the contrary, no Owner shall rely upon or, utilize the foregoing easements set forth in this Section 2.5 or otherwise include the Parking Areas on another Owner's Parcel for purposes of satisfying any local ordinance or other similar municipal requirement pertaining to the maintenance of a specified level of parking spaces on each Owner's respective Parcel. Notwithstanding the foregoing, (i) the Owner of New Parcel 1 and the Owner of New Parcel 2 may utilize parking on the Developer Parcel to satisfy parking requirements for New Parcel 1 and/or New Parcel 2, and (ii) in the event that the Meijer Parcel exceeds the parking space requirements of any applicable governmental authority by a minimum of twenty (20) parking spaces, then Owner of New Parcel 1 and Owner of New Parcel 2 may utilize the cross-parking provisions provided by this instrument and may utilize no more than twenty (20) parking spaces on the Meijer Parcel to satisfy parking requirements for New Parcel 1 and/or New Parcel 2 individually (provided that the foregoing limitation on utilizing parking on the Meijer Parcel shall only be in effect during the term of the Meijer Lease, and there shall be no such limitation on New Parcel 1 and/or New

Parcel 2 utilizing parking on the Meijer Parcel following expiration or sooner termination of the Meijer lease).

2.6 **Maintenance Contribution.**

a. In exchange for Developer's agreement to maintain the Project Sign, as provided herein, Meijer (for so long as the Meijer Lease is in effect, and thereafter, Meijer Parcel Owner), New Parcel 1 Owner and New Parcel 2 Owner each agree to pay to Developer an annual maintenance fee as follows (the "**Project Sign Maintenance Fee**"):

- i. Commencing upon the date that Meijer opens for business on the Meijer Parcel, Meijer (for so long as the Meijer Lease is in effect, and thereafter, Meijer Parcel Owner) shall pay to Developer an annual maintenance fee equal to \$1,000.00;
- ii. Commencing upon the date the first Occupant of New Parcel 1 opens for business, New Parcel 1 Owner shall pay to Developer an annual maintenance fee equal to \$1,000.00; and
- iii. Commencing upon the date the first Occupant of New Parcel 2 opens for business, New Parcel 2 shall pay to Developer an annual maintenance fee equal to \$1,000.00.
- iv. The Project Sign Maintenance Fee shall be payable by January 31 of each year to contribute towards the costs for the calendar year in which such Project Sign Maintenance is paid. The Project Sign Maintenance Fee shall increase each year by three percent (3%) over the amount of the Maintenance Fee due in the immediately preceding year.

b. In exchange for Developer's agreement to maintain the Main Trunk Line, as provided herein, Meijer (for so long as the Meijer Lease is in effect, and thereafter, Meijer Parcel Owner) on behalf of the Meijer Parcel, New Parcel 1 Owner on behalf of New Parcel 1, and New Parcel 2 Owner on behalf of New Parcel 2, each agree to reimburse Developer for their respective Parcel's pro rata share of the invoiced reasonable costs and expenses actually incurred by Developer in a calendar year to maintain the Main Trunk Line in accordance with the terms of this Agreement (the "**Main Trunk Line Expenses**"). The pro rata share applicable to each Party shall be the product of a fraction, the numerator of which is the total acreage of such Party's respective Parcel, the denominator of which is the total acreage of the Developer Parcel, Meijer Parcel, New Parcel 1, and New Parcel 2. On or before January 31 of each year, Developer shall deliver a statement (the "**Maintenance Cost Statement**") to the Parties certified by Developer's authorized representative showing the amount of the actual Main Trunk Line Expenses for the preceding calendar year. Within 60 days of receipt of the Maintenance Cost Statement, Meijer (for so long as the Meijer Lease is in effect, and thereafter, Meijer Parcel Owner) on behalf of the Meijer Parcel, New Parcel 1 Owner on behalf of New Parcel 1, and New Parcel 2 Owner on behalf of New Parcel 2, shall pay to Developer its pro rata share of the Main Trunk Line Expenses.

2.7 **Temporary Construction Easement.** In connection with any construction work to be performed within the Shopping Center, each Owner hereby grants to the other Owners' temporary easements for incidental encroachments upon the Parties' Parcel which may occur as a result of construction activities (excluding the placement of any improvements), so long as such encroachments are kept within the reasonable requirements of construction work expeditiously pursued and so long as customary insurance is maintained protecting the other Parties from the risks involved. In addition, each Owner hereby grants to the other Owners and its respective contractors, materialmen and laborers a temporary license for access, and passage over and across the Common Areas, as shall be reasonably necessary for the Parties to construct

the improvements within each Owner's respective Parcel. The temporary easements created pursuant to this Section 2.7 shall not exist during any Blackout Period and in any event the use of such temporary easements by an Owner or Occupant shall not unreasonably interfere with the operation of a business by another Owner or Occupant on the respective Parcel of such Owner or Occupant.

2.8 **Encroachment.** Each Parcel shall have nonexclusive easements in, on, over and under the other Owners' Parcels for minor unintentional encroachments. The minor unintentional encroachment easements are easements in, on, over or under such Parcel as required from time to time for building overhangs, building support columns, canopies, eaves, foundations, slabs, footings, pillars and other minor encroachments. Such encroachments, however, shall be limited to a projection of no more than five (5) feet for footings and one (1) foot for other encroachments. Nothing contained in this subsection shall create easements for intentional encroachments without the written consent of the Owner whose Parcel has been encroached upon, which may be granted or withheld in such Owner's sole and absolute discretion.

