

**WHEN RECORDED, RETURN TO:**

**Dillon Companies, LLC  
1014 Vine Street  
Cincinnati, Ohio 45202-1100**

**AGREEMENT FOR OPERATION AND MAINTENANCE FOR  
COMMON AREAS FOR  
FALCON MARKETPLACE**

THIS AGREEMENT FOR OPERATION AND MAINTENANCE FOR COMMON AREAS FOR FALCON MARKETPLACE (the "CAMA") is made this 30th day of January \_\_\_\_\_, 2020, by and between LG HI Falcon, LLC, a Texas limited liability company ("Developing Party"), and Dillon Companies, LLC, a Kansas limited liability company ("Dillon"), collectively referred to herein as the "Parties" or individually, as a "Party".

**RECITALS**

A. The Parties have established a general plan for the development, maintenance, and improvement of certain real property in the County of El Paso, State of Colorado, which property is more particularly described on Exhibit A attached hereto and incorporated herein by this reference ("Shopping Center") and is depicted on the Site Plan attached hereto as Exhibit B and incorporated herein by this reference ("Site Plan").

B. The Parties desire to provide for the operation and maintenance of the Common Areas located within such Shopping Center.

C. Dillon is the Owner of Lot 2 and 3, as legally described on Exhibit A (collectively, the "Dillon Parcels"), and Developing Party is the current Owner of Lots 1, 4, 5, 6, 7, 8, 9, 10, and 11, as legally described on Exhibit A (collectively, the "Developing Party Parcels") and Tracts A, B, and C, as legally described on Exhibit A (collectively, the "Non-Developable Parcels").

D. By virtue of that certain document recorded concurrently with this CAMA entitled Declaration of Covenants, Conditions and Restrictions for Falcon Marketplace ("Declaration"), Dillon and Developing Party agreed to a general plan for development of the Shopping Center.

E. In the Declaration, the Owners have imposed certain restrictions on their Parcels and have executed reciprocal easements each in favor of the other covering those portions of the Shopping Center defined in the Declaration as "Common Areas."

NOW, THEREFORE, in order to establish a plan for the operation and maintenance of the Common Areas, the Parties agree as follows:

## ARTICLE I DEFINITIONS

Section 1.01 The terms, words and phrases used herein shall have the same definition and meaning as provided for in the Declaration unless otherwise specifically defined herein.

## ARTICLE II MAINTENANCE DIRECTOR; OPERATION AND MAINTENANCE OF COMMON AREAS

Section 2.01 At such time as any Occupant or Owner commences doing business at the Shopping Center, Dillon in its capacity as the initial maintenance director (“Maintenance Director”) will commence to (i) remove, as and when needed, snow and ice from the Common Areas (including removal from the building sidewalks) in an expeditious fashion and in accordance with a snow removal plan approved by Developing Party and Dillon, (ii) clean, maintain, repair, and operate the Non-Developable Parcels to a standard consistent with the operation of a first-class shopping center and, in any case, to a standard required by El Paso County and any other governmental authorities having jurisdiction, (iii) operate (including payment of all utilities and any and all taxes and assessments related thereto), insure, maintain, repair and replace (as needed) the Shopping Center Monument Signs referenced and defined in Section 2.4 of the Declaration (but not any individual Pad Monument Signs or signs individually owned and not the one (1) LED sign serving exclusively the Fuel Center) including relamping and repairs to components other than the sign fascias, sign panels and cans which are the responsibility of the Party whose business is displayed; and (iv) clean, maintain, repair, and operate (but excluding lawn maintenance which will be the responsibility of each respective Owners of Lots 7-11) the Detention Basins (defined below) (collectively, the “Maintenance Director Responsibilities”). The then current Owner of the Fuel Center shall be solely responsible for paying for the operation (including payment of all utilities related thereto), maintenance, repair and replacement of the one (1) LED sign serving exclusively the Fuel Center.

Regarding the Maintenance Director’s obligations to insure the Non-Developable Parcels, the Maintenance Director shall provide commercial general liability insurance with broad form coverage endorsement (including property damage) insuring the Maintenance Director and the then Owner of the Non-Developable Parcels against claims for personal injury, bodily injury, death or property damage occurring in, upon or about the Non-Developable Parcels or arising from the activities of Maintenance Director in that capacity and listing all Owners and Occupants as additional insureds. Such insurance shall be written with an insurer licensed to do business in the State of Colorado. The combined single limit of such insurance shall be not less than Three Million and 00/100 Dollars (\$3,000,000.00) per occurrence and annual aggregate. The Maintenance Director shall furnish the Owners and any other insured Party with a certificate of such insurance upon request. The policies of such insurance shall provide that the insurance represented by such certificates shall not be changed or cancelled without the giving of thirty (30) days written notice to the holders of such insurance and the holders of such certificates. The Consenting Owners may review the insurance limits approximately every five (5) years and may adjust limits if circumstances warrant.

Section 2.02 Except as otherwise provided herein with respect to the Maintenance Director Responsibilities, each Parcel Owner shall be solely responsible, at its sole cost and expense, for insuring, repairing, replacing and maintaining all improvements and all portions of

the Common Area situated on its Parcel (exclusive of the Shopping Center Monument Signs located on its Parcel that are included in the Maintenance Director Responsibilities), which repair and upkeep shall be performed in a workmanlike, diligent and efficient manner and shall be accomplished in a first class manner in accordance with standards pursuant to which other shopping centers of a similar size and category in the County in which the Shopping Center is located are maintained and repaired. Such maintenance of the Common Areas situated on its Parcel will include, without limitation, the following:

(a) Maintenance, repair and resurfacing of the paved surfaces, including the Drive-Through Areas and Service Facilities, in a level, smooth and evenly covered condition with the type of surfacing material originally installed on such, or such substitute as will in all respects be equal to it in quality, use, appearance, and durability, and restriping, when necessary;

(b) Removal of all papers, debris, filth, and refuse from the Common Areas (including landscaped areas), and washing or thoroughly sweeping Common Areas as reasonably required to keep the Common Areas in a clean and orderly condition;

(c) Maintenance, repair and replacement of parking area entrances, exits, and directional signs, markers, lines and lights as will be reasonably required and in accordance with the practices prevailing in the operation of shopping centers in the geographic area in which the Shopping Center is located;

(d) Operation, maintenance, repair and replacement of artificial lighting facilities, including relamping when needed;

(e) Repainting of striping, markers, lines, directional signs, and restricted area designations as necessary to maintain same in a first-class condition;

(f) Maintenance, repair and replacement of landscaping necessary to maintain it in first-class condition and to provide the general effect contemplated by the Site Plan, including automatic sprinkler systems, water lines, grass, shrubs and trees (for example, trees and shrubbery will be properly pruned or otherwise controlled to prevent any condition of overgrowth);

(g) Maintenance of all of the Common Areas on its Parcel free from any obstructions not required for their intended use, including the prohibition of the sale or display of merchandise outside the exterior limits of improved Commercial Areas within the Shopping Center, except in areas specifically designated within the Shopping Center for such purposes or as permitted under the Declaration and except that sidewalk displays and sales may be exhibited and conducted by the Owner or Occupant of the Dillon Parcels, provided they do not interfere with pedestrian traffic to and from the adjacent Parcels (it is expressly understood and agreed, however, that in the event of promotional or seasonal activities in the Shopping Center, approved by the Consenting Owners (as defined in the Declaration) or otherwise authorized pursuant to the Declaration, these provisions may be waived during the period of the promotional or seasonal event);

(h) Payment of all electrical, water, sewer and other utility charges or fees for services furnished to the Common Areas on its Parcel;

- (i) Security and policing of Common Areas as necessary;
- (j) Maintenance, repair and replacement, when necessary, of all Common Area retaining walls, including, without limitation, all fences, retaining walls or barricades constructed pursuant to the Declaration or the Development Agreement;
- (k) Maintenance, repair and replacement of the individual Pad Monument Signs, the signs individually owned by such Parcel Owner, and the sign fascias, sign panels and cans located on the Shopping Center Monument Signs that are not included in the Maintenance Director Responsibilities.
- (l) Maintenance, repair and replacement, when necessary, of all storm drains, sewers and other utility lines and facilities including detention and retention areas 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 Common Areas; and
- (m) Complying with all applicable requirements of governmental agencies pertaining to the Common Areas including, without limitation, including lighting, landscaping and trash removal consistent with the requirements of the County of El Paso and any other governmental authorities having jurisdiction, as well as any alterations or additions required to be made to or safety appliances and devices required to be maintained in or about the Common Areas.

