

## **DECLARATION OF COVENANTS AND RESTRICTIONS**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (this "Declaration") is made as of the 2<sup>nd</sup> day of September, 2011 (the "Effective Date"), by COLLEGE STATION MARKETPLACE, LP, a Texas limited partnership, its successors and/or assigns ("Developer").

### **RECITALS**

**WHEREAS**, Developer is the owner of approximately 15.00 acres of real estate situated in Brazos County, Texas described in EXHIBIT A-1 and EXHIBIT A-2 (the "Property").

**WHEREAS**, Developer has deemed it desirable, and in the best interests of the future Owners of the Lots in the Development (as such terms are hereinafter defined), to enter into this Declaration in order to facilitate a cohesive commercial development, to preserve the property values in the Development and to facilitate the integrated use of the Development for the benefit of each Owner.

**NOW, THEREFORE**, it is hereby declared that the property within the Development shall be held, sold and conveyed subject to the following covenants and conditions, which are for the purposes described above and which shall run with the Property and shall be binding on and inure to the benefit of each Owner and "Permittee" (as defined below):

### **ARTICLE 1 - GENERAL PROVISIONS**

**Section 1.1** The following terms shall be defined as set forth below:

**"Affiliate"**: (a) Any corporation in which Developer or any partner, shareholder, director, officer, member, or manager of Developer directly or indirectly owns or controls more than five percent (5%) of the beneficial interest, (b) any partnership, joint venture or limited liability company in which Developer or any Related Person or any partner, shareholder, director, officer, member, or manager of Developer is a partner, joint venturer or member, (c) any trust in which Developer or any partner, shareholder, director, officer, member or manager of Developer is a trustee or beneficiary, (d) any entity of any type which is directly or indirectly owned or controlled by Developer or any partner, shareholder, director, officer, member or manager of Developer or, (e) any partner, shareholder, director, officer, member, manager or employee of Developer ("Related Person").

**"Applicable Rate of Interest"**: Twelve percent (12%) per annum or the highest annual interest rate allowed by law, whichever is less.

**"Approved Plan"**: A Plan approved by the Developer as set forth in Section 3.1.

**"City"**: The City of College Station, Texas unless otherwise denoted.

**"Developer"**: College Station MarketPlace, LP, its successors and assigns; provided, however, unless expressly provided for in writing, no purchaser of a Lot from Developer shall be deemed to be a successor or assign with respect to Developer's rights as Developer hereunder.

**"Developer Control Period"**: The period commencing on the date of the recording of this Declaration in the Official Records of Brazos County, Texas and continuing thereafter until and ending on the earlier to occur of: (i) the date the Developer or its Affiliates no longer owns any part of the Development; or (ii) the date determined by Developer to be the end of the Developer Control Period.

**"Development"**: The land described in EXHIBIT A-1 and EXHIBIT A-2.

**"Environmental Law"**: Any federal, state or local environmental, health and/or safety related law, and any related decision of the courts, ordinance, rule, regulation, code, order, directive, guideline, permit or permit condition.

**"Hazardous Materials"**: Any chemical, substance, material or combination thereof which is or may be hazardous to human health or safety or to the environment due to its radioactivity, ignitability, infectiousness or other harmful or potentially harmful properties or effects, including petroleum and petroleum products, asbestos, radon, polychlorinated biphenyls ("PCBs") and all of those chemicals, substances, materials or combinations thereof that are listed, defined or regulated in any manner by any Environmental Law.

**"Lot"**: Each Lot within the Development created by a Plat.

**"Occupant"**: Any Person from time to time entitled to the use and occupancy of any Lot or portion of any Lot pursuant to ownership right, or any lease, sublease, license, concession, or other similar agreement.

**"Owner"**: The record owner, whether one or more persons or entities, of fee simple title to a Lot, and their respective successors and assigns who become owners of any portion of the Development; provided, however, unless otherwise set forth in this Declaration, the term "Owner" shall not include any Lienholder or any Occupant. Each Owner shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the portion of the Development owned by it which accrue during the period of such ownership. During the Developer Control Period, the transferee of an Owner transferring all or any portion of its interest in a Lot to such transferee shall give written notice in recordable form to the Developer of such transfer and shall include therein the name and address of the transferee and a copy of the legal description of the Lot transferred. Each Owner shall enjoy the benefits imposed on such Owner's Lot by this Declaration including but not limited to the right to enforce the terms and conditions of the Declaration (except as provided below) and shall be subject to the burdens imposed by this Declaration. Notwithstanding the above or any definition contained herein to the contrary, in no event shall any Occupant, Permittee or ground lessee have the right to enforce the terms, conditions or any other part of this Declaration unless the Owner has assigned such enforcement rights in writing to an Occupant or ground lessee.

**"Permittee"**: shall mean any Occupant and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of such Occupant insofar as such person's activities relate to Occupant's intended use of the Development.

**"Person"**: shall mean any individual, partnership, firm, association, corporation, trust, trustee, limited liability company, or any other form of business or government entity.

**"Plans"**: shall have the meaning set forth in Section 3.1 of this Declaration.

**"Plan Approval"**: "Plan Approval" shall have the meaning set forth in Section 3.1 of this Declaration.

**"Plat"**: Any subdivision plat of all or any portion of the Development recorded or to be recorded in the Official Records of Brazos County, Texas.

