

1 AN ORDINANCE, AUTHORIZING AND DIRECTING THE
2 TREASURER OF THE CITY OF ST. LOUIS, ACTING IN HIS
3 CAPACITY AS SUPERVISOR OF PARKING METERS
4 (“TREASURER”) TO SELL TO OPUS NWR DEVELOPMENT LLC
5 (“OPUS”) RIGHTS TO BUILD A RETAIL PARCEL AND A
6 CONDOMINIUM PARCEL ON LAND BELONGING TO THE
7 TREASURER IN CITY BLOCK 3884; AND AUTHORIZING THE
8 TREASURER AND OTHER CITY OFFICIALS TO ENTER INTO A
9 DECLARATION OF RECIPROCAL EASEMENTS, COVENANTS,
10 CONDITIONS AND RESTRICTIONS AND SUCH OTHER
11 DOCUMENTS AS MANY BE NECESSARY TO DEVELOP THE
12 PROPERTY AS A MIXED USE PUBLIC PARKING FACILITY, RETAIL
13 AND CONDOMINIUM DEVELOPMENT, AND CONTAINING A
14 SEVERABILITY CLAUSE AND AN EMERGENCY CLAUSE.

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

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

18 **WHEREAS,** The Treasurer and Opus have proposed to vertically develop the real
19 estate as three (3) separate and interdependent projects; a public parking garage containing
20 approximately 170 parking spaces (the “Public Parking Project”), approximately 52
21 residential condominium units (the “Condominium Project”), and approximately 6000 square
22 feet of retail space (the “Retail Project”) (all the projects collectively referred to as the
23 “Project”) within a single building (the “Building”) consisting of a total of seven levels, six

1 of which shall be located at or above grade and one of which will be located below grade;
2 and,

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

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

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

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

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

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

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

19 **SECTION FOUR.** Further Authority. The Mayor, the Comptroller, the Treasurer
20 and other appropriate City officials are hereby authorized and directed to take such further
21 actions and execute and deliver such other documents, certificates and instruments as may be
22 necessary or desirable to carry out the sale of the real property and the intent of this
23 Ordinance.

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

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

13 315428

EXHIBIT A

Signed Original

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "Agreement") is made as of ~~September 22~~ 2005, by and between the Treasurer of the City of St. Louis, Missouri, acting in his capacity as the Supervisor of Parking Meters, a municipal corporation ("Seller"), and Opus NWR Development, L.L.C., a Delaware limited liability company ("Purchaser").

RECITALS:

A. Seller is the owner of a parcel of real property, having an area of approximately 39,000 square feet (the exact area to be determined at such time as Purchaser has secured the requisite approvals from the City of St. Louis for Purchaser's proposed development of the Parcel, which area shall be certified on the survey delivered pursuant to Paragraph 6 hereof) located at the southwest corner of Euclid Avenue and Buckingham Place, City of St. Louis, Missouri, which is approximately depicted on Exhibit A, attached hereto and made a part hereof, together with all improvements thereon and all easements, rights, privileges, servitudes and appurtenances thereunto belonging or appertaining, including all right, title and interest of Seller, if any, in and to the streets, alleys, and rights-of-way adjacent thereto (collectively, the "Parcel").

B. Purchaser currently occupies the Parcel pursuant to that certain Parking Lot Sublease dated as of January 6, 2005 (the "Parking Lot Sublease"), by and between Seller, its successor-in-interest to EPA Investments LP, a Missouri limited partnership ("EPA"), as landlord, and Purchaser, as tenant.

C. Purchaser and Seller have proposed that the Parcel be vertically developed as four (4) separate and interdependent projects (collectively, the "Project"), within a single building (the "Building") to be constructed by Purchaser on the Parcel, 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.

D. Seller has proposed developing (i) a portion of the Building (the "Public Parking Parcel") comprised of certain air space and ground floor space within the Parcel, generally depicted as "Public Parking" on Exhibit B attached hereto and made a part hereof, for public parking containing, among other things, approximately 130-135 parking spaces on a portion of the lower level, ground floor and on the first above-grade level of the Building, and related improvements, including, without limitation, all necessary mechanical areas, elevator shafts, stairwells, and similar improvements (collectively, the "Public Parking Project"), and (ii) a portion of the Building (the "Below-Grade Parcel"), comprised of certain below grade space within the Parcel, contiguous to and below the Public Parking Project, generally depicted as "Forest Park Apartment Resident Parking" on Exhibit B, for parking containing approximately 50 parking spaces below-grade and related improvements, including, without limitation, all necessary mechanical areas, elevators, elevator shafts, vestibules, stairwells, and similar improvements (collectively, the "Below-Grade Project"); provided, however, it is contemplated that the Below Grade Project will be developed only if an agreement is reached between Seller and EPA for the purchase or lease of the parking spaces anticipated to be included in the Below-Grade Project, as more particularly set forth in Section 13.3 of that certain Real Estate Purchase Contract dated April 18, 2005 by and between Seller and EPA, a copy of which section is attached hereto and made a part hereof as Exhibit E.

E. Purchaser has proposed developing (i) a portion of the Building (the "Retail Parcel"), comprised of certain ground floor space within the Parcel, contiguous to and below the Public Parking Project and contiguous to and above the Sub-Grade Project, generally depicted as "Retail" on Exhibit B, as a retail project containing, among other things, approximately 6,000 square feet of retail space on a portion of the ground floor of the Building and related improvements (collectively, the "Retail Project"), and (ii) a portion of the Building (the "Condominium Parcel"), comprised of certain air space within the Parcel, contiguous to and above the Public Parking Project, and above the Retail Project and the Sub-Grade Project, generally depicted as "Park East Lofts" and "Lofts Lobby" on Exhibit B, together with certain ground level space within the Parcel to be used for condominium lobby, mechanical, elevator and stairwell purposes, as residential condominiums containing, among other things, approximately 67 parking spaces, approximately 40 to 50 condominium units and related improvements, including, without limitation, all necessary mechanical areas, elevator shafts, stairwells, ground floor lobby and administration office areas and similar improvements (collectively, the "Condominium Project").

F. The Project is comprised entirely of the Public Parking Project, the Below-Grade Project, the Retail Project and the Condominium Project, and the Parcel is comprised entirely of the Public Parking Parcel, the Below-Grade Parcel, the Retail Parcel and the Condominium Parcel.

G To facilitate the development of the Public Parking Project, the Below-Grade Project, the Retail Project and the Condominium Project, Purchaser desires to own fee simple title to the Retail Parcel and the Condominium Parcel, Seller desires to retain fee simple title to the Public Parking Parcel and Sub-Grade Parcel, and Purchaser and Seller desire to enter into a declaration of reciprocal easements, covenants, conditions and restrictions and such other documents as may be necessary to construct and develop the Parcel, all as more specifically set forth herein.

H Seller has agreed to sell to Purchaser, and Purchaser has agreed to purchase from Seller, the Retail Parcel and the Condominium Parcel (collectively, the "Acquired Parcels"), upon and subject to all the terms and conditions set forth in this Agreement.

I Capitalized words and terms used in this Agreement and not otherwise defined shall have the meanings ascribed to such words and terms in Exhibit C attached hereto and made a part hereof.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration paid by Purchaser to Seller, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Recitals, Agreement to Sell, and Purchase. The Recitals set forth above are incorporated herein by reference and made a part hereof, as if fully set forth herein. Seller hereby agrees to sell to Purchaser, and Purchaser hereby agrees to purchase from Seller, the Acquired Parcels, subject to all the terms and conditions set forth herein.

2. Purchase Price. The Purchase Price, subject to adjustments and prorations as described herein, and subject to the credit for the earnest money to be paid by Purchaser as described below, shall be credited against Seller's payment obligations under the Public Parking Construction Contract.

Within three (3) business days following full execution and delivery of this Agreement, the parties shall establish an escrow at Commonwealth Land Title Insurance Company, as local agent for Lawyers Title Insurance Corporation (the "Title Company"), and Purchaser shall deposit in such escrow an amount equal to Twenty-Five Thousand and 00/100 Dollars (\$25,000.00). The amount so deposited, together with interest thereon less any investment fees related thereto are hereinafter collectively referred to as the "earnest money", all or a portion of which shall, at Purchaser's election, be credited against the Purchase Price at Closing, or returned to Purchaser at Closing. The earnest money shall be refundable except as otherwise provided herein.

