

**Electronically Recorded  
4117033**

WAUKESHA COUNTY, WI  
REGISTER OF DEEDS  
James R Behrend

Recorded On: 12/30/2014 12:22:34 PM  
Total Fee: \$30.00 Page(s): 8  
Transfer Tax: \$0.00

**DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS**

DOCUMENT NO.

THIS SPACE RESERVED FOR RECORDING DATA

NAME AND RETURN ADDRESS

Lorin Williams Combs  
Winstead PC  
2728 North Harwood Street  
Dallas, Texas 75201

**SEE EXHIBIT A**

Parcel Identification Number

Prepared by:  
Lorin Williams Combs  
Winstead PC  
2728 North Harwood Street  
Dallas, Texas 75201

**DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS**

DOCUMENT NO.

THIS SPACE RESERVED FOR RECORDING DATA

NAME AND RETURN ADDRESS

Lorin Williams Combs  
Winstead PC  
2728 North Harwood Street  
Dallas, Texas 75201

SEE EXHIBIT A

Parcel Identification Number

Prepared by:  
Lorin Williams Combs  
Winstead PC  
2728 North Harwood Street  
Dallas, Texas 75201

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration is made as of December 19, 2014, by Developer.

### RECITALS:

- A. Developer is the fee owner of the Land.
- B. Developer desires to develop a Project on the Land, in which portions of the Land shall be designated for separate ownership.
- C. To effectuate the common development and operation of the Land, and to protect the value and desirability of the Land, Developer desires to subject the Land to the covenants, conditions and restrictions set forth herein.

NOW, THEREFORE, Developer hereby declares that the Land and such additions thereto as may be made pursuant to the terms hereof is and shall be held, transferred, sold, mortgaged, conveyed and occupied subject to the covenants, conditions and restrictions set forth herein.

### AGREEMENT:

1. **Defined Terms.** Each capitalized term used in this Declaration shall have the meaning set forth below:

**Declaration:** This Declaration of Covenants, Conditions and Restrictions and all amendments hereto, which shall be filed for record in the real property records of Waukesha County, Wisconsin.

**Developer:** LOCKARD WAUKESHA HOLDINGS, LLC, an Iowa limited liability company whose address for notice is 4501 Prairie Parkway, Cedar Falls, Iowa 50613, and any successor or assignee thereof evidenced by a written instrument filed for record in the real property records of Waukesha County, Wisconsin assigning the rights, powers, authority and obligations of Developer hereunder.

**Drives:** All current and future existing paved areas on the Land, which are now or hereafter used or intended for the movement or parking of motor vehicles.

**Land:** That certain real property located in Waukesha County, Wisconsin as more particularly described in Exhibit A attached to this Declaration, together with all and singular the easements, leases, subleases, rights, and appurtenances pertaining thereto.

**Legal Requirements:** Any restrictive covenants and any other matters of record and any and all then-current judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any governmental authority in any way applicable to the use and enjoyment of any portion of the Land.

**Owner:** Any person (including Developer) owning fee title to a Parcel, but excluding any person having an interest in a Parcel solely as security for an obligation.

**Parcel:** A portion of the Land that is subdivided by way of plat or certified survey map.

**Permittee:** Any person from time to time entitled to the use and occupancy of any portion of the Project under an ownership right or any lease, sublease, license, easement, concession, or other similar

agreement, together with all employees, agents, contractors, customers, vendors, or invitees of the foregoing.

**Project:** The Land and all improvements now or in the future located thereon.

**Project Signage:** Any Signage constructed by Developer and located on a Parcel that designates or describes the Project, the Owners or their tenants, or advertises future tenants or future improvements within the Project.

**Proportionate Share:** A fraction determined by dividing the square feet of a Parcel by the total square feet of the Land.

**Shared Costs.** All costs and expense incurred by Developer in connection with the maintenance, repair, operation and administration of the Project, including maintenance and repair of the Drives, utilities serving the Project (including any storm water detention facilities), the Project Signage, any landscaping or lighting, or the provision of services benefitting the Parcels.

**Signage:** Any signage, lettering, decorations, banners, advertising or marketing media, awnings, canopies, window covering, or any other form of expression on the Land, or in the interior of any improvements building on the Land, if the same is visible from the exterior of such improvements.

**Signage Guidelines:** Any written guidelines promulgated by Developer for the approval of Signage proposed by an Owner or its tenants for use within the Project.

