

ORDINANCE #67157
Board Bill No. 45

An Ordinance, authorizing and directing the Treasurer of the City of St. Louis, acting in his capacity as Supervisor of Parking Meters (“Treasurer”) to sell to Opus NWR Development LLC (“Opus”) rights to build a retail parcel and a condominium parcel on land belonging to the Treasurer in City Block 3884; and authorizing the Treasurer and other City Officials to enter into a declaration of reciprocal easements, covenants, conditions and restrictions and such other documents as many be necessary to develop the property as a mixed use public parking facility, retail and condominium development, and containing a severability clause and an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

WHEREAS, The Treasurer owns a parcel of real property in City Block 3884, located at the southwest corner of Euclid and Buckingham Court (vacated): and

WHEREAS, The Treasurer and Opus have proposed to vertically develop the real estate as three (3) separate and interdependent projects; a public parking garage containing approximately 170 parking spaces (the “Public Parking Project”), approximately 52 residential condominium units (the “Condominium Project”), and approximately 6000 square feet of retail space (the “Retail Project”) (all the projects collectively referred to as the “Project”) within a single building (the “Building”) consisting of a total of seven levels, six of which shall be located at or above grade and one of which will be located below grade; and,

WHEREAS, to facilitate the development of the Project, the Treasurer will continue to own the fee simple title to the land and the Public Parking Project, and Opus desires to own the fee simple title to the Retail Project and the Condominium Project; and,

WHEREAS, the Treasurer has agreed to sell to Opus, and Opus has agreed to Purchase from Treasurer the Retail Project parcel and the Condominium Project parcel; and,

WHEREAS, the Treasurer and Opus desire to enter into a declaration of reciprocal easements, covenants and conditions and restrictions and such other documents as may be necessary to construct, develop, operate, and maintain the Project;

BE IT ORDAINED BY THE CITY OF ST. LOUIS, AS FOLLOWS:

SECTION ONE. Authorization to enter into Purchase Agreement with First Amendment (“Purchase Agreement”). The Treasurer is hereby authorized and directed to sell to Opus at a price of five hundred thousand dollars (\$500,000) rights to develop and own a Condominium Project and Retail Project on certain real estate belonging to the Treasurer. The Purchase Agreement, in the form attached hereto as EXHIBIT A, is hereby approved on behalf of the City of St. Louis. The Treasurer and other appropriate City officials are hereby authorized and directed to execute and deliver the Purchase Agreement in such form and with such changes, modifications or completions thereof, not inconsistent with the provisions of this Ordinance, as the City officials executing the same shall approve, and the Register is hereby authorized and directed to affix the corporate seal of the City thereto and to attest the same, and the signature of the City officials executing the same shall be conclusive as to their approval of such changes, modifications, or completions on behalf of the City.

SECTION TWO. Authorization of Declaration of Reciprocal Easements, Covenants, Conditions and Restrictions. The Treasurer is hereby authorized and directed to enter into a declaration of reciprocal easements, covenants and conditions and restrictions to govern the rights and obligations of the parties owning the three projects. The Declaration of Reciprocal Easements, Covenants, Conditions and Restrictions, in the attached as EXHIBIT B, is hereby approved on behalf of the City of St. Louis. The Treasurer and other appropriate City officials are hereby authorized and directed to execute and deliver the Declaration of Reciprocal Easements, Covenants, Conditions and Restrictions in such form and with such changes, modifications or completions thereof, not inconsistent with the provisions of this Ordinance, as the City officials executing the same shall approve, and the Register is hereby authorized and directed to affix the corporate seal of the City thereto and to attest the same, and the signature of the City officials executing the same shall be conclusive as to their approval of such changes, modifications, or completions on behalf of the City.

SECTION THREE. Special Warranty Deed. The Treasurer is hereby authorized and directed to execute and deliver a Special Warranty Deed to Opus providing for the right to develop and own a Condominium Project and Retail Project on certain real estate belonging to the Treasurer as provided for in EXHIBIT A.

SECTION FOUR. Further Authority. The Mayor, the Comptroller, the Treasurer and other appropriate City officials

are hereby authorized and directed to take such further actions and execute and deliver such other documents, certificates and instruments as may be necessary or desirable to carry out the sale of the real property and the intent of this Ordinance.

SECTION FIVE. Severability. The sections of this Ordinance shall be severable. In the event that any section of this Ordinance is found by a court of competent jurisdiction to be unconstitutional, the remaining sections of this Ordinance shall remain valid, unless the Court finds the valid sections of this Ordinance are so essentially and inseparably connected with, and do depend upon, the void section, that it cannot be presumed that the Board of Aldermen would have enacted the valid sections without the void ones; or unless the court finds the valid sections, standing alone, are incomplete and incapable of being executed in accordance with the legislative intent.

SECTION SIX. Emergency. This being an Ordinance integral to the provision of a public work, it is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis, and therefore, this Ordinance shall become effective immediately upon its passage and approval by the Mayor.

EXHIBIT A - Purchase Agreement, **EXHIBIT A** - Description of Parcel, **EXHIBIT B** - Description of Public Parking, **EXHIBIT C** - Definitions, **EXHIBIT D** - Permitted Exemptions, EXHIBIT E - Section 13.3 of FTA Contract, FIRST AMENDMENT TO PURCHASE AGREEMENT is on file in the Register Office.

EXHIBIT B

-----Reserved for Recording Data-----

This instrument was prepared by
and after recording return to:

D. Albert Daspin
Daspin & Aument, LLP
227 West Monroe Street, Suite 3500
Chicago, Illinois 60606

**DECLARATION OF RECIPROCAL EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS
[PARK EAST LOFTS]**

THIS DECLARATION OF RECIPROCAL EASEMENTS, COVENANTS CONDITIONS AND RESTRICTIONS ("Declaration") is made as of _____, 2006, by Opus NWR Development, L.L.C., a Delaware limited liability company ("Declarant").

RECITALS

A. Declarant anticipates vertically developing that certain parcel of real property, having an area of approximately 39,000 square feet located north of the northwest corner of Euclid Avenue and Laclede Avenue, City of St. Louis, Missouri (the "**City**"), which is approximately depicted on Exhibit A, attached hereto and made a part hereof (collectively, the "**Parcel**"), as three (3) separate and interdependent projects within a single building (such building, together with any renewals or replacements thereof, is sometimes hereinafter referred to as the "**Building**") to be constructed by Declarant on the Parcel, consisting of a total of eight levels, six of which shall be located at or above grade and two of which will be located below grade.

B. In connection with Declarant's proposed development of certain portions of the Parcel, the Parcel has been vertically subdivided into three tracts, depicted as Tract 1, Tract 2 and Tract 3 on Exhibit A-1 attached hereto and made a part hereof, and legally described on Exhibit B attached hereto and made a part hereof, which such tracts, together with the buildings and improvements on each, if any, are sometimes hereinafter referred to individually as a "**Tract**" and collectively as the "**Tracts**" or the "**Project**." The Project is commonly known as Park East Lofts.