2.9 **Generally.** The use of all easements provided for in this Article, and the use of the entire Common Area will, in each instance, be nonexclusive and irrevocable, and for the use and benefit of all Occupants. No Owner, nor any person not an Owner, shall grant an easement or easements of the type set forth in this Article II for the benefit of any property not within the Shopping Center at the time of such grant; provided, however, that the foregoing shall not prohibit an Owner from granting or dedicating underground utility easements on its Parcel to governmental or quasi-governmental authorities or to public utilities. Subject to the foregoing, the Parties each hereby reserve the right to grant additional easements affecting their respective Parcels for any other purposes which do not materially interfere with the easements set forth herein. Each Owner hereby reserves the right to eject or cause the ejection from the Common Area on its Parcel of any Person or Persons not authorized, empowered or privileged to use the Common Area pursuant to this Agreement. Each Owner also reserves the right to close off the Common Area on its Parcel for such reasonable period or periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing off any portion of the Common Area, such Owner shall give written notice to the other Owners of its intention to do so, and shall coordinate such closing with the other Owners so that no unreasonable interference with the operation of the Shopping Center shall occur.

ARTICLE III

CONSTRUCTION, USE AND MAINTENANCE

3.1 **Construction, Maintenance and Repair.** The size and location of any Building and any and all other improvements to be constructed on each Parcel shall only be located within the Building Area as depicted on the Site Plan and the Building Area on each of the Developer Parcel, Meijer Parcel, New Parcel 1 and/or New Parcel 2 shall not be modified without the prior written consent of the Approving Parties for the Developer Parcel and the Meijer Parcel. The foregoing shall not prohibit construction outside of the Building Area of loading docks or truck facilities appurtenant to a Building, dumpsters, trash receptacles and compactor areas, shopping cart corrals and lighting standards, convenience facilities such as mailboxes, public telephones, benches or public transportation shelters, handicapped-parking signs, drive-in and drive-through aisles, landscaping, other common area elements that do not impact the use of any easements granted under this Agreement, berms or planters or limited curbing or other forms of traffic controls which an Owner may place on its Parcel to the extent permitted in areas where the same are not prohibited as depicted on the Site Plan, and do not impact the use of any easements granted under this Agreement.

a. Each Owner shall, at its cost and expense, construct maintain, repair and replace all Buildings and related exterior improvements on its Parcel, so as to keep such areas at all times in accordance with the Development Standard. All construction shall utilize new materials, and shall be performed in a

good, safe, workmanlike manner. The Owner undertaking such work shall repair at its own cost and expense any and all damage caused by such work to a condition that is equal to or better than the condition that existed prior to the beginning of such work. Although nothing contained in this Agreement obligates an Owner to commence construction of any Building on its Parcel, once construction has been commenced, such Building(s) shall be completed or if not completed, shall be maintained in a safe and attractive condition.

b. Each Owner shall, at its cost and expense, be responsible for the storage of all trash and garbage in adequate containers in compliance with the Development Standard, and to arrange for regular removal of such trash or garbage.

c. At any time a Building is not constructed on a Parcel and with respect to each portion of the Shopping Center for which no improvements are located, each Owner shall take or cause to be taken such measures with respect to its Parcel as may be necessary to control weeds, blowing dirt and sand, and similar matters and grade and landscape or pave such area so that such area(s) shall be visually harmonious with the remainder of the Shopping Center and in a good condition and repair.

d. All construction, alteration, and repair work shall be accomplished in an expeditious and good and workmanlike manner, in compliance with all Regulations and the terms and conditions of this Agreement. Such work shall be accomplished in such a manner as to minimize any disruption, inconvenience, damage or adverse effect which might be caused by such work to any other person or to the Parcel on which the work is being done or any other Parcel in the Shopping Center. The Owner undertaking such work shall repair at its own cost and expense any and all damage caused by such work and shall restore the affected portion of the Shopping Center caused by such work to a condition that is equal to or better than the condition that existed prior to the beginning of such work.

e. Other than (i) initial construction of the Buildings, (ii) reconstruction made necessary by casualty damage or condemnation, (iii) any construction or reconstruction made necessary by an emergency, (iv) with the prior written consent of the Owners, or (v) construction or reconstruction required by any governmental agency or authority having jurisdiction, no exterior construction and/or reconstruction and/or major repair or replacement of the exterior elements of a Building shall be performed during any Blackout Period.

f. Subject to the rights afforded to each Party pursuant to Article II, in connection with any construction, reconstruction, repair or maintenance on its Parcel, each Owner reserves the right to create a temporary staging and/or storage area on its Parcel; provided such staging or storage area is entirely fenced from the balance of the Shopping Center. All storage of materials and the parking of construction vehicles, including vehicles of workers, shall occur only on the constructing Owner's Parcel, and all laborers, suppliers, contractors and others connected with such construction activities shall use only the access points designated by the Owners. Upon completion of such work, the constructing Owner shall restore the affected Common Areas and other portions of the Shopping Center to a condition equal to or better than that existing prior to commencement of such work.

g. Each Owner covenants and agrees to indemnify, defend, protect and hold harmless the other Parcels and the other Owner and Occupants thereof for, from and against all claims and all costs, losses, damages, expenses and liabilities (including reasonable attorneys' fees and costs) incurred in connection with all claims, or the death of, or any accident, injury, loss or damage whatsoever caused to any natural person, or to the property of any Person, as shall occur by reason of the performance of any construction, repair by or at the request of the indemnitor, except to the extent of claims caused by the negligence, recklessness or willful misconduct of the indemnitee, its Occupants, vendors, agents, servants or employees, where the same may occur. The indemnitee shall give the indemnitor notice of any suit or

proceeding entitling the indemnitee to indemnification pursuant to this Section 3.1 and the indemnitor shall defend the indemnitee in such suit or proceeding with counsel approved by the indemnitee.