## **ARTICLE 2 - MAINTENANCE & UPKEEP OF DEVELOPMENT; TAXES**

**Section 2.1 General Operation and Maintenance of Lots.** Each Owner shall, at its sole expense, manage, operate, and maintain its Lot by:

- (a) Diligently maintaining, repairing and replacing that portion of the landscaping located on its Lot in a neat, orderly and first class condition at all times. This shall include, but not be limited to, mowing of grass of six inches (6") or higher, edging, pruning, fertilizing, watering, weeding and other such activities common to the maintenance of landscaping. At all times, each Owner must keep landscaped areas free of trash, litter, weeds, and other unsightly material. All plant materials must be maintained in a healthy and growing condition as is appropriate for the season of the year. An extension of this time may be granted by the Developer if substantial evidence is presented to indicate abnormal circumstances beyond the control of the Owner.
- (b) Paying all electrical, water and other utility charges or fees for services furnished to the Owner's Lot.
- (c) Except as indicated on an Approved Plan, placing no signs, fences, hedges, curbs, barriers, walls or other structures which would prohibit the free flow of pedestrian or automotive traffic or restrict visibility of other Owners' buildings or signage.
- (d) To the extent applicable, requiring, and using whatever efforts necessary to compel all Occupants and Permittees on its Lot to comply with the requirements of this Declaration.
- (e) Constructing any retaining wall and other structures necessary for the development of the Lot in accordance with the Approved Plans for the Lot.

**Section 2.2 Maintenance of Improvements.** Each Owner, at its sole expense, must maintain or cause the Occupant of the Lot to maintain any building and other improvements located on that Owner's Lot in first-class condition and appearance at all times and in conformity with the general character and quality of properties in the Development. Such maintenance and repair includes, but is not limited to:

- (a) The replacement of worn and/or rotted components.
- (b) The regular painting of all exterior surfaces.

- (c) The maintenance, repair and replacement of signs, roofs, rain gutters, down spouts, exterior walls, windows, doors, and other exterior portions of any Building and other improvement to maintain an attractive appearance.
- (d) The cleaning and relamping of lighting fixtures located on any building or improvement.
- (e) The maintenance, cleaning, repair and replacement of all grease traps and exhaust fans located in any building or improvement.
- (f) Maintaining, repairing and replacing any retaining wall and any other structures necessary for the development of the Lot in accordance with the Approved Plans, if applicable, for the Lot.
- (g) Make all structural repairs to any building or improvements located on Lot, including but not limited to all repairs to the foundation, load bearing walls, roof and any other structural members thereof.

**Section 2.3 Owner's Failure to Maintain.** In the event an Owner shall fail to maintain, repair or replace its Lot or the improvements located thereon in the manner prescribed herein during the Developer Control Period, the Developer may at its option, after ten (10) days' written notice to such Owner except in the case of emergency where no notice is required, enter upon such Owner's Lot and undertake to maintain and care for such Lot or improvements thereon to the condition required hereunder, and the Owner thereof shall be obligated, when presented with an itemized statement, to reimburse the Developer for the cost of such work within ten (10) days after presentment of such statement, plus interest at the Applicable Rate of Interest from and after Developer's payment for the work.

### **ARTICLE 3 – GENERAL CONSTRUCTION REQUIREMENTS**

**Section 3.1 Construction Approvals.** The provisions of this Section 3.1 shall only be effective during the Developer Control Period. The Development is contemplated to have a mix of uses. In order to, among other things, preserve the property values and to facilitate the integrated use of the Development, prior to commencement of construction of any improvements on any Lot or undertaking any on-site pre-development work (such as grading or demolition of existing improvements) or any material alterations to such improvements, the Owner thereof shall obtain the prior written consent of the Developer to each of the following: (a) a site plan showing the location of all proposed improvements to be constructed including, but not limited to, a footprint of any proposed building, parking areas, drives, and curb cuts; (b) a written description of the intended use(s) on the Lot in such detail reasonably requested by the Developer; (c) a grading plan for the Lot; (d) a utility plan for the Lot showing the location of all utilities; (e) elevations and preliminary plans and specifications showing the exterior design, building materials, height, and the size of the improvements, including, but not limited to, the location of any trash dumpsters, compactors or the like (which dumpsters or compactors must be screened from public view in a manner reasonably satisfactory to the Developer); (f) a sign plan showing the location, size, and height of all exterior signage; (g) a parking plan showing sufficient ground level parking spaces in order to comply with the minimum number of parking spaces required by applicable law without variance or shared parking from any other Lot; and (h) a landscaping plan; and (i) any other information requested by Developer relating to the development and intended use of the Lot [(a) through (i) above are sometimes collectively referred to herein as the "Plans"].

Unless otherwise agreed to by the Developer, all Plans, including without limitation, any diagrams, schedules, specifications and other data required shall be submitted to the Developer in a complete form (sufficient to obtain a shell building permit), and ready for the Developer's consideration and final approval, in the Developer's sole and absolute discretion, prior to the construction of any such improvements on any Lot. The Developer shall respond with its consent or disapproval within thirty (30) days after the submittal of the Plans to the Developer. If the Developer fails to respond to the Plans within said thirty (30) days of submittal, the Plans shall be deemed disapproved. If the Plans are disapproved, the Developer shall note the reasons for such disapproval in reasonable detail. Every Lot shall at all times comply with all covenants, terms, conditions and obligations of this Declaration. Any approval of the Plans ("Plan Approval") by the Developer does not constitute any warranty or representation that the Plans comply with applicable governmental requirements, or good and prudent design, engineering and/or construction practices. It is the sole responsibility of the submitter of such Plans to the Developer to determine whether the Plans comply with such requirements and practices. Plans that have been approved by the Developer shall be referred to in this Declaration as the "Approved Plans".

Any Plan Approval given by the Developer shall expire and no longer be effective unless construction is commenced in accordance with the Approved Plans within six (6) months after the date of the Developer's notice of approval. Construction shall not be deemed "commenced" until the completion of the foundation of the building to be constructed on the Lot. All construction, once commenced, shall be diligently pursued to completion as soon as reasonably possible. No construction shall be abandoned or left partially complete. The Developer shall have the right to enter onto any Lot from time to time to observe the progress of the construction. The Developer shall have the right, but not the obligation, to enjoin any construction that is not in compliance with the Approved Plans and the applicable Owner acknowledges and hereby accepts that such injunctive relief is necessary because the Developer would have no adequate remedy at law for a violation of this Declaration.