3. Inspections by Purchaser. From and after the execution of this Agreement, Seller grants to Purchaser and its agents and representatives reasonable access to the Parcel, during normal business hours, for the purpose of inspecting the physical condition of the Parcel and conducting non-intrusive physical and environmental tests and inspections thereof (collectively, "Tests"). Purchaser shall not conduct or allow any Tests without first obtaining Seller's written reasonable consent as to the timing and scope of the Test to be performed, which such consent shall be deemed granted if Seller does not provide Purchaser a written response to any request for consent within three (3) business days after Purchaser's request therefor. Purchaser agrees that it will maintain and cause any person accessing the Parcel on Purchaser's behalf hereunder to maintain not less than One Million and No/100 Dollars (\$1,000,000.00) commercial general liability insurance (with, in the case of Purchaser's coverage, a contractual liability endorsement, insuring its indemnity obligation under this Agreement), insuring all activity and conduct of such person while exercising such right of access, issued by a licensed insurance company reasonably acceptable to Seller. Purchaser agrees to give Seller reasonable prior notice of its intent to conduct any Test, so that Seller will have the opportunity to have a representative present during any such Test, the right to which Seller expressly reserves. Purchaser agrees to promptly cooperate with any reasonable request by Seller in connection with the timing of any such Test. Purchaser agrees to provide Seller upon Seller's request with a copy of any written Test report or summary prepared by any third party, without representation or warranty and solely as an accommodation to Seller. Purchaser agrees that any Test or other study or analysis of the physical condition of the Parcel shall be performed at Purchaser's expense and in strict accordance with applicable law. Purchaser agrees at its own expense to promptly repair or restore the Parcel, if any inspection or test requires or results in any damage to or alteration of its condition. Purchaser agrees, to the extent provided by law, to indemnify, defend and hold harmless Seller from any loss, injury, damage (excluding consequential, punitive, special, incidental and similar type damages), claim, lien, cost or expense, including reasonable attorneys' fees and costs, for death, bodily injury or damage to the Parcel to the extent caused by Purchaser in the exercise by Purchaser or its employees, consultants, agents or representatives of its rights pursuant to this Section 3, except to the extent attributable to the negligence of Seller or by any preexisting defects in the Parcel, including the location of any Hazardous Substances. The indemnity in this

Section 3 shall survive any termination of this Agreement. Within five (5) business days after the date of this Agreement, Seller shall provide to Purchaser all title policies and surveys in the possession or reasonable control of Seller with respect to the Parcel.

4. Conditions Precedent.

(a) *Purchaser.* Purchaser's obligation to consummate the transaction contemplated by this Agreement is subject to satisfaction of all of the conditions set forth in this Paragraph 4(a) within the time periods prescribed herein. Purchaser may waive any or all of such conditions in whole or in part but any such waiver shall be effective only if made in writing. No such waiver shall constitute a waiver by Purchaser of any of its rights or remedies nor release Seller from any of its liabilities under this Agreement. Satisfaction of such conditions shall not waive any representation or warranty made by Seller.

(i) As of the Initial Contingency Date:

(1) Purchaser shall be satisfied in its sole and absolute discretion with the results of the Tests.

(2) Purchaser shall be satisfied, in its sole and absolute discretion, that adequate public utilities, including sewers, water, gas, electricity and telecommunication, and all other utilities, are or will be available at the Acquired Parcels in sufficient capacity for Purchaser's proposed development of the Acquired Parcels.

(3) Purchaser shall be satisfied, in its sole and absolute discretion, that the soil and ground and sub-surface conditions (including the ground water) are suitable for Purchaser's proposed development of the Acquired Parcels.

If, as of the Initial Contingency Date, Purchaser is not satisfied with any matter concerning Purchaser's proposed development of the Acquired Parcels, for any reason or for no reason, in Purchaser's sole and absolute discretion, including, without limitation, any condition precedent set forth in this Paragraph 4(a)(i), then Purchaser shall have the right to terminate this Agreement, by written notice given to Seller on or before the Initial Contingency Date, and the earnest money shall promptly be returned to Purchaser.

(ii) As of the Second Contingency Date:

(1) Purchaser, or an Affiliate, shall have entered into an agreement (the "Public Parking Construction Contract") with Seller, in form and substance reasonably acceptable to Purchaser and Seller, pursuant to which, among other things, (A) Purchaser shall agree (i) to provide, or cause to be provided, all utilities of the type and size required by Purchaser for the development of the Project, and (ii) to construct, or cause to be constructed, certain improvements within the Public Parking Parcel consisting of certain parking facilities and related infrastructure improvements, all in accordance with plans, specifications and timetables to be developed and agreed to by Seller and Purchaser, subject to and in accordance with the conditions and limitations set forth in the Public Parking Construction Contract, and (B) Seller shall agree to pay Purchaser, for the construction of the foregoing improvements, an amount equal to the sum of the "cost of the work" (to be defined in the Public Parking Construction Contract) which shall include a 2% development fee and 8% construction fee, not to exceed a guaranteed maximum price to be set forth in the Public Parking Construction Contract.

(2) Purchaser, or an Affiliate, shall have entered into an agreement (the "Sub-Grade Construction Contract") with Seller, in form and substance reasonably acceptable to Purchaser and Seller, pursuant to which, among other things, (A) Purchaser shall agree to construct, or cause to be constructed, certain improvements within the Sub-Grade Parcel consisting of certain parking facilities and related infrastructure improvements, all in accordance with plans, specifications and timetables to be developed and agreed to by Seller and Purchaser, subject to and in accordance with the conditions and limitations set forth in the Sub-Grade Construction Contract, and (B) Seller shall agree to pay

Purchaser, for the construction of the foregoing improvements, an amount equal to 115% of the "cost of the work" (to be defined in the Sub-Grade Construction Contract).

(3) Purchaser and Seller shall have agreed upon the form of declaration of reciprocal easements, covenants, conditions and restrictions (the "Project Declaration"), which shall provide, among other things, for (A) the creation of all necessary construction, parking, cross-access, support, encroachment, maintenance, utility and other requisite easements to facilitate the construction, development and interdependent operation of the Public Parking Project, the Sub-Grade Project, the Condominium Project and the Retail Project, (B) the requirement of the owners of the Public Parking Project, Sub-Grade Project, Retail Project and Condominium Project to perform certain maintenance obligations and to fulfill, among other things, certain insurance and indemnification obligations, and (C) the establishment of certain use restrictions for the Parcel.

If, as of the Second Contingency Date, Purchaser is not satisfied with any matter concerning Purchaser's proposed development of the Acquired Parcels, for any reason or for no reason, in Purchaser's sole and absolute discretion, including, without limitation, any condition precedent set forth in this Paragraph 4(a)(ii), then Purchaser shall have the right to terminate this Agreement, by written notice given to Seller on or before the Second Contingency Date, and the earnest money shall promptly be returned to Purchaser.

(iii) As of the Pre-Sale Contingency Date, the Sales Balance Date shall have occurred. If the Sales Balance Date does not occur, or Purchaser anticipates that the Sales Balance Date will not occur, on or prior to the Pre-Sale Contingency Date, then Purchaser shall have the right to terminate this Agreement, by written notice given to Seller on or before the Pre-Sale Contingency Date. If Purchaser terminates this Agreement, as aforesaid, then the earnest money shall be returned to Purchaser. Purchaser shall have the right and option to extend the Pre-Sale Contingency Date for two (2) periods of one month each (each, an "Extension Period") with respect to the matters set forth in this Paragraph 4(a)(iii) hereof, with the first Extension Period commencing, if at all, on April 1, 2006 and expiring April 30, 2006, and the second Extension Period commencing, if at all, on May 1, 2006 and expiring on May 31, 2006.

(iv) As of the Closing Date:

(1) Seller shall not be in default in the performance of any covenant or agreement to be performed by Seller under this Agreement.

(2) All representations and warranties made by Seller shall be true and correct.

(3) The Parcel shall have been vertically and horizontally subdivided (the expense of which shall be borne equally by Purchaser and Seller) in accordance with Purchaser's general plan of development and in accordance with applicable laws and regulations, and any such subdivision shall be acceptable to Purchaser, in its sole and absolute discretion.

(4) Purchaser shall have obtained any and all zoning and other approvals, consents, amendments, modifications and the like (including, without limitation, (x) any and all entitlements and/or governmental approvals from the City of St. Louis or any other applicable governmental authority which Purchaser may seek in conjunction with its proposed development of the Acquired Parcels, (y) all necessary Federal Aviation Administration approvals and permits, if any, and (z) all necessary zoning approvals or variances to permit the construction of the Retail Project and Condominium Project) that are necessary and/or required by the City of St. Louis and/or the Metropolitan Sewer District for Purchaser to proceed with Purchaser's proposed development of the Acquired Parcels.

If Closing shall not occur due to any one or more of the conditions precedent set forth in this Paragraph 4(a)(iv) having not occurred, then Purchaser may elect to extend the time (not to exceed twelve (12) months following the Pre-Sale Contingency Date (as the Pre-Sale Contingency Date may have been previously extended)) for such conditions precedent to occur or may elect to terminate this Agreement. If Purchaser terminates this Agreement, then the earnest money shall promptly be returned to Purchaser.

(b) **Seller.** Seller's obligation to consummate the transaction contemplated by this Agreement is subject to satisfaction of all of the conditions set forth in this Paragraph 4(b) within the time periods prescribed herein.

(i) On or before September 15, 2005, Seller shall have received a recommendation, acceptable to Seller, issued by the City of St. Louis TIF Review Committee to the City of St. Louis TIF Commission, for approval of tax increment financing for Seller's proposed development of the Public Parking Project. If, as of September 15, 2005, Seller has not satisfied the condition set forth in this Paragraph 4(b)(i), then Seller shall have the right to terminate this Agreement, by written notice given to Purchaser on or before September 15, 2005, in which event the earnest money shall promptly be returned to Purchaser.

(ii) As of the Initial Contingency Date, Seller shall have received approval of this Agreement from the Parking Commission of the City of St. Louis and the City of St. Louis Board of Aldermen. If, as of the Initial Contingency Date, Seller has not satisfied the condition set forth in this Paragraph 4(b)(ii), then Seller shall have the right to terminate this Agreement, by written notice given to Purchaser on or before the Initial Contingency Date, in which event the earnest money shall promptly be returned to Purchaser.

(iii) On or before the Second Contingency Date, Seller and Purchaser, or an Affiliate, shall have entered into the Public Parking Construction Contract. If, as of the Second Contingency Date, Seller has not satisfied the condition set forth in this Paragraph 4(b)(iii), then Seller shall have the right to terminate this Agreement, by written notice given to Purchaser on or before the Second Contingency Date, in which event the earnest money shall promptly be returned to Purchaser.