3.2 **Liens and Indemnification.** In the event any mechanic's lien is filed against the Parcel of an Owner as a result of services performed or materials furnished for the use of another Owner, the Owner permitting or causing such lien to be so filed agrees to cause such lien to be discharged prior to entry of final judgment (after all appeals) for the foreclosure of such lien and further agrees to indemnify, defend, and hold harmless the other Owner and its Parcel against liability, loss, damage, costs or expenses (including reasonable attorneys' fees and costs of suit) on account of such claim of lien. Upon request of the Owner whose Parcel is subject to such lien, the Owner permitting or causing such lien to be filed agrees to promptly (but in any event within thirty (30) days after written request from the other Owner) cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge. Nothing herein shall prevent an Owner permitting or causing such lien from contesting the validity thereof in any manner such Owner chooses so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), Owner shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien.

3.3 **Meijer Remodel.** Notwithstanding anything in this Agreement to the contrary, without the consent of any other Owner or Occupant, Meijer may undertake one or more Meijer Remodels, provided that during such Meijer Remodel, Meijer shall otherwise comply with the terms and conditions of Article III.

3.4 **Common Areas.** Each Owner shall, at its cost and expense, with respect to the Common Areas and Parking Areas on its Parcel, in accordance with the Development Standard, (a) maintain, trim, mow and replace the landscaping, (b) repave, reseal, re-stripe and replace markings on, and sweep and remove snow and ice from, the surface of the sidewalks, Parking Areas and driveways from time to time as and when necessary so as to provide for the orderly parking of automobiles and maintenance of such areas, (c) place and maintain adequate exit and entrance and other traffic control signs to direct traffic in and out of Parking Areas, (d) operate, maintain, repair and replace the lighting, (e) comply with all Regulations, provided however, that an Owner may contest any such law or regulations so long as such contest would not create any material danger of a loss of title to, or impairment in any way of the use of, all or any portion of the Common Areas for their intended purposes.

a. No portion of the Common Area may be used for shows, carnivals, sales by merchants using vehicles or booths, fireworks sales, kiosks or any other purpose which would limit or impair the rights set forth in this Agreement.

b. Each Owner shall keep the Common Areas, including, without limitation, Parking Areas on its Parcel and exterior Building security lights and internal access roadway lights illuminated via use of photocells and open to the customers of the Shopping Center, twenty-four (24) hours a day, seven (7) days a week. Notwithstanding anything contained in this Agreement to the contrary, no Owner shall be required to operate or open a business on its Parcel or to remain open for business at any time during the term of this Agreement.

3.5 **Parking Ratio and Standards.** All parking spaces within the Shopping Center, and the widths thereof, shall meet or exceed the applicable requirements of any governmental agency having jurisdiction over the Shopping Center. There shall be maintained at all times on the Parking Area on each Parcel a number of parking spaces, including all parking spaces for individuals with disabilities, at least equal to the number of spaces which would be legally required for the Building sizes and uses on such Parcel if such

Parcel were not benefited by any parking rights over any other parcels and no variances or exemptions from legal requirements were applicable. Notwithstanding the foregoing, (i) the Owner of New Parcel 1 and the Owner of New Parcel 2 may utilize parking on the Developer Parcel to satisfy parking requirements for New Parcel 1 and/or New Parcel 2, and (ii), in the event that the Meijer Parcel exceeds the parking space requirements of any applicable governmental authority by a minimum of twenty (20) parking spaces, then Owner of New Parcel 1 and Owner of New Parcel 2 may utilize the cross-parking provisions provided by this instrument and may utilize no more than twenty (20) parking spaces on the Meijer Parcel to satisfy parking requirements for New Parcel 1 and/or New Parcel 2 individually (provided that the foregoing limitation on utilizing parking on the Meijer Parcel shall only be in effect during the term of the Meijer Lease, and there shall be no such limitation on New Parcel 1 and/or New Parcel 2 utilizing parking on the Meijer Parcel following expiration or sooner termination of the Meijer lease).

3.6 **Maintenance Standard.** Each Party shall maintain their respective Parcel, including all landscaping and improvements thereon, in a safe condition and in a good state of repair at a standard that is at least comparable to the Development Standard.

3.7 **Hazardous Materials.**

a. No Owner shall use or store, or permit the use or storage of Hazardous Materials (as hereinafter defined) on, about, under or in its Parcel or the Shopping Center, except in the ordinary course of its usual business operations conducted thereon or as inventory to be sold in the normal course of business, and any such use shall at all times be in compliance with all Environmental Laws.

b. Each Owner agrees to defend, protect, indemnify and hold harmless each other Owner from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including but not limited to costs of investigation, remedial response, and reasonable attorneys' fees and cost of suit, arising out of or resulting from any act or omission by an Owner or their respective Occupants, invitees, employees or agents the use or permitted use of any Hazardous Materials on the Parcel, whether or not in the ordinary course of business.

c. Notwithstanding the foregoing, each Owner agrees to comply with all Environmental Laws.

3.8 **Taxes and Assessments.** Each Owner shall pay, or cause to be paid prior to delinquency, all taxes and assessments with respect to its Parcel, the Buildings, and improvements located thereon and any personal property owned or leased by such Owner in the Shopping Center, which, if remain unpaid could extinguish the easements and other terms and conditions set forth in this Agreement; provided that if the taxes or assessments or any part thereof may be paid in installments, the Owner may pay each such installment before the same becomes delinquent. Nothing contained in this Section 3.8 shall prevent any Owner from contesting at its cost and expense any such taxes and assessments with respect to its Parcel in any manner such Owner elects, so long as such contest is maintained with reasonable diligence and in good faith so long as the easements and other terms and conditions set forth in this Agreement are not impaired. At the time such contest is concluded (allowing for appeal to the highest appellate court or administrative agency), the contesting Owner shall promptly pay all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

ARTICLE IV
PARCEL RESTRICTIONS & STANDARDS; RIGHT OF FIRST REFUSAL

4.1 **Restricted Uses – Developer Parcel.** During the Term, no part of the Developer Parcel, New Parcel 1, and New Parcel 2 (and, with respect to item (g) below, the Meijer Parcel) shall be used, directly or indirectly, for the Operation of any of the following uses:

- a. A Hypermarket or Supercenter;
- b. A Membership Warehouse Club having a Floor Area of more than 30,000 square feet;
- c. A supermarket or grocery store, including so-called specialty food, ethnic food and health food store or a store that would not be classified as a supermarket or grocery store that has more than 7,500 square feet of Floor Area dedicated to the combination of the sale of fresh seafood, fresh deli, fresh produce and fresh meat (but nothing in this subsection c shall restrict vitamin stores such as GNC or Vitamin Shoppe, nor restrict any restaurant, nor restrict a store not to exceed 1,500 square feet in connection with a fueling facility pursuant to the last paragraph of this Section 4.1);
- d. A store whose primary business is the sale of spirits, liquor, beer, wine or other alcoholic beverages for consumption off the premises;
- e. A pharmacy selling prescription drugs;
- f. A fuel service station with free-standing pump(s), except that the foregoing is permissible on New Parcel 1 or New Parcel 2 (subject to the right of first refusal at the end of this Section 4.1); or
- g. (i) a free-standing warehouse, but such restriction shall not include a warehouse or storage facility or area that is incidental to a commercial or industrial use; (ii) any “second hand” store or “surplus” store; (iii) any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located behind or on the side of any building); (iv) any pawn shop, check cashing, short term loan, payday loan or other similar business (other than as may be provided by a state or federally-chartered bank or financial institution insured by the F.D.I.C. or replacement government agency); (v) any central laundry or dry cleaning plant; (vi) any mortuary or funeral home; (vii) any outdoor automobile, truck, trailer or recreational vehicles sales, leasing, display or repair; (viii) any kennel where animals are kept overnight (provided such use shall be permitted on the Meijer Parcel if such use is ancillary to the operation of Hypermarket or Supercenter and/or operated by a third-party tenant/licensee within a Hypermarket of Supercenter on the Meijer Parcel and provided that the foregoing shall not restrict a retail pet store such as PetSmart or Petco); (ix) any establishment selling or exhibiting pornographic materials; (x) any bingo parlor, or gaming, gambling, betting or game of chance business; (xi) any flea market; (xii) any video or similar amusement arcade, pool or billiard hall; (xiii) any tattoo parlor; (xiv) any so called “head shop;” (xv) any massage parlor (excluding a spa, medical massage clinic, or a location staffed by licensed massage therapists), sexually-oriented adult book store, sexually-oriented adult entertainment facility, sexually-oriented adult video store or establishment featuring a male or female adult revue or any other similar or related uses; (xvi) a cocktail lounge, tavern, (provided the operation of a bar or tavern shall be permitted, provided it is in connection with a full service, sit-down restaurant, current examples of which are Chili’s and Applebee’s); (xvii) any bowling alley, skating rink, soccer facility, or other sporting facility; and (xviii) any growing, delivering, transferring, supplying, dispensing, dispersing, distributing or selling, of marijuana, whether by prescription, medical recommendation or otherwise and whether consisting of live plants, seeds, seedlings or processed or harvested portions of the marijuana plant.

Nothing contained in this Section 4.1 shall restrict restaurants or any existing lease (to the extent such existing lease may permit any of the foregoing).

4.2 **Term of Restrictions.** The restrictions set forth within this Article IV shall continue for the longer of (i) twenty (20) years after the date of this Agreement, or (ii) so long as the Meijer Parcel is developed commercially.

4.3 **Right of First Refusal.** For so long as the Meijer Lease is in effect, if New Parcel 1 Owner or New Parcel 2 Owner shall at any time receive a bonafide offer from a third party to lease either New Parcel 1 or New Parcel 2 for use as a fuel service station with free standing pumps (each a “Proposed Offer”), New Parcel 1 Owner or New Parcel 2 Owner, before accepting such Proposed Offer, shall give notice in writing to Meijer of the Proposed Offer (the “Proposed Offer Notice”). Such Proposed Offer Notice shall specify the name and address of the party making the Proposed Offer, and the salient terms and conditions thereof. Meijer shall then have twenty (20) days from receipt of the Proposed Offer Notice to lease said property upon the same terms and conditions as are contained in such Proposed Offer Notice, and if Meijer shall either: (i) fail to exercise such right within such twenty (20) day period, or (ii) having timely exercised such right, fail to thereafter, within thirty (30) days form its exercise of such right, execute a written modification to the Meijer Lease for Meijer to lease New Parcel 1 or New Parcel 2 (as applicable) pursuant to the terms contained in such notice, then Meijer’s right to lease New Parcell 1 or New Parcel 2 (as applicable) shall be deemed waived with respect to such Proposed Offer, and New Parcel 1 Owner or New Parcel 2 Owner (as applicable) shall be entitled to lease New Parcel 1 or New Parcel 2 (as applicable) for use as a fuel service station with free standing pumps in accordance with the Proposed Offer. Notwithstanding the foregoing, in the event that the lease of New Parce 1 or New Parcel 2 (as applicable) is not completed in accordance with the terms and conditions originally set forth in the Proposed Offer, then New Parcel 1 Owner and New Parcel 2 Owner shall be obligated to deliver a Proposed Lease Notice for all future bona fide offers to lease New Parcel 1 or New Parcel 2, and Meijer shall then have twenty (20) days from receipt of such Proposed Offer Notice to lease said property upon the same terms and conditions as are contained in such Proposed Offer Notice.