No improvements of any nature shall be erected, installed, constructed, placed or permitted to remain on any Lot and no exterior portion of any existing buildings, structures, pavement, utility, fences, walls, signs, landscaping or other improvements of any nature shall be altered or remodeled, until Plans therefor, in such detail as provided above, shall have been submitted to and approved in writing by the Developer.

**Section 3.2 Construction to Proceed in Reasonable Manner; Coordination of Construction.** Construction on any Lot shall be undertaken so as not to unreasonably: (a) cause any increase in the cost of construction in the remainder of the Development or on any other Lot; (b) interfere with any other construction being performed in the Development or on any other Lot; (c) interfere with the operations of any other Owner or Permittee within the Development or any other Lot or the rights of any Owner or Occupant as contemplated by this Declaration; or (d) impair the use, occupancy or enjoyment of any Lot by the Permittees of such Lot. All improvements shall be constructed in accordance with the Approved Plans, if applicable. Each Owner shall use all reasonable efforts to cause its or its Occupant's architects, engineers and contractors to cooperate and coordinate its construction with the architects, engineers, contractors and construction work of the Developer, other Owners and Occupants to the extent reasonably practicable, so as to achieve the objectives set forth in this Section. Construction trailers and shacks, other temporary improvements and construction materials and equipment shall be located on a Lot only during such times as construction is actively being

conducted thereon, and shall be removed within thirty (30) days of written demand from the Developer.

**Section 3.3 Safety Matters.** Each Owner and Occupant shall take all safety measures reasonably required to protect the persons and property of all other Owners, Permittees and Lots from injury or damage caused by or resulting from the performance of any construction.

**Section 3.4 Workmanship; Compliance with Laws and Insurance Requirements.** Each Owner and Permittee shall perform its construction, or cause the performance of its construction by its agents, to be undertaken, in a diligent, good and workmanlike manner with the use of first class materials, and in accordance with: (a) the Approved Plans, if applicable, (b) the terms of this Declaration, (c) all applicable building and zoning laws and all other laws, ordinances, orders, codes, rules, regulations and requirements of all federal, state, municipal, public and governmental agencies and governments, and (d) all orders, rules and regulations of the National Board of Fire Underwriters or any other body now or hereafter constituted performing similar functions in the county in which the Development is located, including, without limitation, the Americans with Disabilities Act and Texas Architectural Barriers Act, and all regulations thereunder.

**Section 3.5 "Construction" Defined.** As used in this Article 3 the word "construction" includes any initial construction, expansion, alteration, restoration, demolition and razing contemplated under this Declaration, and except where otherwise specified, subsequent construction, reconstruction, expansion, alteration, maintenance, repair, restoration, rebuilding, demolition and razing carried on in the Development.

**Section 3.6 Delivery, Trash, Roof Areas and Utility Connections.** Outside storage on the Lots is prohibited. Loading docks and refuse areas shall be screened and located on the least visible side of the Lots and screened from public view. Whenever possible, refuse areas should be accommodated inside the building located on a Lot. Exterior exposed fire escapes, exposed service stairs or ladders, radio or television towers and antennae or satellite dishes or receivers are not permitted without the prior written approval of any appropriate governmental entity and, during the Developer Control Period, the Developer. All utility lines shall be underground with no exterior visible connections, except for required meters or transformers, which shall be screened from public view.

**Section 3.7 Set-back Requirements.** All Lots shall be subject to the set-back requirements contained in the local zoning ordinances and building codes, without variance. Setback requirements may be affected by the public or private characterization of adjacent roadways and access roads. Notwithstanding the foregoing, no building on any Lot lying adjacent to Highway 6 right of way may lie closer than seventy-five feet (75') to the Lot line immediately adjacent to the Highway 6 right of way.

**Section 3.8 Parking.** At the time any buildings are constructed in the Development, the Owner constructing such building shall construct all parking lots, driveways, sidewalks, landscaping, lighting and other improvements necessary to serve such building. No Owner shall allow any building on its Lot to be constructed or expanded or used by any Owner and Permittee such that the parking areas on the Lot owned by such Owner cannot independently meet the number of parking spaces required by any governmental regulation; provided, however, during the Developer Control Period, Developer in its sole and absolute discretion

may grant, in writing, a variance to this requirement and such variance shall continue after the end of the Developer Control Period.

**Section 3.9 Alterations.** During the Developer Control Period, no Owner may, without the prior written consent of Developer, which shall not be unreasonably withheld, conditioned or delayed (i) make alterations or additions to, or build additional stories on a building; (ii) make material alterations to the exterior structure of any buildings or additions thereto unless such exterior alterations satisfy the provisions of this Declaration applicable to buildings, or (iii) modify, alter or relocate the parking facilities, driveways, sidewalks, lighting and other improvements necessary to serve the building.

#### **ARTICLE 4 – DAMAGE AND DESTRUCTION**

**Section 4.1** In the event that any part of a building or improvement on a Lot is damaged by fire, casualty or event of force majeure, the affected Owner thereof shall either promptly restore or raze same. If the damaged building or improvements are razed, such Owner shall, at its sole expense, raze the damaged structures, remove all debris, pave such area for parking or landscape such area and install adequate lighting and storm water drainage. Any area restored in this manner shall be maintained at the sole cost and expense of the Owner of such Lot.

#### **ARTICLE 5 – COVENANTS AND RESTRICTIONS**

**Section 5.1 Restricted Uses.** The following uses will not be made, conducted or permitted on or with respect to all or any part of the Property: any nuisance; any use which violates laws or requirements of governmental authorities having jurisdiction over the Property; any sexually oriented businesses, adult bookstores or stores selling sexually explicit material; or any use determined by Developer to be obnoxious to or out of harmony with the development or operation of the then existing development on the Property or on the neighboring Tower Point Shopping Center.