5. **Title Insurance Commitment.** Purchaser, at its sole cost and expense, may obtain a title insurance commitment (the "Commitment") issued by the Title Company in the amount of the Purchase Price, which shall commit the Title Company to issue the Title Policy in form and substance as described in Paragraph 8, and the Commitment shall have attached thereto copies of all documents referred to therein which constitute encumbrances on title to the Parcel.

If the Commitment that the Title Company issues after execution hereof or the Title Policy the Title Company is prepared to issue at Closing does not comply with the requirements of this Agreement, Seller shall be allowed a period of seven (7) days from the date of issuance of the Commitment, or twenty (20) days from the date on which the Title Company is prepared to issue the Title Policy, as the case may be, to cause the Commitment or the Title Policy, as the case may be, to conform to the requirements of this Agreement, and shall use its best efforts to do so (and Seller shall notify Purchaser promptly if Seller determines that Seller will not be able to do so); and if Seller shall not cause the Commitment or the Title Policy to conform to the requirements of this Agreement, then Purchaser may elect: (i) to have the Title Company issue its endorsement insuring against damage caused by said failure to comply and take title as it then is, with the right to deduct from the Purchase Price amounts equal to all liens and similar type encumbrances of a definite or ascertainable amount, (ii) to terminate this Agreement and receive a return of the earnest money, or (iii) to extend the time for Seller to cause the Commitment or the Title Policy, as the case may be, to conform to the requirements of this Agreement (and if Purchaser elects to so extend the time as described herein, Purchaser shall have the same rights concerning title matters at the end of the extended period as Purchaser had at the end of the original period). Further, if the matter which causes the Commitment or the Title Policy, as the case may be, to fail to conform to the requirements of this Agreement is a matter which was intentionally caused by Seller, then Purchaser's rights set forth in the immediately preceding sentence shall be in addition to, and not in lieu of, any other rights and remedies available to Purchaser for a default by Seller. Failure of Purchaser to make any of the foregoing elections within the time limits prescribed herein shall constitute an election by Purchaser to extend the time for Seller to cause the Commitment or the Title Policy, as the case may be, to conform to the requirements of this Agreement for the time period prescribed above.

6. **Survey.** Purchaser, at its sole cost and expense, may obtain a survey of the Parcel, prepared in accordance with Purchaser's specifications. If the survey indicates any encroachments or other title matters which would not constitute Permitted Exceptions, Seller shall have a period of ten (10) days in which to cure such matters or cause the Title Company to consent to insure against such matters in a manner which is satisfactory to Purchaser, and shall use its best efforts to do so (and Seller shall notify Purchaser promptly if Seller determines that Seller will not be able to do so); and if Seller shall not cure such matters or cause the Title Company to consent to insure against such matters in a manner satisfactory to Purchaser, Purchaser shall have the same rights it would have in the event that the Commitment or the Title Policy to be delivered to Purchaser were not in accordance with the requirements of this Agreement (including, in the case of a matter

intentionally caused by Seller, rights which Purchaser would have in case of an unperfected title matter which was intentionally caused by Seller.

7. Representations and Warranties of Seller. Seller represents and warrants to and covenants with Purchaser that

a. Seller has good and marketable, fee simple title to the Parcel, subject only to the exceptions to title set forth on Exhibit D attached hereto and made a part hereof ("Permitted Exceptions"), and that Seller has the power and authority to enter into and perform the terms and conditions of this Agreement, and such performance will not conflict with or result in a breach of any of the terms, conditions or provisions of any agreement or instrument to which Seller is a party or by which it is bound, or constitute a default under any of the foregoing; this Agreement is valid, binding and enforceable against Seller in accordance with its terms.

b. Seller has not received any notice of any violation of any law, municipal ordinance or other governmental requirement affecting the Parcel, including without limitation any notice of any fire, health, safety, building, pollution, environmental or zoning violation, and Seller has no knowledge that any governmental authority contemplates issuing such a notice, or that any such violation exists.

c. Seller has not received any written notice of any condemnation or eminent domain proceedings, or negotiations for purchase in lieu of condemnation, relating to the Parcel, or any portion thereof, and Seller has no knowledge that any condemnation or eminent domain proceedings have been commenced or threatened in connection with the Parcel, or any portion thereof.

d. (1) The Parcel (A) is not subject to any private or governmental lien or judicial or administrative notice, order or action relating to Hazardous Substances or environmental problems, impairments or liabilities with respect to the Parcel and (B) to the best of Seller's knowledge, is not in, or with any applicable notice and/or lapse of time, and/or failure to take certain curative or remedial actions, will not be in violation of any Environmental Laws.

(2) To the best of Seller's knowledge, no Hazardous Substances are located on or have been stored, generated, used, processed or disposed of on or released or discharged from (including ground water contamination) the Parcel and no above or underground storage tanks exist on, or have been removed from, the Parcel. Seller shall not allow, prior to Closing, any Hazardous Substances to exist or be stored, generated, used, located, discharged, released, possessed, managed, processed or otherwise handled on the Parcel, and shall comply with all Environmental Laws affecting the Parcel.

(3) Seller shall immediately notify Purchaser should Seller become aware of (A) any Hazardous Substance or other environmental problem or liability with respect to the Parcel, (B) any lien, order, action or notice of the nature described in subparagraph (1) above, or (C) any litigation or threat of litigation relating to any alleged unauthorized release, discharge, generation, use, storage or processing of any Hazardous Substance or the existence of any Hazardous Substance or other environmental contamination, liability or problem with respect to or arising out of or in connection with the Parcel.

Anything in this Agreement to the contrary notwithstanding, it is expressly understood and agreed that Purchaser does not assume or agree to be responsible for, and Seller hereby agrees to defend, indemnify and hold Purchaser harmless from and against, any and all claims, obligations and liabilities and all costs, expenses and attorney's fees incurred, based upon or arising out of any obligation, liability, loss, damage or expense, of whatever kind or nature, contingent or otherwise, known or unknown, incurred under or imposed by, any Environmental Laws arising out of any act or omission by Seller or its employees or representatives prior to the Closing.

As used herein, "Hazardous Substances" means any matter giving rise to liability under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601 et seq. (including the so-called "Superfund" amendments thereto), or other applicable, federal, state or local statute, law, ordinance, rule or regulation governing or pertaining to any hazardous substances, hazardous wastes, chemicals or other materials, including without limitation asbestos, polychlorinated biphenyls, radon, petroleum and any derivative thereof, or any common law theory based on nuisance or strict liability (all of the

foregoing statutes, laws, ordinances, rules, regulations and common law theories being sometimes collectively hereinafter referred to as "Environmental Laws").

c. No litigation or proceedings are pending or, to the best of Seller's knowledge, contemplated, threatened or anticipated, relating to the Parcel, or any portion thereof.

f. To the best of Seller's knowledge, there are no unrecorded agreements, undertakings or restrictions which affect the Parcel. There are no tenants, persons or entities occupying any portion of the Parcel (other than Purchaser pursuant to the Parking Lot Sublease) and no claim exists against any portion of the Parcel by reason of adverse possession or prescription.

g. To the best of Seller's knowledge, there is no condition or circumstance which would prevent, hinder or make more expensive the proposed development of the Acquired Parcels.

h. To the best of Seller's knowledge: (i) there is no assessment payable in annual installments, or any part thereof, which has become a lien on the Parcel, (ii) there is no obligation with respect to the Parcel for any assessment, annexation fee, payment, donation or the like, other than general real estate taxes, for schools, parks, fire departments or any other public facilities which are required to be made by the owner of the Parcel, (iii) there are no obligations in connection with the Parcel of any so-called "recapture agreement" involving refund for sewer extension, oversized utility, lighting or like expense or charge for work or services done upon or relating to the Parcel or otherwise; and (iv) there is no unexecuted paving agreement or undertaking with any government agency respecting construction or any acceleration or de-acceleration lane, access, or street lighting.

i. No portion of the Parcel is located within a flood plain, flood prone area, special flood hazard area or the like, as so designated by any applicable Flood Hazard Boundary Map or any such similar map or plan issued or controlled by the Federal Insurance Administration and/or any other federal agency appointed to regulate such matters under the Federal Flood Disaster Protection Act, as amended, or pursuant to any other national, state or local flood insurance program.

j. No management agent or other personnel employed in connection with the operation of the Parcel has the right to continue employment with respect to the Parcel after Closing.

If, prior to the Closing Date, Seller or Purchaser obtains knowledge of a fact or circumstance the existence of which constitutes a breach by Seller of its representations and warranties hereunder or renders any such representations and warranties untrue or incorrect, then Seller or Purchaser, as the case may be, shall promptly notify the other party in writing of the same as soon as possible following discovery of such fact or circumstance. Under such circumstances, and in addition to any other right or remedy that may be available to Purchaser, Purchaser, at its option, may terminate this Agreement without further liability by giving written notice thereof to Seller, in which event the earnest money shall promptly be returned to Purchaser. If Purchaser terminates this Agreement, as aforesaid, then, in addition to any other right or remedy that may be available to Purchaser, Seller shall pay to Purchaser all of Purchaser's costs and expenses of any kind or nature whatsoever paid or incurred in connection with the transaction contemplated by this Agreement, including, without limitation, any amounts expended by Purchaser as part of Purchaser's development activities for the Acquired Parcels, including design, marketing, environmental, engineering and legal costs, collectively, "Purchaser's Expenses" within five (5) days after Purchaser's demand therefor. Seller agrees to defend, indemnify and hold harmless Purchaser from and against any loss, claim, damage or expense, including reasonable attorneys' fees, that Purchaser may sustain because of the breach of any of Seller's representations and warranties, whether such breach is discovered before or after the Closing Date.