Section 2.03 Notwithstanding the other provisions of this CAMA, the cost of constructing the Shopping Center Monument Signs shall be paid as provided for in the Declaration.

Section 2.04 Intentionally deleted.

Section 2.05 The cost associated with the Maintenance Director Responsibilities referred to means the total of all items of direct cost and expense reasonably expended for the performance of the Maintenance Director Responsibilities, determined in accordance with generally accepted accounting principles on the cash basis method of accounting. The cost includes maintenance, replacements, and reconstruction work as required to preserve the Shopping Center Monuments Signs and the Non-Developable Parcels and their equipment in the same condition and status as it was at the time of completion of the original construction and installation, except for normal wear and tear; the Maintenance Director's service-fee provided for in Section 5.07 below; all rental charges for equipment; all charges for snow and ice removal from the Common Areas (including removal from the building sidewalks); the cost of small tools and supplies; costs of cleaning and removal of rubbish, dirt, and debris from the Non-Developable Parcels, the cost of landscaping, and supplies incidental to such; all charges for utility services used in connection with the Shopping Center Monument Signs and/or the Non-Developable Parcels; liability insurance on the Non-Developable Parcels; and other reasonable costs and expenses necessary for performing the Maintenance Director Responsibilities set forth in Section 2.01 above.

Section 2.06 Anything in this Article to the contrary notwithstanding, the Maintenance Director shall not be responsible for the maintenance or insurance of any Service Facilities or Drive-Through Areas, which facilities shall be maintained by the respective Owners thereof in good and clean condition and repair and in a quality and condition comparable to the quality and condition of the maintenance of the balance of the Common Area.

Section 2.07 To the extent not covered by the insurance provided for in Section 2.01 above or by the insurance and/or waivers of subrogation provided for in Article VI of the Declaration, the Maintenance Director agrees to indemnify, defend and hold harmless the Owners and Occupants of all Parcels from and against any and all liability, claims, damages, expenses (including reasonable attorneys' fees and reasonable attorneys' fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property occurring in, on or about the Common Area (which excludes by definition any Service Facilities or Drive-Through Areas) arising out of the negligent performance or nonperformance of any of the Maintenance Director Responsibilities set forth in this CAMA, except to the extent caused by the negligent or willful act or omission of the indemnified person, its agents, contractors or employees.

Section 2.08 Notwithstanding anything to the contrary contained herein, the Maintenance Director and each Parcel Owner shall comply with and be bound by the terms, conditions, covenants, obligations and standards set forth for the Shopping Center contained in that certain Private Detention Basin / Stormwater Quality Best Management Practice Maintenance Agreement and Easement dated [\_\_\_\_\_] between El Paso County by and through the Board of County Commissioners of El Paso County, Colorado, and Developing Party which relates to the detention basins that will be constructed on Lots 7-11 and Tract C, as more particularly shown on Exhibit "C" attached hereto (the "Detention Basins").

Section 2.09 Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed that the Maintenance Director shall have no responsibility under any section or provision of this Agreement to perform any task or obligation of any kind or nature whatsoever with respect to Tracts A and B, which Tracts are included in the definition of Non-Developable Parcels, regardless of when Tracts A and B are deeded to County of El Paso, Colorado by Developing Party.

Section 2.10 Notwithstanding anything contained in this Agreement to the contrary, at such time as a Lot Owner constructs a building, structure or other vertical improvement upon its Parcel, such owner shall install such Common Area landscaping and irrigation as may be required by the Development Agreement and/or governmental authorities having jurisdiction and such Common Area irrigation (as well as irrigation serving right of way landscaping adjacent to such Owner's Lot) shall be tied to such Owner's water meter for such Owner's Lot. In addition, the Owner of Lot 1 shall perform and be responsible for the same services set forth in the preceding sentence (regarding landscaping and irrigation) on Tract C. For so long as the Developing Party is the owner of Lot 1, it shall install and maintain an interim system of irrigation for Tract C. For so long as the Developing Party is the owner of Lots 7-11, it shall install and maintain an interim system of irrigation on each Lot and the Detention Ponds until such time as the respective Lots are sold to third parties (i.e. once Developer is no longer the Lot Owner of Lot 7, the Lot Owner of such Lot shall install landscaping and irrigation in compliance with this Section 2.10 and Developing Party shall be relieved of such responsibility).

### **ARTICLE III LIGHTING**

Section 3.01 It is agreed that the artificial lighting for the main drive aisles within the Common Area (as designated by the Consenting Owners) shall remain on from dusk until dawn

unless the Owner of the Dillon Parcel is not operating twenty-four hours a day in which event the Consenting Owners shall determine the lighting schedule.

#### **ARTICLE IV MAINTENANCE DIRECTOR**

Section 4.01 The Owners have appointed Dillon and its future successors and/or assigns the Maintenance Director of the Shopping Center from and after the date the first Occupant opens its building in the Shopping Center for business.

Section 4.02 The Maintenance Director has the right to contract from time to time a person or persons to provide service in connection with the Maintenance Director Responsibilities or portions of them, provided that such selection does not diminish the Maintenance Director's obligation to complete the Maintenance Director Responsibilities. The other Owner(s) will each pay to the Maintenance Director, as their respective share of the costs related to the completion of the Maintenance Director Responsibilities, a proportionate share of such costs in the percentages provided for in ARTICLE VI below.

Section 4.03 The successors (by merger, consolidation or otherwise) and assigns of Dillon upon the sale or transfer of Lot 2 or a merger or consolidation of the Dillon entity, as applicable, shall automatically (without the need for the consent of the Owners or any occupant), be deemed to be appointed the successor Maintenance Director and all of the rights, powers, covenants, conditions and obligations of the Maintenance Director shall automatically transfer to such successor or assign of Dillon.

Section 4.04 The Maintenance Director shall have the right, upon giving sixty (60) days prior written notice to the Owners of the Shopping Center, to resign as Maintenance Director, in which event the Consenting Owners shall appoint another person to be the Maintenance Director. The Maintenance Director shall have no liability under this CAMA (including Section 2.067 above) for occurrences within the Shopping Center arising after the effective date of termination and relinquishment of its duties under this CAMA.

Section 4.05 All successor Maintenance Directors shall agree to be bound by the terms and conditions of this CAMA. Dillon, upon resignation as the Maintenance Director has, after the effective date of resignation, only the responsibilities and obligations of an Owner for maintenance items occurring after that date.

#### **ARTICLE V BUDGET AND REIMBURSEMENT OF MAINTENANCE DIRECTOR**

Section 5.01 The Maintenance Director shall contract and pay for all of the items enumerated as Maintenance Director Responsibilities expenses in ARTICLE II herein, pursuant to the provisions of this ARTICLE V.

Section 5.02 At least sixty (60) days prior to the date the first Occupant is scheduled to open for business, and thereafter by November 1 of each calendar year during the term of this CAMA, the Maintenance Director shall submit to the Owner of the Dillon Parcel (and Developing Party, if it is still an Owner), for such Owner's review, a proposed annual budget for expenses in completing the Maintenance Director Responsibilities ("Budget") covering, respectively, the First Partial Maintenance Budget Year (as hereafter defined) or full year and each Maintenance Budget

Year thereafter, together with any backup materials reasonably requested by the Owner of the Dillon Parcel (and Developing Party, if it is still an Owner). For purposes of this CAMA the term "First Partial Maintenance Budget Year" shall mean the period running from the date the first Occupant in the Shopping Center opens its business to the following December 31. For purposes of this CAMA, the term "Maintenance Budget Year" shall mean the period running from the January 1 following the date the first Occupant opens for business, and continuing through the following December 31 and for each corresponding twelve (12) month period thereafter. In no event shall a Budget for the Maintenance Budget Year exceed the previous year's actual maintenance costs plus the service fee set forth in Section 5.07 by more than five (5%) percent. The preceding sentence shall not be effective until the Shopping Center is fully developed.