**Section 5.2 Monument Sign Restriction.** No Owner may construct a monument or pylon sign on its Lot; provided, however, Developer (or any Person to whom Developer expressly assigns its rights under this Section 5.2) may construct, maintain and replace a monument/pylon sign(s) in the Development for the use of some or all Occupants, at Developer's sole discretion.

**Section 5.3 Subdivision of Lots.** During the Developer Control Period, no Lot may be subdivided or the Lot line between two Lots adjusted without the prior written consent of the Developer. If the Developer consents to such subdivision or adjustment, all rights and restrictions in this Declaration applicable to such Lot(s) before such subdivision or adjustment shall remain applicable to the resulting Lot(s).

**Section 5.4 Environmental Requirements.** Each Owner covenants and agrees to comply with the following environmental requirements:

- (a) Each Owner shall comply with, and shall pay all costs incurred in complying with, any Environmental Law then in effect and the environmental state, condition and quality of its Lot, including, without limitation, the performance of

and payment for any environmental cleanup work (which shall mean any cleanup, remediation, removal, construction, alteration, demolition, renovation or installation that is required in connection with Hazardous Materials installed, used, stored, handled or located on such Owner's Lot or disposed of from such Owner's Lot in order to comply with any Environmental Law) and the preparation of any disclosure or other required plans, excluding, however, any costs related to Hazardous Materials on the such Owner's Lot caused by the removal, storage, transportation and disposal of Hazardous Materials brought upon, generated, produced, kept, or used in or about such Lot by another Owner, Occupant or Permittee (such Owner, Occupant or Permittee, as applicable, who has brought upon, generated, produced, kept, or used Hazardous Materials in or about another Owner's Lot being referred to herein as the "Responsible Party"). Each Responsible Party shall comply with, and shall pay all costs incurred in complying with, any Environmental Law then in effect with respect to its Hazardous Materials, including, without the performance of and payment for any environmental cleanup work (which shall mean any cleanup, remediation, removal, construction, alteration, demolition, renovation or installation that is required in connection with Hazardous Materials installed, used, stored, handled or located on a Lot by such Responsible Party in order to comply with any Environmental Law) and the preparation of any closure or other required plans.

- (b) EACH OWNER SHALL AND HEREBY DOES AGREE TO INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS ANY OTHER OWNER AND ITS PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, AGENTS, CONTRACTORS AND EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL, CLAIMS, JUDGMENTS, DAMAGES, PENALTIES, FINES, TAXES, COSTS, LIABILITIES, LOSSES AND EXPENSES ARISING AT ANYTIME DURING OR AFTER THE TERM OF THIS DECLARATION AS A RESULT OF OR IN CONNECTION WITH: (I) SUCH OWNER'S BREACH OF ANY COVENANT CONTAINED IN THIS SECTION 5.4; OR (II) THE REMOVAL, STORAGE, TRANSPORTATION OR DISPOSAL OF HAZARDOUS MATERIALS BROUGHT UPON, GENERATED, PRODUCED, KEPT, OR USED IN OR ABOUT SUCH OWNER'S LOT BY SUCH OWNER OR ANY OF SUCH OWNER'S PERMITEES.

#### **ARTICLE 6 – DEFAULT**

**Section 6.1** Should any Owner breach any of its obligations hereunder and such breach continue for a period of thirty (30) days after its receipt of written notice (unless a longer or shorter period is expressly provided herein), any other Owner or the Developer (during the Developer Control Period) (the "Curing Party") shall be entitled to cure such breach in addition to all remedies at law or in equity, which shall be cumulative, not exclusive, and shall include injunctive relief, provided that such injured party furnishes prior written notice to the defaulting party, except that no notice is required should the breach create an emergency that interferes with a right granted hereunder. All expenses required to cure the breach shall be paid by the defaulting party within thirty (30) days after receipt of written evidence confirming the payment of such expenses.



**Section 6.2** Any sums remaining unpaid hereunder shall accrue interest calculated at the Applicable Rate of Interest.

**Section 6.3** In the event of litigation by reason of this Declaration, the prevailing party in litigation shall be entitled to recover reasonable attorney's fees in addition to all other expenses incurred as a result of such litigation.

## **ARTICLE 7 – MISCELLANEOUS PROVISIONS**

**Section 7.1 Amendment.** During the Developer Control Period, this Declaration may be amended by Developer (without the joinder, of any other Owner) with the consent of Developer's lender which will not be unreasonably withheld, conditioned or delayed. Thereafter, this Declaration may be amended by the Owners of a majority of Lots. A written instrument of amendment must be executed and acknowledged by all of the required Owners and recorded in the Official Records of Brazos County, Texas. The lien of any recorded deed of trust or mortgage or deed of trust or mortgage granted or created by an Owner of a Lot is subordinated to this Declaration and any and all amendments and/or restatements of the Declaration and no signature by or consent of any Lienholder is required to effect such subordination. This Declaration may not be terminated, in whole or in part, except with the consent of the Developer (if within the Developer Control Period) and Owners of seventy-five percent (75%) of the Lots, and then only by written instrument duly executed and acknowledged by the Developer (if within the Developer Control Period) and all of the required Owners and recorded in the Official Records of Brazos County, Texas.

**Section 7.2 No Partnership Created.** This Declaration shall not create an association, partnership, joint venture or a principal and agency relationship between any party hereto or their tenants or licensees.

**Section 7.3 No Waiver.** No waiver of any provision hereof shall be deemed to imply or constitute a further waiver thereof or any other provision set forth herein.

**Section 7.4 Severability.** Should any provision hereof be declared invalid by a legislative, administrative or judicial body of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall be unaffected by same.

**Section 7.5 Notices.** All notices and approvals required or permitted under this Declaration shall be served by certified mail, return receipt requested, to a party at the last known address of its principal place of business. Date of service of notice or approval shall be the date on which such notice or approval is deposited in the Post Office of the United States Postal Service or any successor governmental agency.

