

**LANSING TOWNE CENTER
DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS**

THIS DECLARATION is made as of the 16th day of September 2021, by the City of Lansing, Leavenworth County, Kansas (“**Developer**”).

WITNESSETH:

WHEREAS; Developer is the developer of the real property in the city of Lansing, Leavenworth County, Kansas now legally described as follows (the “**Property**”):

Lots 2 through 4, inclusive, LANSING TOWNE CENTER, 2ND PLAT, a subdivision located in the City of Lansing, Leavenworth County, Kansas.

WHEREAS, Developer intends to develop the Property into separate building lots for retail or office uses as permitted by the applicable zoning and governmental land use requirements; and

WHEREAS, Developer, as the present owner and developer of the Property, desires to place certain restrictions, reservations, easements, covenants, charges and assessments against the Property to preserve and enhance the value, desirability and attractiveness of the development and improvements constructed thereon and to keep the use thereof consistent with the intent of the Developer, and all of said restrictions, reservations, easements, covenants, charges and assessments shall be for the use and benefit of the Developer and its future grantees, successors and assigns;

NOW THEREFORE, in consideration of the premises contained herein, Developer, for itself and for its successors and assigns, and for its future grantees, hereby agrees and declares that all of the Property shall be, and it hereby is, restricted as to its use and subject to the restrictions, reservations, easements, covenants, assessments and charges in the manner hereinafter set forth.

1. Definitions. For purposes of this Declaration, the following definitions shall apply:

(a) **“City”** means the City of Lansing, Kansas.

(b) **“Declaration”** means this Lansing Towne Centre Declaration of Easements, Covenants and Restrictions.

(c) **“Detention Areas”** means those specific areas within Lansing Towne Centre to be used for the detention of stormwater, as set forth on the Preliminary Development Plans approved by the City on January 3, 2008, Ordinance No. 807, or as further revised by Developer with the approval of the City, together with all related detention facilities and other improvements constructed, or to be constructed, by or for the Developer and/or the City within such areas. Developer shall have the right to replat any Detention Areas located within Lot 2 to be a separate tract.

(d) **“Developer”** means the City of Lansing, Leavenworth County, Kansas, a Municipal Corporation of the State of Kansas, or its successor and assigns.

(e) **“Lansing Towne Center”** means all of Lansing Towne Centre, a subdivision located within the City of Lansing, Leavenworth County, Kansas.

(f) **“Lot”** means a lot included in Lots 2 through 4, inclusive, Lansing Towne Centre, a subdivision located in the City of Lansing, Leavenworth County, State of Kansas.

(g) **“Owner”** means the record owner(s) of title to any Lot, including the Developer, and for purposes for all rights and obligations of the Owner hereunder, shall include, where appropriate, all tenants, subtenants and licensees of such Owner and all of their respective employees, agents, customers, guests and invitees. If a building on a Lot has been subdivided into condominium units, the “owner” of such Lot shall be the condominium association for purposes of all voting and consent rights and payment obligations under this Agreement with respect to such Lot.

(h) **“Parking Areas”** means all asphalt parking areas and drives (including curbs) and parking area lights located on the Lots.

(i) **“Property”** means Lots 2 through 4, inclusive, Lansing Towne Centre, a subdivision located in the City of Lansing, Leavenworth County, State of Kansas.

(j) **“Recording Office”** means the Office of Register of Deeds of Leavenworth County, Kansas.

2. Use of Land; Certain Use Restrictions.

(a) Except as otherwise expressly provided herein, none of the Lots may be improved, used or occupied other than for the uses authorized by the zoning approved by the City for the Property.

(b) No outdoor trash, grass or construction material burning shall be allowed within the Property. No noxious activity shall be carried on with respect to any Lot; nor shall anything be done which may be or become a nuisance to the Property, or any part thereof.

(c) The following uses and activities shall be prohibited within the Property:

(i) Any use which emits an obnoxious odor, noise or sound which can be smelled or heard outside of any Building; provided, however, the foregoing shall not be construed as prohibiting normal cooking odors, paging or music.

(ii) Any self-service laundromat; provided, however, the foregoing shall not be construed as prohibiting non-self-service dry cleaning and/or laundry facilities as the same may be found in retail shopping centers in the Kansas City metropolitan area.