C. The Treasurer of the City of St. Louis, Missouri, acting in his capacity as the Supervisor of Parking Meters, a Missouri municipal corporation (the "**Treasurer**"), is the owner of Tract 1, which is anticipated to contain the Common Areas (as hereinafter defined) and that part of the Building proposed to be developed for public parking purposes containing, among other things, approximately 180 parking spaces in the aggregate and related improvements, including, without limitation, all necessary

mechanical areas, elevator shafts, stairwells, and similar improvements, located in the below-grade levels, a portion of the ground floor, and a portion of the first above-grade level of the Building.

D. Declarant is the owner of Tract 2, which is anticipated to contain that part of the Building proposed to be developed for retail purposes containing approximately 6,100 square feet of retail space and related improvements located in a portion of the ground floor of the Building. Tract 2 is above the portion of Tract 1 on the below-grade level of the Building, adjacent to the portions of Tract 1 and Tract 3 located on the ground floor of the Building.

E. Declarant is the owner Tract 3, which is anticipated to contain that part of the Building proposed to be developed for residential condominium purposes comprised of one partial floor and three full floors of above-grade residential condominium space containing approximately 52 condominium units, approximately 67 parking spaces located on the second and third levels of the Building, and related improvements, including, without limitation, certain ground floor space to be used for condominium lobby, mechanical, elevator and stairwell purposes and those columns of space within which all mechanical areas, elevator shafts, stairwells and similar improvements which are necessary to permit the operation of the proposed residential condominium improvements are anticipated to be constructed as part of the proposed residential condominium improvements. Tract 3 is primarily above Tract 1 and Tract 2, with the portion thereof containing certain mechanical areas, elevator shafts, stairwells, ground floor lobby and administration office areas located adjacent to the ground floor portion of Tract 1 and Tract 2.

F. Declarant desires to impose certain easements, covenants, conditions and restrictions upon the Tracts for the purpose of facilitating the economic and related development of the Project.

NOW, THEREFORE, in connection with the development of the Project, Declarant does hereby declare that each of the following grants, easements, covenants, conditions and restrictions shall exist at all times hereafter and be binding upon, and inure to the benefit of, each Tract in the Project.

1. **EASEMENT DECLARATIONS AND GRANTS.**

(a) **Access.** Subject to the conditions and limitations hereinafter set forth, Declarant hereby declares and grants for the benefit of each of the Tracts, a nonexclusive easement appurtenant to each Tract, upon, over and across the access areas (including all emergency exit corridors and hallways within the Building), driveways, sidewalks, and walkways of the Tracts, all as shown and depicted on Exhibit A as the same may exist from time to time, for the purpose of providing the owner from time to time of each Tract and its tenants and occupants and their respective employees, customers, agents and invitees having business in the Project with (i) vehicular, pedestrian and bike ingress and egress to, from and between each Tract, and (ii) use of the driveways of the Project for access to Euclid Avenue. Nothing herein contained shall be construed to provide any parking rights on any Tract to the owner of any other Tract or its tenants or occupants or their respective employees, customers, agents or invitees having business in the Project.

(b) **Utilities.** Subject to the conditions and limitations hereinafter set forth, Declarant hereby declares and grants for the benefit of each Tract, a non-exclusive easement appurtenant to each such Tract over, across, upon and under each of the other Tracts for the use for their intended purposes of all Utility Systems (as defined below) located, or to be located, in the improvements constructed within each of the other Tracts and connected, or to be connected, to the Utility Systems located in the applicable Tract which provide or shall be necessary to provide such applicable Tract with any utilities or other services or which may otherwise be necessary to the operation of the improvements located within such applicable Tract, together with the right of access to such Utility Systems within each of the other Tracts and areas adjacent thereto as may be reasonably and temporarily necessary for purposes of installing, maintaining, repairing, replacing, and renewing the same.

For purposes hereof, the term "**Utility Systems**" shall mean all components, and any replacements, renewals or substitutions therefor, of the storm water, sanitary sewer and waste, domestic water, gas, electrical, telephone, cable television, communication, central air handling and fan, temperature control, combination stand pipe and low-level sprinkler, detector and alarm, master antenna, emergency power, elevator, lighting protection and any other utility systems forming a part of the improvements constructed within any Tract and designed or utilized to furnish utility and/or any other utility services to any portion of such improvements, including without limitation, enunciators, antennae boxes, brackets, cabinets, cables, coils, computers, conduits, controls, control centers, cooling towers, couplers, devices, ducts, elevator cars, equipment, fans, fixtures, generators, hangers, heat traces, indicators, junctions, lines, machines, meters, motors, outlets, panels, pipes, pumps, radiators, risers, shafts, starters, switches and switchboards, systems, tanks, transformers, valves, wiring and the like. The owner of each Tract shall not permit the flow of toxic or hazardous substances or any other substance from such Tract into the storm water system, the sanitary sewer system or any other utility system which is not permitted to be discharged into the storm water system, the sanitary sewer system or any other utility system serving the Project by any applicable law, statute or regulation or otherwise

(c) Maintenance. Subject to the conditions and limitations hereinafter set forth, Declarant hereby declares and grants for the benefit of each of the Tracts, a non-exclusive easement appurtenant to each Tract over, across, upon and under those portions of each of the other Tracts as may be necessary for the purpose of permitting the owner of the applicable Tract to perform its obligations in accordance with the provisions of Section 4(c) and Section 4(d) of this Declaration.

(d) Building Construction. Subject to the conditions and limitations hereinafter set forth, Declarant hereby declares and grants for the benefit of each Tract a non-exclusive easement appurtenant to each such Tract, over, across, upon and under the portions of each of the other Tracts as may be temporarily and reasonably necessary for the purpose of constructing and installing the buildings and improvements approved by Declarant ("**Constructed Improvements**") within such Tract.

(e) Encroachment. Subject to the conditions and limitations hereinafter set forth, Declarant hereby declares and grants for the benefit of each Tract, a non-exclusive easement appurtenant to each such Tract over, across, upon and under each of the other Tracts for encroachments of the improvements constructed within the applicable Tract, in the event and to the extent that, by reason of the original construction of the improvements constructed within such applicable Tract or the subsequent settlement or shifting of any part of such improvements, any part of such improvements encroaches or shall hereafter encroach upon any portion of such other Tract for as long as the encroaching portion of such improvements continues to exist, together with the right of access to such encroaching improvements and areas adjacent thereto as may be reasonably and temporarily necessary for purposes of maintaining and repairing the same.

(f) Structural Support. Subject to the conditions and limitations hereinafter set forth, Declarant hereby declares and grants for the benefit of each Tract, a non-exclusive easement appurtenant to each such Tract, in and to all structural members, footings, caissons, foundations, columns and beams and any other supporting components located in or constituting a part of each of the other Tracts for the support of the improvements located within the applicable Tract and any facilities located in such other Tract with respect to which the owner of the applicable Tract is granted an easement pursuant to this Declaration, together with the right of access to such supporting components and areas adjacent thereto as may be reasonably and temporarily necessary for purposes of installing, maintaining, repairing, replacing, and renewing such structural members, footings, caissons, foundations, columns and beams and other supporting components.

(g) Structural Support Maintenance. Declarant hereby reserves to itself and declares and grants for the benefit of Tract 3, a non-exclusive easement appurtenant to Tract 3, over, across, upon and under those portions of the Tracts as may be necessary for the purpose of permitting Declarant to perform its obligations in accordance with the provisions of Section 4(c) of this Declaration.

