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**DECLARATION  
OF RESTRICTIONS AND EASEMENTS**

BK 1176 PG 3689

THIS DECLARATION OF RESTRICTIONS AND EASEMENTS is made this 10th day of March, 2020, by Bartlesville 501, LLC, an Oklahoma limited liability company (collectively with its heirs, personal representatives, successors and assigns the "Declarant").

WHEREAS, Declarant is the owner in fee of that certain real property in the City of Bartlesville, County of Washington, State of Oklahoma, ("Property") sometimes hereinafter referred to as the "Center" and more particularly described in *Exhibit A*, attached hereto and made a part hereof by this reference.

WHEREAS, Declarant operates the Center as a commercial retail development.

WHEREAS, Declarant is about to, or may hereafter, sell, dispose of, convey, lease, or hypothecate a portion or portions of the Center.

WHEREAS, Declarant desires to subject each and every portion of the Center to the easements, covenants, conditions, restrictions, reservations, liens, and charges hereinafter set forth pursuant to a general plan of improvement of the Property.

**NOW, THEREFORE**, in consideration of the covenants and declarations hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

**1. Definitions.**

1.1. "Building" shall mean any permanently enclosed structure placed, constructed, or located on a Tract, which shall include any appurtenant canopies and supports.

1.2. "Claims" shall mean causes of action, claims, and actual and direct liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees and court costs).

1.3. "Easement Area" shall mean the areas designated as Easement Area in *Exhibit B*, attached hereto and made a part hereof, including without limitation parking areas, sidewalks, and driveways, and other areas that are designated for the use and benefit of all Occupants of the Center. Easement Area shall not include existing or future Buildings that are constructed on any Tract. Canopies which extend over the Easement Area, together with any columns or posts supporting same, shall be deemed to be a part of the Building to which they are attached and not a part of the Easement Area.

1.4. "Declaration" shall mean this Declaration of Restrictions and Easements.

1.5. "Governmental Regulations" shall mean any or all laws, statutes, ordinances, codes, decrees, rulings, regulations, writs, injunctions, orders, rules, or conditions of approval or authorization of any governmental entity, agency, or political subdivision whether now in force or which may hereafter be in force.

1.6. "Improvements" shall mean any Building, sign, structures, equipment, fences, walls, mailboxes, and any other structures located in the Center.

1.7. "Minimum Design Standards" shall mean those Building standards and specifications as set forth in Section 2.3.

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1.8. "Mortgagee" shall mean any mortgagee under a mortgage, a grantee under a deed to secure debt, or a trustee or beneficiary under a deed of trust constituting a lien on any Tract.

1.9. "Occupant" shall mean any Person from time to time entitled to the use and occupancy of any portion of a Building in the Center under an ownership right or any lease, sublease, assignment, license, concession, or other similar agreement.

1.10. "Outparcel" shall mean that certain tract identified on *Exhibit C* attached hereto and made a part hereof.

1.11. "Owner" shall mean the record holder of fee simple title to a Tract, its heirs, personal representatives, successors and assigns.

1.12. "Permittee" shall mean all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended development, use and occupancy of the Center; provided, however, persons engaged in civic, public or political activities within the Center, including but not limited to the following activities, shall not be considered to be Permittees:

- (a) exhibiting any placard, sign or notice;
- (b) soliciting memberships or contributions for private, civic, public or charitable purposes;
- (c) distributing any circular, handbill, placard or booklet; and
- (d) parading, picketing or demonstrating.

1.13. "Person" shall mean individuals, partnerships, firms, associations, corporations, limited liability companies, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity,

1.14. "Restaurant" shall mean any operation or business which requires a governmental permit, license and/or authorization to prepare and/or serve food for either on-site or off-site consumption.

1.15. "Service Areas" shall mean trash compactors and enclosures, exterior lighting attached to a Building, drive-up or drive-through customer service facilities directly adjacent or in close proximity to a Building, side yards and rear yards used for outdoor storage (provided such outdoor storage does not interfere with the flow of vehicular traffic), loading docks, electrical facilities and transformers, truck ramps and other similar exclusive service facilities and outward extensions, and customer pickup areas directly adjacent or in close proximity to a Building, whether or not described, labeled or depicted as such on a site plan as may hereafter be approved.

1.16. "Tract" shall mean the Center, including any portion of the Center that may be subdivided in the future.

1.17. "Utility Lines" shall mean those facilities and systems for the transmission or other provision of utility services, including, but not limited to, water drainage, detention or retention systems

or structures, water mains, sewers, lift stations, water sprinkler system lines, electrical conduits or systems, gas mains, other public or private utilities providing service to any Tracts.

1.18. "Retail Office" shall mean an office which provides services directly to consumers (i.e., financial institutions, real estate agencies, stock brokerages, title company and escrow offices, travel and insurance agencies, and medical, dental and legal clinics).

## 2. **Buildings, Easement Area, and Improvements.**

2.1. **Building Restrictions.** There shall be only one (1) Building located on the Outparcel, with no Building footprint exceeding twenty percent (20%) of the total area of the Outparcel. No Building or Improvement on the Outparcel shall ever be located within fifty (50) feet of a Building in existence as of the date of this Declaration. Other than the Outparcel, no other outparcels shall be permitted in the Center. Although no Owner shall have an obligation to commence construction of any Building on its Tract, once construction of a Building has been commenced, such Building shall be completed within a reasonable period of time thereafter, not to exceed eighteen (18) months, as extended due to factors beyond Owner's control. The area of the Building foot print of any building existing on the Property as of the date of this Declaration will not be increased by more than twenty percent (20%), provided however, the footprint of any existing Building shall not be increased in any amount along the east facing side. Notwithstanding anything to the contrary contained herein, the Owner of the Outparcel may develop (or cause to be developed) the Outparcel to include, in addition to the Building, related improvements, including but not limited to sidewalks, trash corrals, landscaping, signage (including a pole sign) and/or dedicated "to-go" parking spaces for such Owner's Occupant's use, and lighting, so long as said improvements are in compliance with Governmental Regulations and the provisions set forth in this Section 2.1 and Section 2.3. Provided the Outparcel Owner develops the Outparcel in compliance with the provisions set forth in this Declaration, Ollie's Bargain Outlet, Inc. hereby acknowledges and confirms that such development does not violate the Ollie's Lease (as defined below).

2.2. **Easement Area.** The Easement Area is hereby reserved for the sole and exclusive use of the Owners and Occupants of the Center, and their respective Permittees. Subject to the terms of Section 3 hereof, the Easement Area may be used only for vehicular driving, parking, and pedestrian traffic and such other purposes as are usual and customary in shopping centers in the metropolitan area in which the Center is located, unless otherwise specifically prohibited in this Declaration. The Easement Area shall be maintained by the Owner as part of the Owner's Tract in accordance with Section 6. The Owners acknowledge and agree that incidental temporary encroachments upon the Easement Area may occur as a result of the use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of Improvement signs and/or the Easement Area, all of which are permitted under this Declaration so long as all activities requiring the use of such equipment are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with the use of the Easement Area or with the normal operation of any business in the Center.

2.3. **Type and Design of Improvements.** The type and design of Improvements constructed or installed after the effective date of this Declaration shall be as follows:

(a) Subject to compliance with applicable laws and the Minimum Design Standards, no Improvement on any Outparcel shall exceed one story in height or twenty-five (25) feet tall; provided, however, the foregoing restriction shall not prohibit the construction of mezzanines inside of Improvements that are otherwise constructed in accordance with these Minimum Design Standards or parking lot lighting on the Outparcel in excess of said height restriction.

(b) The height of any Building shall be measured perpendicular from the finished floor elevation of the ground level of the Building to the top of the roof structure, including any architectural feature, screening, parapet, penthouse, mechanical equipment or similar appurtenance located on the roof of such Building. Owners shall have the right to install, maintain, repair, replace and remove rooftop equipment used in connection with the business being conducted by an Occupant on the top of an Improvement, provided, however, such rooftop equipment shall (i) be screened from all sides, and (ii) not exceed the height limits established above on any Outparcel.