(iii) Any automobile, truck, motorcycle, trailer or recreational vehicle sales, leasing, display, repair or body repair operation; provided however, auto parts retailers with ancillary repair operations (less than 25% of revenues) shall be allowed.

(iv) Any bowling alley or skating rink, without the express consent of the Developer, which consent shall be in the Developer's discretion.

(v) Any massage parlor, pawn shop, tanning salon or title loan, check cashing or pay-day loan service.

(vi) Any establishment selling or exhibiting pornographic materials or which sells drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff; provided, however, the foregoing shall not be construed as prohibiting the operation of any bookstore that is not primarily an adult bookstore or the operation of any nationally or regionally recognized video rental (with or without sales).

(vii) Any bar, tavern, restaurant or other establishment whose revenues from the sale of alcoholic beverages for on premises consumption exceeds fifty percent (50%) of the gross revenues of such business.

(viii) A flea market, amusement or video arcade, pool or billiards hall or dance hall; provided, however, the foregoing shall not be construed as prohibiting the operation of any business not otherwise prohibited hereunder that has video game machines or pool or billiards tables as an incidental part of its business and not as its primary business.

(ix) Any gambling facility or operation.

(x) Any car wash; provided, however the foregoing shall not be construed as prohibiting the operation of any car wash incidental to the operation of a convenience store.

(xi) Cellular or other towers not fully integrated or “stealth”.

(xii) Churches, synagogues, mosques or any other places of religious worship.

(xiii) Commercial or industrial machinery equipment or sales, farm equipment sales, or mobile home sales.

(xiv) Educational institutions.

(xv) Gas stations, unless incidental to the operation of a convenience store, grocery store, or department store.

(xvi) Liquor stores, except if approved by the City, and if the sale of liquor is customarily and incidentally associated with the primary use, is located entirely within the structure of the primary use, and is not visible from and cannot be directly accessed from the exterior of the structure that contains the primary use.

(xvii) Manufacturing or assembly facilities.

(xviii) Warehouses.

(xix) Motor freight garages, equipment or storage.

(xx) Mobile home parks.

(xxi) Any drive-thru restaurants without the express prior approval of the City Council of Lansing, Kansas; provided, however, that full service restaurants (as defined by section 722110 of the NAICS code) with drive-up or drive-thru service are expressly permitted.

(xxii) Any use prohibited by the Redevelopment Agreement, as defined in Section 13 below.

(d) No Lot may be sold to any tax-exempt organization, except that this prohibition shall not prevent the granting of any temporary or permanent easements necessary to facilitate the construction of the Project.

(e) Lot 2 may not be used as a fast-food, drive-through style hamburger or chicken restaurant (including without a limitation, a Wendy’s, Burger King, or Hardee’s), provided,

however that Lot 2 may specifically be used as a Taco Bell, Taco Bueno, or Subway (subject to the approval of the City as set forth in Section 2(c)(xxi) above.

(f) The total aggregate square footage of all buildings located on Lot 4 of Lansing Towne Centre shall not exceed 7,900 total square feet, and such Lot 4 shall contain no more than two (2) tenants, owners, or users; provided, however, that there shall be no restriction on the number of tenants, owners, or users in connection with any office uses upon Lot 4 (but all other restrictions set forth herein, including the square footage restrictions set forth in this Section 2(f), shall apply to all such office uses).

(g) No Lot shall contain any buildings or other structures having a height of more than one story unless approved by Developer, in its sole and absolute discretion, prior to the construction of such buildings or structures. For the purposes of this Section 2(g), “one story” shall be defined as buildings having only one usable floor. Notwithstanding the foregoing, any building constructed on Lot 3 shall have only one usable floor but may have: (i) architectural elements extending no more than 23’6” above grade, and (ii) rooftop mechanical and HVAC equipment extending no more than 25’ above grade.