All representations, warranties, covenants, indemnities and undertakings made herein shall be deemed made as of Closing and shall be true and correct as of Closing and shall be deemed to be material and to have been relied upon by the parties, notwithstanding any investigation or other act of Purchaser herebefore or hereafter made, and shall survive Closing and execution and delivery of the Special Warranty Deed (the "Warranty Deed").

8. Closing. The conveyance of the Acquired Parcels to Purchaser, or Purchaser's nominee, and credit of the Purchase Price against Seller's payment obligations under the Public Parking Construction Contract ("Closing") shall occur at the office of the Title Company on a date ("Closing Date") selected by Purchaser upon at least five (5) days prior written notice to Seller and within thirty (30) days after the Pre-Sale Contingency Date (as the Pre-Sale Contingency Date may have

been previously extended), or at such other date, time and place as the parties may mutually agree, subject to delays by reason of operation of Paragraph 5.

Closing shall occur through an escrow with the escrow department of the Title Company ("Escrowee"), in accordance with the general provisions of Escrowee's usual form of deed and money escrow agreement, with special provisions inserted in the escrow agreement as may be required to conform to this Agreement and subject to the terms of a separate money lender's escrow, if any. The attorneys for both Seller and Purchaser are authorized to sign the escrow agreement. Upon the creation of such escrow, delivery of the Warranty Deed shall be made through the escrow. The cost of the deed and money escrow and any closing fee charged by the Title Company shall be divided equally between Seller and Purchaser. This Agreement shall not be merged into nor in any manner superseded by the escrow agreement.

The Acquired Parcels shall be conveyed to Purchaser, or Purchaser's nominee, by the Warranty Deed, conveying good and marketable, fee simple title subject to no exceptions to title other than the Permitted Exceptions.

At Closing, Seller and Purchaser shall each execute and deliver or cause to be executed and delivered such documents, closing statements, affidavits, searches, declarations, ben waivers, certificates, indemnities or deposits as shall be customary, necessary or appropriate to complete the transaction and cause the issuance of the Title Policy. At Closing, Seller shall deliver physical possession of the Acquired Parcels to Purchaser in substantially the same condition as exists on the date of execution of this Agreement. At Closing, Seller shall also execute and deliver or cause to be executed and/or delivered:

a. Certification with respect to Seller's non-foreign status sufficient to comply with the requirements of Section 1445 of the Internal Revenue Code of the United States of America and all regulations applicable thereto.

b. Certification to Purchaser, or its nominee, that the representations, warranties and covenants contained in this Agreement shall be true, correct and complete as of Closing.

c. An Owner's Title Insurance Policy (ALTA Form B-1970) ("Title Policy") issued by the Title Company, at Purchaser's expense, in the amount of the Purchase Price insuring title to the Acquired Parcels (including, without limitation, all appurtenant easements created pursuant to the Project Declaration) to be good and marketable and free from exceptions other than the Permitted Exceptions and insuring any appurtenant easements. The Title Policy shall have extended coverage over the general exceptions contained therein, and shall contain endorsements reasonably satisfactory to Purchaser pertaining to (i) zoning, (ii) contiguity, (iii) access, (iv) the absence of violations of restrictive covenants and easements, (v) the identity of the Acquired Parcels as described in the Title Policy with the property as shown on any survey (hereof delivered to the Title Company), (vi) the agreement of the Title Company to increase the amount of insurance to reflect the value of improvements Purchaser plans to construct on the Acquired Parcels, (vii) creditors rights, (viii) utility facilities, (ix) arbitration, (x) subdivision, (xi) tax sale, and (xii) any other endorsement reasonably requested by Purchaser (including without limitation any encroachment endorsement required as a result of matters disclosed by the survey delivered pursuant to Paragraph 6).

9. Apportionments. At and as of the Closing, Seller and Purchaser shall make adjustments for and apportion all expenses with respect to the Acquired Parcels including, without limitation, adjustments and apportionments with respect to real estate taxes (exclusive of any real estate taxes attributable to any existing improvements and any special assessments, payment of which shall be Seller's responsibility), and all expenses accrued prior to and on the Closing Date shall be paid by Seller (including any real estate taxes applicable to any period prior to Closing, regardless of when assessed or levied, including any so-called roll back taxes imposed because of a change in use of the Acquired Parcels after Closing, and including all special assessments affecting the Acquired Parcels, including installments thereof due after Closing, and any real estate taxes attributable to any existing improvements), and all expenses with respect to the Acquired Parcels accruing after the Closing Date shall be paid by Purchaser. Notwithstanding the foregoing, if the Acquired Parcels are subject to any special assessments, Purchaser may elect to take title to the Acquired Parcels, as applicable, subject to the unpaid balance of any such special assessments and receive a credit against the Purchase Price in respect thereof. Real estate taxes for which Seller is responsible and special assessments which are not paid prior to Closing shall be paid by means of a credit to Purchaser against the Purchase Price. If the amount of any real estate taxes to be adjusted is not ascertainable at the time of Closing, the adjustment thereof shall be on the basis of 110% of the amount of the most recent ascertainable real estate taxes and shall be readjusted upon receipt of final bills therefor. At or prior to Closing, Seller shall prepare a petition for tax division ("Petition") which shall be filed with the City of St. Louis Assessor's Office, petitioning for a division of the tax parcel or parcels presently applicable to the Parcel so that the Retail Parcel, Condominium Parcel, Sub-Grade Parcel and Public Parking Parcel will

become separate tax parcels. Purchaser shall sign the Petition, if required, and shall cooperate with Seller in obtaining a separate permanent index number for the Retail Parcel and the Condominium Parcel. If following Closing, the real estate tax bills are issued covering the Retail Parcel or the Condominium Parcel and other property owned by Seller, Seller and Purchaser shall cooperate in making an appropriate allocation of the tax bill(s) so that each party shall pay its pro rata share of said bill(s), determined by comparing the estimated construction cost of the Condominium Project and/or Retail Project with the estimated construction cost of the entire Project. Purchaser shall pay to Seller the amount so determined (promptly to avoid a late payment of taxes) to be allocated to the Acquired Parcels and Seller shall be responsible for paying the tax bill(s). The parties' obligations with respect to this paragraph shall survive the Closing and execution and delivery of the Warranty Deed.

Seller shall pay all state and local transfer taxes, if any, imposed by reason of the transfer of title to the Acquired Parcels to Purchaser or its nominee.

10. Development Assurances and Cooperation. From and after the execution of this Agreement, Seller shall, at the request of Purchaser, cooperate and work together with Purchaser (including, without limitation, joining in the execution of the materials described in clause (i) below) in connection with (i) applications, agreements, amendments, approvals, permits and annexation agreements relating to, among other things, zoning, site plan, planned development, subdivision, protective covenants, utility and other development matters to permit the development of the Acquired Parcels in accordance with Purchaser's proposed development plans, and (ii) any requirements of local, state or federal governments, or any agency thereof, including, without limitation, the Metropolitan Sewer District, or any public utility, relating to the proposed development of the Acquired Parcels, provided, however, that Seller shall not be required to incur any material out-of-pocket expense under this Section. The provisions of this paragraph shall survive the Closing and execution and delivery of the Warranty Deed.

11. Eminent Domain. In the event that between the date of this Agreement and the Closing Date, any eminent domain proceedings are initiated which might result in the taking of any part of the Parcel, or if Seller receives written notice from a governmental or quasi-governmental authority which states that such an action is contemplated, Purchaser may:

a. terminate this Agreement, in which event all rights and obligations of the parties hereunder shall terminate, and the earnest money shall promptly be returned to Purchaser; or

b. keep this Agreement in effect, and consummate the purchase of the Acquired Parcels or part thereof, in which event the Purchase Price shall be calculated without deduction for the loss of any portion of the Acquired Parcels taken or to be taken by eminent domain, and Seller shall cause to be conveyed and assigned to Purchaser all right, title and interest in and to any award made in connection with such eminent domain proceedings.

Seller shall notify Purchaser immediately, in writing, of the occurrence of any eminent domain proceedings, or the receipt of a written notice stating that such an action is contemplated. Purchaser shall then notify Seller within thirty (30) days after Purchaser's receipt of Seller's notice whether Purchaser elects to exercise its right under Subparagraph a. or b. of this Paragraph 11. Closing shall be delayed until Purchaser makes such election. If Purchaser elects to consummate the transaction, the Closing Date shall be adjusted accordingly.

12. Covenants of Seller. Between the date of this Agreement and the Closing Date, Seller shall:

a. comply with all laws, ordinances, regulations and restrictions affecting the Parcel and its use;

b. not create any mortgage, lien, pledge or other similar encumbrance in any way affecting the Acquired Parcels, nor otherwise convey any interest in the Parcel;

c. not commit any waste or nuisance upon the Parcel; and

d. not, without first obtaining the written consent of Purchaser, enter into any contracts or agreements, pertaining to the Acquired Parcels, except contracts or agreements which are not inconsistent with Purchaser's development rights and which may be terminated on not more than thirty (30) days notice.

13. **Project Announcement Signs/Confidentiality.** Purchaser and Seller shall have the right to erect "project announcement" signs on the Parcel. Such signs shall comply with applicable code restrictions regarding size, design, location and number. Purchaser shall keep such signs in good condition.