#### 2.4. Construction Requirements.

(a) During the construction, repair, replacement, alteration or expansion of any Improvements all work performed shall be performed as expeditiously as possible and in such a manner so as to minimize any interference, obstruction or delay with or in (i) access to or from the Center, or any part thereof, (ii) access to or from any public right-of-way, (iii) customer vehicular parking in the Center, (iv) the receiving of merchandise by any business in the Center, including, without limitation, access to its Building, or (v) the visibility of the Ollie's Occupant's storefront or signage, more than to the extent necessary to comply with Governmental Regulations. In addition, all work performed on Improvements shall not unreasonably interfere, obstruct or delay (x) construction work being performed on any other Tracts, or (y) the use, enjoyment or occupancy of any other Tracts. Unless otherwise specifically stated herein, the Person contracting for the performance of such work ("Contracting Owner") shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all Buildings, signs and Easement Area Improvements damaged or destroyed in the performance of such work.

(b) Intentionally deleted.

(c) Staging for the initial construction of Improvements or the replacement, alteration, or expansion of any Improvements including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall be located solely on the constructing Owner's Tract and shall be located in such a way that it will not unreasonably interfere with the use of the Easement Area.

(d) All construction in the Center shall comply with the Minimum Design Standards applicable to the Center.

2.5. Temporary License. Each Owner hereby grants to the other Owners a temporary license for access and passage over and across the Easement Area located on the granting Owner's Tract, to the extent reasonably necessary for such Owner to construct and/or maintain Improvements upon its Tract; provided, however, that such license shall be in effect only during periods when actual construction and/or maintenance is being performed, and provided further that the use of such license shall not unreasonably interfere with the use and operation of (i) any business conducted by an Owner or Occupant, or (ii) the Easement Area on the granting Owner's Tract. Prior to exercising the rights granted herein, an Owner shall provide each granting Owner with a written statement describing the need for such license.

#### 2.6. Intentionally Deleted.

2.7. Liens. If any lien is recorded against the Tract of one Owner as a result of services performed or materials furnished for the use of another Owner, the Owner permitting or causing such lien to be so recorded agrees to cause such lien to be discharged within fifteen (15) days after the entry of a final judgment (after all appeals) for the foreclosure of such lien. Notwithstanding the foregoing, upon

written request of the Owner or the Ollie's Occupant whose Tract is subject to such lien, the Owner permitting or causing such lien to be recorded agrees to (i) cause any such outstanding lien or claim of lien to be released of record or transferred to bond in accordance with applicable law, or (ii) give such assurance as would enable a title insurance company to insure over such lien or claim of lien, failing which the Ollie's Occupant or the Owner whose Tract is subject to such lien shall have the right, at the expense of the Owner permitting or causing such lien to be so recorded, to transfer said lien to bond. Nothing herein shall prevent the Owner permitting or causing such lien to be recorded from contesting the validity thereof in any manner such Owner chooses so long as such contest is pursued with reasonable diligence. If such contest is determined adversely (allowing for appeal to the highest appellate court), such Owner shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien of record. The Owner permitting or causing such lien agrees to defend, protect, indemnify and hold harmless the Ollie's Occupant and the other Owner and its Tract from and against all Claims arising out of or resulting from such lien.

### 3. Easements.

3.1. Ingress and Egress. Declarant, as grantor, hereby creates for and grants to each Owner, as grantee, for the benefit of each Tract existing now or hereafter, and for the use of each Owner and its Permittees, a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic upon, over and across the Easement Area for the purpose of gaining access to each Tract and traveling over, across, between, and among the Tracts in the course of the intended development, use, and occupancy of the Center.

3.2. Parking. Declarant, as grantor, hereby creates for and grants to each Owner and such Owner's Permittees, collectively, as grantee, for the benefit of each Tract existing now or hereafter, and for the use of each Owner and its Permittees, a nonexclusive easement for vehicular parking upon, over and across the parking areas within the Easement Area for the purpose of providing parking for each Owner and its Permittees.

### 3.3. Utility Lines and Facilities.

(a) Declarant, as grantor, hereby creates for and grants to each Owner, as grantee, for the benefit of each Tract existing now or hereafter, a perpetual, nonexclusive easement under, through and across the Easement Area for the purpose of installation, operation, flow, passage, use, maintenance, connection, repair, relocation, removal and replacement of Utility Lines. All such Utility Lines shall be installed and maintained below the ground level or surface of such easements, except that fire hydrants, ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any Improvements located in the Center).

(b) The Utility Line easement area shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility, or five feet on each side of the centerline if the Utility Line easement is granted to a private party. The installation, operation, maintenance, repair and replacement of such Utility Line easement facilities shall not unreasonably interfere with the use of the Easement Area or with the normal operation of any business in the Center. The Utility Line easement grantee shall bear all costs related to the installation, operation, maintenance, repair and replacement of such Utility Line easement facilities, shall repair to the original specifications any damage to the Easement Area resulting from such use, and within thirty (30) days after the date of completion of construction of the Utility Line easement facilities, the Utility Line easement grantee shall provide to the Owners of all Tracts upon which such Utility Lines are located as-built plans for all such facilities and a copy of an as-built survey showing the location of such Utility Line.

(c) At any time and from time to time an Owner shall have the right to install, repair, maintain *and/or* relocate on its Tract any Utility Line installed (or to be installed) pursuant to the foregoing grant of easement which is then located (or to be located) on the Tract of such Owner, provided that:

(i) in the case of an installation or relocation, such installation or relocation shall be performed only after sixty (60) days' notice in writing of the Owner's intention to undertake the relocation shall have been given to the Ollie's Occupant and the Owner of each Tract served by the Utility Line;

(ii) in the case of a repair *and/or* maintenance, such repair *and/or* maintenance shall be performed only after thirty (30) days' notice in writing of the Owner's intention to undertake such repair *and/or* maintenance shall have been given to the Ollie's Occupant and the Owner of each Tract served by the Utility Line, except in the case of an emergency (defined as any situation where there is an imminent threat of harm to persons or property or immediate repair *and/or* maintenance is required to keep the Owner's or Occupant's business open), when such notice shall be given a reasonable period in advance of such emergency repair as is practicable;

(iii) any such repair, maintenance *and/or* relocation shall not unreasonably interfere with or diminish utility service to the Tract(s) served by the Utility Line;

(iv) any such repair, maintenance *and/or* relocation shall not reduce or unreasonably impair the usefulness, capacity or function of the Utility Line;

(v) any such repair, maintenance *and/or* relocation shall be performed without cost or expense to the Owner or Occupant of any other Tract;

(vi) any such repair, maintenance *and/or* relocation shall provide for the original and relocated area (if applicable) to be restored using materials and design standards which equal or exceed those originally used;

(vii) any such repair, maintenance *and/or* relocation shall not unreasonably interfere with the business operation of any of the Owners or Occupants of the Center;

(viii) if an electrical line/computer line is being relocated, the grantor and grantee shall coordinate such interruption to eliminate any detrimental effects; and

(ix) within thirty (30) days after the date of completion of such relocation, the Owner performing such relocation shall provide to the Owners of all Tracts served by such Utility Lines as-built plans for all such relocated Utility Lines and a copy of an as-built survey showing the location of such relocated Utility Lines.

3.4. Signs. The installation, operation, maintenance, repair and replacement of the signs are governed by Section 4.3 of this Declaration. No signage (temporary or otherwise) with respect to Persons who are not Owners or Occupants, shall be permitted on any signs located in or upon the Center or on any rooftop of any of the Buildings. No billboards shall be erected upon any Tract and no signs will be placed upon any Tract that are not directly related to the business being conducted thereon.

3.5. Storm Drainage and Detention Easements. Declarant hereby creates for and grants to each Owner as grantee for the benefit of each Tract existing now or hereafter, a nonexclusive easement

for the discharge of surface storm water drainage and/or runoff over, upon and across the Easement Area. No Owner shall alter or permit to be altered the surface of the Easement Area or the drainage/retention system constructed on its Tract if such alteration would materially increase the flow of surface water onto an adjacent Tract either in the aggregate or by directing the flow of surface water to a limited area. All surface water collection, retention and distribution facilities shall be deemed a Utility Line. All drains, gutters, downspouts, berms, swales, and other drainage facilities and systems (collectively, "Systems") shall be maintained by each Owner, with respect to the portion of each such System located upon an Owner's Tract, in a neat, orderly, safe and sanitary condition, and in such a manner as to facilitate the orderly discharge of water by means thereof.

3.6. Dedication to Public Entities. No Owner shall grant any easement for the benefit of any property not within the Center; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by an Owner on its Tract to governmental or quasi-governmental authorities or to public utilities to service the granting Owner's Tract.