3. Easements for Utilities; Drainage; Maintenance.

(a) Developer shall have, and does hereby reserve, the right to locate, erect, construct, maintain and use, or authorize the location, erection, construction, maintenance and use of, drains, pipelines, sanitary and storm sewers, gas and water lines, electric and telephone lines, television cables and other utilities (all of which shall be underground), and to give or grant rights-of-way or easements therefor within the building setbacks on any Lot (and specifically not through any existing buildings, structures, or drive thru lanes on such Lot), or otherwise over, under, upon and through all easements and rights-of-way shown on any recorded plat of the Property, and, as an ongoing obligation, each Owner shall be obligated to execute any and all easements or other documents required to grant or otherwise evidence any rights reserved by the Developer pursuant to this Section 3. All utility easements and rights-of-way shall inure to the benefit of all governmental authorities and utility companies for purposes of installing, maintaining or moving any utility lines or services and shall inure to the benefit of the Developer and all Owners as a cross easement for utility line maintenance.

(b) In the event any easement rights granted in this Section are exercised with respect to any Lot, the party so exercising such easement rights (i) shall exercise those rights in a reasonable manner so as to minimize all adverse effects on the Owners, and (ii) shall promptly repair any damages to such Lot or improvements thereon resulting from the exercise of such easement rights and restore the Lot and improvements to as near the original condition as possible.

4. Cross Access.

(a) Subject to the terms and provisions of this Section, each Owner (the “Grantor”) with respect to its own Lot hereby reserves and retains for the benefit of itself

and its successors and assigns, tenants, subtenants, employees, agents, customers, business visitors, business guests, licensees and invitees (its “**Permitted Users**”) the perpetual, non-exclusive right and easement to use the Parking Areas, driveways, access ways, sidewalks and other paved areas that may from time to time be constructed on such Owner’s Lot (the “**Access Area**”) for the purpose of parking and for pedestrian and vehicular (as applicable) ingress and egress, as well as vehicular maneuvering and turn around.

(b) Grantor further grants, with respect to its own Lot, for the benefit of the Developer and each other Owner, the perpetual, non-exclusive right and easement to the Access Area for the purpose of pedestrian and vehicular (as applicable) ingress and egress, as well as vehicular maneuvering and turn around; provided, however that nothing in this Declaration shall grant any right to the Developer or any other Owners to use the Access Area for the purposes of parking for Developer or other such Owners, their tenants, subtenants, employees, agents, customers, business visitors, business guests, licensees or invitees.

(c) Nothing herein contained shall operate to prevent Grantor from establishing, installing or construction on its Lot traffic control devices, drives, curbs, walks, drains or parking areas and relocating, realigning or redesignating the same or the traffic flow patterns from time to time, or from establishing or enforcing reasonable parking regulations on its Lot, or from establishing rules and regulations requiring delivery trucks to use only Grantor designated access lanes and turnaround points; provided, however, that Grantor shall not unreasonably interfere with the easement granted and reserved to any other party under this Section 4 with respect to the use of the Access Area.

(d) This easement shall be a servitude on the Access Area and shall be appurtenant to, and shall pass automatically with, title to each Lot.

5. Detention Areas. Each Owner acknowledges that stormwater originating on such Owner’s Lot may be detained within Detention Areas located within Lansing Towne Centre. To the extent that any Lot drains to any Detention Area, the Owner of such Lot agrees that it shall contribute to the maintenance costs (but not the construction costs) of any such Detention Area as follows: The Owner of each Lot shall pay a portion of the maintenance costs for each Detention Area used by such Lot equal to the ratio of the size of such Owner’s Lot to the total amount of square footage within Lansing Towne Centre draining to such Detention Area(s). The Lots draining to any Detention Area shall be determined by Developer pursuant to any stormwater studies or other engineering reports obtained by Developer for such purpose, copies of which shall be provided to each Owner upon request. Upon the incurrence of any costs for the maintenance of such Detention Areas, Developer shall provide to each Owner an itemized invoice of such costs, along with a calculation of each such Owner’s portion of the costs. Upon receipt, each Owner shall remit its portion of such costs to the Developer within thirty (30) days thereafter.

6. Property Taxes. Each Owner shall promptly pay all real estate taxes, special assessments, sewer charges, and other similar charges levied against its Lot, the non-payment of

which would give rise to a lien superior to any other Owner's rights under this Declaration. Each Owner may contest the validity or amount of any such tax or assessment on its Lot but upon final determination as to the validity and amount thereof, such Owner shall promptly pay the same.