2. **Access and Parking Easement.** Developer hereby reserves and grants a perpetual, assignable and non-exclusive easement over, on and across the Drives for its own benefit and for the benefit of the Owners and their respective Permittees for (i) vehicular and pedestrian ingress and egress for each Parcel, (ii) vehicular parking but only in such areas specifically designated for parking; (iii) the performance of Developer's maintenance obligations, as described herein and (iv) loading and unloading of commercial and other delivery vehicles, subject, however, to any existing encumbrances of record.

3. **Signage, Signage Easement.** Each Owner shall have the right to erect Signage on its Parcel, provided that such Signage is in compliance with all Legal Requirements and, except with respect to Developer, (a) such Signage is in compliance with the Signage Guidelines and (b) is approved in writing by Developer in its sole discretion. In addition, Developer shall have the right to install such Project Signage as Developer may desire on any Parcel within the Project, whether owned by Developer or another Owner, and in connection with the exercise of such right, Developer hereby reserves a perpetual, assignable and non-exclusive easement over, on and across the Parcels for its own benefit for the construction and maintenance of Project Signage.

4. **Maintenance Obligations.** Each Owner shall have the duty and responsibility, at its sole cost and expense, to keep its Parcel, including any Signage constructed by such Owner thereon, in a well-maintained, clean and attractive condition at all times in a manner that is consistent with the quality of the maintenance of similar retail shopping centers in Waukesha, Wisconsin. Such maintenance shall include: (a) removing promptly all litter, trash, refuse and wastes; (b) keeping landscaping alive, free of weeds and vegetation-destroying insects and attractive, properly mowed, trimmed, watered and fertilized; and (c) complying with all Legal Requirements. Furthermore, each Owner shall maintain commercial general liability insurance covering the portions of the Drives located on its Parcel. Developer shall maintain the Drives in good condition and repair and in accordance with the standards necessary to comply with all applicable Legal Requirements. Such responsibilities shall include, without limitation, the sweeping, cleaning, striping and repairing the Drives.

5. **Shared Costs.** Each Owners shall be responsible for prompt payment of its Proportionate Share of the Shared Costs within 30 days after receiving notice and appropriate details of such Shared Costs from Developer. Payment shall be made to Developer at its address for notice as specified herein, or at such other address as specified in such notice of Shared Costs.

6. **Compliance and Default.** Failure of an Owner to comply with any provision of this Declaration, including timely payment of the Shared Costs, shall entitle Developer to suit for the recovery of damages or for injunctive relief, or both, which relief shall not be exclusive of other remedies provided at law or in equity; and recovery of costs of litigation and reasonable attorneys' fees. The failure of Developer to enforce any covenant, restriction or other provision of this Declaration shall not constitute a waiver of the right to do so thereafter.

7. **INDEMNIFICATION.**

(a) EACH OWNER, ON BEHALF OF ITSELF AND ITS PERMITTEES, EXPRESSLY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS DEVELOPER AND ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (EACH AN "INDEMNIFIED PARTY"), INDIVIDUALLY AND COLLECTIVELY, FROM ANY CLAIM BY ANY PERSON ARISING OR RESULTING FROM, SUSTAINED OR INCURRED BY ANY INDEMNIFIED PARTY, OR WHICH CAN OR MAY ARISE, RESULT FROM, BE SUSTAINED OR INCURRED IN CONNECTION WITH (i) THE EXERCISE OR FAILURE TO EXERCISE OR THE USE OR MISUSE OF ANY OF AN OWNER OR ITS PERMITTEES' RESPECTIVE RIGHTS OR OBLIGATIONS CONTAINED IN THIS DECLARATION; (ii) THE BREACH BY AN OWNER OR ITS PERMITTEES OF ANY PROVISION OF THIS DECLARATION; (iii) ANY HAZARDOUS SUBSTANCE CREATED BY AN OWNER ON THE LAND; OR (iv) THE NEGLIGENCE, FRAUD, WILLFUL MISCONDUCT OR CRIMINAL MISCONDUCT OF AN OWNER OR ITS PERMITTEES. IF MULTIPLE OWNERS AND/OR PERMITTEES ARE RESPONSIBLE FOR INDEMNIFYING AND HOLDING HARMLESS THE INDEMNIFIED PARTIES HEREUNDER, THEN SUCH OWNERS SHALL BE JOINTLY AND SEVERALLY RESPONSIBLE FOR DOING SO.