ARTICLE V INSURANCE & INDEMNITY

5.1 **Property Insurance.** During the Term of this Agreement and subject to the right to self-insure set forth in Section 5.1(g), each Party shall, at its sole cost and expense, obtain and keep in force:

a. Commercial general liability insurance, including premises/operations, products/completed operations, blanket contractual liability, broad form property damage, independent contractors and personal/advertising injury coverage, fire and explosion legal liability, explosion/collapse/and underground hazard coverage in an amount not less than Three Million and No/100 Dollars (\$3,000,000.00) per occurrence; such policy shall be an occurrence policy and not a claims-made policy.

b. Each Party may satisfy its obligation under Section 5.1(a) by appropriate endorsement of its blanket insurance policies. Such insurance shall name the other Parties (and their parent and affiliated companies) as additional insureds on an endorsement acceptable to the other Parties. The additional insured endorsement shall extend coverage to the contractual liability and completed operations coverage. All liability policies maintained by a Party shall be written as primary policies, not contributing with and not in excess of coverage that any other Party may carry.

c. Automobile liability insurance including coverage for owned, hired, and non-owned automobiles. The limits of liability shall not be less than One Million and No/100 Dollars (\$1,000,000.00) combined single limit each accident for bodily injury and property damage combined.

d. Workers' Compensation coverage for its employees or contractors with statutory limits.

e. All insurance required in this Agreement and all renewals of it shall be issued by companies authorized to transact business within the state in which the Shopping Center is located.

f. Subject to the right to self-insure set forth in Section 5.1(g), each Party shall, upon the written request of another Party, promptly furnish the other Party with one (1) or more certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Agreement. No Party shall be required during any given 180-day period or term of the policy, whichever is shorter, to honor more than one (1) such request from another Party.

g. If a Party elects to self-insure all or a part of the insurance required in Section 5.1(a) through 5.1(d) hereof shall not apply to any Party or such Party's successors or assigns so long as such Party, or its direct or indirect parent company, maintains a net worth in excess of One Hundred Million and No/100 Dollars (\$100,000,000.00) as certified by an officer of such Party.

5.2 **Indemnification.** Each Party, for itself and its successors and assigns (each an "**Indemnifying Party**"), agrees to indemnify and hold the other Parties (each an "**Indemnified Party**") harmless from and against any loss or damage of any type or nature to the extent caused by the act or omission of an employee, agent or contractor of an Indemnifying Party while performing any construction, maintenance or repair activities on the Indemnified Party's Parcel for the benefit of the Indemnifying Party's Parcel or the Shopping Center, including, without limitation, attorneys' fees and costs. Without limiting the foregoing, the Indemnifying Party, its successors and assigns, agrees to indemnify, defend and hold the Indemnified Party harmless from and against any claims, loss or damage of any type or nature arising out of or related to the extent asserted by an Occupant of the Indemnifying Party's Parcel, that asserts that the terms and conditions of any lease, sublease, license, concession, or other similar agreement to which an Occupant of the Indemnifying Party's Parcel is a party are superior to or conflict with the terms and conditions of this Agreement.

ARTICLE VI DAMAGE TO IMPROVEMENTS

6.1 **Restoration of Common Area.** In the event of any damage or destruction to the Common Area on any Parcel, whether insured or uninsured, the Owner with respect to such Parcel shall restore, repair or rebuild such Common Area with all due diligence as nearly as possible to at least as good a condition as it was in immediately prior to such damage or destruction.

6.2 **Restoration of Buildings.** In the event of damage to or destruction of the Building(s) on an Owner's Parcel, such Owner may, but shall not be obligated to, restore and reconstruct such Building(s) within such Owner's Building Area. In the event an Owner so elects, such Owner shall restore and reconstruct such Building(s) to at least as good a condition as it or they were in immediately prior to such damage or destruction. All such restoration and reconstruction shall be performed in accordance with the following requirements, as the same are applicable thereto: (a) no such work shall be commenced which would alter the Common Area from the condition prior to such casualty unless the Owner desiring to perform the same has in each instance complied with the appropriate provisions of this Agreement; and (b) all work shall be performed in a good and workmanlike manner in accordance with this Agreement, and

shall be done such that the Common Areas and Buildings affected continue to conform to and comply with this Agreement. All such work shall be completed with due diligence, and at the sole cost and expense of the Owner performing the same.

6.3 **Clearing of Premises.** Whenever an Owner elects not to restore, repair or rebuild its Building(s) that has or have been damaged or destroyed, such Owner, at its sole cost and expense, and as soon as reasonably possible, shall raze such Building(s) or such part thereof as has or have been damaged or destroyed, clear the premises of all debris, and all areas not restored to their original use shall, at the expense of such Owner, be leveled, cleared and improved with, at the option of the Owner of such Parcel, either landscaping or Parking Area, of like standard and design as the Common Area of the Shopping Center.

ARTICLE VII EMINENT DOMAIN

In the event any part of the Shopping Center, including any Common Areas, shall be taken by eminent domain or any other similar authority of law, the entire award for value of the land and improvements so taken shall belong to the Owner whose property was so taken or its Mortgagees or Occupants as their interests may appear, and the other Owner (or Owners, as the case may be) shall not claim any portion of such award by virtue of any interests created by this Agreement. However, the other Owner (or Owners, as the case may be) may file a claim with the condemning authority over and above the value of the property so taken to the extent of any damage suffered by such Owner (or Owners, as the case may be) resulting from the severance of such area taken. The Owner whose property was so condemned shall promptly repair and restore in accordance with this Agreement the remaining portion of its Parcel as nearly as practicable to the condition existing just prior to such condemnation without contribution from the other Owners.

ARTICLE VIII ENFORCEMENT

8.1 **Legal Action Generally.** If any of the Owners breaches any provision of this Agreement, then any other Owner may institute legal action against the defaulting Owner for specific performance, injunction, declaratory relief, damages, or any other remedy provided by law. All remedies herein or at law shall be cumulative and not inclusive. As used herein, any reference to rights or remedies “at law” or “under applicable law” shall also include any rights or remedies “in equity.”

8.2 **Injunctive and Declaratory Relief.** In the event of any violation or threatened violation by any Owner or Occupant of the Shopping Center (or any portion thereof) of any of the terms, covenants, conditions, and restrictions herein contained, in addition to any other remedies provided for in this Agreement, any Owner shall have the right to enjoin such violation or threatened violation and to bring an action for declaratory relief in a court of competent jurisdiction.