3.7. No Merger. Notwithstanding an Owner's ownership of more than one Tract, the easements granted hereunder shall burden and benefit each Tract individually, without merger as a result of such common ownership, and upon conveyance of a Tract so that such Tract ceases to be under common ownership, neither the Owner conveying said Tract nor the Owner acquiring said Tract shall need to execute additional documentation to evidence the existence of said easements, and said easements shall relate back to and shall be deemed to have been created as of the date this Declaration is recorded in the office of the recorder of the county in which the Center is located.

#### 4. Operation of Easement Area.

##### 4.1. Parking Requirements.

(a) There shall be no charge for parking and there shall not be any reserved parking designated anywhere in the Easement Area unless otherwise required by law. The parking area on each Tract shall contain sufficient ground level parking spaces, without reliance on parking spaces that may be available on another Tract, in order to comply with Governmental Regulations.

(b) Any areas designated as vehicular parking spaces resulting from Improvements made on the Outparcel shall be paved in conformance with the existing vehicular parking spaces in the Easement Area.

(c) Except as otherwise permitted in this Declaration, if unauthorized Persons, including without limitation tenants or invitees of Occupants now or at any future time located on any Tract, use the parking area for other than cart corrals and temporary parking by customers while shopping in the Center, the Owner of such Tract shall at its sole expense take whatever action as shall be necessary to prevent said unauthorized use.

4.2. Employee Parking. Each Owner shall use commercially reasonable efforts to cause the employees of the Occupants of its Tract to park their vehicles only on such Tract or in the parking spaces farthest away from the Buildings in the Center.

##### 4.3. Occupant Signs.

(a) No identification sign attached to the exterior of a Building shall be placed on a Building roof, canopy roofs extending above the Building roof, or penthouse walls, or placed so as to project above the parapet, canopy or top of the wall upon which it is mounted.

(b) Except for the signage of the Ollie's Occupant (as defined below), no signage shall be made of paper or cardboard, or be temporary in nature (exclusive of contractor signs and temporary "grand opening" signs as set forth below), or be a sticker or decal; provided, however, the foregoing shall not prohibit the placement at the entrance of each Occupant's space of a small sticker or decal indicating hours of business, emergency telephone numbers, acceptance of credit cards and other similar items of information.

(c) Notwithstanding anything contained herein to the contrary, each Owner shall be permitted to place within the Easement Area located on its Tract the temporary display of leasing information and the temporary erection of one sign identifying each contractor working on a construction job on its Tract or broker advertising a Tract is for sale. Each Owner shall have the obligation to operate, maintain and repair, in a clean, sightly and safe condition, all signs, including components thereof, located upon its Tract pursuant to the provisions hereof.

(d) Exclusive of signs permitted by this Section 4.3, no billboards shall be erected upon any Tract and no signs will be placed upon a Tract that are not directly related to the business being conducted thereon.

(e) Temporary "grand opening" signage on or about the exterior of a Building shall be permitted subject to the same being professionally prepared and maintained, conforming with all applicable legal requirements, and remain for a maximum period of thirty (30) days following the date a business first commences the conduct of business within a Building.

4.4. Protection of Easement Area. Each Owner shall have the right to take such steps as it deems necessary to prevent those Persons not authorized by this Declaration to use the Easement Area from using the Easement Area for ingress, egress, parking or any other purpose. Subject to Governmental Regulations, such steps shall include, without limitation, the posting of signage and towing of unauthorized vehicles as allowed by Government Regulations.

4.5. Changes to Easement Area.

(a) The construction or modification of any Improvements in the Easement Area shall be subject to the following conditions:

(i) the accessibility of Easement Area for pedestrian and vehicular traffic (as it relates to the remainder of the Center) is not unreasonably restricted or hindered;

(ii) there shall be maintained at all times within such Easement Area, a sufficient number of vehicular parking spaces to meet the parking requirements set forth in Section 4.1;

(iii) all Governmental Regulations applicable to such modifications shall be satisfied by the Owner performing the same; and such action shall not result in any other Owner being in violation of any Governmental Regulations; and

(iv) no change shall be made that removes or interferes with any access points between the Easement Area and the adjacent public streets.



5. **Restrictions on Use.**

5.1 **Outparcel Restrictions.**

(a) The Outparcel shall be used only for retail sales, Retail Offices, Restaurants or other commercial purposes. No use shall be permitted on the Outparcel which is inconsistent with the operation of a first-class commercial development. For so long as Dollar Tree Stores, Inc. under that certain Lease Agreement dated December 9, 2019 by and between Declarant and Dollar Tree Stores, Inc. ("Dollar Tree Lease") is an Occupant in the Center under the Dollar Tree Lease and is doing business as Dollar Tree or similar variety retail operation with the word "Dollar," "Outlet," or any derivation, abbreviation, slang, symbol or combination thereof (or their respective equivalents in any other language) in their trade name (the "Dollar Tree Occupant"), the following uses shall not be permitted on the Outparcel:

- (1) A store principally selling a combination of gifts, cards, gift wrap and other party supplies;
- (2) An arts & crafts store or a store whose principal business is selling a combination of craft supplies, art supplies, artificial flowers, picture frames and scrapbooking supplies;
- (3) A store occupying less than 30,000 square feet whose principal business is selling national or private-label pre-packaged food products and household items at prices that are generally below comparable items found in traditional supermarkets;
- (4) A store selling a variety of general merchandise at a price not to exceed \$5.00, provided that such limitation on price is a part of the regularly advertised attributes of such store;
- (5) Any variety retail operations with the word "Dollar," "Outlet," or any derivation, abbreviation, slang, symbol or combination thereof (or their respective equivalents in any other language) in their trade name.

5.2 **Center Restrictions.** For so long as a Restaurant serving American Food is operating on the Outparcel, there shall be no other Restaurant in the Center that serves breakfast food items or food items that are commonly known as American, including but not limited to fried chicken, burgers, salads, pizzas, sandwiches, barbeque and smoked food ("American Food"), except that this provision shall not prohibit a Restaurant use that sells breakfast food or American Food items so long as breakfast food or American Food sales are less than twenty percent (20%) of such business's annual gross revenues derived from its operations in the Center.

5.3. **Prohibited Uses.** All Tracts within the Center shall be used only for retail sales, Retail Offices, Restaurants or other commercial purposes. No use shall be permitted on any Tract which is inconsistent with the operation of a first-class commercial development.

- (a) All Tracts within the Center shall be prohibited from the following uses:
- (1) Any adult or sexually explicit or oriented stores, including bookstores or video stores or any business featuring the display of male and/or female

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dancers or so-called “strip tease” or “adult entertainment” establishments;

- (2) Any massage parlor (except that this provision shall not prohibit massages in connection with a beauty salon, health club, spa or athletic facility or other establishments of a non-prurient nature compatible with a first-class shopping center nor shall it apply to a national massage parlor chain with at least twenty (20) locations nationwide);
- (3) Any so called “head shops” or businesses which sell drug related paraphernalia, grows, delivers, transfers, supplies, dispenses, distributes or sells marijuana, whether by prescription, medical recommendation or otherwise and whether consisting of live plants, seeds, or processed or harvested portions of the marijuana plant (this shall not prohibit the incidental sale of CBD products);
- (4) Any mortuary, funeral home, crematorium, cemetery or similar facility;
- (5) Lounges, bars, taverns, nightclubs, and other establishments of like type whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds fifty percent (50%) of the gross revenues of such business;
- (6) Any check cashing establishment or advance pay day loan establishment, excepting those in banks or other financial institutions and grocery stores;
- (7) Any use which produces noise or sound that is objectionable due to intermittence, high frequency, shrillness, or loudness;
- (8) Any purpose or business which is noxious or unreasonably offensive because of the emission of noise, smoke, dust dirt, fly ash, or odors;
- (9) Any use which produces noxious, toxic, caustic or corrosive fuel or gas (except that this provision shall not prohibit an automobile fueling station);
- (10) Any use which produces fire, explosion or other damaging or dangerous hazard, including the storage, display or sale of explosives (this shall not prohibit the incidental sale of fireworks to the general public);
- (11) Any assembling, manufacturing, industrial, distilling, refining, smelting, agricultural or mining operation;
- (12) Any pawn shop or flea market;
- (13) Any carnival, fair, amusement park or circus;
- (14) Any mobile home park, trailer court, labor camp, junkyard or stockyard (except that this provision shall not prohibit the temporary use of

construction trailers during periods of construction, reconstruction or maintenance);

- (15) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any Building);
- (16) Any central laundry, central dry-cleaning plant or laundromat (except that this provision shall not prohibit nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in first-class shopping centers);
- (17) Any service station or automobile, truck, mobile home, trailer or recreational vehicles sales, leasing, display, body shop or repair operation (except that this prohibition shall not prohibit auto parts stores);
- (18) Any veterinary hospital or animal raising facility (except that this prohibition shall not prohibit pet shops or pet supply superstores and veterinary services which are incidental thereto);
- (19) Any office or clinic devoted to drug rehabilitation services;
- (20) Any office devoted to the monitoring or meeting of paroled individuals;
- (21) Any use which prohibits the Owner or Occupant of the Outparcel from obtaining or maintaining a license to serve or sell alcoholic beverages from the Outparcel;
- (22) Any training or educational facility, including, but not limited to, beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers;
- (23) An office or offices devoted to the Department of Motor Vehicles, Department of Public Safety, or Employment Security Commission (except that this shall not apply to a tag agency);
- (24) Any church or other place of worship, school, or related religious or educational facility or religious reading room;
- (25) Any call center;
- (26) Any casino or other gambling facility or operation, including but not limited to, off-track or sports betting parlors, table games such as black-jack or poker, slot machines, video gambling machines and similar devices, and bingo halls;
- (27) Any nursing home or similar use; and/or
- (28) Any living quarters or sleeping apartment.