(b) ANY OWNER, ON BEHALF OF ITSELF AND ITS PERMITTEES, MAKING, CAUSING OR PERMITTING TO BE MADE ANY ADDITIONS, ALTERATIONS OR IMPROVEMENTS TO ITS PARCEL AGREES, AND SHALL BE DEEMED TO HAVE AGREED, FOR SUCH OWNER, TO INDEMNIFY, DEFEND AND HOLD HARMLESS EACH INDEMNIFIED PARTY AND ALL OTHER OWNERS FROM ANY CLAIMS ARISING OR RESULTING FROM, SUSTAINED OR INCURRED BY ANY INDEMNIFIED PARTY, OR WHICH CAN OR MAY ARISE, RESULT FROM, BE SUSTAINED OR INCURRED IN CONNECTION WITH, SUCH ADDITIONS, ALTERATIONS OR IMPROVEMENTS TO ANY OWNER'S PARCEL, INCLUDING ANY CLAIM ARISING FROM ANY MECHANIC'S LIEN FILED OR ASSERTED AGAINST THE PARCEL OF SUCH OWNER AND THE PARCEL OF OTHER OWNERS.

8. **No Public Dedication.** Nothing in this Declaration shall be deemed to be a gift or dedication of any portion of the Land to the general public or for any public use or purpose whatsoever, it being the intent that this Declaration be strictly limited to and for the purposes herein expressed for the development, maintenance and operation of a private real estate development on private property solely for the benefit of the Owners, except that certain easements and rights-of-way within the Project may be dedicated by separate documents.

9. **Notices.** All notices under this Declaration must be in writing and shall be deemed to have been served, given, and received when actually received or, if earlier, and regardless of when received, (i) if hand delivered, when delivered in person to the address for the Owner to whom notice is

given, as determined in accordance with the terms of this Declaration, (ii) if sent by overnight delivery service which provides service to the addressee's address, on the delivery date selected by the sender of such notice, so long as the sender complies with all of the requirements of the delivery service concerning address, payment, and selection of delivery date, or (iii) if mailed, upon the expiration of the third business day after having been placed in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed to the Owner at the Owner's address within the Project.

10. **Applicable Law.** This Declaration is to be construed under and in accordance with the laws of the State of Wisconsin and the laws of the United States applicable to transactions in Wisconsin. All of the obligations contained in this Declaration are performable in Waukesha County, Wisconsin.

11. **Severability.** In case any one or more of the provisions contained in this Declaration shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Declaration shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

12. **Binding Effect and Duration.** Each Owner accepts a deed conveying title to a Parcel subject to the covenants, conditions, restrictions and easements contained in this Declaration, which such covenants, conditions, restrictions and easements shall run with the land, shall constitute equitable servitudes upon each Parcel in the Project in favor of the other Parcels and shall be binding upon and inure to the benefit of the respective successors and assigns of the Owners. This Declaration shall continue in full force and effect for a period of 50 years after the date of the recording of this Declaration in the real property records of Waukesha County, Wisconsin, after which time this Declaration shall automatically be extended for successive periods of ten years each, unless amended or terminated in the manner specified in this Declaration.

13. **Amendments.** This Declaration, or any provisions hereof, may be amended or terminated only by written instrument, duly executed and acknowledged by Developer and recorded in the real property records of Waukesha County, Wisconsin. Any amendment to or termination of this Declaration shall not require the prior consent of any Owner. Furthermore, Developer shall have the right, from time to time, to amend this Declaration as Developer deems necessary, in its sole and absolute discretion. No Owner shall have the right to amend this Declaration without the prior written consent of Developer.

14. **Headings.** The headings, captions, numbering system, etc. in this Declaration are inserted only as a matter of convenience and under no circumstances will they be considered in interpreting the provisions of this Declaration.

15. **Number and Gender.** Where required for proper interpretation, words in the singular includes the plural, and vice versa; the masculine gender includes the neuter and the feminine, and vice versa.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the date first written above.

**DEVELOPER:**

LOCKARD WAUKESHA HOLDINGS, LLC,  
an Iowa limited liability company

By: Lockard IRES, LLC,  
Its Manager

By Lockard Asset Managers, LLC,  
Its Manager

By: [Signature]  
Robert L. Smith, Jr. Manager

STATE OF Iowa §  
COUNTY OF Black Hawk §

This instrument was acknowledged before me on December 17<sup>th</sup>, 2014, by Robert L. Smith, Jr., as Manager of Lockard Asset Managers, LLC, as Manager of Lockard IRES, LLC, as Manager of Lockard Waukesha Holdings, LLC.