8.3 **Defaults; Self-Help.** If a Party shall default in the performance of an obligation of such Party under this Agreement (a “**Defaulting Party**”), any other non-defaulting Party (a “**Non-defaulting Party**”), shall, in addition to all other remedies the Non-defaulting Party may have at law or in equity, after thirty (30) days’ prior written notice to the Defaulting Party, have the right of “self help” to perform such obligation on behalf of the Defaulting Party; provided, however, that in the event of an emergency, a Non-defaulting Party may exercise the right of self-help if such failure is not cured within a period reasonable for the nature and circumstances of such emergency. In such event, the Defaulting Party shall, following receipt of invoice and reasonably documentation of such costs, promptly reimburse the Non-defaulting Party the reasonable, actual out-of-pocket cost thereof, together with interest thereon from the 31st day following the date of outlay at a rate equal to ten percent (10%) in excess of the prime interest rate published

in the money rates section of the Wall Street Journal. To the extent that a Non-defaulting Party must enter upon the property of the Defaulting Party in order to exercise such right of “self help,” the Defaulting Party hereby grants such Non-defaulting Party a license to enter and perform such obligation.

8.4 **Non-waiver.** No delay or omission of any Owner in the exercise of any right accruing upon any default of any other Owner shall impair such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any Owner of a breach of, or a default in, any of the terms and conditions of this Agreement by any other Owner shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Agreement.

8.5 **Non-terminable Agreement.** No breach of the provisions of this Agreement shall entitle any Owner to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies which any Owner may have hereunder by reason of any breach of the provisions of this Agreement. No breach of the provisions of this Agreement shall defeat or render invalid the lien of any mortgage made in good faith for value covering any part of the Shopping Center, and any improvements thereon.

8.6 **Force Majeure.** In the event any Owner shall be delayed or hindered in or prevented from the performance of any act required to be performed by such Owner by reason of a “Force Majeure Event” (as defined below), then the time for performance of such act shall be extended for a period equivalent to the period of such delay. As used in this Agreement, a Force Majeure Event means any acts of God, strikes, lockouts, unavailability of materials, failure of power, prohibitive governmental laws or regulations, riots, wars, epidemic, pandemic, insurrections, the act or failure to act of the other Owner, adverse weather conditions which are unusual for the general geographic area in which the Shopping Center is located and which prevent the performance of work as certified to by an architect, war or other reason beyond such Owner’s reasonable control. For the avoidance of doubt, a Force Majeure Event shall not include lack of adequate funds, financial inability to perform, inability to make a profit or avoid a financial loss, or changes in market prices or conditions.

ARTICLE IX

EFFECT OF INSTRUMENT

9.1 **Mortgage Subordination.** Any Mortgage affecting any portion of the Shopping Center shall at all times be subject and subordinate to the terms of this Agreement, except to the extent expressly otherwise provided herein, and any party foreclosing any such Mortgage or acquiring title by deed in lieu of foreclosure or trustee’s sale shall acquire title subject to all of the terms and provisions of this Agreement. Each Owner represents and warrants to the other Owners that there is no presently existing Mortgage lien on its Parcel, other than Mortgage liens that are expressly subordinate to this Agreement and which have provided its consent to this Agreement as contemplated herein.

9.2 **Binding Effect.** Every agreement, covenant, promise, undertaking, condition, easement, right, privilege, option and restriction made, granted or assumed, as the case may be, by any Owner is made by such Owner not only for the benefit of the other Owners, but also as Owner of a portion of the Shopping Center and shall run with the land and constitute an equitable servitude on the portion of the Shopping Center owned by such Owner appurtenant to and for the benefit of the other Parcels comprising the Shopping Center and shall survive the total or partial destruction of the subject matter of the easement and/or the servient tenement of such grant. Each and all of the covenants and agreements in this Agreement to be performed by or on the part of either Party, whether affirmative or negative in nature, shall be construed as covenants and not as conditions. Any transferee of any part of the Shopping Center shall

automatically be deemed, by acceptance of the title to any portion of the Shopping Center, to have assumed all obligations of this Agreement relating thereto and to have agreed with the then Owner or Owners of all other portions of the Shopping Center to execute any and all instruments and to do any and all things reasonably required to carry out the intention of this Agreement. The transfer of all or any portion of a Parcel shall be accompanied by a written notice of transfer, which shall include at least the name and address of the transferee and a copy of the legal description of the portion of the Shopping Center transferred.

9.3 **Non-Dedication.** Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general public or for any public use or purpose whatsoever. Nothing in this Agreement, expressed or implied, shall confer upon any person, other than the Parties and their successors and assigns, any rights or remedies under or by reason of this Agreement.

ARTICLE X GENERAL

10.1 **No Covenant to Build.** This Agreement shall not create or impose any obligation on any Owner to build, open, operate, or continuously operate, a business or any particular business on the its respective Parcel. Each Owner (for itself and any Occupants of such Owner) hereby acknowledges and agrees that it is not relying upon any other Owner or Occupant to construct a Building on such other Owner's Parcel.