Section 5.03 The Owner of the Dillon Parcel (and Developing Party, if it is still an Owner) shall have the authority to disapprove the Budget. If the Owner of the Dillon Parcel (and Developing Party, if it is still an Owner) shall disapprove the Budget, such Owner shall communicate such disapproval and the specific grounds therefor in writing to the Maintenance Director. The Owner of the Dillon Parcel (and Developing Party if then still an Owner) shall not withhold approval of the Budget if the Budget calls for maintenance and expenditures that are substantially equivalent to those of other Shopping Centers in the Colorado Springs, Colorado metropolitan area that are similar to the Shopping Center; provided, however, in no event shall the Owner of the Dillon Parcel (and Developing Party if then still an Owner) approve a Budget that exceeds the previous year's actual maintenance costs plus the service fee set forth in Section 5.07 by more than five (5%) percent. The preceding sentence shall not be effective until the Shopping Center is fully developed. The Maintenance Director shall meet with the disapproving Owner or Owners within fifteen (15) days after the Maintenance Director's receipt of such notice of disapproval, and the Parties shall negotiate with each other in good faith to resolve any differences relating to the Budget. A revised Budget shall then be submitted to the Owner of the Dillon Parcel (and Developing Party, if it is still an Owner). Approval of a revised Budget shall require the approval of the Owner of the Dillon Parcel (and Developing Party, if it is still an Owner). Upon approval, the Budget shall go into effect at the beginning of the Maintenance Budget Year, as applicable, and shall be binding during that year upon all of the Owners in the Shopping Center, subject to the provisions hereof. If the Budget is approved, the Maintenance Director shall complete the Maintenance Director Responsibilities during the ensuing Maintenance Budget Year (or the First Partial Maintenance Budget Year, as applicable) in accordance with the final approved Budget and shall not incur any expense not included in the final approved Budget (except for any increased utility expenses incurred during such period, which shall be treated as set forth below), subject to Section 5.05 or Section 5.06 below, without the written permission of the Owner of the Dillon Parcel (and Developing Party, if it is still an Owner). Notwithstanding the foregoing, the Maintenance Director shall be entitled to exceed the Budget by not more than five percent (5%) for any single item, nor more than five percent (5%) in the aggregate for all items (not including increased utility expenses discussed in this Section 5.03), without prior written approval from the Owner of the Dillon Parcel (and Developing Party, if it is still an Owner). The limits provided for above shall not apply to snow and ice removal charges that increase as a result of a heavy snowfall in any year. The Maintenance Director shall notify the Owner of the Dillon Parcel (and Developing Party, if it is still an Owner) within thirty (30) days of receipt by the Maintenance Director of notice of an increase in utility costs for the Shopping Center, and shall provide the Owner of the Dillon Parcel (and Developing Party, if it is still an Owner) with copies of all documentation representing such increase. Within thirty (30) days after the Maintenance

Director's receipt of notice of an increase in utility costs, the Maintenance Director shall provide to the Owner of the Dillon Parcel (and Developing Party, if it is still an Owner) in the Shopping Center a revised Budget for the remainder of the Maintenance Budget Year, reflecting changes only in utility costs. Such revised Budget shall be operative for the Maintenance Budget Year, absent reasonable objection by the Owner of the Dillon Parcel (and Developing Party, if it is still an Owner).

Section 5.04 Except with respect to the First Maintenance Budget Year, in the event a Budget is not approved for any Maintenance Budget Year, the Maintenance Director shall continue to complete the Maintenance Director Responsibilities on the basis of the Budget for the previous Maintenance Budget Year (or, if no Budget was approved in the previous Maintenance Budget Year, then on the basis of the actual Maintenance Director Responsibilities expenses for the previous Maintenance Budget Year). The Parties agree, however, that with respect to the period of time following the date of this CAMA until the commencement of the First Partial Maintenance Budget Year and with respect to any Maintenance Budget Year as to which no Budget has been approved, the following restrictions shall apply:

(a) The Owner of the Dillon Parcel (and Developing Party, if it is still an Owner) may require the Maintenance Director to submit for bidding any contract for Maintenance Director Responsibilities to be performed during the Maintenance Budget Year. Such request shall be made no more than once annually for any contract and shall be handled as follows; and

(b) At least thirty (30) days prior to the commencement of the work requested to be bid, the Maintenance Director shall submit said Maintenance Director Responsibilities work for bid to at least three (3) bidders approved in writing by such Consenting Owner, which approval shall not be unreasonably withheld or delayed.

The names of the bidding contractors or companies and the amounts of their respective bids shall be furnished to the Owner of the Dillon Parcel (and Developing Party, if it is still an Owner) requesting the bid within ten (10) days after receipt thereof. The Maintenance Director shall award the contract to the lowest responsible bidder unless prior written consent to award the contract to a higher bidder is first obtained by the Maintenance Director from the Owner of the Dillon Parcel (and Developing Party, if it is still an Owner).

Section 5.05 In the event the Maintenance Director is required to incur an extraordinary cost or expense during any Maintenance Budget Year for the emergency repair or replacement of any item included within the Maintenance Director Responsibilities, which expense has not been set forth in an approved Budget, each Owner shall pay to the Maintenance Director its proportionate share of such costs or expenses within thirty (30) days of receipt of the Maintenance Director's statement and reasonable backup documentation therefor. Upon the occurrence of such emergency, if the cost or expense involved is in an amount in excess of One Thousand and 00/100 Dollars (\$1,000.00), the Maintenance Director shall provide the Owner of the Dillon Parcel (and Developing Party, if it is still an Owner) with the best and earliest notice feasible under the circumstances, which notice shall in no event be delayed more than forty-eight (48) hours. For purposes of this Section 5.05, an "emergency" necessitating repair or replacement shall be one which presents an imminent threat or danger of irreparable harm to person or property, which delay would cause further threat or damage or would further endanger person or property.

Section 5.06 In the event the Maintenance Director reasonably deems it necessary to incur an extraordinary cost or expense for the completion of any portion of the Maintenance Director Responsibilities, which expense has not been set forth in any approved Budget and which repair or replacement is not an emergency, if the cost or expense involved is in an amount in excess of One Thousand and 00/100 Dollars (\$1,000.00), the Maintenance Director shall request written approval of such expenditure from the Owner of the Dillon Parcel (and Developing Party, if it is still an Owner) as far in advance of such repair or replacement as is reasonably possible, and such approval shall not be unreasonably withheld or delayed. If requested by the Owner of the Dillon Parcel (and Developing Party, if it is still an Owner), the Maintenance Director shall follow the bidding procedures set forth in Section 5.04 with regard to any repair or replacement performed under this Section 5.06.

Section 5.07 The Maintenance Director agrees to perform its duties under this Article with the objective of keeping expenses at a reasonable minimum. The Maintenance Director may charge a maximum service fee, to include all service and administration charges, of ten percent (10%) of each Owner's proportionate share of Maintenance Director Responsibilities expenses. The Maintenance Director Responsibilities expenses shall not include any costs incurred by the Maintenance Director for the services of a manager or management company or for office overhead or compensation of its employees, except to the extent covered by the service fee provided for in this Section.