(b) Should any Tract, other than the Outparcel, be used for one or more of uses stated immediately below (numbered 1 through 4), then for the duration of such use, the Outparcel shall be given the use by its Owners and Occupants and their employees, customers and other invitees, in common only with the Ollie's Occupant and its Permittees, of those thirty (30) parking spaces in the Easement Area, which are nearest to the South property line of the Outparcel, but which are not located on the Outparcel.

- (1) Any hotels, motels or tourist courts;
- (2) Any health spa, fitness center or athletic facility which occupies more than 7,500 square feet of floor area;
- (3) Any movie theater, night club, live performance theater, banquet hall, auditorium, meeting hall or other places of public assembly or used for private clubs or organizations;
- (4) Hospital or similar use.

(c) For so long as Ollie's Bargain Outlet, Inc. or any successor or assignee of Ollie's Bargain Outlet, Inc. under that certain Lease Agreement dated October 22, 2019 by and between Declarant and Ollie's Bargain Outlet, Inc. (the "Ollie's Lease") is an Occupant in the Center under the Ollie's Lease (the "Ollie's Occupant"), the following uses shall not be permitted on any Tract, except that the following uses shall be permitted for such Ollie's Occupant:

- 1) retail store the principal business of which is the sale and offering for sale of merchandise that is generally categorized as: closeout, surplus or salvage goods, overruns, or distressed merchandise;
- 2) retail operations with the word "Bargain," or any derivation, abbreviation, slang, symbol, or combination thereof (or the equivalent in any other language) in their trade name;
- 3) a store whose principal business is the offer and sale of merchandise which is classified as "salvage," "close-out," "odd lot," "clearance," "discontinued," "cancellation," "second," "floor model," "demonstrator," "obsolescent," "over stock," "distressed," "bankruptcy," "overruns," "fire sale," or "damaged";
- 4) a store using the lesser of (A) thirty percent (30%) or more of its sales floor area, or (B) two thousand (2,000) square feet or more, for the display and sale of books and related media (in calculating the areas used for display and sale of books and related media, both the actual display and sale areas, as well as one-half of the aisle space adjacent to such display and sales areas shall be counted);
- 5) any of the following retail establishments (or their successors in interest): Big Lots, National Wholesale Liquidators, Bed Bath and Beyond, Odd Lots, Bargain Hunt, Essex Discount, Fred's Discount, Family Dollar, Barnes & Noble, and Dirt Cheap.

- 6) The demising wall of any office or storage operations (except office and storage operations which are an ancillary part of the conduct of a retail business in the Center) shall not be located within two hundred fifty (250) feet of any demising wall of the premises of the Ollie's Occupant, as depicted on **Exhibit B** (the "Ollie's Premises").
- 7) Bingo parlors, dance halls, bowling alleys, skating rinks, game or video/arcade rooms, amusement centers, billiard, pool halls, auction houses, and flea markets shall not share a demising wall with the Ollie's Premises.

5.4. **Hazardous Materials.** No Owner shall use or permit the use of Hazardous Materials (as hereinafter defined) on, about, under or in its Tract, or the Center, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws (as hereinafter defined). Each Owner shall indemnify, defend, protect and hold harmless the other Owners from and against all Claims, including, but not limited to, costs of investigation, litigation and remedial response arising out of any Hazardous Materials used or permitted to be used by such Owner, whether or not in the ordinary course of business. "Hazardous Materials" shall mean petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law. "Environmental Laws" shall mean all Government Regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

## 6. **Maintenance Standards.**

6.1. **Maintenance Obligations.** Each Owner of a Tract shall bear the sole responsibility for maintaining the Tract in a safe and attractive condition, including mowed and kept litter-free, and in a good state of repair. The minimum standard of maintenance for a Tract shall be comparable to the standard of maintenance followed in other first-class commercial retail developments of comparable size in the metropolitan area in which the Center is located; notwithstanding the foregoing, however, a Tract shall be operated, maintained and repaired in compliance with all applicable Governmental Regulations and with the provisions of this Declaration. All Improvements shall be repaired or replaced with materials of a quality which is at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony and integration of the Center as a whole and the attributes of a first-class shopping center. The maintenance and repair obligations of each Owner with regard to a Tract it owns shall include, but shall not be limited to, the following:

(a) Maintaining, repairing and resurfacing, when necessary, all paved surfaces to a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability, and restriping, when necessary, to maintain clearly visible parking stalls and traffic control lines;

(b) Removing all papers, debris, filth, refuse, ice and snow, including periodic vacuuming and broom sweeping to the extent necessary to keep the Easement Area in a first-class, clean and orderly condition (snow shall be plowed as soon as a two-inch accumulation occurs and replowed as necessary to maintain less than a two-inch accumulation at all times; upon cessation of the snowfall, the Easement Area shall be plowed to the paved surface);

(c) Placing, painting, maintaining, repairing, replacing and repainting, as and when necessary, all directional signs, markers, striping and pedestrian crossings upon or within the Easement Area;

(d) Maintaining, repairing and replacing, when necessary, traffic entrances and exits to and from the Center, traffic directional signs, markers and lines, and all informational signs such as "Handicapped Parking", in good repair and condition;

(e) Operating, maintaining, repairing and replacing, when necessary, such artificial lighting facilities as shall be reasonably required including, but not limited to, poles, pole bases, wiring, lamps, ballasts, lenses, photocells, time clocks, and contacts. Each Owner shall maintain and provide electricity to all lighting fixtures attached to its respective Building(s) at its sole cost and expense;

(f) Maintaining and watering all landscaped areas in an attractive, weed-free condition, maintaining, repairing and replacing, when necessary, automatic sprinkler systems and water lines; replacing shrubs and other landscaping as necessary;

(g) Maintaining, repairing and replacing, when necessary, all walls (including, without limitation, all fences, walls or barricades constructed);

(h) Maintaining, repairing and replacing, when necessary, all storm drains, sewers, lift stations and other Utility Lines not dedicated to the public or conveyed to any public or private utility which are necessary for the operation of the Buildings and improvements located in the Center;

(i) Performing itself or contracting with a competent third party or parties to perform any of the services described herein;

(j) Maintaining commercial general liability insurance as set forth in Article 8 hereof; and

(k) Keeping the Easement Area and all common Utility Lines free from any obstructions including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this Declaration.

## 7. **Lighting.**

7.1. **General Requirements.** After completion of the Easement Area lighting system on its Tract, where applicable, each Owner hereby covenants and agrees to keep its Tract fully illuminated each day from dusk to at least 10:30 p.m. (8:30 p.m. on Sundays). Each Owner further agrees to keep any exterior Building security lights on from dusk until dawn. During the term of this Declaration, each Owner grants an irrevocable license to each other Owner for the purpose of permitting the lighting from one Tract to incidentally shine on the adjoining Tracts.

## 8. **Insurance and Indemnity.**

### 8.1. **Liability Insurance.**

(a) Each Owner shall maintain or cause to be maintained commercial general liability insurance with broad form coverage insuring against claims on account of bodily injury or death, personal and advertising injury, and property damage or destruction (i.e., exclusions for liability assumed under contract must be deleted) that may arise from, or be related to (i) the conduct of the Owner and/or Occupants, or (ii) the condition, use or occupancy of each Owner's Tract (the "Owner's Liability Insurance"). The Owner's Liability Insurance shall have a combined single limit of liability of not less than \$2,000,000.00 for bodily injury, personal injury and property damage arising out of any one

occurrence and shall be written on an "occurrence" basis form and not on a "claims made" form. The other Owners shall be "additional insureds" under the policies of the Owner's Liability Insurance as same applies to the insuring Owner's Tract.