(h) Common Areas Construction. Declarant hereby reserves for itself and declares and grants for the benefit of Tract 3, a non-exclusive easement appurtenant to Tract 3, over, across, upon and under those portions of the Common Areas and the Tracts as may be necessary for the purpose of permitting Declarant to construct, install, maintain, repair, replace and renew the improvements thereon including, without limitation, the entrance areas of the Project, the Common Areas improvements, utility lines, irrigation systems and other utilities and systems located outside the Building which service any part of the Project, and the like.

(i) Miscellaneous. The owner of each Tract, in the exercise and use of the rights and privileges herein granted, will not create a nuisance or do any act which would materially and adversely affect the Project or part thereof. Any work to be performed in connection with the easement rights granted herein shall be subject to the provisions of Section 4(b)(i) hereof, and the owner(s) of the Tract(s) benefitted thereby shall, at their sole cost and expense, comply with the same; if more than one Tract is benefitted by such easement rights, the cost of compliance shall be equitably shared between such Tracts based upon the nature and extent of the easement rights benefitting each such Tract.

Declarant hereby reserves non-exclusive easements under, over, through and across the sidewalks, driveways, parking areas, ramps, landscaping, walkways, aisles, or retaining walls on any of the Tracts and all other areas of any of the Tracts, including the areas within the Building, for the purposes of installing, maintaining, repairing, replacing, renewing and using the Utility Systems which are or may be located in the Project to service any part of the Project, including any of the Tracts. Each Tract owner shall maintain any private utility lines located on its respective Tract (and, if required by the public utility, any public utility located on its respective Tract). If any such utility line is used exclusively by another Tract owner, then said other Tract owner shall be solely responsible for the maintenance of said utility lines and the costs of such maintenance; if more than one Tract is benefitted by any such utility line, then the maintenance of said utility lines, and the costs of such maintenance, shall be equitably shared between such Tracts based upon the nature and extent of the benefit of such utility line to each such Tract. Declarant covenants that in the exercise of the easements hereby reserved, Declarant shall not disturb any Tract owner's use of its Tract except as reasonably and temporarily necessary, and Declarant shall interfere with the business being operated on any such Tract as little as reasonably possible in the

exercise of Declarant's rights herein.

2. **DURATION.** The easements, covenants, conditions and restrictions herein contained shall be perpetual, shall create mutual benefits and covenants running with the land and shall be binding upon any owner, tenant, or occupant of the Project and their respective heirs, personal representatives, successors and assigns.

3. **COMMON AREAS.** The sidewalks, access driveways, recreation areas, landscaping, walkways, and other facilities of the Project located outside the Building and designed for use by all tenants and occupants of the Project, and their employees, agents, customers and invitees, as shown on Exhibit A as the same may exist from time to time, are herein together referred to as the "Common Areas". The Common Areas shall not include any portion of the Building (including any appurtenant canopies, supports and other outward extensions). The Common Areas shall not be used for any purpose other than pedestrian movement and the passage of motor vehicles and parking and passage of bicycles, landscaping, signage, sidewalk sales approved by Declarant, in each case subject to reasonable, non-discriminatory rules and regulations as may be established by Declarant from time to time, including, without limitation, rules and regulations governing traffic flow, traffic management, and the like, to facilitate access and parking with respect to each Tract. Without limiting the generality of the foregoing, Declarant reserves the right to erect, install and implement, as the case may be, traffic signs and signals, traffic control devices (including, without limitation, speed bumps and/or tire stops), access and security control measures and the like to facilitate the orderly administration and use of the Common Areas and the parking areas within the Building by those parties entitled to use the same. The owner of Tract 1 shall have the right to construct, install, operate, maintain, repair and replace one monument sign in that portion of the Common Areas designated by Declarant, which such monument sign shall be of a size, type and design approved by Declarant. Declarant reserves the right to remove any unauthorized signage from the Common Areas.

4. **CONDITIONS AND RESTRICTIONS; STRUCTURAL SUPPORT.**

(a) **Building.** Except as permitted by the prior written approval of Declarant, no improvements shall be constructed, erected, expanded or altered on Tract 1 or Tract 2 until the plans for the same (including site layout, signage, civil engineering drawings (including finished floor elevations), exterior appearance, and parking, if any) have been approved by Declarant, which approval shall not be unreasonably withheld so long as such plans shall be substantially in accordance with Declarant's project development plans submitted to and approved by the City of St. Louis as part of the planned development of the Project. All construction work shall, upon approval of plans by Declarant, be prosecuted with all due diligence, and subject to the conditions and limitations herein contained.

(b) **Construction; Landscaping; Building Maintenance; Marketing.** Use and enjoyment by the owner of each Tract of the easement rights and declarations herein granted shall be subject to the following terms, covenants and restrictions.

(i) Following completion of the Building, the owner of such Tract (each, a "**Constructing Owner**") shall pay all reasonable costs and expenses incurred by any other Tract owner due to damage to the Project arising from or related to such Constructing Owner's construction operations at such Constructing Owner's Tract. Prior to the exercise of the easement granted by Section 1(e) of this Declaration, the owner of the applicable Tract shall advise the owner of each of the other Tracts of such proposed exercise and shall provide plans and specifications and construction schedule relating thereto to the owner of each of the other Tracts, including proposed construction techniques for the Constructed Improvements. In addition, the owner of the applicable Tract shall reasonably cooperate with the owner of each of the other Tracts to coordinate the construction and installation of any Constructed Improvements with any construction or business operations on such other Tract, including taking such actions as may be reasonably required to accommodate any critical path construction schedule of the owner of such other Tract. No Constructing Owner shall materially obstruct the free flow of pedestrian or vehicular traffic upon, across and within the Project during any period of construction at such Constructing Owner's Tract or at any time thereafter. During such period of construction, such Constructing Owner may use the access driveways of the Project for construction vehicle access to, from and between such Constructing Owner's Tract and Euclid Avenue and Buckingham Place. During such period of construction, such Constructing Owner shall cause the driveways and other portions of the Project to be maintained free of all materials and supplies arising out of or resulting from such Constructing Owner's construction and otherwise in a neat and orderly condition undisturbed from such Constructing Owner's construction operations. Any vehicle or equipment used in such construction or any materials used in such construction shall be parked or stored only in an area, if any, approved in writing by Declarant. Each Constructing Owner agrees to defend, indemnify and hold harmless each other Tract owner and its tenants and occupants from and against any and all loss, cost, damage, liability, claim or expense (including, without limitation, reasonable attorneys' fees and costs) arising from or relating to such Constructing Owner's construction operations. All construction operations at such Constructing Owner's Tract shall be performed in a lien-free and good and workmanlike manner, in accordance with