#### **ARTICLE VI BILLING FOR EXPENSES**

Section 6.01 Not more than thirty (30) nor less than ten (10) days prior to the beginning of each month during each Maintenance Budget Year, the Maintenance Director shall submit to the Owner of each Parcel (or its respective tenants or agents, as it may direct) a bill indicating one-twelfth (1/12th) of that Owner's proportionate share of all budgeted expenses to be incurred by the Maintenance Director in completing the Maintenance Director Responsibilities as provided above (including the ten percent [10%] service charge described in Section 5.07 above) with the first, monthly payment being due on the first day of January. For the First Partial Maintenance Budget Year, the Maintenance Director shall, not more than thirty (30) nor less than ten (10) days after the date the first Occupant opens for business and the first day of each month thereafter, submit to the Owner of each Parcel (or its respective tenants or agents, as it may direct) a bill indicating a fraction (equal to one over the number of full months remaining in that First Partial Maintenance Budget Year) of that Owner's pro rata share of all budgeted expenses to be incurred by the Maintenance Director in completing the Maintenance Director Responsibilities as provided above (including the ten percent [10%] service charge described in Section 5.07 above) with the first monthly payment being due on the first day of the first full month following the date the first Occupant opens for business and on the first day of each month thereafter. The proportionate share of the total Maintenance Director Responsibilities expenses to be borne by each Owner for any year after Occupants have commenced doing business on all Parcels shall be that percentage set forth below:

<u>Parcels</u>	<u>Parcel Area</u> (square feet)	<u>Acreage</u>	<u>Percentage (%)</u>
Lot 1	168,926	3.878	15.651
Lot 2	434,598	9.977	40.266
Lot 3	45,259	1.039	4.193

Lot 4	51,032	1.172	4.728
Lot 5	34,031	.781	3.153
Lot 6	45,193	1.037	4.187
Lot 7	71,578	1.643	6.632
Lot 8	59,816	1.373	5.542
Lot 9	67,517	1.550	6.256
Lot 10	70,480	1.618	6.530
Lot 11	30,884	.709	2.861
Tract C			---
	_____	_____	_____
Total	---	---	100%

Until such time as Owners or Occupants have constructed buildings on and commenced business in all Parcels the proportionate share shall be the ratio of the Parcel Percentage for each Parcel provided for above on which an Owner or Occupant has constructed buildings on and commenced doing business to the Parcel Percentage for all Parcels in which Occupants have commenced doing business. The readjustment of proportionate shares is not applicable to any discontinuance of business on any Parcel once the initial Occupant commences to do business on the Parcel. Notwithstanding the provisions of the two preceding sentences, the obligation of an Owner who acquired its Parcel from Developing Party to pay its proportionate share shall commence on the sooner of such Owner commencing to do business on its Parcel or the date that is six (6) months following acquisition by such Owner of its Parcel from Developing Party.

Section 6.02 The Maintenance Director shall not be entitled to reimbursement from the Owner of the Dillon Parcel (and Developing Party, if it is still an Owner) (or its tenants or agents) for any item of Maintenance Director Responsibilities maintenance expense (including the ten percent [10%] service charge described in Section 5.07 above) or insurance expense for which a bill is not submitted to said Owner (or its tenants or agents, as it may direct) within eighteen (18) months after the end of the calendar year in which said expense is incurred.

Section 6.03 Any Owner of a Parcel, upon not less than ten (10) days prior written notice to the Maintenance Director, may inspect the Maintenance Director's records for all Maintenance Director Responsibilities expenses incurred during the preceding calendar year at the Maintenance Director's general offices or at such other location reasonably designated by the Maintenance Director at any time during reasonable business hours within one (1) year after the end of said calendar year. If said inspection reveals an overpayment of Maintenance Director Responsibilities expenses; upon confirmation of the results of such inspection, the Maintenance Director shall reimburse the Owner of each Parcel (or its respective tenants or agents, as it may direct) its proportionate share of any such overpayment within thirty (30) days after receipt of notice of determination, and of the amount, of such overpayment. If said inspection reveals an underpayment of Maintenance Director Responsibilities expenses, but excluding all expenses for which a statement was not timely submitted pursuant to Section 6.01 above), the Owner of each Parcel shall reimburse the Maintenance Director its proportionate share of any such underpayment within thirty (30) days after receipt of proper billing. If said inspection reveals that the Maintenance Director overstated Maintenance Director Responsibilities expenses by more than

five percent (5%), the Maintenance Director shall reimburse the inspecting Owner for all out of pocket, non-contingent costs reasonably incurred in making such inspection within thirty (30) days after receipt of notice of determination, and of the amount, of any such misstatement and confirmation of the results thereof. The Maintenance Director's expenses for any calendar year shall be deemed correct if the Owner of the Dillon Parcel (and Developing Party, if it is still an Owner) does not give the Maintenance Director written notice of any such overpayment or underpayment within the one (1) year period provided.

#### **ARTICLE VII EFFECT OF SALE BY OWNER**

Section 7.01 In the event an Owner sells all or any portion of its interest in its Parcel, upon such Owner providing written notice of such sale to the Maintenance Director (which notice shall identify the new Owner of the Parcel in question and include a notice address for the new Owner), the selling Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it arising under this CAMA after the sale and conveyance of title but shall remain liable for all obligations arising under this CAMA prior to the sale and conveyance of title. The new Owner of any such Parcel or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this CAMA with respect to such Parcel or portion thereof after the date of sale and conveyance of title.

#### **ARTICLE VIII DEFAULT**

Section 8.01 In the event any Owner fails or refuses to pay when due its share of any bill for the Maintenance Director Responsibilities expenses described above which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and legal action may thereafter be instituted against the defaulting Owner by the Maintenance Director or other person paying the maintenance or insurance expenses of the defaulting Owner (“Curing Party”) for reimbursement plus interest from and after the date said bill was due and payable to and including the date said bill is paid at a rate equal to the lesser of (i) the highest rate allowed by law, or (ii) the rate five percent (5%) above the reference rate of interest charged from time to time to corporate borrowers of the highest credit standard as publicly announced, quoted or published by US Bank, N.A. at its corporate headquarters (the lesser rate being hereinafter referred to as the “Default Rate”). Furthermore, the Curing Party shall have, in accordance with the provisions of Article IX, a lien on the Parcel of the defaulting Owner for the amount of said expenses, plus accrued interest as set forth above.

Section 8.02 In the event an Owner fails to pay when due all taxes and assessments against such Owner's Parcel as required pursuant to the provisions of Section 6.01, which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and any other Owner (“Curing Owner”) may thereafter pay such taxes or assessments if such taxes are delinquent and the defaulting Owner has not commenced and is not duly prosecuting any contest of such taxes. The Curing Owner shall then bill the defaulting Owner for the expenses incurred. The defaulting Owner shall have fifteen (15) days within which to pay the bill. If the defaulting Owner does not so pay, the Curing Owner shall have a lien on the Parcel of the defaulting Owner for the amount of the bill, which amount shall bear interest at the Default Rate from the date of expiration of said fifteen (15) day period until paid.

Section 8.03 In the event any Owner fails to perform any other provision of this CAMA, which failure continues for a period of thirty (30) days after receipt of written notice specifying the particulars of such failure, such failure shall constitute a default and any other Owner may thereafter institute legal action against the defaulting Owner for specific performance, declaratory or injunctive relief, monetary damages (excluding, however, special, consequential or punitive damages) or any other remedy provided by law; provided, however, that the defaulting Owner shall not be deemed to be in default if such failure to perform cannot be rectified within said thirty (30) day period and such Owner is diligently proceeding to rectify the particulars of such failure.

Section 8.04 In the event the Maintenance Director fails to perform any of the provisions of this CAMA, which failure continues for a period of thirty (30) days (ten [10] days in the event of failure to pay money) after receipt of written notice from any Owner specifying the particulars of such failure, such failure shall constitute a default and any Owner may thereafter institute legal action against the Maintenance Director for specific performance, declaratory or injunctive relief, monetary damages (excluding, however, special, consequential or punitive damages) or any other remedy provided by law and/or may perform the obligations of the Maintenance Director specified in said notice of default and offset the cost thereof from amounts due the Maintenance Director; provided, however, that the Maintenance Director shall not be deemed to be in default if such failure to perform (excluding the payment of money) cannot be rectified within said thirty (30) day period and the Maintenance Director is diligently proceeding to rectify the particulars of such failure.

Section 8.05 In addition to the foregoing, in the event any Owner (or Maintenance Director) initiates or defends any legal action or proceeding to enforce or interpret this CAMA, the prevailing Owner (or Maintenance Director) in any such action or proceeding shall be entitled to recover from the non-prevailing Owner (or Maintenance Director, as the case may be) in any such action or proceeding its reasonable costs and attorneys' fees (including its reasonable costs and attorneys' fees on any appeal) as determined by the court in the same or a separate proceeding.