**Section 7.6 Matters of Record.** All of the provisions hereof are made and accepted subject to any and all encumbrances, reservations, conditions, covenants, easements and restrictions, if any, now of record in the Official Records of Brazos County, Texas, and to all zoning laws, regulations and ordinances of municipal and/or other governmental authorities, if any, affecting the use thereof. All liens and encumbrances affecting the Development which are created on or after the date of this Declaration shall be, and shall be made, expressly junior and subordinate to the rights created under this Declaration.

**Section 7.7 Duration.** Except as otherwise provided herein, the term of this Declaration shall be for a period of sixty-five (65) years ("Primary Period") from the Effective

Date hereof. Notwithstanding the foregoing, upon the expiration of the Primary Period, the term of this Declaration shall automatically renew for successive periods of ten (10) years each (each such period being referred to as an "Extension Period") unless, at least ninety (90) days prior to the date of expiration of the Primary Period or Extension Period then in effect, the Owners of seventy-five percent (75%) of the Lots consent to the termination of this Declaration and deliver to the other Owners in the Development written notice of termination, in which event, the Declaration shall automatically expire at the end of the Primary Period or Extension Period then in effect.

**Section 7.8 Entire Agreement.** This Declaration contains the entire agreement between the parties concerning the subject matter hereof and there are no other terms, expressed or implied, except as contained herein. Any statement, representation or promise made by either party or an agent or employee thereof which is not contained herein shall be null and void.

**Section 7.9 Declaration for Exclusive Benefit of Parties.** This Declaration is not intended to confer any benefit upon any Person other than an Owner, an Owner's permitted assignee as described below or the Developer. No Person other than an Owner, an Owner's permitted assignee as described below, or the Developer shall be entitled to make any claim against any Owner or its property under or by virtue of this Declaration or any provisions hereof. Notwithstanding anything to the contrary contained herein, an Owner is permitted to assign its rights under this Declaration to a tenant for a period of time not to exceed the term of the lease between Owner and such tenant.

**Section 7.10 Release of Parties; Assumption.** If an Owner owning a fee simple interest in a Lot (the "Transferring Party") sells, transfers or otherwise conveys its Lot so that after such conveyance the Transferring Party is no longer, either alone or with other Persons, an Owner (excluding any ground lessee), then such Transferring Party shall be released from all further future liabilities accruing under this Declaration after the date of such transfer.

**Section 7.11 Governing Law.** THIS DECLARATION, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY THE LAW OF THE STATE OF TEXAS (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW.

**Section 7.12 Sole and Absolute Discretion.** Notwithstanding anything herein to the contrary, whenever a party to this Declaration is entitled to exercise its sole discretion or "sole and absolute discretion", such discretion may be exercised by that party for any reason or for no reason, whether such discretion is arbitrary, uncontrolled or unreasonable. Any party's exercise of its sole discretion or its "sole and absolute discretion" shall be final and shall not be subject to appeal or be subject to adjudication by a court of law, arbitration, mediation, or otherwise. Except as otherwise expressly provided, whenever in this Declaration, the Developer has the right to approve or consent to a matter, such approval or consent may be given or withheld in Developer's sole and absolute discretion.

**Section 7.13 Removal of Property.** At any time and from time to time during the Developer Control Period, Developer shall have the right from time to time and as many times as Developer, in its sole and absolute discretion, determines, without the joinder or consent of the Owners, to remove portions of the Development from all or part of the provisions of this Declaration. The removal shall be accomplished by the filing in the Official Records of Brazos County, Texas an instrument describing the portion of the Development to be removed,

thereby freeing such portion of the Development from all or a part of terms of this Declaration, as amended from time to time, as designated in such filing.

**Section 7.14 Time of Essence.** Time is of the essence. Unless otherwise specified, all references to "days" shall mean and refer to calendar days. Business days shall exclude all Saturdays, Sundays and federal legal banking holidays. In the event the date for performance of any obligation hereunder shall fall on a Saturday, Sunday or federal legal banking holiday, then that obligation shall be performable the next following regular business day.

**Section 7.15 No Obligation to Enforce.** The failure by Developer or Owner to enforce any provision of this Declaration shall in no event subject Developer or Owner to any claims, liability, costs or expense; it being the express intent of this Declaration to provide Developer with the right (such right to be exercised at its sole and absolute discretion), but not the obligation to enforce the terms of this declaration for the benefit of any Owner(s) of any Lot(s) in the Development.

**Section 7.16 No Warranty.** While the Developer has no reason to believe that any of the restrictive covenants or other terms or provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Developer makes not warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Developer harmless therefrom. The Developer shall not be responsible for the acts or omissions of any individual, entity, or other Owners.

**Section 7.17 Contra Proferentem.** This Declaration is not to be construed more or less favorably between the parties by reason of authorship or origin of language.

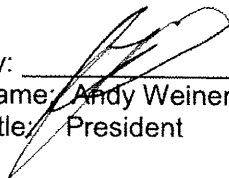
**Section 7.18 Exhibits.** All Exhibits referred to in this Agreement are attached hereto and incorporated herein by reference for all purposes.

[SIGNATURES ON FOLLOWING PAGE]

**CSMP:**

**COLLEGE STATION MARKETPLACE,  
L.P., a Texas limited partnership**

By: College Station Marketplace GP, LLC, a  
Texas limited liability company, as General  
Partner

By:   
Name: Andy Weiner  
Title: President

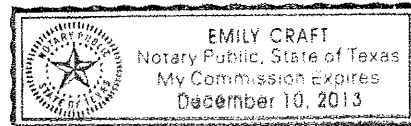
THE STATE OF TEXAS

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COUNTY OF HARRIS

This instrument was acknowledged before me on this 2<sup>nd</sup> day of Sept., 2011, by  
Andy Weiner in the capacity of President on behalf of COLLEGE STATION MARKETPLACE  
GP, LLC, a Texas limited liability company, as General Partner of COLLEGE STATION  
MARKETPLACE L.P., a Texas limited partnership.

