



August 9th, 2021

Pittsfield Charter Township  
Department of Utilities and Municipal Services  
Attn: Laura Kreps  
6201 West Michigan Ave.  
Ann Arbor, MI 48108

**Subject: Final Site Plan Submittal  
3020 Lohr Road Pittsfield – Former Joe’s Crab Shack**

On May 10<sup>th</sup>, 2021, ICAP Development (Applicant) submitted revisions for the Preliminary Site Plan Application to the Pittsfield Township. Subsequently the Applicant was placed on the agenda for the Plan Commission meeting held on June 3<sup>rd</sup>, 2021. At that meeting the Plan Commission voted and approved CSPA 31-06 La Z Boy. Since the approval the Applicant has revised plans to address Township’s Engineering comments dated May 25<sup>th</sup>, 2021, and the Plan Commission action letter dated June 4<sup>th</sup>, 2021.

On June 30<sup>th</sup>, 2021, the Applicant completed submittals to the WCRC and WCWRC. The WCWRC provided comments to the civil plan set dated 7/1/2021 and the plan set dated 8/6/21 is revised to address those comments. The Applicant is concurrently submitting the 8/6/21 plan documents to the Township and WCWRC. However, as the date of this submittal, the Applicant has not received WCRC comments.

The Applicant is seeking Final Site Plan approval and is ready to start construction on this project this Fall. To meet that timeline, the Applicant is requesting a Plan Commission Meeting date of 9/2/21. The following documents are included with this Submittal:

- WCRC Permit Letter Request – Dated 6/30/21
- WCWRC comment letter dated July 26<sup>th</sup>, 2021, with Redline response
- Redlined Response to Engineering Comments dated May 25<sup>th</sup>, 2021, by Poggemeyer Group
- Planning Commission Action Letter dated June 4<sup>th</sup>, 2021
- Cross Access Agreement – to be signed and recorded at closing
- Updated Civil Plans – Dated August 6<sup>th</sup>, 2021 – Include Landscape and Lighting Plan

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "JJ Alaily", written in a cursive style.

JJ Alaily  
ICAP Development  
Partner



June 30, 2021

Washtenaw County Road Commission  
Permit Engineering Section  
555 N. Zeeb Road  
Ann Arbor, MI 48103  
734-327-6643  
Attn: Gary Streight

**Subject: Commercial Approach Permit Ref 17655 – Civil Plan Update  
3020 Lohr Road Pittsfield – Former Joe’s Crab Shack**

On March 31<sup>st</sup>, 2021, ICAP submitted a Commercial Approach Permit to the Washtenaw County Road Commission along with a narrative describing the project located at 3020 Lohr Road. Since that submission, the Applicant has received preliminary site plan approval from the Pittsfield Township Plan Commission and has made minor revisions to the Civil plans.

Attached to this email are the updated Civil Plans and the important item to note for the Road Commission is that the Easternmost access point has been moved approximately an additional 20 feet to the West.

The Applicant is seeking a commercial Approach Permit to conduct work in the county road right-of-way for the property located at 3020 Lohr Road.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "JJ Alaily", is written over a light blue horizontal line.

JJ Alaily  
ICAP Development  
Partner

**Enclosed**

- Updated Civil Plans

[marsikt@washtenaw.org](mailto:marsikt@washtenaw.org)

8/5/2021

**Theresa M. Marsik, P.E.**

Stormwater Engineer  
Water Resources Commissioner's Office  
705 N. Zeeb Rd., Ann Arbor, MI  
Direct: (734) 222-6844

Re: ICAP Development - La Z Boy (Pittsfield Parkway, Units 2 and 3)  
Stormwater Review  
PDG # 600005 00010

Ms. Theresa M Marsik:

Our Comments to the review are in Red.

1. The engineer's certificate of outlet, accompanied by corresponding calculations and documentation, should be submitted to our office for review.

**The certificate as well as the additional calculations were added to the Storm Water Management Report.**

2. A storage volume chart for the below-grade detention system should be included.
  - a. Pages 4 and 5 of the "Storm Water Management Report" prepared by Poggemeyer Design Group indicates the volume of each Chamber Maxx unit with an assumed stone void space of 40%. In order to account for the maximum void space of 30% allowed by the rules of this office, the referenced document indicates that the amount of stone between the rows and above, below, and around the external perimeter of the system will be increased. However, no calculations were provided to verify that the required volume capacity was achieved.

**A stage/storage table generated by Contech is included in the Storm Water Management Report. This was generated assuming 70% voids.**

3. The soils at this site do not meet the minimum infiltration rate of 0.1 inches per hour. Therefore, a 20% penalty on the required detention volume will be assessed. The determination of this penalty, as shown on Worksheet W13 provided with this submittal, is incorrect. The volume capacity available for this development within the existing detention basin located north of Lohr Road should be subtracted from the "Total Required Detention Volume, including penalty" on part B of W13.