Section 8.06 The failure of an Owner to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said Owner may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained herein by the same or any other Owner.

Section 8.07 In addition to the remedies set forth in this CAMA, but subject to the limitations set forth in this CAMA, each Owner entitled to enforce this CAMA shall have all other remedies provided by law and equity to the same extent as if fully set forth herein word for word. No remedy herein conferred upon, or reserved to any Owner shall exclude any other remedy herein or by law provided, but each shall be cumulative. Notwithstanding anything contained in this CAMA to the contrary, so long as The Kroger Co., an Ohio corporation, its subsidiaries and affiliates, has a legal or equitable interest in Lot 2, then such Kroger entity shall be deemed an Owner for purposes of this CAMA.

## ARTICLE IX LIEN FOR EXPENSES

Section 9.01 The lien provided for in ARTICLE III above shall only be effective when filed for record by the Curing Party or Curing Owner as a claim of lien against the defaulting Owner in the office of the recorder of the county in which the Shopping Center is located, signed and verified, which shall contain at least:

- (a) An itemized statement of all amounts due and payable pursuant hereto;
- (b) A description sufficient for identification of that portion of the real property of the defaulting Owner which is the subject of the lien;
- (c) The name of the Owner or reputed Owner of the property which is the subject of the lien; and
- (d) The name and address of the Curing Party or Curing Owner, as the case may be.

Section 9.02 The lien, when so established against the real property described in the lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing the lien. The lien shall be for the use and benefit of the Owner curing the default of the defaulting Owner and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

Section 9.03 The breach of this CAMA shall not entitle any Owner or person to cancel, rescind or otherwise terminate this CAMA, or any conditions, covenants, easements or restrictions hereunder.

Section 9.04 This CAMA, and the rights, privileges, covenants, agreements and easements hereunder with respect to each Owner and Parcel, shall be superior and senior to any lien placed upon any Parcel, 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 of the covenants and restrictions, easements and conditions and other provisions, terms and conditions contained in this CAMA shall be binding upon and effective against any Owner (including any mortgagee or beneficiary under a deed of trust) who acquires title to any Parcel or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

Section 9.05 Any lien created pursuant to the provisions of Article VIII or Section 9.01 shall be subject and subordinate to the interests of any bona fide purchaser or encumbrancer of all or any part of an affected Parcel, or any interest therein, for fair value, who acquired its interest prior to the date of recordation of the lien, notwithstanding the fact that the claim of lien may be asserted with respect to work performed or costs incurred prior to the date the lien was duly recorded. In addition, breach of any of the covenants or restrictions contained in this CAMA shall not defeat or render invalid any lease executed by a Party in good faith and for value as to all or any portion of a Parcel and any Person acquiring a Parcel as a result of a foreclosure of any lien granted pursuant to this CAMA shall acquire title to such Parcel subject to such lease. Any lessee

takes possession subject to the restrictions contained in the Declaration and is bound by those restrictions unless waived in writing by the Consenting Owners, as defined in the Declaration.

#### **ARTICLE X RESPONSIBILITY IF NO MAINTENANCE DIRECTOR**

Section 10.01 In the event there should at any time cease to be a Maintenance Director, each Owner shall be responsible for the Maintenance Director Responsibilities with respect to its own Parcel, including (but not limited to) the maintenance, repair, insurance of all Shopping Center Monument Signs located thereon, according to the standards herein enumerated. In the event any Owner defaults in the performance of such obligations, any other Owner may exercise the rights set forth in Article VIII above.

Section 10.02 In the event there should at any time cease to be a Maintenance Director, each Owner agrees to indemnify, defend and hold harmless the Owners and Occupants of all other Parcels from and against any and all liability, claims, damages, expenses (including reasonable attorneys' fees and reasonable attorneys' fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property occurring on the indemnifying Owner's Parcel and arising out of the performance or nonperformance of any of the obligations of the Owner of said Parcel, except to the extent caused by the negligent or willful act or omission of the indemnified person, its agents, contractors or employees.

#### **ARTICLE XI ESTOPPEL CERTIFICATE**

Section 11.01 Each Owner hereby severally covenants that within thirty (30) days following written request of another Owner, it will issue to such other Owner, Lienholder of such other Owner, prospective Lienholder of, such other Owner or to a prospective successor to such other Owner, an estoppel certificate stating at a minimum:

- (a) Whether it knows of any default by the requesting Owner under this CAMA, and if there are known defaults, specifying the nature thereof;
- (b) Whether to its knowledge this CAMA has been assigned, modified or amended in any way (and if it has, then stating the nature thereof);
- (c) That to its knowledge the CAMA as of that date is in full force and effect; and
- (d) The requesting Owner's proportionate share of Maintenance Director Responsibilities expenses payable pursuant to this CAMA.

The Maintenance Director shall provide a similar estoppel certificate within thirty (30) days following written request of any Owner, Lienholder, prospective Lienholder or prospective successor to any Owner.

Section 11.02 If any Owner shall request and receive from any other Owner or Maintenance Director more than two such estoppel certificates during any period of twelve (12) successive months, then the requesting Owner shall reimburse the other Owner upon demand for

the reasonable costs and expenses incurred in connection with each additional certificate provided by the requested Owner, not to exceed, however, One Thousand and 00/100 Dollars (\$1,000.00).

Section 11.03 An estoppel certificate shall constitute and give rise to a waiver and estoppel of any claim or defense by the Party furnishing it to the extent such claim or defense is based upon facts contrary to those asserted in the certificate which were known to the furnishing Party. However, furnishing an estoppel certificate shall not subject the Party furnishing it to any liability whatsoever (except by preclusion of a defense), notwithstanding the negligent or otherwise inadvertent failure of such Party to disclose correct and/or relevant information.

## **ARTICLE XII SEPARATE MAINTENANCE**

Section 12.01 As a right personal to Dillon or any affiliates of Dillon, and in addition to the provisions of Section 12.03 below, in the event that in Dillon's reasonable business judgment, Maintenance Director has failed to complete the Maintenance Director Responsibilities as required by this CAMA, then Dillon shall have the right to notify Maintenance Director of such fact. If Maintenance Director shall not have rectified such situation within fifteen (15) days from receipt of Dillon's notice, then Dillon shall have the right to issue a second notice regarding such failure. If Maintenance Director shall not have rectified such situation within fifteen (15) days from receipt of Dillon's second notice, then Dillon shall have the right to cure such failure and deduct the costs of such action from its share of the costs related to the Maintenance Director Responsibilities. In the event Dillon shall have issued two (2) separate second notices to Maintenance Director during any twelve (12) month period, then Dillon shall have the right, upon not less than forty-five (45) days written notice given to Maintenance Director, to take over and assume the Maintenance Director Responsibilities in connection with the Dillon Parcel, provided that such notice shall be effective only as of the last day of a calendar quarter. Following the effective date of such assumption, Dillon shall perform the Maintenance Director Responsibilities on the Dillon Parcel, in accordance with standards set forth in this CAMA and shall pay all costs and expenses incurred in connection therewith. Upon such assumption, Dillon shall be released from the obligation to contribute towards Maintenance Director's maintenance and operation of the balance of the Shopping Center Monument Signs and snow removal of the Common Areas not located on the Dillon Parcel, except with respect to those functions identified above for which continued participation is mandatory; Dillon's share of such costs shall be paid in accordance with the allocation set forth in Section 6.01 above. Maintenance Director shall continue to complete the Maintenance Director Responsibilities in accordance with the standards set forth herein. In the event Dillon elects to assume the obligations of Maintenance Director pursuant to the provisions of this Section 12.01 or Section 12.03 below, Dillon shall indemnify, defend and hold Maintenance Director and the other Owners harmless for, from and against any and all liability, claims, damages, expenses (including reasonable attorneys' fees and court costs), judgments, proceedings and causes of action for injury to or death of any person or damage to or destruction of any property arising out of the performance or non-performance of any such obligations assumed. Dillon shall have the right to cause the Maintenance Director to resume the Maintenance Director Responsibilities on the Dillon Parcel upon the satisfaction of the following condition: Dillon shall give the Maintenance Director at least sixty (60) days prior notice of its intention to have the Maintenance Director reassume the Maintenance Director Responsibilities on the Dillon Parcel; provided however, such date for re-assumption shall always be the first day of a calendar quarter.