7. Notices. All notices required or permitted under this Declaration shall be deemed given if deposited in the United States Mail, postage prepaid, and addressed to the Owner of the Lot at the address of the Lot. Notice to one co-Owner shall constitute notice to all co-Owners.

8. Covenants Running with Land: Enforcement.

(a) The agreements, restrictions, reservations, charges and other provisions herein set forth are, and shall be, covenants running with the land and shall be binding upon all subsequent grantees of all parts of the Property. The Developer, and its successors, assigns and grantees, and all parties claiming by, through to under them, shall conform to and observe such agreements, restrictions, reservations, assessments, charges and other provisions. By accepting a deed to any of the Lots, each future grantee of any of the Lots shall be deemed to have personally consented and agreed to the agreements, restrictions, reservations, assessments, charges and other provisions set forth herein as applied to the Lot owned by such Owner.

(b) The Developer and each Owner shall have the right (but not the obligation) to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach, or to enforce the observance, of the agreements, restrictions, reservations and other provisions herein set forth, in addition to any action at law for damages. If the Developer or an Owner shall be successful in obtaining a judgment or consent decree in any such court action against an Owner or the Developer, such successful party shall be entitled to receive from the breaching party as part of the judgment or decree the legal fees and expenses incurred by the successful party with respect to such action.

(c) No delay or failure by any person or entity to exercise any of its rights or remedies with respect to a violation of this Declaration shall impair any of such rights or remedies; nor shall any such delay or failure be construed as a waiver of that or any other violation.

(d) No waiver of any violation shall be effective unless in writing and signed and delivered by the person or entity entitled to give such waiver, and no such waiver shall extend to or affect any other violation or situation, whether or not similar to the waived violation.

9. Assignment of Developer's Rights. The Developer shall have the right and authority, by appropriate agreement made expressly for that purpose, to assign, convey and transfer to any person(s) or entity who acquires any of the Lots from the Developer, all or any part of the rights, benefits, powers, reservations, privileges, duties and responsibilities herein reserved by or granted to the Developer, and upon such assignment the assignee shall then for all purposes be the Developer hereunder with respect to the assigned rights, benefits, powers, reservations, privileges, duties and responsibilities. Such assignee and its successors and assigns shall have the

right and authority to further assign, convey, transfer and set over the rights, benefits, powers, reservations, privileges, duties, and responsibilities of the Developer hereunder, as provided above.

10. Release or Modification of Restrictions.

(a) The terms and provisions of this Declaration may be amended, modified or terminated, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by the Developer and the owners of each Lot.

(b) If the rule against perpetuities or any rule regarding restraints on alienation or similar restriction is applicable to any right, restriction or other provision of this Declaration, such right, restriction or other provision shall terminate (if not earlier terminated) upon lapse of 20 years after the death of the last survivor of the now-living children and grandchildren of the individuals signing this Declaration on behalf of the Developer as the date of such execution.

11. Severability. Invalidation of any of the provisions set forth herein, or any part thereof, by an order, judgement or decree of any court, or otherwise, shall not invalidate or affect any of the other provisions or parts.

12. Governing Law. This Declaration shall be governed by and construed in accordance with the laws of Kansas.

13. Transportation Development District. The Property is located within a Transportation Development District (“**TDD**”), formed pursuant to K.S.A. §12-17,140 et seq., to finance the construction of some or all of the area infrastructure. Each Owner agrees to fully cooperate with the implementation and administration of the TDD including, without limitation, submitting any and all reports to the City or Developer as may be required pursuant to the Lansing Towne Centre South Project Area and North Project Area Redevelopment Agreement, dated June 7, 2007 (the “**Redevelopment Agreement**”). The TDD requires an additional 1% sales tax on all sales made within Property. Each Owner, to the extent applicable, agrees to comply with, and to cause any sales contracts, leases, or other transfer documents with all assignees, purchasers, tenants, subtenants and any business operating on such Owner’s Lot to include language obligating such assignees, purchasers, tenants, subtenants, or other entities to comply with, any sales tax reporting requirements or other requirements under the TDD or Redevelopment Agreement, and to levy and collect any additional sales tax pursuant to the TDD or the Redevelopment Agreement. Each Owner acknowledges and agrees that it shall have no rights to any TDD revenue as a result of being the Owner of any portion of the Property. Upon termination or expiration of the TDD the provisions of this paragraph shall have no further force or effect and an Owner shall have no obligations hereunder.