(b) The following provisions shall apply to the Owner's Liability Insurance:

(i) the policy may not be canceled or reduced in amount or coverage below the requirements of this Declaration, without at least thirty (30) days' prior written notice by the insurer to each insured and additional insured;

(ii) the policy shall provide for severability of interests;

(iii) the policy shall provide that an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to the other insureds; and

(iv) the policy shall provide for contractual liability coverage with respect to the indemnity obligations set forth in this Declaration.

(c) Each Owner agrees to furnish to any other Owner requesting same evidence that: (i) such insurance is in full force and effect; (ii) the premiums have been paid in full; and (iii) the appropriate parties are designated as additional insureds. The Owners agree that such evidence may be provided in electronic form.

(d) If the use of a Tract includes the sale of alcoholic beverages, the Owner's Liability Insurance shall include coverage for employer's liability, host liquor liability, liquor liability and so-called "dram shop" liability coverage with a combined single limit of not less than \$2,000,000.00 per occurrence. If an Owner has fuel facilities on its Tract, then such Owner shall also maintain pollution liability insurance.

## 8.2. Insurance Coverage During Construction.

(a) Prior to the commencement of any construction activities on an Owner's Tract, such Owner shall obtain thereafter maintain, or cause to be obtained and thereafter maintained, so long as such construction activity is occurring, at least the minimum insurance coverage's set forth below:

(i) Workers' compensation and employer's liability insurance as required by any applicable law or regulation.

(A) Employer's liability insurance in the amount of \$1,000,000.00 each accident for bodily injury, \$1,000,000.00 policy limit for bodily injury by disease, and \$1,000,000.00 each employee for bodily injury by disease.

(ii) General liability insurance: Commercial General Liability insurance covering all operations by or on behalf of the general contractor, which shall include the following minimum limits of liability and coverages:

(A) Required coverages:

- (1) Premises and Operations;
- (2) Products and Completed Operations;

(3) Contractual liability insuring the indemnity obligations assumed by contractor under the contract documents;

(4) Broad Form Property Damage (including Completed Operations);

(5) Explosion, Collapse and Underground Hazards; and

(6) Personal Injury Liability.

(B) Minimum limits of liability:

(1) \$1,000,000.00 per occurrence;

(2) \$2,000,000.00 aggregate for Products and Completed Operations (which shall be maintained for a three-year period following final completion of the work); and

(3) \$2,000,000.00 general aggregate applied separately to the Center.

(iii) Automobile Liability Insurance: Automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired, and non-owned automobiles, with limits of liability of not less than \$1,000,000.00 combined single limit each accident for bodily injury and property damage combined. The general contractor shall require each of its subcontractors to include in their liability insurance policies coverage for automobile contractual liability.

(iv) Umbrella/Excess Liability Insurance: Umbrella/excess liability insurance with coverage not less than \$3,000,000.00.

(b) If the construction activity involves the use of another Owner's Tract, the Owner of such other Tract shall be added as an additional insured and such insurance shall provide that the insurance shall not be canceled, or reduced in amount or coverage below the requirements of this Declaration without at least thirty (30) days' prior written notice to the insureds and each additional insured. If such insurance is canceled or expires, the constructing Owner shall immediately stop all work on or use of the other Owner's Tract until either the required insurance is reinstated or replacement insurance obtained. The general contractor shall supply each Owner with certificate(s) of insurance with respect to all insurance required by this Section.

8.3. Property Insurance. To assure performance of their respective obligations under Section 9.2 hereof and Section 9.3 hereof, the Owners of the respective Tracts shall carry or cause to be carried special form property insurance in an amount not less than the full insurable replacement cost (excluding footings, foundations or excavations) of all Buildings and other Improvements (including Easement Area Improvements) on their respective Tracts (the "Owner's Property Insurance").

#### 8.4. Insurance Requirements.

(a) The Owner's Liability Insurance and the Owner's Property Insurance shall be carried by an insurance company or companies qualified to do business in the State in which the Center is located with a Best's Key Rating Guide Property/Casualty (United States) rating of at least A- and a financial rating of VIII or better (or a comparable standard under an international rating system).

(b) The insurance referenced in this Section may be provided under (i) an individual policy specifically covering such Owner's Tract, (ii) a blanket policy or policies which include other liabilities, properties and locations of such Owner; so long as the amount and coverage of insurance required to be carried hereunder is not diminished, or (iii) a combination of any of the foregoing



insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by an Owner in compliance with this Section, such Owner shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed \$50,000.00.

8.5. Waiver of Subrogation. The Owners each hereby waive any rights one may have against the other on account of any loss or damage occurring to an individual Owner, or its respective property, either real or personal, arising from any risk generally covered by the Owner's Property Insurance, from any risk covered by standard forms of special form property insurance policies then in effect and from any risk covered by any other property insurance which is actually carried by said Owner. Said Owners shall use reasonable efforts to obtain, if needed, appropriate endorsements to the Owner's Property Insurance with respect to the foregoing waiver; provided, however, that failure to obtain such endorsements shall not affect the waiver hereinabove given. In addition, said Owners shall cause the insurance companies issuing the Owner's Property Insurance to waive any right of subrogation that said insurance companies may have against the Owners. It is the intent of the parties that with respect to any loss from a peril required to be covered under a policy of Owner's Property Insurance, the parties shall look solely to their respective insurance company for recovery. The foregoing waivers of subrogation shall be operative only so long as available in the state where the Center is situated and provided further that no policy of insurance is invalidated thereby.

8.6. Indemnification. Subject to the provisions of Section 8.5 hereof, regarding waiver of subrogation with respect to damage to property, each Owner (and the Ollie's Occupant, as applicable) shall defend, indemnify, protect and hold the other Owners (and the Ollie's Occupant, as applicable) harmless for, from and against all Claims arising out of or resulting from such indemnifying Owner's (or the Ollie's Occupant's, as applicable) (a) breach of this Declaration, or (b) intentional actions in the course of performing such party's obligations under this Declaration.

## 9. Property Damage and Eminent Domain.

9.1. Maintenance of Buildings and Service Areas. After completion of construction, each Owner shall maintain and keep the exterior portion of the Buildings, if any, and the Service Areas, if any, located on its Tract in first-class condition and state of repair, in compliance with all applicable Governmental Regulations, and in compliance with the provisions of this Declaration. Each Owner shall store all trash and garbage in adequate containers, shall locate such containers so that they are not readily visible from the parking area, and shall arrange for regular removal of such trash or garbage.

### 9.2. Damage to Buildings.

(a) If any of the Buildings are damaged by fire or other casualty (whether insured or not), the Owner upon whose Tract such Building is located shall, subject to Governmental Regulations and/or insurance adjustment delays, promptly remove the debris resulting from such event and provide a sightly barrier, and within a reasonable time thereafter shall perform one of the following alternatives:

(i) such Owner shall repair or restore the Building so damaged to a condition and an architectural style existing immediately prior to the damage or destruction; such repair or restoration to be performed in accordance with all applicable provisions of this Declaration;

(ii) such Owner shall erect another Building on such Owner's Tract, such construction to be performed in accordance with all applicable provisions of this Declaration, including, without limitation, the approval process set forth in this Declaration; or

(iii) such Owner shall demolish the damaged portion and/or the balance of such Building, fill any excavation, and perform any other work necessary to put such portion of the Center in a clean, sightly and safe condition.

(b) All Building areas on which Buildings are not reconstructed following a casualty or Taking (as hereinafter defined) shall be (i) graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such a manner as not to adversely affect the drainage of the Center or any portion thereof, (ii) maintained in a neat, landscaped condition or covered by decomposed granite, gravel, sod, hydro seed or as otherwise permitted by Governmental Regulations, and (iii) kept weed free and clean at the subject Owner's sole cost and expense until such time as Buildings are reconstructed thereon.

9.3. Casualty Damage to Easement Area. If any of the Easement Area is damaged or destroyed by any cause whatsoever, whether insured or uninsured, during the term of this Declaration, the Owner upon whose Tract such Easement Area is located shall repair or restore such Easement Area at its sole cost and expense with all due diligence. Except to the extent limited by Section 8.5 hereof, if such damage or destruction of Easement Area is caused wholly by the negligence or willful act of another Owner, Occupant or third Person, the Owner obligated to make such repair or restoration as a result of such damage or destruction reserves and retains the right to proceed against such other Owner, Occupant, or third Person for indemnity, contribution or damages.