Provided the above condition is satisfied, concurrently with the designated date, Maintenance Director shall resume Maintenance Director Responsibilities on the Dillon Parcel and Dillon shall again be responsible for its share of the costs and expenses of Maintenance Director's performance as set forth in Section 6.01 above. In the event that in Developing Party's reasonable business judgment, Dillon has failed to perform the Maintenance Director Responsibilities on the Dillon Parcel or any portion thereof as required by this CAMA, then Developing Party shall have the right to notify Dillon of such fact. If Dillon shall not have rectified such situation within fifteen (15) days from receipt of Developing Party's notice, then Developing Party shall have the right to issue a second notice regarding such failure. If Dillon shall not have rectified such situation within fifteen (15) days from receipt of Developing Party's second notice, then Developing Party shall have the right to cure (or cause Maintenance Director to cure) such failure and assess the costs of such action to Dillon. In the event Developing Party shall have issued two (2) separate second notices to Dillon during any twelve (12) month period, then Developing Party shall have the right, upon not less than sixty (60) days written notice given to Dillon, to cause Maintenance Director to resume the Maintenance Director Responsibilities on the Dillon Parcel, provided that such notice shall be effective only as the last day of a calendar quarter.

Section 12.02 [*Intentionally Deleted*].

Section 12.03 In addition to the right set forth in Section 12.01 above, as a right personal to Dillon or any affiliate of Dillon, in the event Maintenance Director fails to respond to an emergency situation within a timely manner (which shall be deemed to be three (3) hours in the case of snow removal), Dillon may, but shall not be obligated, to rectify the emergency situation and be reimbursed by Maintenance Director for the reasonable costs and expenses so incurred from its share of the costs related to the Maintenance Director Responsibilities. In the event Dillon has exercised its right of separate maintenance as described in either Section 12.01 above, in the event Dillon fails to respond to an emergency situation within a timely manner (which shall be deemed to be three (3) hours in the case of snow removal), Developing Party may, but shall not be obligated (or may cause Maintenance Director) to rectify the emergency situation and assess the reasonable costs and expenses so incurred to Dillon as a component of Dillon's share of the costs of operating and maintaining the Common Areas.

**ARTICLE XIII  
GENERAL PROVISIONS**

Section 13.01 Whenever the right of approval or consent is given to a Party pursuant to this CAMA, such Party shall not unreasonably withhold, condition or delay its approval or consent. Unless provision is made for a specific time period, each response to a request for an approval, re-submittal for approval, or consent required to be considered pursuant to this CAMA shall be given by the Party to whom directed within thirty (30) days after receipt thereof. Any disapproval shall be in writing and clearly state the reasons therefor. If a response is not given within the required time period, the requested Party shall be deemed to have given its approval or consent (as applicable) if the original notice stated in capitalized letters that failure to respond within the applicable time period will be deemed an approval or a consent.

Section 13.02 This CAMA shall bind and inure to the benefit of the heirs, personal representatives, successors and assigns of the Owners and upon any Person acquiring a Parcel, or

any portion thereof or any interest therein, whether by operation of law or otherwise. Notwithstanding the foregoing, upon conveyance of Tracts A and/or B to the County of El Paso, Tracts A and/or B, as applicable, shall automatically be released from this Agreement without the need for any further action or recorded instrument; provided, however, that the Lot Owners will promptly provide a recordable release to the County of El Paso upon its request.

Section 13.03 This CAMA shall have a term conterminous with the Declaration, unless earlier terminated by mutual agreement of the Owners; provided, that this CAMA shall terminate automatically upon termination of the Declaration.

Section 13.04 Notwithstanding any of the provisions of this CAMA, a breach of any of the conditions or covenants contained herein shall not defeat, affect or render invalid the lien, of any mortgage or deed of trust made in good faith and for value, but such conditions and covenants shall be binding and effective against any Owner of any Parcel or any portion thereof whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

Section 13.05 Each term, condition and covenant respecting any one Parcel shall be appurtenant to and for the benefit of the other Parcels and each part thereof. Each term, condition and covenant respecting any one Parcel shall be a burden thereon for the benefit of the other Parcels and each part thereof, and shall run with the land.

Section 13.06 Whenever any Owner or the Maintenance Director is permitted to perform work upon another Parcel, it is expressly understood and agreed that such Owner or Maintenance Director will not cause any mechanic's, materialmen's or other such liens to stand against that other Parcel, except to the extent such lien results from the non-payment by an Owner of its proportionate share of the costs and expenses which are the obligation of such Owner under this CAMA.

Section 13.07 All notices, statements, demands, approvals, or other communications to be given under or pursuant to this CAMA shall be in writing, addressed to the Owners at their respective addresses as provided below, and will be delivered in person, or by certified or registered mail, postage prepaid, return receipt requested or by overnight delivery, telegraph, facsimile, electronic mail or cable, charges prepaid and receipt at the recipient's office verified. The notice will be deemed to have been given upon receipt.

The addresses of the Owners to which such notices are to be sent will be those designated by written notice to the other Owners or the addresses shown on the then current real property tax rolls if none other has been designated, and until further notice are as follows:

DEVELOPING PARTY:      LG HI Falcon, LLC  
   c/o Leon Capital Group  
   Attn: Will Tolliver  
   3500 Maple Avenue, Suite 1600  
   Dallas, Texas 75219

With a copy to: Hummel Investments, LLC  
Attn: Ben Hummel  
3953 Maple Avenue, Suite 290  
Dallas, Texas 75219

With a copy to: Squire Patton Boggs (US) LLP  
Attn: Stacy H. Krumin, Esq.  
201 N. Franklin Street, Suite 2100  
Tampa, Florida 33602  
Fax Number: 813-202-1313

DILLON: Dillon Companies, LLC  
Attention: Director of Real Estate (KS-147)  
1014 Vine Street  
Cincinnati, Ohio 45202-1100  
FAX: (513) 762-4839

With a copy to: The Kroger Co.  
1014 Vine Street  
Cincinnati, Ohio 45202-1100  
Attention: Legal Department (KS-147)

The persons and addresses may be changed at any time by written notice to the other Owners.

Section 13.08 Notwithstanding anything to the contrary contained in this CAMA, it is expressly agreed that in the event an Owner sells its Parcel to an unaffiliated third party and thereafter enters into a new lease for such Parcel with such third party or its lessee or sublessee (hereinafter referred to collectively as the "Prime Lessor"), so long as said Owner or its affiliate is in possession of the property as a prime lessee the Parties hereto shall look solely to said prime lessee (and said prime lessee shall be liable therefor) for the performance of any obligations either the prime lessee or the Prime Lessor shall have under this CAMA and so long as said Owner or its affiliate is in possession of the property as a prime lessee, the Prime Lessor shall be relieved of any obligation for the performance of or liability for any of the terms, covenants, conditions or agreements set forth herein relating to either the prime lessee or its Parcel, unless otherwise specified by written agreement delivered to the Owners.

Section 13.09 If any term or provision of this CAMA or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this CAMA 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 CAMA shall be valid and shall be enforced to the extent permitted by law.

Section 13.10 The provisions of this CAMA 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 Parties.

Section 13.11 The captions and headings in this CAMA are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

Section 13.12 The provisions of this CAMA shall be construed as a whole and not strictly for or against any Party. Except as specifically provided for herein, this CAMA may only be modified or terminated, in whole or in part, by written instrument duly executed and acknowledged by the Owners of Parcels representing at least eighty percent (80%) of the proportionate share responsibilities for the costs of the Maintenance Director Responsibilities as listed in Section 6.01 above at the time of such modification or termination, and duly recorded in the office of the clerk and recorder of the county in which the Shopping Center is located; provided, however, so long as Developing Party is an Owner, any modification or termination of this CAMA shall require the approval of Developing Party.