  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS



CONSENT AND SUBORDINATION OF LENDER

THE BANK & TRUST OF BRYAN/COLLEGE STATION ("Lender"), owner and holder of certain liens for the benefit of Lender recorded in the Official Records of Brazos County, Texas (collectively, the "Security Instruments") (i) hereby consents to the foregoing Declaration of Covenants and Restrictions ("Declaration") to which this Consent and Subordination of Lender is attached and the imposition of the Declaration on the real property encumbered by the Security Instruments; and (ii) confirms that from and after this date, the provisions of the Declaration will be superior to all liens in favor of Lender and Lender's rights under the Security Instruments.

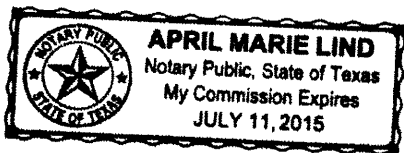
LENDER:

THE BANK & TRUST OF BRYAN/COLLEGE STATION

By: Nora Thompson  
Name: Nora Thompson  
Title: Pr. Vice President

STATE OF TEXAS §  
COUNTY OF §

This instrument was acknowledged before me on the 1 day of Sept, 2011 by Nora Thompson, SUP of THE BANK & TRUST OF BRYAN/COLLEGE STATION, a national banking association, on behalf of said association.



April Marie Lind  
Notary Public, State of Texas

Filed for Record in:  
BRAZOS COUNTY

On: Sep 07, 2011 at 03:30P

As a  
Recordings

Document Number: 01100804  
Amount: 20.00

Receipt Number - 420844  
By:  
Victoria Elliott

STATE OF TEXAS COUNTY OF BRAZOS  
I hereby certify that this instrument was  
filed on the date and time stamped hereon by me  
and was duly recorded in the volume and page  
of the Official Public records of:

BRAZOS COUNTY

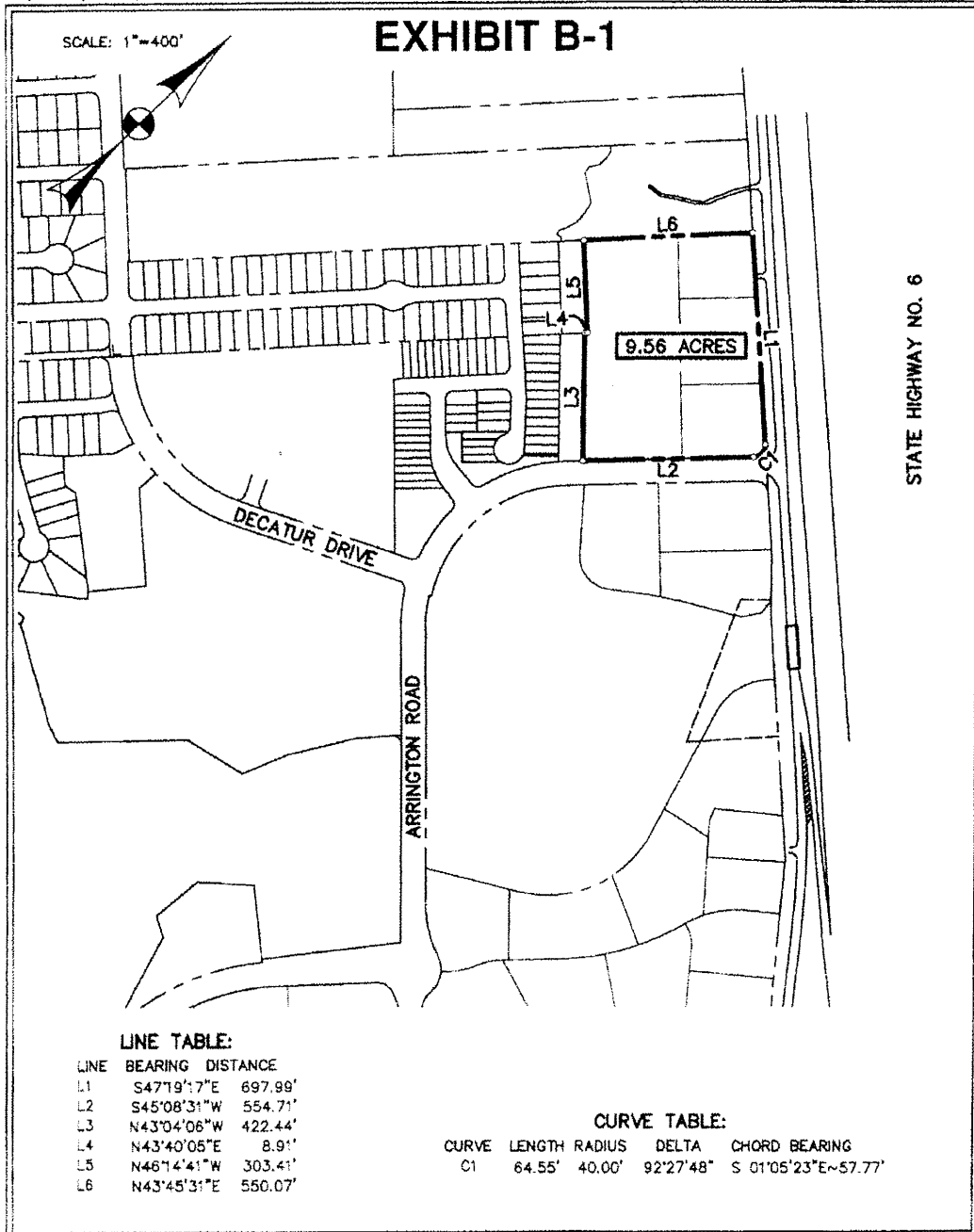
as stamped hereon by me.