9.4. Eminent Domain. If the whole or any part of the Center shall be taken or damaged by right of eminent domain or any similar authority of law or any transfer in lieu thereof (a "Taking"), the entire award for the value of the land and Improvements so taken shall belong to the fee owner of the Tract so taken or to such owner's Mortgagees, as they may have agreed between or among themselves, and in the absence of any such agreement, as provided by law, and no other Owner shall have a right to claim any portion of such award by virtue of any interest created by this Declaration. Any Owner of a Tract which is not the subject of a Taking may, however, file a collateral claim with the condemning authority over and above the value of the Tract (or portion thereof) being so taken to the extent of any damage suffered by such Owner resulting from the severance of the land or improvements so taken so long as such claim does not reduce the condemnation proceeds payable to the owner of the Tract so taken. In the event of a partial Taking, the Owner of the portion of the Center so taken shall restore the Improvements located on the Easement Area of the Owner's Tract as nearly as possible to the condition existing prior to the Taking to insure the continued ingress/egress to, from and between all areas of the Center to the extent reasonably feasible, without contribution from any other Owner.

## 10. Payment of Taxes.

### 10.1. Taxes and Assessments.

(a) Each Owner shall pay, or cause to be paid, prior to delinquency, all taxes and assessments with respect to its Tract, the Building, the Easement Area located on such Tract, other improvements located thereon, and any personal property owned or leased by such Owner in the Center; provided, however, if the taxes or assessments or any part thereof may be paid in installments, the Owner responsible therefore may pay each such installment as and when the same becomes due and payable. Nothing contained in this Section shall prevent any Owner from contesting at its cost and expense any such taxes and assessments with respect to its Tract in any manner such Owner elects, so long as such contest is maintained with reasonable diligence and in good faith; provided, however, if a lien is recorded against such Owner's Tract, the Owner permitting or causing such lien to be recorded agrees to (i) cause any such tax lien to be released of record or transferred to bond in accordance with applicable law, or (ii) give such assurance as would enable a title insurance company to insure over such lien. At the time as

such contest is concluded (allowing for appeal to the highest appellate court), the contesting Owner shall promptly pay all such taxes and assessments determined to be owed, together with all interest, penalties and costs thereon. Nothing contained in this Section shall prevent any Owner from permitting an Occupant to pay such Owner's taxes and assessments on its behalf.

(b) If a tax parcel covers more than a single Tract, each Owner owning a Tract within the larger tax parcel shall be responsible for the payment of its proportionate share of the tax bills for the larger tax parcel on or before the due date therefor. Unless the Owners within the larger tax parcel agree otherwise, each Owner's proportionate share of the tax bill for the larger tax parcel shall be determined by dividing the square footage of the portion of such Owner's Tract within the larger tax parcel by the square footage of the larger tax parcel provided, however, if Buildings have been constructed on the larger tax parcel, the taxes assessed upon the Buildings shall be allocated on the basis of the floor area of such Buildings. At the request of any Owner owning a Tract within the larger tax parcel, the Owners owning Tracts within the larger tax parcel shall petition the appropriate governmental authority to create separate tax parcels for each of the Tracts affected thereby.

## 11. Default.

11.1. Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this Declaration by the non-performing Owner (the "Defaulting Owner"):

(a) The failure of any Owner or Occupant to observe or perform any of the covenants, conditions or obligations of this Declaration, within thirty (30) days after the issuance of a written notice by another Owner (the "Non-Defaulting Owner") specifying the nature of the default claimed; provided, however, if such matter is not susceptible of being cured within thirty (30) days, the cure period shall be extended for a reasonable period of time provided the Defaulting Owner commences the cure within said 30-day period and thereafter diligently prosecutes the cure to completion.

(b) Each Owner shall be responsible for the default of its Occupants. In the event of a default as described in this Section 11.1, the Ollie's Occupant shall have the right to provide notice to a Defaulting Owner on behalf of a Non-Defaulting Owner, which notice shall have the same effect as a notice provided by the Non-Defaulting Owner.

## 11.2. Right to Cure.

(a) With respect to any default under Section 11.1, any Curing Owner (as hereinafter defined) shall have the right, but not the obligation, to cure such default by the performance of some other action for the account of and at the expense of the Defaulting Owner; provided, however, if an event that would become a default under Section 11.1(b) with the passage of time shall constitute an emergency condition, the Curing Owner acting in good faith, shall have the right to cure such event prior to the passage of the time period set forth in Section 11.1(a).

(b) If any Curing Owner shall cure a default, the Defaulting Owner shall reimburse the Curing Owner for all costs and expenses reasonably incurred in connection with such curative action, plus interest thereon at the rate of ten percent (10%) per annum from the date due until paid, within thirty (30) days after receipt of an invoice from such Curing Owner, together with reasonable documentation supporting the expenditures made. Furthermore, the Curing Owner shall have the right, if such invoice is not paid within said thirty-day period, to record a lien on the Tract of the Defaulting Owner for the amount of the unpaid costs incurred by the Curing Owner pursuant to this Section.

(c) To effectuate any such cure, a Curing Owner shall have the right to enter upon the Tract of the Defaulting Owner (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Owner.

(d) As used in this Section, the term "Curing Owner" shall refer to any Owner that is not the Defaulting Owner.

#### 11.3. Remedies Cumulative.

(a) Each Non-Defaulting Owner shall have the right to prosecute any proceedings at law or in equity against any Defaulting Owner hereto, or any other Person violating or attempting to violate or default upon any of the provisions contained in this Declaration, and to recover damages for any such violation or default.

(b) In the event of any violation or threatened violation by any Person of any of the easements, restrictions or other terms of this Declaration, any or all of the Owners of the property included within the Center shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

(c) All of the remedies permitted or available to an Owner under this Declaration or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

(d) In all situations arising out of this Declaration, all Owners shall attempt to avoid and mitigate the damages resulting from the conduct of any other Owner. Each Owner shall take all reasonable measures to effectuate the provisions of this Declaration.

(e) The Ollie's Occupant shall have the right to pursue the remedies of a Non-Defaulting Owner described in this Section 11.3 against a Defaulting Owner on behalf of a Non-Defaulting Owner.

11.4. Attorneys' Fees. If any Person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Declaration, the Prevailing Party in any such action or proceeding shall be entitled to recover from the non-prevailing party in any such action or proceeding its reasonable costs and attorneys' fees (including its reasonable costs and attorneys' fees on any appeal). For purposes of this Section 11.4, the term "Prevailing Party" shall mean that party who obtains a judgment or its requested relief. In the event that it is unclear which party prevailed (for instance where both claims and counterclaims are awarded or requested relief is obtained by both parties), the Prevailing Party must have obtained a greater percentage of its claimed relief than the other party, or if the foregoing cannot be reasonably determined, then the Prevailing Party must have prevailed on some of its claims and have obtained a judgment that modifies the behavior of the other party in a way that benefits the Prevailing Party.

#### 12. Binding Effect.

12.1. Successors and Assigns. This Declaration and the easements and restrictions created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, Occupants, successors and assigns, and upon any Person acquiring a Tract, or any portion thereof, or any interest therein, whether by operation of law or otherwise.

13. **Miscellaneous.**

13.1. **Covenants Run With the Land.** The terms of this Declaration and each restriction and easement on each Tract shall be a burden on that Tract, shall be appurtenant to and for the benefit of the other Tracts and each part thereof, and shall run with the land.

13.2. **No Public Dedication.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Center or of any Tract or portion thereof to the general public, or for any public use or purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed. An Owner shall have the right to close, if necessary, all or any portion of the Easement Area on its Tract from time to time as may be necessary, in the reasonable opinion of such Owner, to prevent a dedication thereof, the accrual of any rights of the public therein or the acquisition of prescriptive rights by anyone. Before closing off any part of the Easement Area as provided above, such Owner must give notice to the other Owner(s) of its intention to do so and must coordinate such temporary closing with the activities of the other Owners so that no unreasonable interference with the operation of the Center occurs.