Section 13.13 In construing the provisions of this CAMA and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

Section 13.14 In the event any Party hereto is composed of more than one person or entity, the obligations of said Party shall be joint and several.

Section 13.15 This CAMA shall be recorded in the office of the recorder of the county in which the Shopping Center is located.

Section 13.16 If any Owner shall bring an action or proceeding (including, without limitation, any cross-complaint, counterclaim or third party claim) against any other Owner by reason of the breach or alleged violation of any covenant, term or obligation hereof, or for the enforcement of any provision hereof, or to interpret or otherwise arising out of this CAMA, the prevailing Party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing Party" within the meaning of this Section 13.17 shall include, without limitation, an Owner who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached or consideration substantially equal to the relief sought in the action. If any Owner is required to initiate or defend any action or proceeding with a third party (including, without limitation, any cross-complaint, counterclaim or third party claim) because of any other Owner's breach of or failure to enforce this CAMA, or otherwise arising out of this CAMA, then the Owner so initiating or defending shall be entitled to reimbursement of its reasonable attorneys' fees from such other Owner. Attorneys' fees under this Section 13.17 shall include attorneys' fees on any appeal, and, in addition, a Party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

Section 13.17 Time is of the essence of this CAMA and each and every provision hereof.

Section 13.18 All references herein to a given Article, Section or subsection refer to the Article, Section or subsection of this CAMA.

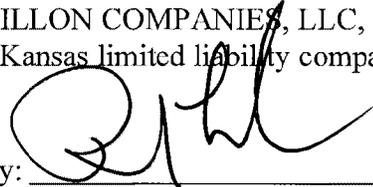
Section 13.19 This CAMA shall be construed and enforced in accordance with the laws of the State where the Shopping Center is located.

Section 13.20 This CAMA, together with the Declaration, contains the entire agreement between the parties concerning the subject matter of the CAMA and incorporates and supersedes all prior understandings and agreements, both written and oral. The recitals contained herein form part of this CAMA and reflect the intent of the parties.

[Signatures appear on next pages]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement for Operation and Maintenance for Common Areas for Falcon Marketplace the day and year first above written.

DILLON COMPANIES, LLC,  
a Kansas limited liability company



By: \_\_\_\_\_  
Its: **Rick J. Landrum**  
**Vice President**



STATE OF OHIO )  
 )ss.  
COUNTY OF HAMILTON )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of January, 2020, by Rick J. Landrum as Vice President of Dillon Companies, LLC, a Kansas limited liability company, on behalf of the corporation.

My commission expires: 11/30/2020

(SEAL)

Renee A. R. Cipriani  
Notary Public  
Address: 1014 Vine Street Cincinnati OH 45202



**Renee A. R. Cipriani**  
Notary Public, State of Ohio  
My Commission Expires 11-30-2020



CONSENT OF MORTGAGEE

The undersigned, Simmons Bank, an Arkansas state bank, as the successor-in-interest by merger to Bank SNB, an Oklahoma banking corporation, is the holder of a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Deed of Trust") executed by LG HI FALCON, LLC, a Texas limited liability company ("Borrower") for the benefit of Bank SNB, which is recorded at Instrument No. D216085939 ("Recorder's Office"), The undersigned hereby consents to the execution by the Borrower of the foregoing Agreement for Operation and Maintenance for Common Areas for Falcon Marketplace dated January 30, 2020, and filed or to be filed for record in the Recorder's Office (the "CAM Agreement") and, subject to the following sentence, hereby subordinates the lien of such Deed of Trust to the CAM Agreement. Notwithstanding the foregoing, however, the undersigned specifically does **not** subordinate the lien of the Deed of Trust to any liens created or granted by such Development Agreement including, without limitation, any liens created or granted pursuant to Article VIII of the CAM Agreement.

Dated: January 30, 2020

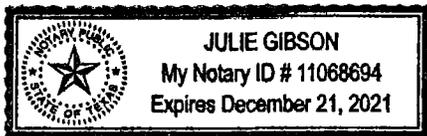
**SIMMONS BANK,**  
an Arkansas state bank,  
as successor-in-interest by merger to  
Bank SNB, an Oklahoma banking corporation

By:   
Peter J. Thompson, Senior Vice President

STATE OF TEXAS                   §  
   §  
COUNTY OF TEXAS           §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Peter J. Thompson, as Senior Vice President of SIMMONS BANK, an Arkansas state bank, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as a duly authorized officer of such state banking corporation, and as the act and deed of such state banking corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 30<sup>th</sup> day of January, 2020.



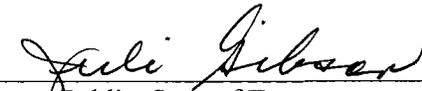
  
Notary Public, State of Texas  
My Commission Expires 12/21/2021  
Julie Gibson  
(Typed/Printed Name of Notary)

EXHIBIT A  
Shopping Center Legal Description

Dillon Parcels:

Lot 2, Falcon Marketplace

LOT 2 OF FALCON MARKETPLACE SUBDIVISION, LOCATED IN EL PASO COUNTY, COLORADO; AS SHOWN ON THE PLAT THEROF RECORDED UNDER RECEPTION NO. 219714441 OF THE RECORDS OF THE COUNTY OF EL PASO, STATE OF COLORADO

Lot 3, Falcon Marketplace

LOT 3 OF FALCON MARKETPLACE SUBDIVISION, LOCATED IN EL PASO COUNTY, COLORADO; AS SHOWN ON THE PLAT THEROF RECORDED UNDER RECEPTION NO. 219714441 OF THE RECORDS OF THE COUNTY OF EL PASO, STATE OF COLORADO

Developing Party Parcels:

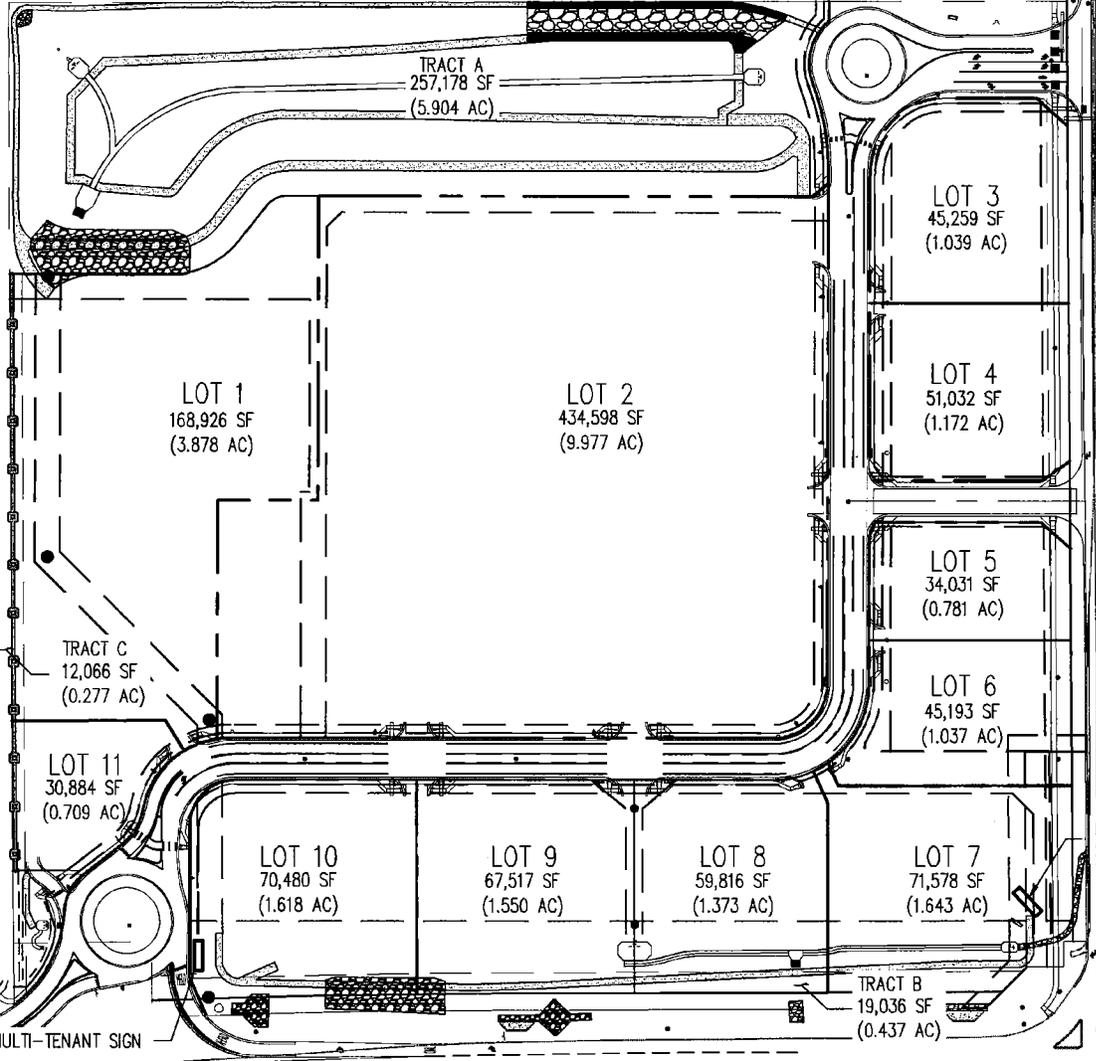
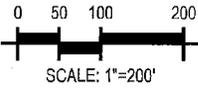
Lots 1, 4, 5, 6, 7, 8, 9, 10, and 11 of Falcon Marketplace Subdivision, Located in El Paso County Colorado; as shown on the plat thereof recorded under Reception No. 219714441 of the records of the County of El Paso, State of Colorado.