Sep 07, 2011

HONORABLE KAREN MCQUEEN, COUNTY CLERK  
BRAZOS COUNTY

**EXHIBIT A-1**

H:\Land Projects R2\041\Stevenson Robert A-54\Market Place\dwg\Exhibits\Field Notes\Supplemental REA\Exhibit B-1.dwg 2/1/2011 3:03:16 PM CST



KLING ENGINEERING & SURVEYING  
BRYAN, TEXAS

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Exhibit B-1 - 9.56 Acres  
Tower Point  
Robert Stevenson Survey, A-54  
College Station, Brazos County, Texas

Field notes of a 9.56 acre tract or parcel of land, lying and being situated in the Robert Stevenson Survey, Abstract No. 54, College Station, Brazos County, Texas, and being all of the called 5.711 Acre - Tract 2 and all of the called 3.838 acre - Tract 3 described in the deed from Spring Creek CS Development, Ltd. to College Station Marketplace, L.P. as recorded in Volume 6647, Page 207, of the Official Records of Brazos County, Texas, and said 9.56 acre tract being more particularly described as follows:

**BEGINNING** at the 1/2" iron rod set at the west corner of the beforementioned 3.838 acre tract, same being the north corner of the called 1.36 acre tract, described in Volume 8437, Page 03, of the Official Records of Brazos County, Texas, and being in the southeast line of the K. S. Moss Capital Corp - called 14.28 acre tract described in Volume 2763, Page 147, of the Official Records of Brazos County, Texas;

THENCE N 43° 45' 31" E along the northwest line of the beforementioned 3.838 acre tract, partially adjacent to a fence, at a distance of 61.7 feet, pass a 2" metal pipe post fence corner, continue on, at a distance of 223.2 feet, pass a 2" metal pipe post fence corner, continue on, leaving said fence, at a distance of 536.50 feet, pass a 1/4" iron rod found at a 2" iron pipe post fence corner, continue on, for a total distance of 550.07 feet to a 1/2" iron rod set at the north corner of the 3.838 acre tract, same being the east corner of the 14.28 acre tract in the southwest right-of-way line of State Highway No. 6;

THENCE S 47° 19' 17" E along the southwest right-of-way line of State Highway No. 6, (right-of-way width varies) partially adjacent to a fence, for a distance of 697.99 feet to a 1/2" iron rod set at the beginning of a transition curve to Arrington Road, concave to the west, having a radius of 40.00 feet;

THENCE along the northwest right-of-way line of Arrington Road (80' wide right-of-way, see Volume 7800, Page 12, of the Official Records of Brazos County, Texas), as follows:

Southeasterly and Southwesterly along said transition curve, for an arc length of 64.55 feet to a lead plug and tack set in concrete sidewalk at the end of this curve, the chord bears S 01° 05' 23" E - 57.77 feet,  
S 45° 08' 31" W for a distance of 554.71 feet to a lead plug and tack set in concrete sidewalk at the south corner of the 5.711 acre tract, same being the east corner of the beforementioned 1.36 acre tract;

THENCE along the southwest line of the beforementioned 5.711 acre and 3.838 acre tracts, same being the northeast line of the beforementioned 1.36 acre tract, as follows:

N 43° 04' 06" W for a distance of 422.44 feet to a 1/2" iron rod set,  
N 43° 40' 05" E for a distance of 8.01 feet to a 1/2" iron rod set,  
N 46° 14' 41" W for a distance of 303.41 feet to the **PLACE OF BEGINNING**, containing 9.56 acres of land, more or less.



Surveyed: February, 2011

By *S. M. Kling*  
S. M. Kling  
R.P.L.S. No. 2003

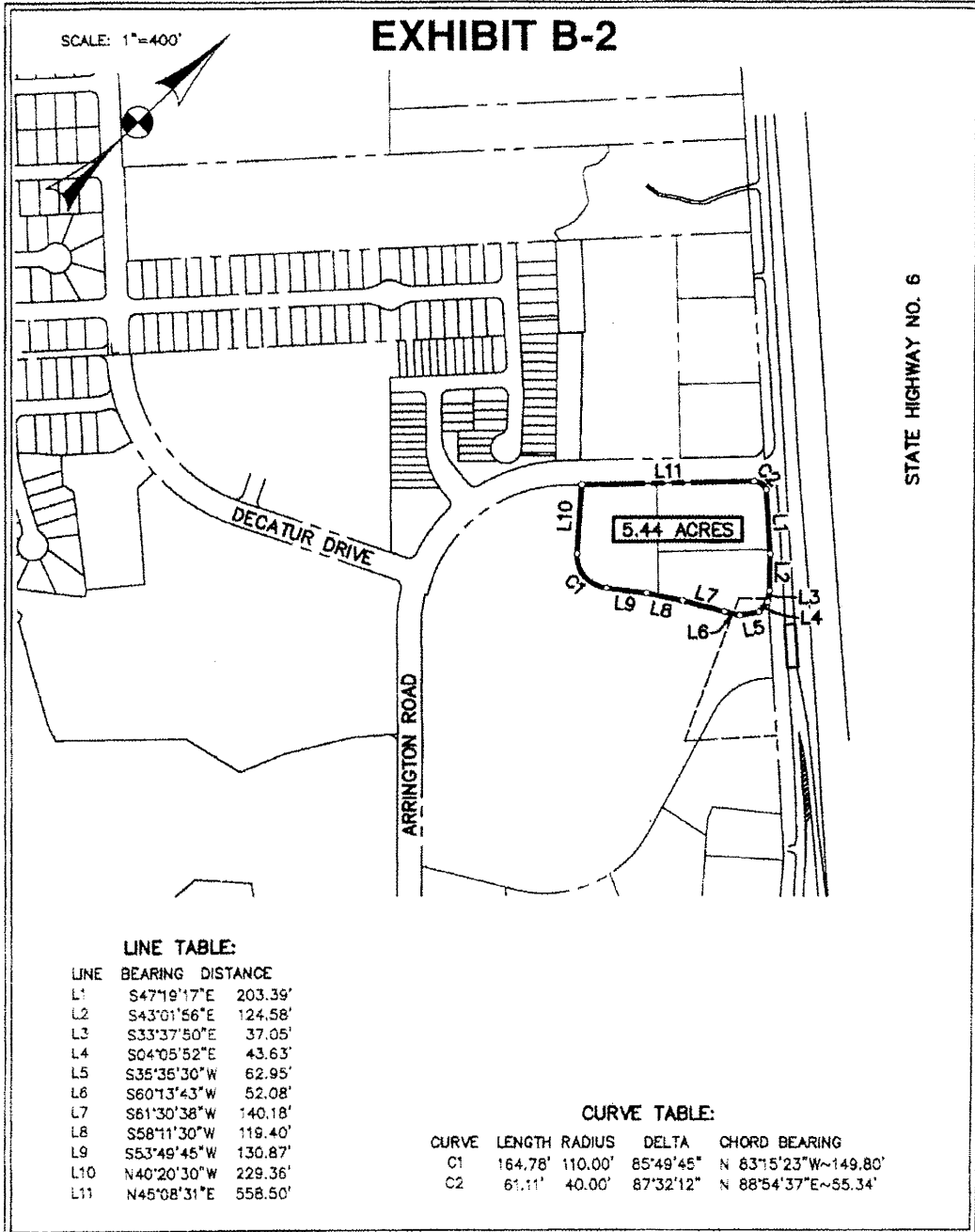
Prepared 02/02/11  
Key 11-draft Tower Point, Et-1 - S. M. Kling, 2003