Markita L. Peterson  
Notary Public in and for the State of Iowa

My Commission Expires:  
3/26/17

Markita L Peterson  
Printed Name of Notary



CONSENT AND SUBORDINATION

FIRST BUSINESS BANK – MILWAUKEE ("Lender"), hereby consents to the filing of the foregoing Declaration of Covenants, Conditions and Restrictions (the "Declaration") and, subject to the terms and provisions of this Consent and Subordination, subordinates the lien and security interests of that certain Mortgage, Security Agreement and Fixture Financing Statement dated as of December 18, 2014, recorded as Volume \_\_\_\_\_, Page \_\_\_\_\_, Document No. 4116893 with the register of deeds Waukesha County, Wisconsin, to the Declaration.

FIRST BUSINESS BANK – MILWAUKEE

By: [Signature]  
Name: Robert N. Bell II  
Title: VP

STATE OF WISCONSIN §  
COUNTY OF Waukesha §

This instrument was acknowledged before me on December 17, 2014, by Robert N Bell II VP of First Business Bank - Milwaukee, on behalf of said \_\_\_\_\_.

[SEAL]  
My Commission Expires:  
7/17/2016

[Signature]  
Notary Public - State of Wisconsin  
TARI A. HANSEN  
Printed Name of Notary



EXHIBIT A

LEGAL DESCRIPTION OF LAND

ALL THAT PART OF THE SOUTHWEST 1/4 OF SECTION 11, TOWN 6 NORTH, RANGE 19 EAST, CITY OF WAUKESHA, COUNTY OF WAUKESHA, STATE OF WISCONSIN, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 11; THENCE NORTH 0° 03' 15" WEST ALONG THE WEST LINE OF SAID SECTION 11, 280.02 FEET; THENCE NORTH 88° 30' EAST, 33.02 FEET TO THE EAST RIGHT-OF-WAY LINE OF SOUTH EAST AVENUE (C.T.H. "F"); SAID POINT BEING THE POINT OF BEGINNING OF THE LANDS HEREIN TO BE DESCRIBED; THENCE CONTINUING NORTH 88° 30' EAST, 140.00 FEET; THENCE SOUTH 0° 03' 15" EAST, 220.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SUNSET DRIVE (C.T.H. "A"); THENCE NORTH 88° 30' EAST ALONG SAID NORTH RIGHT-OF-WAY LINE, 828.00 FEET; THENCE NORTH 0° 03' 15" WEST, 562.06 FEET TO THE FORMER SOUTH LINE OF THE CITY OF WAUKESHA SCHOOL PROPERTY; THENCE SOUTH 88° 19' 04" WEST ALONG SAID SOUTH LINE AND SOUTH LINE EXTENDED, 968.08 FEET TO THE EAST RIGHT-OF-WAY LINE OF SOUTH EAST AVENUE (C.T.H. "F"); THENCE SOUTH 0° 03' 15" EAST ALONG SAID EAST RIGHT-OF-WAY LINE 338.98 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED LAND MAY ALSO BE DESCRIBED AS FOLLOWS:

ALL THAT PART OF THE SOUTHWEST 1/4 OF SECTION 11, TOWN 6 NORTH, RANGE 19 EAST, CITY OF WAUKESHA, COUNTY OF WAUKESHA, STATE OF WISCONSIN, BOUNDED AND DESCRIBED AS FOLLOWS:  
COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 11; THENCE NORTH 00° 06' 09" WEST ALONG THE WEST LINE OF SAID SECTION 11, 280.02 FEET; THENCE NORTH 88° 27' 06" EAST, 33.02 FEET TO THE EAST RIGHT-OF-WAY LINE OF SOUTH EAST AVENUE (C.T.H. "F"); SAID POINT BEING THE POINT OF BEGINNING OF THE LANDS HEREIN TO BE DESCRIBED; THENCE CONTINUING NORTH 88° 27' 06" EAST, 140.00 FEET; THENCE SOUTH 00° 06' 09" EAST, 220.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SUNSET DRIVE (C.T.H. "A"); THENCE NORTH 88° 27' 06" EAST ALONG SAID NORTH RIGHT-OF-WAY LINE, 828.00 FEET; THENCE NORTH 00° 06' 09" WEST, 562.06 FEET TO THE FORMER SOUTH LINE OF THE CITY OF WAUKESHA SCHOOL PROPERTY; THENCE SOUTH 88° 16' 10" WEST ALONG SAID SOUTH LINE AND SOUTH LINE EXTENDED, 968.08 FEET TO THE EAST RIGHT-OF-WAY LINE OF SOUTH EAST AVENUE (C.T.H. "F"); THENCE SOUTH 00° 06' 09" EAST ALONG SAID EAST RIGHT-OF-WAY LINE 338.98 FEET TO THE POINT OF BEGINNING.