all laws, rules, regulations and requirements, including, without limitation, such reasonable, non-discriminatory rules and regulations for the Tracts as may be promulgated by Declarant. No Constructing Owner shall permit or suffer any mechanic's liens claims to be filed or otherwise asserted against the Project in connection with such Constructing Owner's construction operations, and shall promptly discharge the same in case of the filing of any claims for liens or proceedings for the enforcement thereof, or in the event such Constructing Owner in good faith desires to contest the validity or amount of any mechanic's lien, such Constructing Owner shall have the right to contest the validity or amount of any such mechanic's lien, provided that (i) such Constructing Owner deposits with the owner of the Tract affected by such mechanic's lien cash or a letter of credit or other security reasonably acceptable to such affected Tract owner in an amount equal to one hundred fifty percent (150%) of the amount of said lien to insure payment and prevent any sale or forfeiture of any part of the affected Tract by reason of nonpayment; (ii) neither the affected Tract nor any part thereof or interest therein would be in any substantial danger of being sold, forfeited, or lost, (iii) such affected Tract owner would not be in any substantial danger of any civil or criminal liability for failure to comply therewith; and (iv) such Constructing Owner promptly notifies such affected Tract owner, in writing, of such contest. Any such contest shall be prosecuted with due diligence and such Constructing Owner shall promptly after the final determination thereof pay the amount of any such lien, together with all interest, penalties and other costs payable in connection therewith. Any such letter of credit deposited hereunder shall be issued by a national bank reasonably acceptable to such affected Tract owner. Each Constructing Owner and its tenants and their respective contractors and subcontractors shall be solely responsible for the transportation, safekeeping and storage of materials and equipment used in connection with such Constructing Owner's construction operations, and for the removal of waste and debris resulting therefrom. In the event any Constructing Owner's construction operations detrimentally affect the condition of any portion of the Project, such Constructing Owner shall restore the Project, or part thereof, to its condition existing prior to commencement of such Constructing Owner's construction operations, including, without limitation, all repairs or replacements of, in, on, under, within, upon or about the Project, whether interior or exterior, structural or non-structural. No such construction operations shall result in a labor dispute or encourage labor disharmony. Prior to commencement of such Constructing Owner's construction operations, such Constructing Owner shall obtain, at its sole cost and expense, and maintain during the performance of such Constructing Owner's construction operations, workers compensation insurance covering all persons directly employed by such Constructing Owner in connection with such Constructing Owner's construction operations and with respect to which death or injury claims could be asserted against Declarant, such Constructing Owner, the Project or any interest therein as required by applicable laws and regulations, together with commercial general liability insurance for the mutual benefit of Declarant and such Constructing Owner with limits not less than the amounts set forth in Section 7 hereof, and all risk builder's risk insurance for full insurable value covering any improvements constructed. All such insurance shall be written by solvent insurance companies licensed in the State of Missouri and all such policies of insurance or binders of insurance shall be delivered to Declarant prior to commencement of such Constructing Owner's construction operations.

(ii) No delivery or service trucks servicing the business operations located on the Retail Tract shall be permitted to park in any portion of the Project, unless otherwise permitted in writing by Declarant.

(c) Structural Support. In addition to the maintenance obligations set forth in Section 5 hereof, the owners of the Tracts shall each be responsible for keeping, repairing, maintaining and restoring the structural elements of the Building to the extent constructed within its respective Tract. Any such repairs, maintenance, restoration, substitutions or additions shall be performed subject to and in accordance with the conditions and limitations set forth in Section 4(b) of this Declaration. No owner of any Tract shall do or permit any act which would materially and adversely affect the structural integrity or safety of the Building. If for any reason the owner of any Tract fails to keep, repair, maintain or restore the structural elements of the improvements constructed within such Tract in the manner required by this Declaration, then, in addition to any other remedy available to Declarant hereunder, Declarant may cure any such failure, and to do so, may enter upon such owner's Tract, without being liable for prosecution or any claim for damages therefor, and the owner of such Tract shall be responsible for reimbursing Declarant on demand for any expenses which Declarant may incur in so paying or performing such owners' obligations hereunder, together with interest on such expenses at the Interest Rate, until the owner of such Tract makes full payment of all amounts owing to Declarant at the time of said payment.

Declarant may from time to time elect ("**Structural Support Election**") to maintain and repair the structural elements of the Building in the manner hereinafter set forth. Any such Structural Support Election shall be in writing and shall be given to each of the owners of the Tracts, and shall specify a date (no earlier than thirty (30) days following the date of the Structural Support Election) by which Declarant intends to commence maintenance and repair of the structural elements of the Building. In the event Declarant makes a Structural Support Election (i) Declarant shall, subject to reimbursement as provided herein, cause to be maintained and repaired the structural elements of the Building, consistent with the terms and provisions of the immediately preceding grammatical paragraph, (ii) the owner of each of the Tracts shall not be required to so maintain the structural elements of any

improvements constructed within such owner's Tract, notwithstanding the provisions of the immediately preceding grammatical paragraph, and (iii) the owner of each Tract shall pay to Declarant its proportionate share of expenses incurred by Declarant in performing the maintenance and repair of the structural elements of the Building within ten (10) days after receipt of an invoice from Declarant from time to time. For purposes of this Declaration, each such Tract owner's proportionate share shall be the percentage set forth on Exhibit D attached hereto and made a part hereof. In the event Declarant makes a Structural Support Election, Declarant may promulgate such reasonable, non-discriminatory rules and regulations for the Tracts as Declarant deems reasonable and necessary, and the owners of each of the Tracts shall be bound thereby.

Declarant may from time to time elect to cancel ("**Structural Support Cancellation**") any Structural Support Election and no longer be responsible for the repair and maintenance of the structural elements of the Building in the manner hereinafter set forth. Any such Structural Support Cancellation shall be in writing and shall be given to each of the owners of the Tracts, and shall specify a date, no earlier than ninety (90) days following the date of the Structural Support Cancellation, by which Declarant shall no longer be responsible for the maintenance and repair of the structural elements of the Building. In the event Declarant makes a Structural Support Cancellation, the owner of each of the Tracts shall, on the date specified in the Structural Support Cancellation, resume responsibility for the maintenance and repair of the structural elements of the portion of the Building located within its respective Tract in the manner required by the first grammatical paragraph of this Section 4(c). Nothing herein contained shall preclude Declarant from making a Structural Support Election subsequent to a Structural Support Cancellation.

(d) Operation of Utility Services. The owner of each Tract shall operate the Utility Systems within its tract in a manner which will provide the owner of the other Tracts with comfortable occupancy and enjoyment of the improvements constructed within each such owner's other Tract for its intended use as first-class retail, office, commercial or residential property, but in no event shall any owner of any Tract be obligated to use more than reasonable diligence in performing the services required of such owner as set forth in this Declaration or be liable for consequential, punitive, special, incidental or similar type damages for failure to so perform. Notwithstanding the foregoing, the owner of each Tract shall reserve the right to curtail or halt the performance of any service provided by any Utility System at any time in reasonable respects and for a reasonable period of time to perform any required maintenance, repair or renewal of such Utility System. If any utility service, including, without limitation, water and electricity, for more than one Tract is not separately metered, then the owners of each such Tracts shall install a submeter for each such common utility service, and each such owner shall pay its share of the costs of such common utility service, as determined by such submeter.