KLING ENGINEERING AND SURVEYING  
BRYAN, TEXAS

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**EXHIBIT A-2**

H:\Land Projects R2\041\Stevenson Robert A-54\Market Place\cwg\Exhibits\Field Notes\Supplement: REA\Exhibit B-2.dwg 2/1/2011 3:04:33 PM CST



**LINE TABLE:**

LINE	BEARING	DISTANCE
L1	S47°19'17"E	203.39'
L2	S43°01'56"E	124.58'
L3	S33°37'50"E	37.05'
L4	S04°05'52"E	43.63'
L5	S35°36'30"W	62.95'
L6	S60°13'43"W	52.08'
L7	S61°30'38"W	140.18'
L8	S58°11'30"W	119.40'
L9	S53°49'45"W	130.87'
L10	N40°20'30"W	229.36'
L11	N45°08'31"E	558.50'

**CURVE TABLE:**

CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING
C1	164.78'	110.00'	85°49'45"	N 83°15'23"W~149.80'
C2	61.11'	40.00'	87°32'12"	N 88°54'37"E~55.34'

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 BRYAN, TEXAS

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Exhibit B-2 - 5.44 Acres  
Tower Point  
Robert Stevenson Survey, A-54  
College Station, Brazos County, Texas

Field notes of a 5.44 acre tract or parcel of land, lying and being situated in the Robert Stevenson Survey, Abstract No. 54, College Station, Brazos County, Texas, and being part of the 5.643 acre - Tract 1, described in the deed from Spring Creek CS Development, Ltd., to College Station Market Place, L.P., according to the deed recorded in Volume 6647, Page 207, of the Official Records of Brazos County, Texas, and said 5.44 acre tract being more particularly described as follows:

**BEGINNING** at a 1/2" iron rod found marking the intersection of the southwest line of the beforementioned 5.643 acre tract with the southeast right-of-way line of Arrington Road - 80' wide right-of-way, according to the plat recorded in Volume 7800, Page 12, of the Official Records of Brazos County, Texas, the west corner of the said 5.643 acre tract bears N 40° 20' 30" W - 10.00 feet;

THENCE N 45° 08' 31" E along the southeast right-of-way line of the beforementioned Arrington Road - 80' wide right-of-way, for a distance of 558.50 feet to a 1/2" iron rod found marking the transition curve from Arrington Road to State Highway No. 6, said curve being concave to the south, having a radius of 40.00 feet;

THENCE Easterly along the beforementioned transition curve, for an arc length of 61.11 feet to a 1/2" iron rod found marking the end of this transition curve, in the southwest right-of-way line of State Highway No. 6, the chord bears N 88° 54' 37" E - 55.34 feet;

THENCE along the southwest right-of-way line of State Highway No. 6, as follows:

S 47° 19' 17" E for a distance of 203.39 feet to a 1/2" iron rod found,  
S 43° 01' 56" E for a distance of 124.58 feet to a 1/2" iron rod set;

THENCE S 33° 37' 50" E for a distance of 37.05 feet to a 1/2" iron rod set;

THENCE S 04° 05' 52" E for a distance of 43.63 feet to a 1/2" iron rod set;

THENCE S 35° 35' 30" W for a distance of 62.05 feet to a 1/2" iron rod set;

THENCE S 60° 13' 43" W for a distance of 52.08 feet to a 1/2" iron rod set;

THENCE S 61° 30' 38" W for a distance of 140.18 feet to a 1/2" iron rod set;

THENCE S 58° 11' 30" W for a distance of 119.40 feet to a 1/2" iron rod set;

THENCE S 53° 49' 45" W for a distance of 130.87 feet to a 1/2" iron rod set at the beginning of a curve, concave to the north, having a radius of 110.00 feet;

THENCE Westerty along said curve, for an arc length of 164.78 feet to a 1/2" iron rod found marking the original end of the curve for the beforementioned 5.643 acre tract, the chord bears N 83° 15' 23" W - 149.80 feet;

THENCE N 40° 20' 30" W along the southwest line of the beforementioned 5.643 acre tract, for a distance of 229.36 feet to the **PLACE OF BEGINNING**, containing 5.44 acres of land, more or less.



Surveyed: February, 2011  
By: *S.M. Kling*  
S. M. Kling  
R.P.L.S. No. 2003

Prepared 02/02/11  
ksc11-dvd Tower Point B-2 - 5.44ac.wpd

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BRYAN, TEXAS

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