WAKC 1339.972



**DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS**

DOCUMENT NO.

THIS SPACE RESERVED FOR RECORDING DATA

NAME AND RETURN ADDRESS

Lorin Williams Combs  
Winstead PC  
2728 North Harwood Street  
Dallas, Texas 75201

SEE EXHIBIT A

Parcel Identification Number

Prepared by:  
Lorin Williams Combs  
Winstead PC  
2728 North Harwood Street  
Dallas, Texas 75201

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration is made as of December \_\_, 2014, by Developer.

### RECITALS:

- A. Developer is the fee owner of the Land.
- B. Developer desires to develop a Project on the Land, in which portions of the Land shall be designated for separate ownership.
- C. To effectuate the common development and operation of the Land, and to protect the value and desirability of the Land, Developer desires to subject the Land to the covenants, conditions and restrictions set forth herein.

NOW, THEREFORE, Developer hereby declares that the Land and such additions thereto as may be made pursuant to the terms hereof is and shall be held, transferred, sold, mortgaged, conveyed and occupied subject to the covenants, conditions and restrictions set forth herein.

### AGREEMENT:

1. **Defined Terms.** Each capitalized term used in this Declaration shall have the meaning set forth below:

**Declaration:** This Declaration of Covenants, Conditions and Restrictions and all amendments hereto, which shall be filed for record in the real property records of Waukesha County, Wisconsin.

**Developer:** LOCKARD WAUKESHA HOLDINGS, LLC, an Iowa limited liability company whose address for notice is 4501 Prairie Parkway, Cedar Falls, Iowa 50613, and any successor or assignee thereof evidenced by a written instrument filed for record in the real property records of Waukesha County, Wisconsin assigning the rights, powers, authority and obligations of Developer hereunder.

**Drives:** All current and future existing paved areas on the Land, which are now or hereafter used or intended for the movement or parking of motor vehicles.

**Land:** That certain real property located in Waukesha County, Wisconsin as more particularly described in Exhibit A attached to this Declaration, together with all and singular the easements, leases, subleases, rights, and appurtenances pertaining thereto.

**Legal Requirements:** Any restrictive covenants and any other matters of record and any and all then-current judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any governmental authority in any way applicable to the use and enjoyment of any portion of the Land.

**Owner:** Any person (including Developer) owning fee title to a Parcel, but excluding any person having an interest in a Parcel solely as security for an obligation.

**Parcel:** A portion of the Land that is subdivided by way of plat or certified survey map.

**Permittee:** Any person from time to time entitled to the use and occupancy of any portion of the Project under an ownership right or any lease, sublease, license, easement, concession, or other similar

agreement, together with all employees, agents, contractors, customers, vendors, or invitees of the foregoing.

**Project:** The Land and all improvements now or in the future located thereon.

**Project Signage:** Any Signage constructed by Developer and located on a Parcel that designates or describes the Project, the Owners or their tenants, or advertises future tenants or future improvements within the Project.

**Proportionate Share:** A fraction determined by dividing the square feet of a Parcel by the total square feet of the Land.

**Shared Costs.** All costs and expense incurred by Developer in connection with the maintenance, repair, operation and administration of the Project, including maintenance and repair of the Drives, utilities serving the Project (including any storm water detention facilities), the Project Signage, any landscaping or lighting, or the provision of services benefitting the Parcels.

**Signage:** Any signage, lettering, decorations, banners, advertising or marketing media, awnings, canopies, window covering, or any other form of expression on the Land, or in the interior of any improvements building on the Land, if the same is visible from the exterior of such improvements.

**Signage Guidelines:** Any written guidelines promulgated by Developer for the approval of Signage proposed by an Owner or its tenants for use within the Project.