Declarant hereby reserves unto itself, the right to cure any failure of the owner of any Tract to make such repairs, maintenance or restoration as are required under the aforesaid covenants, conditions and reservations and as required under Sections 5 and 8 hereof; provided, however, Declarant shall not be entitled to cure any such failure unless Declarant has first given the owner of such Tract written notice of such failure and such owner has not cured such failure within ten (10) days after delivery of such notice or, in case such cure cannot be effected within said 10-day period and such owner is diligently pursuing such cure, such additional period as may be reasonably necessary to effect such cure, and provided further that, with respect to a failure by such owner to maintain insurance set forth in Section 4(b)(i) and Section 7 hereof or with respect to any event, fact or circumstance which involves imminent threat of injury or damage to persons or property, the aforesaid cure period shall not apply. All reasonable costs incurred by Declarant in performing such repairs, maintenance or restoration shall be due from any such owner upon demand, and, in addition, such owner shall pay interest on such costs from the date of expenditure by Declarant until the date of reimbursement by any such owner, at an interest rate (the "Interest Rate") equal to four percent (4%) per annum in excess of the published prime rate of interest of U.S. Bank National Association (or similar institution if said bank shall cease to exist or to publish such a prime rate) provided that such rate shall not exceed the highest rate permitted by applicable law.

5. **REPAIR AND MAINTENANCE OF COMMON AREAS; COMPLIANCE WITH LAWS; REAL ESTATE TAXES.**

(a) Repairs and Maintenance. Except as otherwise expressly provided herein, each Tract owner shall, at such Tract owner's sole cost and expense, in a manner consistent with "Class A" mixed use buildings in the greater St. Louis, Missouri metropolitan area, (i) keep such Tract owner's Tract free of obstruction, clean, swept and in good repair and renew any portions thereof as necessary, (ii) keep such Tract owner's Tract lighted during hours of darkness when any business operations located upon such Tract owner's Tract are open for business, (iii) keep any parking areas, access driveways and entrance areas located on such Tract owner's Tract properly maintained, operated, replaced, repaired, repaved, continuously lighted, striped, and sealed, (iv) provide trash service for such Tract owner's Tract, and (v) perform such other maintenance and repairs as are customary for "Class A" mixed use buildings in the greater St. Louis, Missouri metropolitan area. All maintenance and repairs shall be done as quickly as possible and at such times and in such a manner as shall minimize any inconvenience to the business conducted in the Project and to delivery vehicles servicing such business.

(b) Compliance With Laws; Payment of Real Estate Taxes; Universal Common Area Maintenance Items.

(i) *Generally.* Each Tract owner shall comply with all laws, rules, regulations and requirements of public authorities relating in any manner whatsoever to such Tract owner's Tract. Each Tract owner shall pay one hundred percent (100%) of the real estate taxes, if any, which are due and payable for each such Tract owner's Tract and insurance premiums payable with respect to each such owner's Tract required by Section 4(b)(i) and Section 7 hereof. For purposes of this Declaration, real estate taxes shall include all taxes, installments of assessments and governmental charges of any kind and nature whatsoever levied or assessed against the Project and any improvement thereon.

(ii) *Universal Common Area Maintenance Items.* Anything in Section 5(b)(i) to the contrary notwithstanding, Declarant shall (a) maintain and repair all utility lines and retaining walls within the Common Areas, in accordance with the requirements of applicable governmental authorities, (b) insure the Common Areas, (c) keep the Building insured in an amount equivalent to the full replacement value thereof (excluding foundation, grading and excavation costs) against loss or damage by fire and such other risks of a similar or dissimilar nature customarily covered with respect to buildings and improvements similar in construction, general location, use, occupancy and design to the Building, and the policies of such insurance shall name Declarant or a financial institution or other entity selected by Declarant (the "Insurance Trustee") as loss payee for the purpose of collecting and disbursing the insurance proceeds described in Section 8 of this Declaration, and (d) perform any other Common Areas maintenance to the extent the same covers services directly benefiting a Tract owner's Tract, but which cannot be billed to or contracted for separately by the owner of such Tract, including, without limitation, costs for security, lighting and signage (collectively, "**Universal Common Area Maintenance Items**").

(iii) *Payments.* In addition to payment of amounts described in the second sentence of Section 5(b)(i), each Tract owner shall pay to Declarant on a quarterly basis, in advance, in accordance with Declarant's estimate, and subject to adjustment after the end of the year on the basis of the actual costs for such year, its respective proportionate share of the cost of the Universal Common Area Maintenance Items, including, without limitation, any deductible incurred in connection with any loss covered by the insurance obtained by Declarant pursuant to Section 5(b)(ii)(c) of this Declaration.

6. **INDEMNIFICATION.** The owner of each Tract agrees to defend, indemnify and hold harmless the other Tract owners from and against any and all claims, actions, damages, fines, liabilities and expenses of every kind, nature and sort whatsoever (including reasonable attorney's fees, court costs and expenses) which may be imposed upon, incurred by or asserted against the indemnified party or its property in connection with loss of life, personal injury and/or property damage arising from or relating to any occurrence in, upon or at the Tract owned by the indemnifying party, or any part thereof, or from exercise of the easement rights granted herein, except to the extent caused by the willful or negligent acts or omissions of the indemnified party or to the extent covered by insurance. With respect to any indemnification provided for hereunder, the indemnifying owner shall immediately respond and take over the expense, defense and investigation of all such claims arising under this indemnity.

Each Tract owner ("**Releasing Owner**") shall release and waive for itself, and each person claiming by, through or under it, each other Tract owner ("**Released Owner**") from any liability for any loss (including any deductible loss) or damage to any property of such Releasing Party located upon any portion of the Project and for any business conducted upon any portion of the Project, without regard to any negligence on the part of the Released Owner which may have contributed to or caused such loss, or of the amount of such insurance required to be carried or actually carried; provided, however, the foregoing release shall not apply to any loss or damage attributable to an environmental condition caused by the Released Owner. Each Tract owner agrees to use all reasonable efforts to obtain, if needed, appropriate endorsements to its policies of insurance with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release hereinabove given.

7. **INSURANCE.** Each Tract owner shall cause to be procured and maintained commercial general public liability insurance with a combined single limit of no less than \$3,000,000.00 on an occurrence basis, which policy or policies shall:

- (a) name as insured the Declarant and Declarant's management agent;
- (b) be written by solvent insurance companies licensed in the State of Missouri;
- (c) provide that such policy or policies may not be canceled by the insurer without first giving each named insured and Declarant at least thirty (30) days' prior written notice;

(d) protect and insure the parties designated in clause (a) above on account of any loss or damage arising from injury or death to persons or damage or destruction to property caused by or related to or occurring on (i) any such Tract; (ii) any construction or reconstruction that any such Tract owner may perform in connection with such owner's Tract; and (iii) any act or omission of any such Tract owner, and its respective agents, employees, licensees, invitees or contractors on any portion of such Tract; and

(e) include contractual liability coverage insuring the indemnity obligations provided for herein.

Any such coverage shall be deemed primary to any liability coverage secured by any other Tract owner covering such owner's Tract.