14. **Default.** If Closing does not occur, and the failure of Closing to occur is caused by the default of Purchaser, then Seller shall be entitled, as its sole and exclusive remedies, to retain the earnest money paid by Purchaser as liquidated damages and to be reimbursed by Purchaser for the reasonable out-of-pocket costs (including, without limitation, all reasonable attorneys' fees and reasonable financial advisors' fees) incurred by Seller, and subject to independent verification by Purchaser, in connection with the transaction contemplated by this Agreement, not to exceed Ten Thousand and 00/100 Dollars (\$10,000.00), and neither party shall have any further rights or obligations hereunder. If Closing does not occur, and the failure of Closing to occur is caused by a reason other than the default of Purchaser, then Purchaser shall be entitled to exercise any remedies available to Purchaser at law or equity for a default by Seller hereunder including, without limitation, the immediate refund of the earnest money, payment to Purchaser of Purchaser's Expenses, and the remedy of specific performance. If any party shall bring suit against the other to enforce the terms of this Agreement, the losing party shall pay to the prevailing party the prevailing party's cost and expenses (including, without limitation, reasonable attorneys' fees and costs) incurred in enforcing this Agreement.

15. **Notices.** All notices and demands herein required shall be in writing and shall be sent by United States Certified Mail return receipt requested, personal delivery, overnight courier (guaranteeing next day delivery) or facsimile:

a. To Seller:

Treasurer of the City of St. Louis
1200 Market Street, Room 220
St. Louis, Missouri 63103
Attention: Hon. Larry C. Williams
Facsimile Number: (314) 622-4246

with a copy to:

Patsine H. Shalton Welte Suelthaus
100 S. Fourth Street
Suite 1100
St. Louis, Missouri 63102
Attention: William J. Kuehling
Facsimile Number: (314) 231-1776

b. To Purchaser:

Opus NWR Development, L.L.C.
c/o Opus Corporation
10350 Deen Road West
Minnetonka, Minnesota 55345-9002
Attention: Andrew C. Deckas, Senior Vice President
Facsimile Number: (952) 656-4529

with a copy to:

Opus Northwest, L.L.C.
14755 North Outer Ferry Drive
Suite 104
Chesterfield, Missouri 63017
Attention: John G. Pittner, Director, Real Estate Development
Facsimile Number: (636) 537-8777

and a copy to:

Opus, L.L.C.
10350 Bren Road West
Minnetonka, Minnesota 55343-9002
Attention: Legal Department - Brad J. Ostlundson
Facsimile Number: (952) 650-4814

and a copy to:

Daspin & Aument, LLP
10 South Riverside Plaza, Suite 1220
Chicago, Illinois 60606
Attention: D. Albert Daspin
Facsimile Number: (312) 256-1955

All notices shall be deemed given two (2) business days following deposit in the United States mail with respect to a certified or registered letter, one (1) business day following deposit if delivered to an overnight courier guaranteeing next day delivery or on the same day if sent by personal delivery or telecopy (with proof of transmission). Attorneys for each party shall be authorized to give notices for such party. Any party may change its address for the service of notice by giving written notice of such change to the other party, in the manner above specified.

16. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

17. Time. Time is of the essence of this Agreement. If the time for performance of any obligations hereunder falls on a Saturday, Sunday or a day which is a Missouri state or federal holiday, the time for performance of such obligations shall be extended to the next day which is not a Saturday, Sunday or Missouri state or federal holiday.

18. Brokers. Each of Seller and Purchaser represents and warrants to the other party that in connection with the transaction contemplated hereby no third party broker or finder has been engaged or consulted by Seller or Purchaser, respectively, or is entitled to compensation or commission in connection herewith. Each of Seller and Purchaser agrees to defend, indemnify and hold harmless the other party from and against any and all claims of any brokers, finders or any like third party claiming any right to commission or compensation by or through acts of Seller or Purchaser, respectively, in connection herewith. The indemnity obligations hereunder shall include all damages, losses, risks, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from or related to matters being indemnified hereunder.

19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

20. Memorandum. Seller and Purchaser agree that either party may record a memorandum of this Agreement and the other party shall render such assistance as is necessary and appropriate to the execution and recording of such a memorandum.

21. Further Assurances. The parties each agree to do, execute, acknowledge and deliver any and all other documents and instruments and to take all such further action before or after the Closing as shall be necessary or desirable to fully carry out this Agreement and to fully consummate and effect the transaction contemplated hereby.

22. Counterparts. This Agreement and any document or instrument executed pursuant hereto may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

23. Written Waiver Required. No covenant, term or condition of this Agreement shall be deemed to have been waived by either party, unless such waiver is in writing signed by the other party charged with such waiver.

25. **No Partnership.** Nothing herein contained shall be construed as creating a joint venture, partnership, tenancy in common, or joint tenancy relationship between Seller and Purchaser, it being agreed and acknowledged that the only relationship between Seller and Purchaser shall be that of seller and purchaser.

26. **Option to Repurchase.** If Purchaser has not substantially completed the Condominium Project (i.e., obtained at least one certificate of occupancy for a residential condominium unit within the Condominium Project) on or before December 31, 2008, subject to events beyond Purchaser's reasonable control (the "Repurchase Date"), then Seller shall have the option (the "Repurchase Option") to purchase the Acquired Parcels from Purchaser, together with any improvements, alterations or additions (hereon or replacements thereof (collectively, the "Acquired Parcels Project") for a purchase price (the "Repurchase Option Price") to be determined in accordance with the provisions herein contained. Seller shall exercise the Repurchase Option, if at all, by giving Purchaser notice of the exercise of the Repurchase Option on or before the date thirty (30) days after the Repurchase Date (the "Repurchase Option Period"). Failure by Seller to exercise the Repurchase Option, as aforesaid, shall constitute a waiver of the Repurchase Option. If Seller waives, or is deemed to have waived, the Repurchase Option, or if Purchaser substantially completes the Condominium Project on or before the date thirty (30) days after the Repurchase Date, then the Repurchase Option shall automatically terminate without further act of the parties hereto, and within thirty (30) days after written request by Purchaser, Seller shall execute any documents reasonably required to evidence such termination, including, without limitation, a quit claim deed, and to remove any exceptions to Purchaser's title resulting from the Repurchase Option. If Seller fails to so execute and deliver to Purchaser any such documents within the 30-day period prescribed above, then Seller irrevocably constitutes and appoints Purchaser as Seller's agent and attorney-in-fact to execute and deliver such documents, which appointment includes full power of substitution and shall be deemed to be coupled with an interest. The Repurchase Option shall be subordinate and junior to any construction financing (or renewals, extensions or replacements thereof) secured in connection with the development of the Condominium Project and/or the Retail Project, provided such construction financing is secured solely by the Condominium Project and/or the Retail Project, as the case may be.

The Repurchase Option Price shall be an amount equal to the sum of (i) the Purchase Price, and (ii) Purchaser's costs incurred in connection with the design and construction of the Condominium Project and the Retail Project. The Repurchase Option Price shall be paid to Purchaser by wire transfer of funds on the date of closing.

Seller may, at its sole cost and expense, obtain (i) a commitment (the "Repurchase Commitment") for an owner's policy of title insurance issued by the Title Company showing title to the Acquired Parcels Project to Purchaser, and (ii) a plat of survey (the "Repurchase Survey") for the Acquired Parcels. Seller shall be allowed thirty (30) days after exercise of the Repurchase Option by Seller for examination of the Repurchase Commitment and the Repurchase Survey. If Seller has any objections to the Repurchase Commitment or the Repurchase Survey, then Seller may elect either (i) to rescind its exercise of the Repurchase Option, by written notice given to Purchaser within thirty (30) days after exercise of the Repurchase Option, or (ii) to take title to the Acquired Parcels Project as it then is (with the right to require Purchaser to remove from the Parcel any liens or encumbrances of a definite or ascertainable amount created by Purchaser). Seller's failure to rescind its exercise of the Repurchase Option by giving written notice to Purchaser within the 30-day period prescribed above shall constitute an election to proceed pursuant to clause (ii) above. Purchaser agrees to execute and deliver a limited warranty deed conveying title to the Acquired Parcels Project, to Seller, subject to all exceptions listed in the Repurchase Commitment, other than any exception constituting liens or encumbrances of a definite or ascertainable amount created by Purchaser.

Closing of said sale, pursuant to exercise of the Repurchase Option, shall be within forty-five (45) days after the notice of exercise of the Repurchase Option by Seller. The sale shall be closed through an escrow with the Title Company in accordance with the terms and provisions of the usual form of deed and money escrow agreement used by the Title Company, with such special provisions inserted in the escrow agreement as may be required to conform with provisions hereof and with provision for a "New York Style" closing. The parties further agree that pro-rata adjustments for real estate taxes and other matters shall be made as of the date of such closing.

If Purchaser fails to sell the Acquired Parcels Project to Seller pursuant to Seller's exercise of the Repurchase Option by reason of default by Purchaser, then Seller shall be entitled, as its sole and exclusive remedy, to pursue an action for specific performance of the Repurchase Option and recover all reasonable attorney's fees and costs incurred in connection with such specific performance action, and neither party shall have any further rights or obligations pursuant to this Section 26. If Seller fails to acquire the Acquired Parcels Project pursuant to Seller's exercise of the Repurchase Option by reason of default by Seller, then Purchaser shall be entitled, as its sole and exclusive remedy, to terminate the Repurchase Option and collect from Seller the sum of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) as liquidated damages and recover all reasonable

attorneys' fees and costs incurred in connection with such default, and neither party shall have any further rights or obligations pursuant to this Section 26.