2. **Access and Parking Easement.** Developer hereby reserves and grants a perpetual, assignable and non-exclusive easement over, on and across the Drives for its own benefit and for the benefit of the Owners and their respective Permittees for (i) vehicular and pedestrian ingress and egress for each Parcel, (ii) vehicular parking but only in such areas specifically designated for parking; (iii) the performance of Developer's maintenance obligations, as described herein and (iv) loading and unloading of commercial and other delivery vehicles, subject, however, to any existing encumbrances of record.

3. **Signage, Signage Easement.** Each Owner shall have the right to erect Signage on its Parcel, provided that such Signage is in compliance with all Legal Requirements and, except with respect to Developer, (a) such Signage is in compliance with the Signage Guidelines and (b) is approved in writing by Developer in its sole discretion. In addition, Developer shall have the right to install such Project Signage as Developer may desire on any Parcel within the Project, whether owned by Developer or another Owner, and in connection with the exercise of such right, Developer hereby reserves a perpetual, assignable and non-exclusive easement over, on and across the Parcels for its own benefit for the construction and maintenance of Project Signage.

4. **Maintenance Obligations.** Each Owner shall have the duty and responsibility, at its sole cost and expense, to keep its Parcel, including any Signage constructed by such Owner thereon, in a well-maintained, clean and attractive condition at all times in a manner that is consistent with the quality of the maintenance of similar retail shopping centers in Waukesha, Wisconsin. Such maintenance shall include: (a) removing promptly all litter, trash, refuse and wastes; (b) keeping landscaping alive, free of weeds and vegetation-destroying insects and attractive, properly mowed, trimmed, watered and fertilized; and (c) complying with all Legal Requirements. Furthermore, each Owner shall maintain commercial general liability insurance covering the portions of the Drives located on its Parcel. Developer shall maintain the Drives in good condition and repair and in accordance with the standards necessary to comply with all applicable Legal Requirements. Such responsibilities shall include, without limitation, the sweeping, cleaning, striping and repairing the Drives.

5. **Shared Costs.** Each Owners shall be responsible for prompt payment of its Proportionate Share of the Shared Costs within 30 days after receiving notice and appropriate details of such Shared Costs from Developer. Payment shall be made to Developer at its address for notice as specified herein, or at such other address as specified in such notice of Shared Costs.

6. **Compliance and Default.** Failure of an Owner to comply with any provision of this Declaration, including timely payment of the Shared Costs, shall entitle Developer to suit for the recovery of damages or for injunctive relief, or both, which relief shall not be exclusive of other remedies provided at law or in equity; and recovery of costs of litigation and reasonable attorneys' fees. The failure of Developer to enforce any covenant, restriction or other provision of this Declaration shall not constitute a waiver of the right to do so thereafter.

7. **INDEMNIFICATION.**

(a) EACH OWNER, ON BEHALF OF ITSELF AND ITS PERMITTEES, EXPRESSLY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS DEVELOPER AND ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (EACH AN "INDEMNIFIED PARTY"), INDIVIDUALLY AND COLLECTIVELY, FROM ANY CLAIM BY ANY PERSON ARISING OR RESULTING FROM, SUSTAINED OR INCURRED BY ANY INDEMNIFIED PARTY, OR WHICH CAN OR MAY ARISE, RESULT FROM, BE SUSTAINED OR INCURRED IN CONNECTION WITH (i) THE EXERCISE OR FAILURE TO EXERCISE OR THE USE OR MISUSE OF ANY OF AN OWNER OR ITS PERMITTEES' RESPECTIVE RIGHTS OR OBLIGATIONS CONTAINED IN THIS DECLARATION; (ii) THE BREACH BY AN OWNER OR ITS PERMITTEES OF ANY PROVISION OF THIS DECLARATION; (iii) ANY HAZARDOUS SUBSTANCE CREATED BY AN OWNER ON THE LAND; OR (iv) THE NEGLIGENCE, FRAUD, WILLFUL MISCONDUCT OR CRIMINAL MISCONDUCT OF AN OWNER OR ITS PERMITTEES. IF MULTIPLE OWNERS AND/OR PERMITTEES ARE RESPONSIBLE FOR INDEMNIFYING AND HOLDING HARMLESS THE INDEMNIFIED PARTIES HEREUNDER, THEN SUCH OWNERS SHALL BE JOINTLY AND SEVERALLY RESPONSIBLE FOR DOING SO.