Non-Developable Parcels:

Tracts A, B, and C of Falcon Marketplace Subdivision, Located in El Paso County Colorado; as shown on the plat thereof recorded under Reception No. 219714441 of the records of the County of El Paso, State of Colorado.

**EXHIBIT B**

Site Plan of Shopping Center



MULTI-TENANT SIGN

MULTI-TENANT SIGN

LOT 1  
168,926 SF  
(3.878 AC)

LOT 2  
434,598 SF  
(9.977 AC)

LOT 3  
45,259 SF  
(1.039 AC)

LOT 4  
51,032 SF  
(1.172 AC)

LOT 5  
34,031 SF  
(0.781 AC)

LOT 6  
45,193 SF  
(1.037 AC)

LOT 10  
70,480 SF  
(1.618 AC)

LOT 9  
67,517 SF  
(1.550 AC)

LOT 8  
59,816 SF  
(1.373 AC)

LOT 7  
71,578 SF  
(1.643 AC)

TRACT C  
12,066 SF  
(0.277 AC)

LOT 11  
30,884 SF  
(0.709 AC)

TRACT A  
257,178 SF  
(5.904 AC)

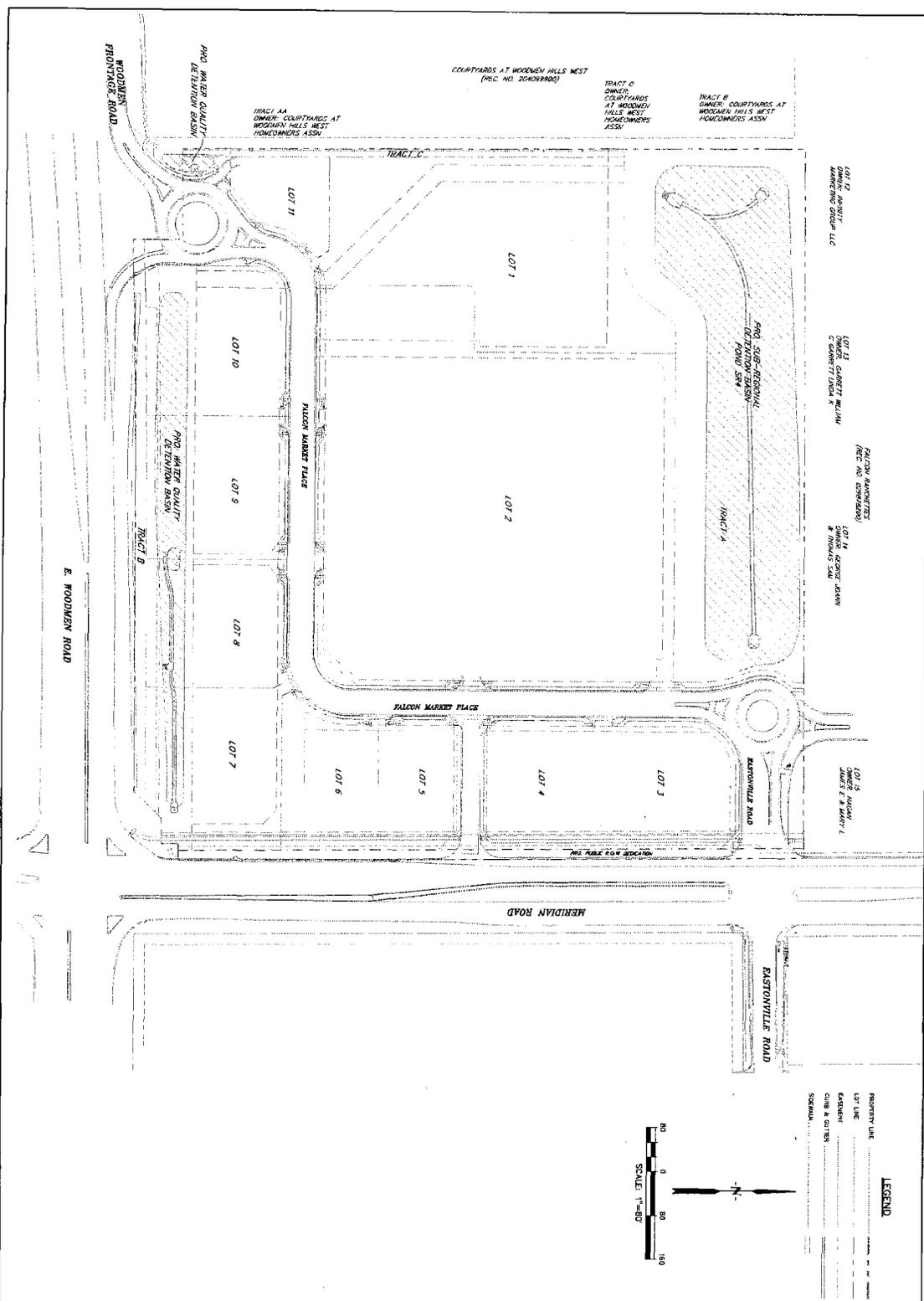
TRACT B  
19,036 SF  
(0.437 AC)

MERIDIAN ROAD

E. WOODMEN ROAD

**EXHIBIT C**

Detention Basins



**LEGEND**

PROPERTY LINE  
 LOT LINE  
 CURB & GUTTER  
 CLIMB & GUTTER  
 SEWER

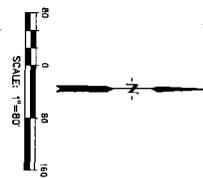


EXHIBIT FOR  
**FALCON MARKETPLACE**  
 FALCON, COLORADO

ISSUE	DATE
ISSUE	1-17-20

DESIGNED BY	DATE
DESIGNED BY	1-17-20
CHECKED BY	1-17-20
IN CHARGE	1-17-20

PREPARED BY: **C**

PROJECT NO. 2019-000000  
 DRAWING NO.

PREPARED BY: **C**

PROJECT NO. 2019-000000  
 DRAWING NO.

CLIENT:  
**LD III FALCON LLC**  
 201 S. MAIN ST. #200  
 FALCON, CO 80626  
 (303) 978-9800

DESIGNED BY:  
**JENSEN, BARRETT & CO.**  
 1000 S. JESSIE STREET  
 COVINGTON, LA 70044  
 (504) 835-1111



PREPARED BY: **C**