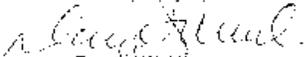
27. No Personal Liability. Larry C. Williams has executed this Agreement on behalf of the Treasurer's Office of the City of St. Louis, solely in his official capacity as Treasurer of the City of St. Louis. Neither Larry C. Williams, nor any employee or agent or consultant of the Treasurer's Office of the City of St. Louis, nor any other official, agent, or employee of the City of St. Louis, or of an affiliated entity, shall be held to any personal liability under this Agreement, and no resort shall be had against them personally, or their property or assets, for the satisfaction of any claim under this Agreement.

{Signature page follows}

IN WITNESS WHEREOF, Seller and Purchaser have executed this Agreement as of the day and year first above written

PURCHASER:

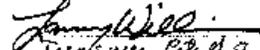
OPUS NWR DEVELOPMENT, L.L.C.,
a Delaware limited liability company


By: ~~Timothy W. Murnane~~
Senior Vice President, General Manager
Its: ~~Real Estate Development~~

David J. Menke
Vice President
Real Estate Development

SELLER:

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

By: 
Its: ~~Treasurer - City of St. Louis~~

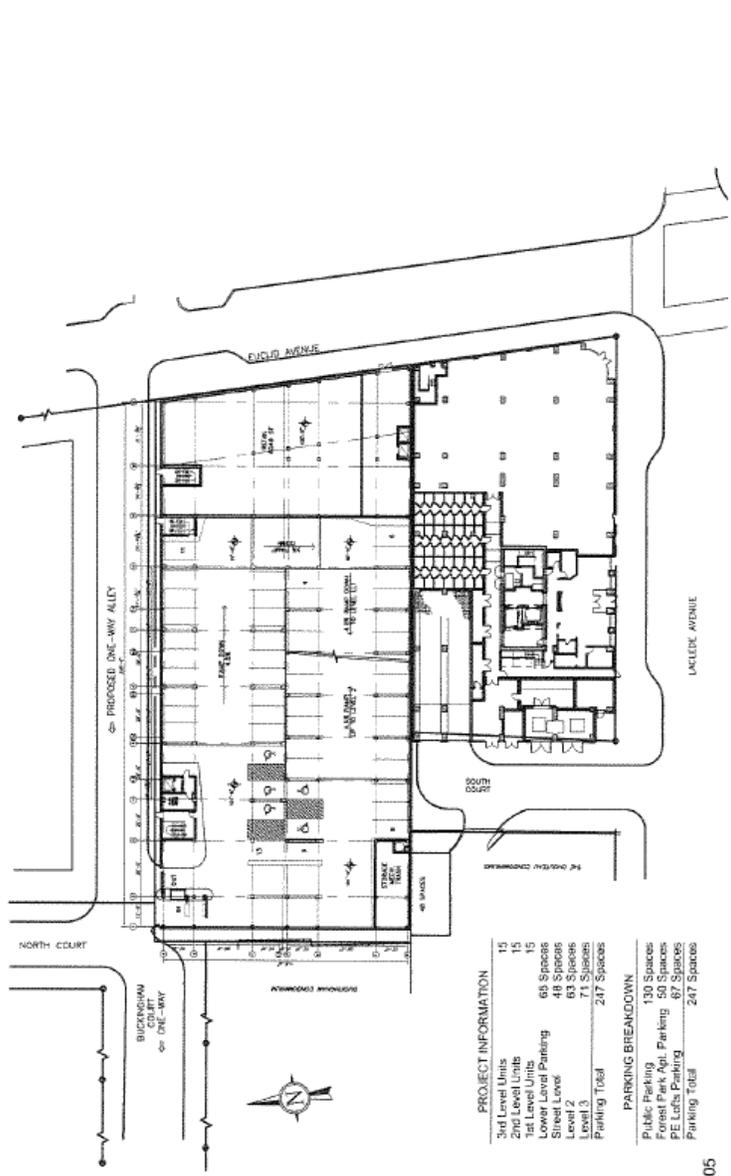
This Agreement Includes the Following Exhibits:

- Exhibit A – Depiction of Parcel
- Exhibit B – Public Parking Parcel
- Exhibit C –
- Exhibit D –
- Exhibit E –
- Exhibit C – Definitions
- Exhibit D – Permitted Exceptions
- Exhibit E – Section 13.5 of EPA Contract

EXHIBIT A

Depiction of Parcel

{To be attached}



PROJECT INFORMATION

3rd Level Units	15
2nd Level Units	15
1st Level Units	15
Lower Level Parking	68 Spaces
Stack Zone	63 Spaces
Level 2	63 Spaces
Level 3	71 Spaces
Parking Total	217 Spaces

PARKING BREAKDOWN

Public Parking	130 Spaces
Forest Park Appl. Parking	50 Spaces
PE Lofts Parking	67 Spaces
Parking Total	247 Spaces

19 JULY 2005

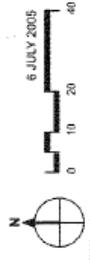
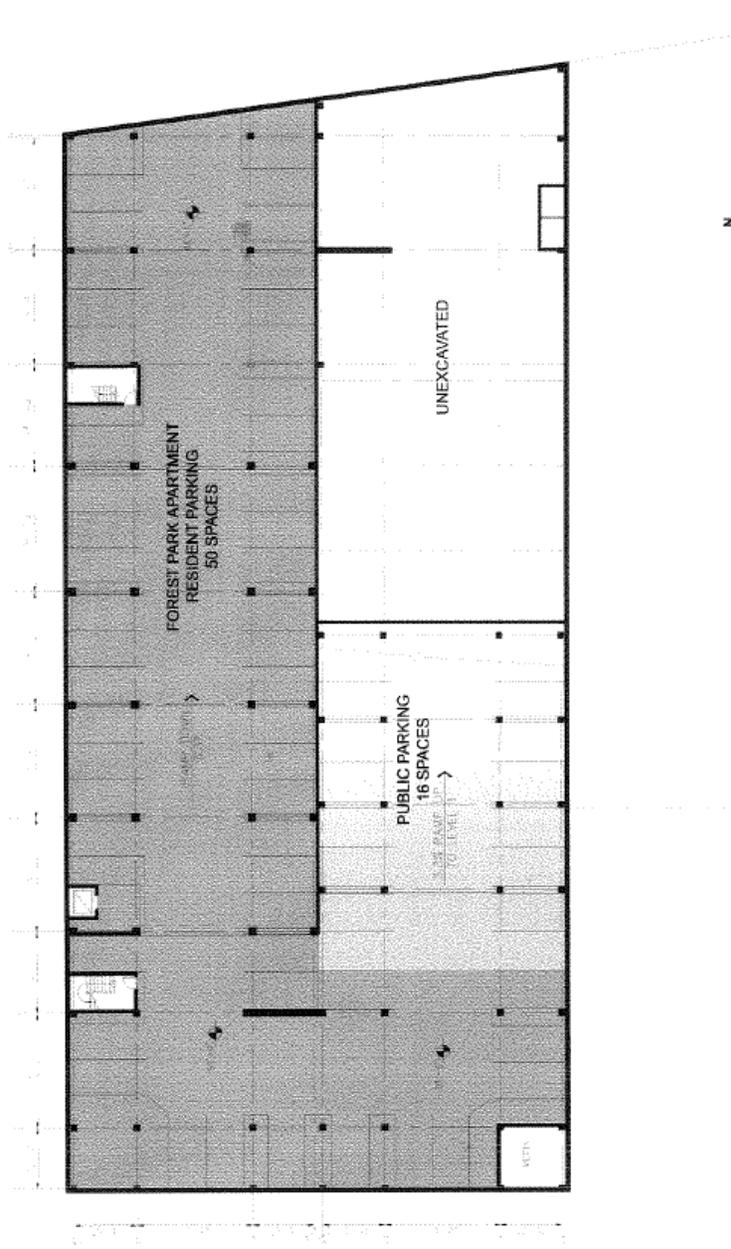


Opus Architects & Engineers, Inc.

PARK EAST LOFTS

ST. LOUIS, MO.