13.3. **Modification and Termination.** This Declaration may not be amended or modified in any respect whatsoever or terminated, in whole or in part, except by a written agreement signed by all of the Owners of the Center at the time of such amendment, modification or termination, and such amendment, modification or termination shall be effective only when recorded in the official real estate records of the county and state where the Center is located. Notwithstanding the foregoing, for so long as the Ollie's Occupant is an Occupant in the Center, the provisions of Sections 2.2, 2.3, 2.7, 3, 4, 5, 8.6, 11.1(b), 11.3(e), 11.4, 13.3, and 13.13 of this Declaration may not be amended or modified in any respect without the prior consent of the Ollie's Occupant, which consent shall not be unreasonably withheld, conditioned, or delayed.

13.4. **Breach Shall Not Permit Termination.** It is expressly agreed that a breach of this Declaration shall not entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

13.5. **Waiver.** The failure of a Person to insist upon strict performance of any of the restrictions or other terms and provisions contained herein shall not be deemed a waiver of any rights or remedies that said Person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the restrictions or other terms and provisions contained herein by the same or any other Person.

13.6. **Severability.** If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

13.7. **Not a Partnership.** The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the Owners. Each Owner shall be considered a separate party and no Owner shall have the right to act as agent for another, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.

13.8. Captions and Headings. The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, or conditions contained herein.

13.9. Interpretation. Whenever the context requires construing the provisions of this Declaration, the use of a gender shall include both genders, use of the singular shall include the plural, and the use of the plural shall include the singular. The word "including" shall be construed inclusively, and not in limitation, whether or not the words "without limitation" or "but not limited to" (or words of similar importance) are used with respect thereto. The provisions of this Declaration shall be construed as a whole and not strictly for or against any party. Unless otherwise provided, references to Articles and Sections refer to the Articles and Sections of this Declaration.

13.10. Joint and Several Obligations. If any Owner is composed of more than one person, the obligations of said party shall be joint and several.

13.11. Recordation. This Declaration shall be recorded in the official real estate records of the county in which the Center is located.

13.12. Mortgagee Protection. This Declaration and the easements and restrictions established hereby with respect to each Owner and Tract, shall be superior and senior to any lien placed upon any Tract, including the lien of any mortgage or deed of trust. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust made in good faith and for value, but all the easements and restrictions and other provisions, terms and conditions contained in this Declaration shall be binding upon and effective against any Person (including, but not limited to, any mortgagee or beneficiary under a deed of trust) who acquires title to any Tract or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

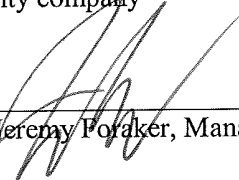
13.13. Ollie's Lease Controls. For so long as an Ollie's Occupant is an Occupant in the Center, except as expressly set forth to the contrary herein and except with respect to the exercise of its rights hereunder, such Ollie's Occupant shall not be bound by the terms and conditions of this Declaration (including without limitation Section 5.1 hereof), and if any conflict arises between the terms and conditions of the Ollie's Lease and the terms and conditions of this Declaration, the terms and conditions of the Ollie's Lease shall control, so long as they do not adversely affect the Outparcel Owner's or its Occupant(s)'s use and enjoyment of the Outparcel consistent with the terms herein. Provided however, the restricted uses in Sections 5.2 and 5.3(a) do not conflict with the Ollie's Lease and shall be deemed to apply to the Ollie's Occupant.

[SIGNATURE TO APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned, has executed this Declaration on this 10<sup>th</sup> day of March, 2020, to become effective on recording in the office of the County Clerk of Washington County, Oklahoma.

**DECLARANT:**

BARTLESVILLE 501, LLC an Oklahoma limited liability company

By:   
Jeremy Foraker, Manager

BK 1176 PG 3711

**ACKNOWLEDGMENT**

STATE OF OKLAHOMA                    )  
  ) SS  
COUNTY OF OKLAHOMA                )

This instrument was acknowledged before me on March 10, 2020 by Jeremy Foraker as Manager of Bartlesville 501, LLC.

  
Notary Public

My Commission Expires: \_\_\_\_\_

My Commission No: \_\_\_\_\_



IN WITNESS WHEREOF, the undersigned, hereby executes this Declaration on this 6<sup>th</sup> day of March, 2020 to evidence its acknowledgment of, and consent to, the same.

**OLLIE'S BARGAIN OUTLET, INC.**, a Pennsylvania corporation

By: [Signature]  
Name: JERRY ALTANO  
Title: VP Real Estate

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### ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :  
: SS:  
COUNTY OF Dauphin :

On this 6<sup>th</sup> day of March, 2020, before me, a Notary Public, the undersigned officer, personally appeared Jerry Altano, who acknowledged (her)(him)self to be the Vice President, Real Estate of **OLLIE'S BARGAIN OUTLET, INC.**, a Pennsylvania corporation, and that (s)he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of such corporation by (her)(him)self as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature: Pamela K. Bishop]  
Notary Public

(SEAL)

My Commission Expires: 6/5/2023

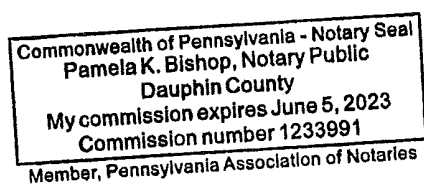




EXHIBIT A

Center Legal Description

A tract of land in the Southeast Quarter (SE/4) of Section Eight (8), Township Twenty-Six (26) North, Range Thirteen (13) East of the Indian Meridian, Washington County, Oklahoma, being a portion of Tract 1, CLARK PLAZA ADDITION, an addition to the City of Bartlesville, and being more particularly described as follows:

COMMENCING at the Northeast corner of Tract 1 of CLARK PLAZA ADDITION, an Addition to the City of Bartlesville, Washington County, State of Oklahoma, according to the recorded plat thereof;

THENCE South 02°00'50" East (South 00°39'23" East Record), along the East line of said Tract 1, a distance of 39.90 feet;

THENCE South 32°00'50" East (South 30°39'23" East Record), along the East line of said Tract 1, a distance of 30.00 feet;

THENCE South 02°00'50" East (South 00°39'23" East Record), along the East line of said Tract 1, a distance of 124.25 feet to the POINT OF BEGINNING.

THENCE continuing South 02°00'50" East (South 00°39'23" East Record), along the East line of said Tract 1, a distance of 91.46 feet;

THENCE South 88°55'58" West (South 89°20'37" West Record), along the East line of said Tract 1, a distance of 38.75 feet (39.64 feet Record)

THENCE South 01°52'26" East (South 00°39'23" East Record), along the East line of said Tract 1, a distance of 71.49 feet (70.91 feet Record) to the Northeast corner of Tract 2 of CLARK PLAZA ADDITION;

THENCE South 89°21'06" West (South 89°54'51" West), along the North line of said Tract 2, a distance of 201.26 feet (200.00 feet Record) to the Northwest corner of said Tract 2;

THENCE South 01°23'26" East (South 00°39'23" East Record) a distance of 200.00 feet to the Southwest corner of said Tract 2, said point also being the Southeast corner of said Tract 1;

THENCE South 88°51'33" West (South 89°54'51" West Record), along the South line of said Tract 1, a distance of 511.94 feet;

THENCE North 01°03'16" East (North 00°01'11" East Record), parallel with the West line of said Tract 1, a distance of 647.48 feet (647.58 feet Record) to the Southwest corner of Tract 4 of CLARK PLAZA ADDITION;

THENCE North 88°52'52" East (North 89°54'51" East Record), along the South line of Tracts 3 and 4 of CLARK PLAZA ADDITION, a distance of 305.10 feet to the Southeast corner of said Tract 3;

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THENCE North 01°11'06" West (North 00°01'11" West Record), along the East line of said Tract 3, a distance of 125.00 feet to a point on the South right of way line of Frank Phillips Boulevard, said point also being on the North line of said Tract 1;

THENCE North 88°52'52" East (North 89°54'01" East Record), along said South right of way and North line of Tract 1, a distance of 14.60 feet;

THENCE South 77°18'43" East (South 75°25'28" East Record), along said South right of way and North line of Tract 1, a distance of 26.16 feet to a point on the West line of CVS BARTLESVILLE ADDITION, an Addition to the City of Bartlesville, Washington County, State of Oklahoma, according to the recorded plat thereof;

THENCE South 01°11'06" East (South 00°01'11" W Record), along the West line of said CVS BARTLESVILLE ADDITION, a distance of 142.52 feet (140.30 feet Record);

THENCE North 88°49'54" East (North 89°51'27" East Record), along the West line of said CVS BARTLESVILLE ADDITION, a distance of 48.37 feet (45.41 feet Record);

THENCE South 01°13'05" East (South 00°01'11" East Record), along the West line of said CVS BARTLESVILLE ADDITION, a distance of 73.10 feet (73.29 feet Record) to the Southwest corner of said CVS BARTLESVILLE ADDITION, said point also being on the North line of said Tract 1;

THENCE North 88°46'04" East (North 89°51'27" East Record), along North line of said Tract 1 also being the South line of CVS BARTLESVILLE ADDITION, a distance of 81.74 feet;

THENCE South 02°00'50" East, parallel with the East line of said Tract 1, a distance of 189.93 feet;

THENCE North 88°46'04" East, parallel with the North line of said Tract 1 also being the South line of CVS BARTLESVILLE ADDITION, a distance of 269.56 feet to the POINT OF BEGINNING.