14. Community Improvement District. Developer may include the Property within a Community Improvement District (“**CID**”), to be formed pursuant to K.S.A. § 12-6a26 et seq., to finance the construction of some or all of the area improvements. Each Owner agrees to fully cooperate with the creation implementation and administration of the CID including, without

limitation, submitting any and all reports to the City or Developer as may be required pursuant to the Kansas Community Improvement District Act. The CID may require up to an additional 2% sales tax on all sales made within the Property. Each Owner, to the extent applicable, agrees to comply with, and to cause any sales contracts, leases, or other transfer documents with all assignees, purchasers, tenants, subtenants and any business operating on such Owner's Lot to include language obligating such assignees, purchasers, tenants, subtenants, or other entities to comply with, any sales tax reporting requirements or other requirements under the CIT, and to levy and collect any additional sales tax pursuant to the CID. Each Owner acknowledges and agrees that it shall have no rights to any CID revenue as a result of being the Owner of any portion of the Property. Upon termination or expiration of the CID the provisions of this paragraph shall have no further force or effect and an Owner shall have no further obligation hereunder.

15. TIF District.

(a) The Property is located within a tax increment financing district ("**TIF District**") formed pursuant to K.S.A. 12-1770 et seq. Each Owner agrees to fully cooperate, at no out-of-pocket expense to such Owner, with the administration of the TIF District, including, without limitation, signing or consenting to any application or petition required to be filed in connection with the amendment of the TIF District and taking such other actions as are necessary. Each Owner agrees to give the City notice of all tenants on November 1 of each year and upon the request of the City.

(b) Each Owner shall cause any sales contracts, leases, or other transfer documents with all assignees, purchasers, tenants, subtenants or any other entity acquiring property or occupancy rights in the Property to include language obligating such assignees, purchasers, tenants, subtenants or other entities to provide to the City's Finance Department, and to Developer upon Developer's request, simultaneously with submission to the Kansas Department of Revenue, the monthly sales tax returns for their facilities in Lansing Towne Centre of such assignee, purchasers, tenants, subtenants or any other entity acquiring property or occupancy rights. Each such contract or lease agreement shall provide that each of the Developer and the City is an intended third-party beneficiary of such provisions and has a separate and independent right to enforce such provisions against any such tenant or purchaser.

(c) Each Owner acknowledges and agrees that it shall have no rights to any TIF District revenue as a result of being the Owner of any portion of the Property.

(d) By accepting title to its Lot, each Owner authorizes the City to release such sales tax information to the Developer and to any bond trustee. City and Developer agree to keep all sales tax information confidential except as necessary for the administration of the TIF District.

(e) Upon termination or expiration of the TIF District the provisions of this paragraph shall have no further force or effect and an Owner shall have no further obligation hereunder.

16. Relocation Prohibited. Each Owner acknowledges that such Owner, or any of its tenants or subtenants, may not be relocated to the Property from any other space located within the City limits of the City unless the City Council of Lansing, Kansas has consented to such relocation with its prior and express approval by resolution. For purposes of this section, “relocation” shall mean the opening of any store, office or business located outside of Property (but within the City) is closed within 365 days prior to or after such opening.

[Signature page follows on separate sheet.]

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed the day and year first written above.

THE DEVELOPER:

CITY OF LANSING, KANSAS

By: _____

Name: _____

Title: _____

STATE OF KANSAS)
) ss.
COUNTY OF LEAVENWORTH)

This instrument was acknowledged before me, a Notary Public in and for the county and state aforesaid, on _____, 2021, by _____, as _____ of City of Lansing, Leavenworth County, Kansas, a Municipal Corporation of the State of Kansas, to me known to be the person who executed the foregoing instrument on behalf of said Municipal Corporation of the State of Kansas, and acknowledge that said Municipal Corporation of the State of Kansas executed the same as its free act and deed.

Notary Public

Print Name: _____

My Commission Expires

[SEAL]