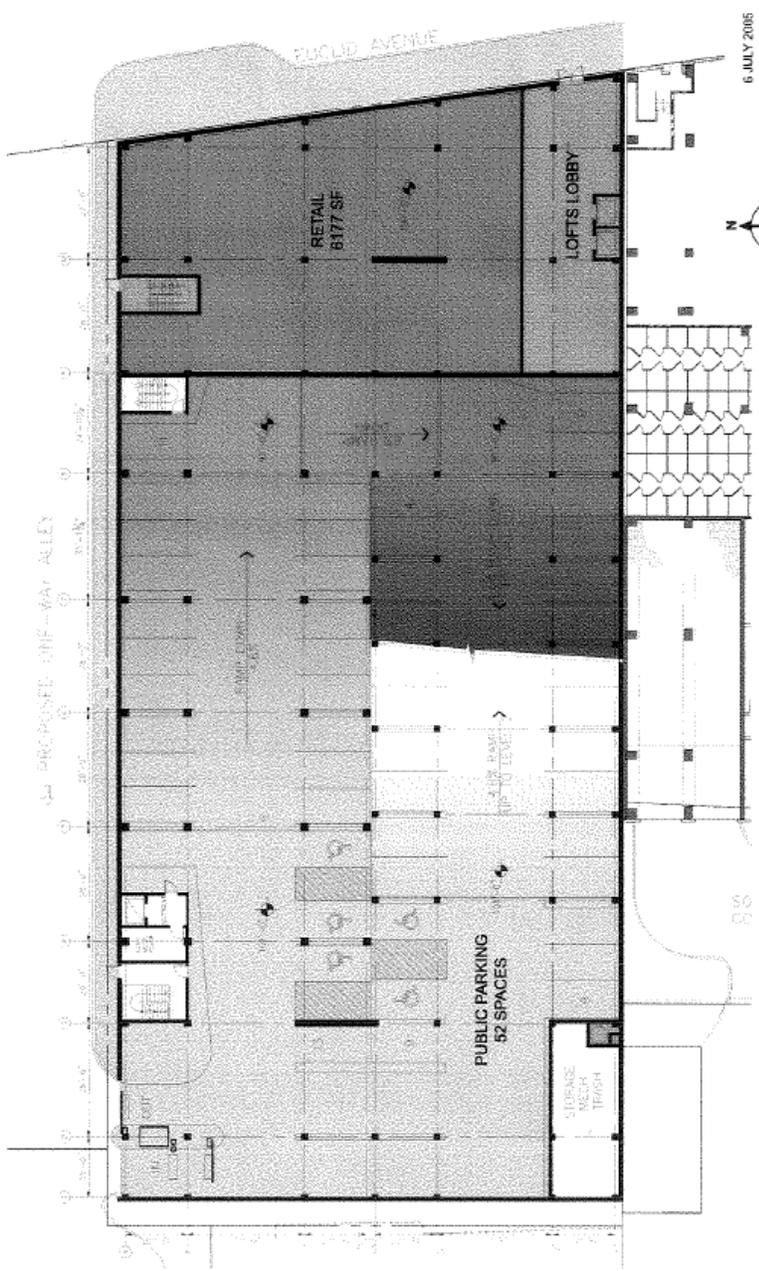
SCHEME 3 - OVERALL SITE PLAN



LOWER LEVEL

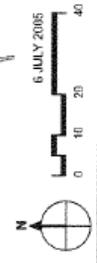
Park East Lofts
ST. LOUIS, MO

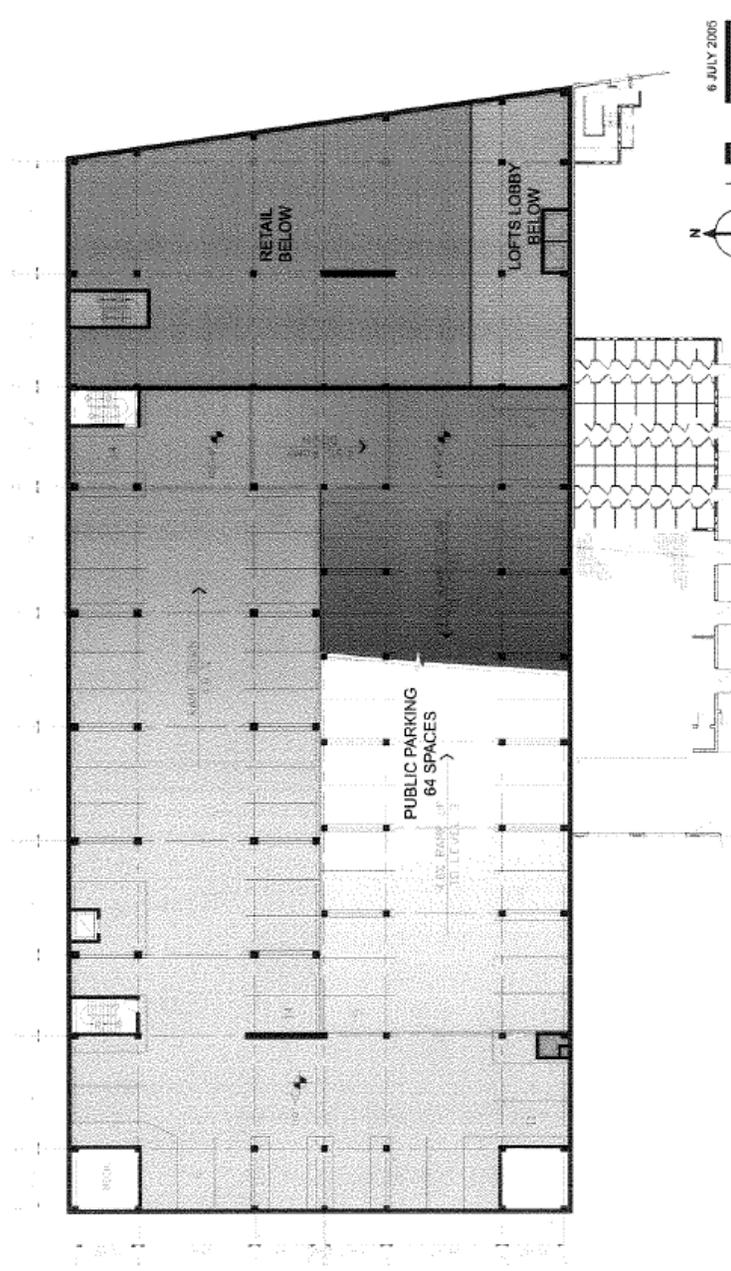
OPUS
A Development of Opus Northwest LLC



OPUS
COMMERCIAL ARCHITECTURE
 A Division of Olin NorthWest LLC

Park East Lofts
 St. Louis, MO





A Division of Opus Northstar LLC

Park East Lofts

St. Louis, MO

LEVEL 2

EXHIBIT C

Definitions

"Acquired Parcels" shall have the meaning set forth in Recital H.

"Acquired Parcels Project" shall have the meaning set forth in Paragraph 26.

"Affiliate" means any Person that directly or indirectly through one or more intermediaries is controlled by, controls or is under common control with (a) Purchaser, (b) the founder of Opus Corporation, his children, his grandchildren or other members of his family, or (c) the trustee of a trust or trusts for the benefit of the founder of Opus Corporation, his children, his grandchildren or other members of his family.

"Below-Grade Parcel" shall have the meaning set forth in Recital D.

"Below-Grade Project" shall have the meaning set forth in Recital D.

"Building" shall have the meaning set forth in Recital C.

"Closing" shall have the meaning set forth in Paragraph 8.

"Closing Date" shall have the meaning set forth in Paragraph 8.

"Commitment" shall have the meaning set forth in Paragraph 5.

"Condominium Parcel" shall have the meaning set forth in Recital E.

"Condominium Project" shall have the meaning set forth in Recital E.

"Environmental Laws" shall have the meaning set forth in Paragraph 7.

"Escrowee" shall have the meaning set forth in Paragraph 8.

"FPA" shall have the meaning set forth in Recital B.

"Hazardous Substances" shall have the meaning set forth in Paragraph 7.

"Initial Contingency Date" means the date which is the later to occur of (i) the date sixty (60) days following the date of full execution and delivery of this Agreement, and (ii) October 21, 2005.

"Parcel" shall have the meaning set forth in Recital A.

"Packing Lot Sublease" shall have the meaning set forth in Recital B.

"Permitted Exceptions" shall have the meaning set forth in Paragraph 7(a).

"Person" shall mean any individual, corporation, partnership, joint venture, association, limited liability company, joint stock company, trust, non-incorporated organization or government or any agency of political subdivision thereof or any other entity.

"Petroleum" shall have the meaning set forth in Paragraph 9.

"Pre-Sale Contingency Date" shall mean March 31, 2006.

"Project" shall have the meaning set forth in Recital C.

"Project Declaration" shall have the meaning set forth in Paragraph 4(a)(ii)(3).

"Public Parking Construction Contract" shall have the meaning set forth in Paragraph 4(a)(ii)(1).

"Public Parking Parcel" shall have the meaning set forth in Recital D.

"Public Parking Project" shall have the meaning set forth in Recital D.

"Purchase Price" means an amount equal to Five Hundred Thousand and 00/100 Dollars (\$500,000.00).

"Repurchase Commitment" shall have the meaning set forth in Paragraph 26.

"Repurchase Option" shall have the meaning set forth in Paragraph 26.

"Repurchase Option Period" shall have the meaning set forth in Paragraph 26.

"Repurchase Option Price" shall have the meaning set forth in Paragraph 26.

"Repurchase Survey" shall have the meaning set forth in Paragraph 26.

"Retail Parcel" shall have the meaning set forth in Recital E.

"Retail Project" shall have the meaning set forth in Recital E.

"Sale" means the sale of any portion (i.e. any individual residential condominium unit) of the Condominium Project by Purchaser to a bona fide, non-Affiliate purchaser.

"Sale Contract" means a binding, written agreement between Purchaser and a third-party purchaser, acceptable to Purchaser's prospective lender for purposes of satisfying any loan funding or loan closing conditions pursuant to which Purchaser agrees to sell, and such third-party purchaser agrees to purchase, one or more residential condominium units in the Condominium Project, without contingencies (other than customary contingencies for Purchaser's performance of any construction obligations), and with respect to which such third-party purchaser has deposited with Purchaser, in cash or other immediately available funds, at least 5% of the purchase price for such residential condominium unit.

"Sales Balance Date" means the date on which the percentage of the aggregate number of residential condominium units proposed to be developed by Purchaser on the Condominium Parcel which are subject to Sale Contracts is not more than eight percentage points less than and not more than eight percentage points greater than the percentage of the aggregate value (as established by Purchaser's list price for such units) of the residential condominium units proposed to be developed by Purchaser on the Condominium Parcel which are subject to Sale Contracts; provided, however, in no event shall the Sales Balance Date be deemed to be earlier than the date on which Purchaser shall have entered into Sale Contracts for the sale of at least fifty percent (50%) of the aggregate value (as established by Purchaser's list price for such units) of the residential condominium units proposed to be developed by Purchaser on the Condominium Parcel.