10.2 **Representations and Warranties.**

a. Developer represents and warrants to the Parties that as of the Effective Date, (i) Developer is the owner of fee simple title to the Developer Parcel, (ii) Developer has the capacity and authority to enter into this Agreement without the consent of any third party, and (iii) to Developer's knowledge, Developer has not entered into any agreements, oral or written, and is not subject to any judgment or decree of a court of competent jurisdiction or governmental agency, that would limit or restrict Developer's right to enter into and carry out this Agreement or limit or preclude the Parties' enforcement of the terms of this Agreement against the Developer Parcel.

b. Meijer Parcel Owner represents and warrants to the Parties that as of the Effective Date, (i) Meijer Parcel Owner is the owner of fee simple title to the Meijer Parcel, (ii) Meijer Parcel Owner has the capacity and authority to enter into this Agreement without the consent of any third party, and (iii) to Meijer Parcel Owner's knowledge, Meijer Parcel Owner has not entered into any agreements, oral or written, and is not subject to any judgment or decree of a court of competent jurisdiction or governmental agency, that would limit or restrict Meijer Parcel Owner's right to enter into and carry out this Agreement or limit or preclude the Parties' enforcement of the terms of this Agreement against the Meijer Parcel.

c. New Parcel 1 Owner represents and warrants to the Parties that as of the Effective Date, (i) New Parcel 1 Owner is the owner of fee simple title to the New Parcel 1, (ii) New Parcel 1 Owner has the capacity and authority to enter into this Agreement without the consent of any third party, and (iii) to New Parcel 1 Owner's knowledge, New Parcel 1 has not entered into any agreements, oral or written, and is not subject to any judgment or decree of a court of competent jurisdiction or governmental agency, that would limit or restrict New Parcel 1 Owner's right to enter into and carry out this Agreement or limit or preclude the Parties' enforcement of the terms of this Agreement against the New Parcel 1.

d. New Parcel 2 Owner represents and warrants to the Parties that as of the Effective Date, (i) New Parcel 2 Owner is the owner of fee simple title to the New Parcel 2, (ii) New Parcel 2 Owner has the capacity and authority to enter into this Agreement without the consent of any third party, and (iii) to New Parcel 2 Owner's knowledge, New Parcel 2 Owner has not entered into any agreements, oral or written,

and is not subject to any judgment or decree of a court of competent jurisdiction or governmental agency, that would limit or restrict New Parcel 2 Owner's right to enter into and carry out this Agreement or limit or preclude the Parties' enforcement of the terms of this Agreement against the New Parcel 2.

10.3 **Easements and Covenants Running With the Land.**

a. Each of the easements granted by this Agreement shall constitute a servitude on the property of the grantor and an appurtenance to the property of the grantee, shall survive the total or partial destruction of the subject matter of the easement and/or the servient tenement of such grant, and shall run with the land. The grantee of any such easement may extend the benefits thereof to each of its tenants and/or occupants of the benefitted property. An estate for whose benefit an easement is established hereunder shall for the purposes of this Section 10.3 be deemed to be the grantee of such easement.

b. Each and all of the covenants and agreements in this Agreement to be performed by or on the part of a Party, whether affirmative or negative in nature, shall be construed as covenants and not as conditions. To the fullest extent permitted by law, all such covenants by a Party shall run with the land to the end that the covenants of a Party undertaking a burden on its Parcel shall be appurtenant to the benefitted Parcels, except as otherwise provided, and shall constitute covenants running with the land as between the respective Parcels, with the benefitted Parcel as the dominant tenement, and the burdened Parcel as the servient tenement.

10.4 **Exhibits.** All exhibits and schedules to this Agreement are by this reference made a part of this Agreement to the same extent as if the same had been written directly within the body of this Agreement.

10.5 **Rights Cumulative.** All rights, powers and privileges conferred hereunder shall be cumulative and not restricted to those given by law.

10.6 **Partial Invalidity.** If any covenant, term or condition of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such covenant, term or condition shall not be affected thereby.

10.7 **Governing Law.** This Agreement shall be construed according to, and be governed by, the laws of the state in which the Shopping Center is located.

10.8 **Waiver of Performance by Any Party.** One or more waivers of any covenant, term or condition of this Agreement by any Party shall not be construed as a waiver of a subsequent breach of the same or any other covenant, term or condition; nor shall any delay or omission by any Party to seek a remedy for any breach of this Agreement or to exercise a right accruing to such Party by reason of such breach be deemed a waiver by such Party of its remedies or rights with respect to such breach. The consent or approval by any Party to or of any act by another Party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any similar act.

10.9 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

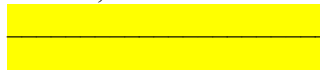
10.10 **Intentionally Omitted.**

10.11 **Modification.** This Agreement may not be modified, changed, supplemented or terminated, in whole or in part, except by written instrument signed by the Approving Parties for the Developer Parcel and the Meijer Parcel, and recorded in the Official Records.

10.12 **Meijer Lease.** Upon the expiration or early termination of the Meijer Lease, any rights or obligations of Meijer under this Agreement shall automatically transfer to the Meijer Parcel Owner.

10.13 **Notice.** Any notice, demand, consent, approval, request, statement, document or other communication required or permitted to be given to or served upon either Party hereto pursuant to this Agreement or applicable law shall be in writing and shall be sent by certified mail or by a recognized national courier service, such as, but not limited to, Federal Express or United Parcel Service, postage prepaid, and shall be deemed to have been given on the day after the date on which the notice was delivered to the overnight courier for delivery, or two days after the date the notice was postmarked if the notice was sent by certified mail. Either Parties may, upon ten (10) days' prior notice to the other Parties, designate a different address or different addresses to which communications intended for such Party are to be sent. Each Party's initial address for notices pursuant to this Section 10.12 are:

If to Developer: Robert G. Nieto, Managing Member
4065 Hedgewood Drive
Medina, Ohio 44256





If to Meijer Parcel Owner: DEL 570 II, LLC
7978 Cooper Creek Boulevard
Suite #100
University Park, Florida 34201
Attn: Legal Department

If to Meijer: Meijer
2929 Walker Ave. NW
Grand Rapids, Michigan 49544
Attention: Real Estate Department

With a copy to:

Meijer
2929 Walker Ave. NW
Grand Rapids, Michigan 49544
Attention: Legal Department (Real Estate)

If to New Parcel 1 Owner: 
7978 Cooper Creek Boulevard
Suite #100
University Park, Florida 34201
Attn: Legal Department

If to New Parcel 2 Owner: 
7978 Cooper Creek Boulevard
Suite #100
University Park, Florida 34201
Attn: Legal Department

10.14 **Time of Essence.** Time is of the essence in the performance of the terms and conditions of this Agreement.