Nothing herein contained shall prevent any Tract owner from taking out insurance of the kind and in the amount provided for hereunder under a blanket insurance policy or policies which may cover other properties owned or operated by such Tract owner as well as its Tract; provided, however, that any such policy of blanket insurance of the kind provided for shall specify therein the amounts thereof allocated to such Tract or such Tract owner shall furnish each other Tract owner with a written statement from the insurers under such policies specifying the amounts of the total insurance allocated to such Tract, and provided further, that such policies of blanket insurance shall, as respects such Tract, contain the various provisions required of such an insurance policy by the foregoing provisions of this Declaration. Further, if any Tract owner demonstrates to Declarant that it has a tangible, net financial worth in accordance with generally accepted accounting principles of at least \$200,000,000.00, as evidenced by financial statements certified by its chief financial officer, such Tract owner may elect to act as a self insurer in respect to the insurance coverages required to be maintained under this Declaration. If such Tract owner so elects to become a self-insurer, such Tract owner shall deliver to Declarant and to each other Tract owner notice in writing of the required coverages which it is self-insuring setting forth the amounts, limits and scope of the self-insurance in respect to each type of coverage self-insured. Any such Tract owner agrees to defend, indemnify and hold harmless each other Tract owner from and against any loss, cost, damage, expense (including attorneys' fees and court costs), claim, cause of action or liability that would have been covered by the insurance policy replaced by the self-insurance.

Each Tract owner shall deliver binders or certificates (ACORD Form 27 or equivalent) of such policies of insurance to each other Tract owner upon demand.

8. **DAMAGE AND DESTRUCTION.**

(a) In the event of any damage or destruction to any portion of the Building within any one Tract, such damage or destruction shall be repaired and restored by the owner of such Tract in as timely a manner as practicable under the circumstances; otherwise, the repair and restoration of such damage or destruction (except as otherwise provided in the immediately succeeding grammatical paragraph) shall be the joint responsibility of the owner(s) of such Tracts containing the portion of the Building which has been damaged. Said repair and restoration shall be commenced and pursued to completion in as timely a manner as practicable and shall be performed on behalf of all owners of such affected Tracts by a contractor or contractors jointly selected by such owners, and in accordance with plans and specifications which shall provide for such improvements to be rebuilt as nearly as commercially practicable to the improvements as constructed prior to the damage unless prohibited by law or unless such owners otherwise agree. If the cost and expense of performing any repair and restoration provided for in this Section 8 shall exceed the amount of available insurance proceeds, if any, paid by reason of the damage, then such excess cost and expense (or the entire amount of such cost and expense, if there be no insurance proceeds) shall be borne by such owners in proportion to the cost and expense of repairing and restoring to their former condition their respective portions of the improvements located in each such owner's respective Tract.

(b) All insurance moneys recovered on account of damage to or destruction of the Building shall be deposited with and held by the Insurance Trustee, shall be applied to the payment of the costs of restoring the Building, and shall be paid out from time to time to the owner of each Tract as such restoration progresses with respect to such owner's Tract upon the written request of such owner, accompanied by a certificate of the architect or a qualified professional engineer directing such restoration stating that as of the date of such certificate: (a) the sum requested is justly due to the contractors, subcontractors, materialmen, laborers, engineers, architects, or persons, firms or corporations furnishing or supplying work, labor, services or materials for such restoration, or is justly required to reimburse the owner of such Tract for any expenditures made by such owner in connection with such restoration, and when added to all sums previously paid out by the Insurance Trustee does not exceed the value of such restoration performed to the date of such certificate by all of said parties; (b) except for the amount, if any, stated in such certificates to be due for work, labor, services or materials, there is no outstanding indebtedness known to the person signing such certificate, after due inquiry, which is then due for work, labor, services or materials in connection with such restoration, which, if unpaid, might become the basis of a mechanic's lien or similar lien with respect to such restoration or a lien upon the Project, or any portion thereof; and (c) the aggregate costs, as estimated by the person signing such certificate, of the completion of such restoration required to be done

subsequent to the date of such certificate in order to complete such restoration do not exceed the sum of the remaining insurance moneys held by the Insurance Trustee after payment of the sum requested in such certificate.

The Insurance Trustee shall not be required to pay out any insurance moneys to the owner of a Tract if such owner fails to supply satisfactory evidence of the payment of work, labor, services or materials performed, furnished or supplied, as aforesaid. Upon completion of the restoration of the Building and payment in full thereof by the owners of the Tracts, the Insurance Trustee shall, within a reasonable period of time thereafter, turn over to the owner of each affected Tract (in proportion to the cost and expense of repairing and restoring its respective portions of the Building located in each such owner's respective Tract) all insurance moneys then remaining upon submission of proof reasonably satisfactory to the Insurance Trustee that such restoration has been paid for in full and the damaged or destroyed portion of the Building repaired, restored or rebuilt as nearly as possible to the condition as existed immediately prior to such damage or destruction in accordance with the provisions herein contained.

(c) If the Building is destroyed or substantially damaged and the owners of all Tracts agree not to rebuild, repair or restore the Building, then such owners shall forthwith remove all rubble and debris resulting from such damage or destruction and restore the site to a safe, orderly and clean condition as soon as possible and maintain landscaping as required by the City. In the event such owners agree not to rebuild such improvements such owners may make provision for the sale of such owners' Tracts and distribution of sale proceeds.

9. **USE.** The Project shall not be used for any activity proscribed on Exhibit C attached hereto and made a part hereof. The owner of Tract 1 shall continuously operate the improvements within Tract 1 for 24 hour public parking purposes and for no other use or purpose. All uses shall comply with the applicable zoning ordinances of the City. Said zoning ordinances shall govern if inconsistent herewith to the extent actually inconsistent. If not inconsistent herewith, the standards herein contained shall be considered as requirements in addition to said zoning ordinances.

10. **NOT A PUBLIC DEDICATION.** Nothing herein contained shall be deemed to be a grant or dedication of any portion of the Project to the general public or for the general public or for any public purposes whatsoever, it being the intention of Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed. Declarant shall have the right to close any portion of the Project owned by Declarant to the extent as may, in Declarant's reasonable opinion, be necessary to prevent a dedication thereof or the accrual of any rights to any person or the public therein; provided, however, in the exercise of any rights pursuant to this Section 10, shall use commercially reasonable efforts to minimize interference with any of the easements granted by this Declaration.

11. **RIGHTS AND OBLIGATIONS OF LENDERS.** If by virtue of any right or obligation set forth herein a lien shall be placed upon any one of the Tracts, such lien shall be expressly subordinate and inferior to the lien of any first mortgage lienholder now or hereafter placed on such Tract except those liens recorded prior to recordation of any such first mortgage. Except as set forth in the preceding sentence, however, any holder of a first mortgage lien on any one of the Tracts, and any assignee or successors in interest of such first mortgage lienholder, shall be subject to the terms and conditions of this Declaration.

12. **ENFORCEMENT.** The covenants, conditions and restrictions set forth herein shall be enforceable only by Declarant and shall be enforceable by:

- (a) Injunctive relief, prohibitive or mandatory, to prevent the breach of or to enforce the performance or observance of said covenants, conditions and restrictions; or
- (b) A money judgment for damages by reason of the breach of said covenants, conditions and restrictions; or
- (c) Any combination of the foregoing.