(b) ANY OWNER, ON BEHALF OF ITSELF AND ITS PERMITTEES, MAKING, CAUSING OR PERMITTING TO BE MADE ANY ADDITIONS, ALTERATIONS OR IMPROVEMENTS TO ITS PARCEL AGREES, AND SHALL BE DEEMED TO HAVE AGREED, FOR SUCH OWNER, TO INDEMNIFY, DEFEND AND HOLD HARMLESS EACH INDEMNIFIED PARTY AND ALL OTHER OWNERS FROM ANY CLAIMS ARISING OR RESULTING FROM, SUSTAINED OR INCURRED BY ANY INDEMNIFIED PARTY, OR WHICH CAN OR MAY ARISE, RESULT FROM, BE SUSTAINED OR INCURRED IN CONNECTION WITH, SUCH ADDITIONS, ALTERATIONS OR IMPROVEMENTS TO ANY OWNER'S PARCEL, INCLUDING ANY CLAIM ARISING FROM ANY MECHANIC'S LIEN FILED OR ASSERTED AGAINST THE PARCEL OF SUCH OWNER AND THE PARCEL OF OTHER OWNERS.

8. **No Public Dedication.** Nothing in this Declaration shall be deemed to be a gift or dedication of any portion of the Land to the general public or for any public use or purpose whatsoever, it being the intent that this Declaration be strictly limited to and for the purposes herein expressed for the development, maintenance and operation of a private real estate development on private property solely for the benefit of the Owners, except that certain easements and rights-of-way within the Project may be dedicated by separate documents.

9. **Notices.** All notices under this Declaration must be in writing and shall be deemed to have been served, given, and received when actually received or, if earlier, and regardless of when received, (i) if hand delivered, when delivered in person to the address for the Owner to whom notice is

given, as determined in accordance with the terms of this Declaration, (ii) if sent by overnight delivery service which provides service to the addressee's address, on the delivery date selected by the sender of such notice, so long as the sender complies with all of the requirements of the delivery service concerning address, payment, and selection of delivery date, or (iii) if mailed, upon the expiration of the third business day after having been placed in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed to the Owner at the Owner's address within the Project.

10. **Applicable Law.** This Declaration is to be construed under and in accordance with the laws of the State of Wisconsin and the laws of the United States applicable to transactions in Wisconsin. All of the obligations contained in this Declaration are performable in Waukesha County, Wisconsin.

11. **Severability.** In case any one or more of the provisions contained in this Declaration shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Declaration shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

12. **Binding Effect and Duration.** Each Owner accepts a deed conveying title to a Parcel subject to the covenants, conditions, restrictions and easements contained in this Declaration, which such covenants, conditions, restrictions and easements shall run with the land, shall constitute equitable servitudes upon each Parcel in the Project in favor of the other Parcels and shall be binding upon and inure to the benefit of the respective successors and assigns of the Owners. This Declaration shall continue in full force and effect for a period of 50 years after the date of the recording of this Declaration in the real property records of Waukesha County, Wisconsin, after which time this Declaration shall automatically be extended for successive periods of ten years each, unless amended or terminated in the manner specified in this Declaration.

13. **Amendments.** This Declaration, or any provisions hereof, may be amended or terminated only by written instrument, duly executed and acknowledged by Developer and recorded in the real property records of Waukesha County, Wisconsin. Any amendment to or termination of this Declaration shall not require the prior consent of any Owner. Furthermore, Developer shall have the right, from time to time, to amend this Declaration as Developer deems necessary, in its sole and absolute discretion. No Owner shall have the right to amend this Declaration without the prior written consent of Developer.

14. **Headings.** The headings, captions, numbering system, etc. in this Declaration are inserted only as a matter of convenience and under no circumstances will they be considered in interpreting the provisions of this Declaration.

15. **Number and Gender.** Where required for proper interpretation, words in the singular includes the plural, and vice versa; the masculine gender includes the neuter and the feminine, and vice versa.

[The remainder of this page is intentionally left blank.]





CONSENT AND SUBORDINATION

FIRST BUSINESS BANK – MILWAUKEE ("Lender"), hereby consents to the filing of the foregoing Declaration of Covenants, Conditions and Restrictions (the "Declaration") and, subject to the terms and provisions of this Consent and Subordination, subordinates the lien and security interests of that certain Mortgage, Security Agreement and Fixture Financing Statement dated as of December \_\_, 2014, recorded as Volume \_\_\_\_\_, Page \_\_\_\_\_, as Document No. \_\_\_\_\_ with the register of deeds Waukesha County, Wisconsin, to the Declaration.