10.15 **Estoppel Certificate.** Each Party covenants that within 15 business days after written request of the other Party, it will from time to time, but not more than twice in any twelve (12) month period, issue to another Party, to a prospective purchaser or lender or to any mortgagee of such Party, an estoppel certificate certifying to the best knowledge of the Party to whom the request has been directed: (i) whether any default of the requesting Party exists under this Agreement and, if there are known defaults, specifying the nature thereof; (ii) whether this Agreement has been modified or amended in any way (or if it has, then stating the nature thereof); (iii) whether this Agreement is, as of that date, in full force and effect, and (iv) whether there have been any modifications or amendments to the Storm Water System Manual adopted in accordance with this Agreement. Any Party to whom the estoppel certificate request has been directed may, but shall not be required to, certify as to other matters related to this Agreement.

10.16 **Rule of Construction.** The Parties acknowledge and agree that each Party has reviewed and negotiated this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement, or any portion hereof, or any exhibits or amendments or agreements supplementary hereto.

10.17 **Defined Terms.** Certain terms in this Agreement have been given specially defined meanings. The defined terms may be used in the singular or plural or in varying tenses or forms but such variations shall not affect their defined meaning so long as they are written with initial capital letters.

10.18 **No Joint Venture.** Nothing contained in this Agreement shall be construed to make the Parties hereto partners or joint venturers or to render any Party liable for the debts or obligations of any other Party, except as this Agreement may expressly provide.

10.19 **Agreement for Benefit of Parties Only.** This Agreement is not intended to and shall not be construed to dedicate any rights or easements to the general public, nor to benefit any third parties which are not either Parties or their successors or assigns.

10.20 **Right to Enjoin.** In the event of any violation or threatened violation by any Party or Occupant of any term, restriction, condition or covenant of the terms of this Agreement, the Party not in violation shall have the right, to seek actual damages or to enjoin such violation or threatened violation in a court of competent jurisdiction.

10.21 **Attorneys Fees.** In the event either Party commences or engages in any legal action or proceeding against the other (including, without limitation, litigation or arbitration, whether in contract, tort or both) arising out of or in connection with this Agreement or the Shopping Center (including, without limitation, (a) the enforcement or interpretation of either Party's rights or obligations under this Agreement, or (b) the declaration of any rights or obligations under this Agreement), the prevailing Party shall be entitled to recover from the non-prevailing Party, the prevailing Party's reasonable documented attorney's fees, together with any costs and expenses, incurred in any such action or proceeding, including any reasonable attorney's fees, costs, and expenses incurred on collection and on appeal.

10.22 **Arbitration.** Except where another dispute resolution procedure has been specifically provided for in this Agreement (unless such dispute is not resolved using such procedure), any and all disputes, claims, or other controversy arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association, and judgment on the award

rendered by the arbitrator(s) may be entered in any court of competent jurisdiction. Within fifteen (15) days after either of the Parties shall have notified another that it desires arbitration, the Parties shall attempt to agree upon one arbitrator to conduct the arbitration; if the Parties cannot agree upon one arbitrator within said fifteen (15)-day period, each Party shall select one arbitrator, and the two arbitrators so selected shall select a third arbitrator; and if they cannot agree, the procedures set forth in this Section 10.21 with respect to completing the panel of arbitrators shall apply.

a. If any of the Parties shall fail to make a choice within the time herein provided, then the Party not in default in selecting an arbitrator, may upon five days' notice to the other Party request the presiding judge of the District Court of the United States for the district in which the Shopping Center is located acting in his private and non-judicial capacity to choose an arbitrator or arbitrators to fill the vacancy or vacancies. Such judge may thereupon appoint an arbitrator or arbitrators, as the case may be, to complete the panel of three arbitrators. If such judge shall fail or refuse to make such appointment, the arbitrator or arbitrators needed to complete the panel shall be named or appointed in accordance with the prevailing laws applicable to this Agreement.

b. Either the one arbitrator, or the three arbitrators, as the case may be, upon being duly appointed shall investigate the facts and hold hearings at which the Parties hereto may present their evidence and arguments. A decision by the one, or a majority vote of the three arbitrators shall be rendered within sixty (60) days after the date upon which the last arbitrator is appointed. Such decision shall be final and binding on the Parties. If the arbitrator(s) shall fail to render a decision within said period of sixty (60) days, then either Party shall have the right to institute such action or proceeding in such court as such Party shall deem appropriate in the circumstances. Judgment upon the award rendered in such arbitration may be entered by any court having jurisdiction thereof. In determining any question, matter or dispute before them, the arbitrators shall apply the provisions of this Agreement, without varying therefrom in any respect and shall be without power to add to, modify or change any of said provisions.

c. No Party shall be considered in default hereunder during the pending of arbitration proceedings relating to such default.

d. The arbitrator(s) shall determine in what proportion the Parties hereto shall bear the cost of such arbitration, except that each Party thereto shall pay the fees and expenses of the arbitrator appointed by or on behalf of such Party and one-half of the fees and expenses of the third arbitrator, if any.

10.23 Waiver of Jury Trial. Each Party hereby waives trial by jury, to the extent permitted by law, in any action, proceeding or counterclaim brought by a Party against any other Party hereto or any matter whatsoever arising out of or in any way connected with this Agreement, the relationship of the Parties, the use or occupancy of the Parties' respective parcels or any person claiming through or under a Party, any claim of injury or damage, and any emergency or other statutory remedy; provided, however, the foregoing waiver shall not apply to any action for personal injury or property damage.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered in multiple counterparts, each counterpart being deemed an original, to be as of the Effective Date.

[Signature Pages Follow]