In addition, in the event any Tract owner fails to comply with the covenants, conditions and restrictions set forth in this Declaration, Declarant may take such action as Declarant deems appropriate to effect such compliance without waiving Declarant's rights under this Declaration, at law or in equity and without releasing such Tract owner from compliance with the covenants, conditions and restrictions under this Declaration; provided, however, Declarant shall not be entitled to cure any such failure unless Declarant has first given the Tract owner written notice of such failure and such Tract owner has not cured such failure within ten (10) days of such notice or, in case such cure cannot be effected within said 10-day period and such Tract owner is diligently pursuing such cure, such additional period as may be reasonably necessary to effect such cure, and provided further that, with respect to a failure by a Tract owner to maintain insurance set forth in Section 4(b)(i) and Section 7 hereof or with respect to any event, fact or circumstance which involves imminent threat of injury or damage to persons or property. All reasonable costs incurred by Declarant

in curing any non-compliance by any Tract owner with the covenants, conditions and restrictions set forth in this Declaration shall be due from any such Tract owner upon demand, and, in addition, such Tract owner shall pay interest on such costs from the date of expenditure by Declarant until the date of reimbursement by any such Tract owner, at the Interest Rate.

The failure of Declarant to enforce any provisions of the covenants, conditions and restrictions herein contained upon the violation thereof as to one or more Tracts (or one or more Tract owners) shall in no event be deemed to be a waiver of its rights to do so as to a subsequent violation or as to any other Tract (or any other Tract owner). Each Tract owner that fails to comply with the covenants, conditions and restrictions set forth in this Declaration shall pay any and all reasonable costs and expenses incurred by Declarant in connection with enforcement by Declarant of the rights and remedies set forth in this Section 12 against any such Tract owner including, including without limitation all reasonable attorneys' fees and consulting fees and all court costs and filing fees related thereto.

Anything in this Section 12 to the contrary notwithstanding, (i) if any Tract owner fails to comply with the covenants, conditions and restrictions set forth in this Declaration (including, without limitation, the failure of the owner of any Tract to perform any of the terms or conditions set forth in Section 4(c), Section 4(d) and/or Section 8 of this Declaration) and Declarant has not taken any action to effect such compliance, then any other Tract owner shall have the right to cause Declarant to use commercially reasonable efforts to take such action as Declarant deems appropriate to effect such compliance, which action shall be at the sole cost and expense of the requesting Tract owner and (ii) if Declarant fails to exercise its rights and responsibilities under this Declaration in accordance with the provisions herein contained, then any Tract owner shall have the right to institute legal proceedings against Declarant to require Declarant to so exercise such rights and responsibilities, but no such proceedings shall subject Declarant to any damages by reason of Declarant's failure to so exercise such rights and responsibilities, it being understood that no Tract owner shall have any claim, and each Tract owner hereby waives the right to claim against Declarant for damages by reason of Declarant failing to exercise its rights and responsibilities under this Declaration, and each Tract owner's only remedy shall be an action for specific performance or injunction to enforce any such failure to exercise Declarant's rights and responsibilities, as aforesaid.

13. **PARTIAL INVALIDITY.** Invalidation of any of the provisions of the covenants, conditions and restrictions herein contained, whether by order of court of competent jurisdiction, or otherwise, shall in no way affect any of the provisions which shall remain in full force and effect.

14. **MISCELLANEOUS.** Any consent or approval required of Declarant hereunder may be given by the person(s) or entity(s) holding beneficial ownership in Declarant. Failure by Declarant to respond to a request for any approval or consent required of Declarant hereunder within ten (10) days after Declarant's receipt of written notice from the party requesting any such approval or consent that Declarant has failed to respond to such request written fifteen (15) days after such request accompanied by all supporting documents and materials required to be furnished to Declarant shall constitute an approval or consent of the matter requested and for which required supporting documentation and materials have been furnished. Subject to the requirements set forth in the next succeeding sentence, all rights and responsibilities reserved to Declarant hereunder shall initially be exercised by the owner of Tract 3; if there is more than one (1) owner of Tract 3 (whether as contemplated by Section 19 of this Declaration or otherwise), such owners shall designate a single owner to act as Declarant. Declarant may transfer the rights and responsibilities reserved to it hereunder to any other person(s) or legal entity by written instrument recorded in the Office of the Recorder of the City of St. Louis, Missouri, but only if such instrument specifically gives the transferee the right to enforce the provisions of this Declaration. Mere purchase of Tract 3 or any portion thereof shall confer no right to enforce the aforesaid provisions. Wherever a transfer occurs in the ownership of any Tract, the transferor shall have no further liability for breach of covenant occurring thereafter. Each Tract owner agrees to look solely to the interest of any other Tract owner in its respective Tract for the recovery of any judgment from such owner, it being agreed that the owner of any such Tract and its partners, directors, officers, members, managers or shareholders shall never be personally liable for such judgment. In the event any Tract is subdivided after the date hereof, the benefits and burdens created hereby shall benefit and be binding upon any tract(s) created by such subdivision, and all references herein to any such Tract shall mean and refer to the tract(s) created by such subdivision, and all rights and obligations of the Tract owner shall be deemed to be the rights and obligations of the owner(s) of any tract created by such subdivision. Declarant shall have the unilateral right to amend this Declaration by recording an executed amendment in the Office of the Recorder of Deeds of the City of St. Louis, Missouri, unless such amendment would materially and adversely affect any Tract not owned by Declarant, in which case any such amendment shall require the consent of the Tract owner so materially and adversely affected thereby, and such amendment shall be of full force and effect, valid and binding upon the execution thereof, notwithstanding that not every owner of each Tract at the time of such amendment consented to, joined in, or executed the same.

15. **FAILURE TO PAY AMOUNTS DUE AND OWING.** Any amounts due from any Tract owner under this Declaration which are not paid when due shall bear interest from the due date until the date of payment at the Interest Rate, and such amounts shall be secured by a lien upon such owner's Tract, effective upon the recording thereof in the Office of the Recorder of

Deeds of the City of St. Louis, Missouri. Any such lien may be foreclosed upon in the same manner as provided for enforcement of mechanics liens or liens securing mortgage indebtedness.

16. **RIGHTS RESERVED.** Declarant retains, reserves and shall continue to enjoy the use of the Tracts for any and all purposes which do not interfere in any material respect with or prevent the use by the Tract owners of the easements granted herein. Without limiting the generality of the foregoing, it is understood that Exhibit A is intended only for identifying the real estate comprising the Tracts and the approximate boundary lines of the individual parcels, and that Exhibit A is not to be considered or construed as a representation, warranty or covenant that the shape, size, location, number and extent of building improvements shown thereon shall be constructed. In furtherance thereof, Declarant reserves the right to change from time to time the dimensions and location of the Common Areas and the location, dimensions, identity and type of any improvements therein; provided, however, in the exercise of such rights, Declarant shall not materially and adversely affect access to, visibility of, or parking serving any Tract.

17. **RELOCATION OF EASEMENTS.** Declarant reserves the right at any time and from time to time to relocate all or a portion of the easements granted by Declarant herein, provided that (i) the easements so relocated will be of substantially equivalent usefulness for the purposes stated in this Declaration, (ii) all costs incurred to effect such relocation shall be paid by Declarant, (iii) Declarant shall interfere with the business being operated on the Tract benefitted by the easement being relocated as little as reasonably possible in the exercise of Declarant's rights herein, and (iv) Declarant shall provide prior written notice of any such relocation to the owner(s) of the Tract(s) benefitted by the easement(s) being relocated.