Said tract of land contains an area of 352,727 square feet or 8.0975 acres, more or less.

The bearing of South 02°00'50" East as shown on the East line of Tract 1 was used as the basis of bearing for this survey. The bearings shown hereon are based upon State Plane North Zone, which was used as the basis of bearing for this survey.

AND

A tract of land in the Southeast Quarter (SE/4) of Section Eight (8), Township Twenty-Six (26) North, Range Thirteen (13) East of the Indian Meridian, Washington County, Oklahoma, being a portion of CLARK PLAZA, an addition to the City of Bartlesville, and being more particularly described as follows:

BEGINNING at the Northeast corner of Tract 1 of CLARK PLAZA ADDITION, an Addition to the City of Bartlesville, Washington County, State of Oklahoma, according to the recorded plat thereof;

THENCE South 02°00'50" East (South 00°39'23" East Record), along the East line of said Tract 1, a distance of 39.90 feet;

THENCE South 32°00'50" East (South 30°39'23" East Record), along the East line of said Tract 1, a distance of 30.00 feet;

THENCE South 02°00'50" East (South 00°39'23" East Record), along the East line of said Tract 1, a distance of 124.25 feet;

THENCE South 88°46'04" West, parallel with the North line of said Tract 1 also being the South line of CVS BARTLESVILLE ADDITION, an Addition to the City of Bartlesville, Washington County, State of Oklahoma, according to the recorded plat thereof, a distance of 269.56 feet;

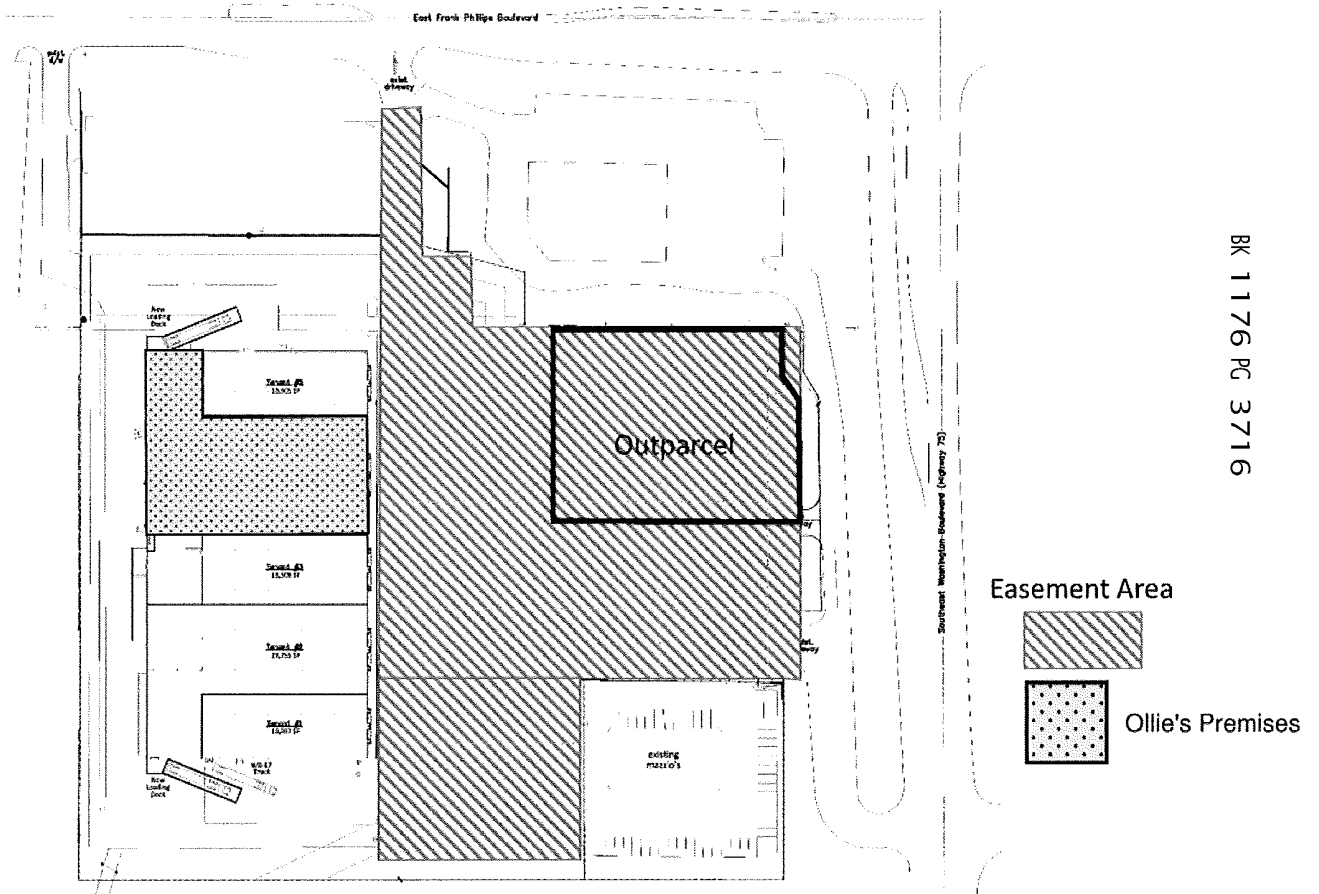
THENCE North 02°00'50" West a distance of 189.93 feet to a point on the North line of said Tract 1 and South line of CVS BARTLESVILLE ADDITION;

THENCE North 88°46'04" East (North 89°54'51" East Record), along said North line of said Tract 1 and South line of CVS BARTLESVILLE ADDITION, a distance of 254.56 feet to the POINT OF BEGINNING.

Said tract of land contains an area of 50,400 square feet or 1.1570 acres, more or less.

The bearing of South 02°00'50" East as shown on the East line of Tract 1 was used as the basis of bearing for this survey. The bearings shown hereon are based upon State Plane North Zone, which was used as the basis of bearing for this survey.

EXHIBIT B  
Easement Area



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EXHIBIT C

**Outparcel**

A tract of land in the Southeast Quarter (SE/4) of Section Eight (8), Township Twenty-Six (26) North, Range Thirteen (13) East of the Indian Meridian, Washington County, Oklahoma, being a portion of CLARK PLAZA, an addition to the City of Bartlesville, and being more particularly described as follows:

BEGINNING at the Northeast corner of Tract 1 of CLARK PLAZA ADDITION, an Addition to the City of Bartlesville, Washington County, State of Oklahoma, according to the recorded plat thereof;

THENCE South 02°00'50" East (South 00°39'23" East Record), along the East line of said Tract 1, a distance of 39.90 feet;

THENCE South 32°00'50" East (South 30°39'23" East Record), along the East line of said Tract 1, a distance of 30.00 feet;

THENCE South 02°00'50" East (South 00°39'23" East Record), along the East line of said Tract 1, a distance of 124.25 feet;

THENCE South 88°46'04" West, parallel with the North line of said Tract 1 also being the South line of CVS BARTLESVILLE ADDITION, an Addition to the City of Bartlesville, Washington County, State of Oklahoma, according to the recorded plat thereof, a distance of 269.56 feet;

THENCE North 02°00'50" West a distance of 189.93 feet to a point on the North line of said Tract 1 and South line of CVS BARTLESVILLE ADDITION;

THENCE North 88°46'04" East (North 89°54'51" East Record), along said North line of said Tract 1 and South line of CVS BARTLESVILLE ADDITION, a distance of 254.56 feet to the POINT OF BEGINNING.

Said tract of land contains an area of 50,400 square feet or 1.1570 acres, more or less.

The bearing of South 02°00'50" East as shown on the East line of Tract 1 was used as the basis of bearing for this survey. The bearings shown hereon are based upon State Plane North Zone, which was used as the basis of bearing for this survey.

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