FIRST BUSINESS BANK – MILWAUKEE

By: [Signature]  
Name: Robert N. Bell II  
Title: VP

STATE OF WISCONSIN §  
COUNTY OF Waukesha §

This instrument was acknowledged before me on December 17, 2014, by Robert N Bell II VP of First Business Bank - Milwaukee, on behalf of said \_\_\_\_\_.

[SEAL]  
My Commission Expires:  
7/17/2016

[Signature]  
Notary Public - State of Wisconsin  
TARI A. HANSEN  
Printed Name of Notary

EXHIBIT A

LEGAL DESCRIPTION OF LAND

ALL THAT PART OF THE SOUTHWEST 1/4 OF SECTION 11, TOWN 6 NORTH, RANGE 19 EAST, CITY OF WAUKESHA, COUNTY OF WAUKESHA, STATE OF WISCONSIN, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 11; THENCE NORTH 0° 03' 15" WEST ALONG THE WEST LINE OF SAID SECTION 11, 280.02 FEET; THENCE NORTH 88° 30' EAST, 33.02 FEET TO THE EAST RIGHT-OF-WAY LINE OF SOUTH EAST AVENUE (C.T.H. "F"); SAID POINT BEING THE POINT OF BEGINNING OF THE LANDS HEREIN TO BE DESCRIBED; THENCE CONTINUING NORTH 88° 30' EAST, 140.00 FEET; THENCE SOUTH 0° 03' 15" EAST, 220.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SUNSET DRIVE (C.T.H. "A"); THENCE NORTH 88° 30' EAST ALONG SAID NORTH RIGHT-OF-WAY LINE, 828.00 FEET; THENCE NORTH 0° 03' 15" WEST, 562.06 FEET TO THE FORMER SOUTH LINE OF THE CITY OF WAUKESHA SCHOOL PROPERTY; THENCE SOUTH 88° 19' 04" WEST ALONG SAID SOUTH LINE AND SOUTH LINE EXTENDED, 968.08 FEET TO THE EAST RIGHT-OF-WAY LINE OF SOUTH EAST AVENUE (C.T.H. "F"); THENCE SOUTH 0° 03' 15" EAST ALONG SAID EAST RIGHT-OF-WAY LINE 338.98 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED LAND MAY ALSO BE DESCRIBED AS FOLLOWS:

ALL THAT PART OF THE SOUTHWEST 1/4 OF SECTION 11, TOWN 6 NORTH, RANGE 19 EAST, CITY OF WAUKESHA, COUNTY OF WAUKESHA, STATE OF WISCONSIN, BOUNDED AND DESCRIBED AS FOLLOWS:  
COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 11; THENCE NORTH 00° 06' 09" WEST ALONG THE WEST LINE OF SAID SECTION 11, 280.02 FEET; THENCE NORTH 88° 27' 06" EAST, 33.02 FEET TO THE EAST RIGHT-OF-WAY LINE OF SOUTH EAST AVENUE (C.T.H. "F"); SAID POINT BEING THE POINT OF BEGINNING OF THE LANDS HEREIN TO BE DESCRIBED; THENCE CONTINUING NORTH 88° 27' 06" EAST, 140.00 FEET; THENCE SOUTH 00° 06' 09" EAST, 220.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SUNSET DRIVE (C.T.H. "A"); THENCE NORTH 88° 27' 06" EAST ALONG SAID NORTH RIGHT-OF-WAY LINE, 828.00 FEET; THENCE NORTH 00° 06' 09" WEST, 562.06 FEET TO THE FORMER SOUTH LINE OF THE CITY OF WAUKESHA SCHOOL PROPERTY; THENCE SOUTH 88° 16' 10" WEST ALONG SAID SOUTH LINE AND SOUTH LINE EXTENDED, 968.08 FEET TO THE EAST RIGHT-OF-WAY LINE OF SOUTH EAST AVENUE (C.T.H. "F"); THENCE SOUTH 00° 06' 09" EAST ALONG SAID EAST RIGHT-OF-WAY LINE 338.98 FEET TO THE POINT OF BEGINNING.

WAKC 1339.972