18. **ESTOPPEL CERTIFICATE.** Any owner of any Tract shall, upon the written request (which shall not be more frequent than three (3) times during any calendar year) of any owner of any other Tract, issue to such other owner or its prospective mortgagee or purchaser, an estoppel certificate stating, to the best of the issuer's knowledge:

- (i) whether it knows of any default under this Declaration by the requesting Tract owner, and if there are known defaults, specifying the nature thereof;
- (ii) whether this Declaration has been assigned, modified or amended in any way by it and if so, then stating the nature thereof;
- (iii) whether this Declaration is in full force and effect; and
- (iv) whether there are any sums due and owing by any owner of any Tract under this Declaration.

19. **ASSOCIATION.** Declarant agrees that the owner of Tract 3 may develop such owner's Tract as one or more residential condominium projects. As part of any such residential condominium development, it is anticipated that the owner of Tract 3 will create and establish a residential condominium association that shall be responsible for the operation, maintenance, repair and replacement of the utilities on Tract 3, and the exterior building facades forming a part of the common elements of such residential condominium development, and all other areas of Tract 3 which the individual owners of each of the residential condominium units within such residential condominium project have a common right to use and enjoy. If any such residential condominium association is created and established, then the owner of Tract 3 shall notify Declarant, in writing, thereof, and the owner of Tract 3 shall have the right to delegate, pursuant to written notice which shall be recorded in the Office of the Recorder of the City of St. Louis, Missouri, to such residential condominium association the rights, duties and obligations related to Tract 3 set forth in Sections 1, 3, 4, 5, 6, 7, 8, 11, 12, 14, 17 and 18 hereof, and the same shall not be the responsibility of the individual owners of each of the individual residential condominium units, if any, developed by the owner of Tract 3. It is the intent of Declarant that if the owner of Tract 3 causes the creation and establishment of a condominium association with respect to Tract 3, then the rights and obligations contained in this Declaration shall be the rights and obligations of such condominium association and not the rights and obligations of each of the individual condominium unit owners; provided, however, each condominium unit and the owner thereof shall be subject to any and all easements and use restrictions set forth in this Declaration. Declarant may transfer the rights and responsibilities reserved to it hereunder to any such condominium association by written instrument recorded in the Office of the Recorder of the City of St. Louis, Missouri, in accordance with the provisions of Section 14 of this Declaration.

[Signature page follows.]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the day and year first above written.

DECLARANT:

OPUS NWR DEVELOPMENT,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

On this ____ day of _____, 2006, before me appeared _____, the _____ of Opus NWR Development, L.L.C., a Delaware limited liability company, to me personally known, who, being by me duly sworn did say that the foregoing instrument was signed and sealed by him/her on behalf of Opus NWR Development, L.L.C., and he/she acknowledged said instrument to be the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first set forth above.

My term expires:

Printed Name: _____
Notary Public in and for said State
Commission expires: _____

*Notary – please affix seal in area
designated above*

JOINDER

The undersigned, Treasurer of the City of St. Louis, Missouri, acting in his capacity as the Supervisor of Parking Meters, a Missouri municipal corporation (the "**Treasurer**"), hereby joins in the execution of this Declaration to evidence the agreement of, and consent by, the Treasurer to subject and subordinate Tract 1 to the terms, obligations and conditions of this Declaration.

THE TREASURER OF THE CITY OF ST. LOUIS,
MISSOURI, ACTING IN HIS CAPACITY AS THE
SUPERVISOR OF PARKING METERS, a
Missouri municipal corporation

By: _____
Its: _____

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

On this ____ day of _____, 2006, before me appeared _____, the Treasurer of the City of St. Louis, Missouri, acting in his capacity as the Supervisor of Parking Meters, a Missouri municipal corporation, to me personally known, who, being by me duly sworn did say that the foregoing instrument was signed and sealed by him/her on behalf of said municipal corporation, and he/she acknowledged said instrument to be the free act and deed of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first set forth above.

My term expires:

Printed Name: _____
Notary Public in and for said State
Commission expires: _____

*Notary – please affix seal in area
designated above*

**EXHIBIT A TO
DECLARATION OF RECIPROCAL EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS**

Project Site Plan

**EXHIBIT A-1 TO
DECLARATION OF RECIPROCAL EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS**

Depiction of Tracts

**EXHIBIT B TO
DECLARATION OF RECIPROCAL EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS**

Legal Descriptions

Tract 1:

Tract 2:

Tract 3:

**EXHIBIT C TO
DECLARATION OF RECIPROCAL EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS**

Use Restrictions

No portion of the Project shall be used in whole or in part for any of the following purposes:

(a) Warehouse, or for any assembling, manufacturing (other than cooking, baking and other preparation of food products for sale), distilling, refining, smelting, agricultural (other than the sale of agricultural products and the preparation thereof for sale) or mining operations;

(b) "Second-hand" thrift store whose principal business is selling discounted and used merchandise (other than an arcade, video, compact disc, novelty, entertainment or similar resale store) such as a salvation army type store, "goodwill" type store, or similar businesses;

(c) Mobile home park, trailer court, labor camp, junk yard, or stock yard (except that this provision shall not prohibit the temporary use of construction trailers during any periods of construction, reconstruction or maintenance);

(d) Dumping, disposing, incinerating, or reducing of garbage (exclusive of dumpsters for the temporary storage of garbage and any garbage compactors, in each case which are regularly emptied so as to minimize offensive odors);

- (e) Fire, going out of business, relocation, bankruptcy or similar sales (unless pursuant to court order);
- (f) Central laundry, dry cleaning plant, or laundromat; provided, however, this restriction shall not apply to any dry cleaning facility providing on-site services oriented to pickup and delivery by the ultimate customer, including nominal supporting facilities, or to laundry facilities for any tenant or occupant of the Project for such tenant's or occupant's own towels, linens, and uniforms used in its premises;
- (g) Selling or leasing automobiles, trucks, trailers, or recreational vehicles;
- (h) Any skating rink, dance hall or gymnasium;
- (i) Funeral home or mortuary;
- (j) "Adult only" store for the sale or rental of pornographic material or other sexually explicit material (provided that this restriction shall not preclude the sale or rental of X rated or "NR" rated or similar materials as an incidental part of the operation of bookstores or other multi-media stores);
- (k) Flea market;
- (l) Car wash; provided however, a car wash shall be permitted as part of a service station/mini-mart operation;
- (m) Operation whose principal use is a massage parlor, provided this shall not prohibit massages in connection with a beauty salon, athletic facility or permitted health club;
- (n) Living quarters, sleeping apartments or lodging rooms, other than any private residences developed on the Residential Tract;
- (o) Tattoo parlor;
- (p) Church, school (other than cooking and other home economic classes conducted by any grocery store tenant or occupant of the Project), or related religious or educational facility; and
- (q) General office facility other than any (i) office used for purposes of managing the Project, (ii) office used by any tenant so long as such office is incidental to such tenant's use of any portion of the Project, (iii) so called retail offices (i.e., any office which provides services directly to customers, such as financial institutions, real estate brokerages, stock brokerages, title companies, escrow offices, travel agencies and insurance agencies), or (iv) any office used in any building, or floor thereof, within the Project which is designated or leased by Declarant, from time to time, primarily for general office purposes.

**EXHIBIT D TO
DECLARATION OF RECIPROCAL EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS**

Proportionate Share Percentages

Tract 1: __%

Tract 2: __%

Tract 3: __%

Approved: July 18, 2006