"Second Contingency Date" means the date which is one hundred and twenty (120) days following the date of full execution and delivery of this Agreement.

"Sub-Grade Construction Contract" shall have the meaning set forth in Paragraph 4(a)(ii)(2).

"Tests" shall have the meaning set forth in Paragraph 3.

"Title Company" shall have the meaning set forth in Paragraph 2.

"Title Policy" shall have the meaning set forth in Paragraph 8(c).

"Warranty Deed" shall have the meaning set forth in Paragraph 7.

EXHIBIT D

Permitted Exceptions

- (A) Real Estate Taxes not yet due and payable.
- (B) Acts of Purchaser or persons claiming by, through or under Purchaser.
- (C) Such other exceptions as may be agreed to in writing by both Seller and Purchaser.

EXHIBIT E
Section 13.3 of FPA Contract

FIRST AMENDMENT TO PURCHASE AGREEMENT

This First Amendment to Purchase Agreement (this "First Amendment") made by between the Treasurer of the City of St. Louis, acting in his capacity as Supervisor of Parking Meters, a municipal corporation ("Seller"), and Opus NWR Development L.L.C., a Delaware limited liability company ("Purchaser"), is hereby entered into this ____ day of _____, 2006;

WHEREAS, Seller and Purchaser have entered into that certain Purchase Agreement dated as of September 22, 2005 (the "Agreement"), pursuant to which, among other things, Seller agreed to sell to Purchaser and Purchaser agreed to purchase from Seller, the Condominium Parcel and the Retail Parcel; and

WHEREAS, Purchaser intends to enter into a construction agreement with Opus NWR Construction, L.L.C. ("Opus Construction"), an affiliate of Purchaser, wherein Opus Construction will construct the Condominium Project upon the Condominium Parcel, which is anticipated to contain approximately fifty-two (52) residential for sale condominium units (the "Condominium Units") and associated parking; and

WHEREAS, Seller intends to enter into a construction agreement with Opus Construction, wherein Opus Construction will construct the Public Parking Project, which is anticipated to contain up to 180 public parking spaces, which such parking spaces shall be paid for, owned and operated by Seller; and

WHEREAS, two million dollars (\$2,000,000) of the financing by the Seller of the costs of the Public Parking Project will come from certain tax increment financing revenues pursuant to that certain Redevelopment Agreement dated as of _____, 2006 (the "TIF Redevelopment Agreement") between the City of St. Louis, Missouri (the "City") and Seller; and

WHEREAS, if Purchaser fails to build the Condominium Project, Seller will not be able to pay Opus Construction the full price for the Public Parking Project because there will be insufficient tax increment financing revenue; and

WHEREAS, the City, pursuant to the TIF Redevelopment Agreement, is imposing certain requirements relating to financial reporting; and

WHEREAS, Seller has petitioned the Circuit Court of the City of St. Louis for the creation of a transportation development district ("TDD") pursuant to Section 238.200 et seq. of Missouri Revised Statutes (the "TDD Act"), which TDD will include the Parcel; and

WHEREAS, the parties desire to extend the period of time of the Pre-Sale Contingency Date; and

WHEREAS, capitalized terms used herein shall have the meanings given them in the Agreement unless otherwise noted.

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

1. Purchaser agrees that in the event both Purchaser and Seller give written notice (the "Construction Commencement Notice") to Opus Construction to commence construction of the Units and the Public Parking Project, respectively, that Purchaser will substantially complete construction of approximately fifty-two (52) residential Condominium Units in the building by January 1, 2009, subject to force majeure, it being understood that in connection with obtaining final municipal approvals and/or potential consolidation of one or more Condominium Units by the contract purchasers thereof, the actual number of Condominium Units may be less than fifty-two (52). Purchaser and Seller shall each provide a copy of their respective Construction Commencement Notice to the other party. If Purchaser does not substantially complete the Condominium Units by said date, then Purchaser shall be deemed to have abandoned construction of the Condominium Units.
2. In the event, after having given the Construction Commencement Notice, Buyer abandons construction of the Condominium Units, Buyer shall pay to Seller an amount equal to the amount Seller has paid or owed to Opus Construction for the construction of the Public Parking Project, and an additional amount up to \$200,000 incurred by Seller (and subject to independent verification by Purchaser) for legal fees, consulting fees, financing costs, application fees, and other documented costs associated with Seller's development of the Public Parking Project, less any tax increment financing proceeds received by Seller with respect to the Condominium Units which have been substantially completed by January 1, 2009, subject to force majeure, not to exceed \$2.2 million in the aggregate.
3. Exhibit C of the Agreement is hereby amended, in part, in that the defined term "Pre-Sale Contingency Date" is deleted in its entirety and the following substituted therefor:

"Pre-Sale Contingency Date" shall mean July 31, 2006.
4. Purchaser shall in good faith cooperate and assist Seller, at no material cost to Purchaser, in obtaining approval for and levying of the transportation development district sales tax (the "TDD Sales Tax") contemplated by Section 3.9 of the TIF Redevelopment Agreement by voting to approve the TDD Sales Tax at an election held in accordance

with Section 238.235 of the TDD Act or by signing a special assessment petition in accordance with Section 238.230 of the TDD Act.

5. Purchaser shall use its commercially reasonable, good faith efforts to ensure that every retailer located on the Property shall be required under the terms of their respective leases to add the TDD Sales Tax to the retailer's sales price and when so added such TDD Sales Tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price, all as provided for in Section 238.235 of the TDD Act.
6. Purchaser shall waive the right to file suit to set aside the TDD Sales Tax or otherwise question the validity of the proceedings relating thereto.
7. Purchaser agrees to cooperate and take all reasonable actions necessary, at no material cost to Purchaser, to cause the TIF Revenues (as defined in the Redevelopment Agreement) from the Retail Parcel to be identified, captured and paid into the Special Allocation Fund (as defined in the Redevelopment Agreement), including the City's enforcement and collection of all such payments through all reasonable and ordinary legal means of enforcement. The Purchaser (or its successor(s) in interest as an owner or owner(s) of the affected portion(s) of the Retail Parcel) shall require each "seller" (as that term is defined in Section 144.010(11) of the Missouri Revised Statutes, as amended) within the Retail Parcel to provide to the Comptroller of the City the following information to the extent required by Section 5.6 of the Redevelopment Agreement:
 - (i) Each "seller's" federal and state tax identification numbers.
 - (ii) Within thirty (30) days of filing, copies of all sales tax returns filed with the Missouri Department of Revenue (on Form 53-S.F. Missouri Department of Revenue, attached hereto and made a part hereof as Exhibit A, or such successor form) with respect to the sales taxes originating from businesses located within the Retail Parcel. In the event that a "seller" has multiple business operations within the City, such "seller" shall file a separate sales tax return for the sales taxes originating from the business located within the Retail Parcel.
 - (iii) Within thirty (30) days of filing, copies of all earnings tax returns filed with the City (on Business Return Form 234, attached hereto and made a part hereof as Exhibit B, or such successor form) with respect to earnings taxes originating from the business located within the Retail Parcel. In the event that a business has multiple operations within the City, such business shall file separate

earnings tax returns for the earnings taxes originating from the business located within the Retail Parcel.

- (iv) Within thirty (30) days of filing, copies of all earnings tax withholding reports filed with the City (on Form W-10, attached hereto and made a part hereof as Exhibit C, or such successor form) with respect to earnings tax withholdings originating from the business located within the Retail Parcel. In the event that a business has multiple operations within the City, such business shall file separate earnings tax withholding reports for the earnings tax withholdings originating from the business located within the Retail Parcel.
- (v) Within thirty (30) days of receipt, copies of monthly invoices received for utility services provided to the property on which the business within the Retail Parcel is located, including without limitation electric, water, natural gas and telephone services.
- (vi) Within thirty (30) days of the end of each calendar quarter, copies of a completed Tax Increment Financing District Quarterly Information Form, attached hereto and made a part hereof as Exhibit D, for each business located within the Retail Parcel.

During such time as the Purchaser owns all or any portion of the Retail Parcel, Purchaser shall provide the information required in clauses (i) through (vi) of this Section 7. Purchaser (or its successor(s) in interest as an owner or owner(s) or lessee or lessee(s) of any portion (s) of the Retail Parcel) shall also request any purchaser or transferee of real property and any lessee, sublessee or other user of real property located within the Retail Parcel to designate sales subject to sales taxes pursuant to Chapter 144 of the Revised Statutes of Missouri, as amended, to be reported as originating from the Redevelopment Area to the fullest extent permitted by law (including reasonable efforts to negotiate for the inclusion of a clause so providing in the leases of the Retail Parcel). Purchaser shall satisfy this requirement by including the obligations set forth in this Section within any deed conveying a portion of the Retail Parcel used for retail purposes to or any lease entered into with any "seller."

- 8. All other terms of the Agreement shall remain the same and shall be in full force and effect.

[Signature page follows.]

IN WITNESS WHEREOF, Seller and Purchaser have executed this First Amendment to Purchase Agreement as of the day and year first above written.

PURCHASER:

OPUS NWR DEVELOPMENT, L.L.C.,
a Delaware limited liability company

By: _____
Its: _____

SELLER:

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

By: _____
Its: _____

031306 / 068618
WIKLJE 310934

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.]

**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: __%