**This calculation was corrected.**

**Total Storage is now 11,908 c.f.**



Theresa M Marsik  
August 5, 2021  
Page 2

4. The outlet calculations for the below-grade system and pipe capacity calculations, showing that the capacity of the existing 12-inch diameter pipe will not be exceeded, must be provided.

**Additional calculations for 3 stage outlet verify outflow and pipe capacity.**

5. A long-term storm water maintenance plan, including budget and responsible party, should be designed and included with the plan set.

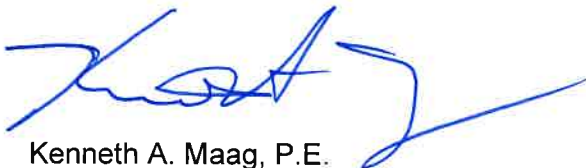
**See attached.**

6. Please see the attached invoice for the current fees and remit these fees upon receipt. As requested, the invoice is being submitted directly to ICAP Development.

If you have any questions, please do not hesitate to contact our office.

Sincerely,

POGGEMEYER DESIGN GROUP, INC.



Kenneth A. Maag, P.E.  
Project Engineer/Manager

KAM/sjl



August 6, 2021

Pittsfield Charter Township  
6201 West Michigan Avenue  
Ann Arbor, MI 48108

Re: ICAP Development - La Z Boy (Pittsfield Parkway, Units 2 and 3)  
C.S.P.A. #21-06  
Preliminary Site Plan Review #2  
PDG # 600005 00010

We have reviewed the May 10, 2021, 16-sheet submittal of the above preliminary site plan that was received by the Township on May 12, 2021 and comment as follows:

1. This project consists of Units 2 and 3 that were formerly known as Joe's Crab Shack in the Pittsfield Parkway development. The applicant is proposing the demolition of the existing building and parking, then developing La Z Boy on Unit 2.
2. Site and Zoning Data Requirements:
  - a. The ground floor and total floor areas to be constructed shall be provided in the plans.

**Information is shown on title sheet and all other pertinent sheets.**

3. Required Information Concerning Utilities, Drainage, and Related Issues:
  - a. Stormwater drainage and detention calculations shall be provided in the plans, similar to what was provided in the March 23, 2021 Storm Water Management Report. In the Report:

**Calculations were added to the plans.**

- i. The description of proposed drainage should also include underground detention and bioretention swales. (page 3)
- ii. Appendix I should be referenced for the Drainage Area Map. (page 4)
- iii. Information will need to be updated per any revisions to the plans.

**The County has determined that there is no infiltration available on-site, therefore the drainage plan, plans and report have been revised.**

**WCWRC has reviewed Storm Water Plans and Calculations and provided official comments per letter dated July 26<sup>th</sup>.**

4. Sheet 2, LSG Engineering ALTA Survey:

- a. The continuation of the existing gas line on Lohr Road should be shown to the edge of the east property line of Unit 3. This should also be done on all other applicable sheets.
- b. The location of the two existing valves on the existing water main at the tee on Lohr Road shall be shown on the plan.
- c. Two additional benchmarks shall be identified to maintain at least two (2) benchmarks for the full duration of this project.

**See revised survey included in plans.**

5. Sheet 4, Site Dimension and Pavement Plan:

- a. Light pole locations should be provided here and on all other applicable sheets.

**Site lighting is now indicated on the plans.**

- b. An easement shall be proposed for portion of the existing sidewalk that extends over the north property line of the site.

**Easement added for sidewalks.**

6. Sheet 5, Site Grading Plan:

- a. Proposed contour lines in 1-foot intervals should be provided in the paved areas.

**1' Contour in pavement are now included.**

7. Sheet 6, Site Utility Plan:

- a. Per the Township records, the existing water valve located east of the proposed building is not located on the existing 12-inch water main and must be removed. A new 12-inch inline gate valve in well shall be proposed south of the currently proposed hydrant lead.

**Valve removed and solid sleeve will be installed. Additionally in line valve will be installed.**

- b. The purpose of the proposed water main loop around the proposed building is not clear. Either justification for this water main loop shall be provided or the water main shall be removed.

**Waterline loop removed.**

- c. If the water main loop is to remain, the 90-degree bend proposed on the water main shall be replaced with two (2) 45-degree angles and the water main shall be at least 20 feet from the proposed building.

**N/A**

- d. A 20-foot wide easement shall be proposed for the water main and hydrant.

**20' Easement added.**

- e. The existing 6-inch sewer downstream of existing manhole MH D to existing manhole s-2 located in Lohr Road will need to be upsized to 8-inch and be a public sewer if a second building will be connected to it.

8. Sheet 8, Fire Protection Plan:

- a. Hydrants shall be located such that all sides of buildings will be within 300 feet of a hydrant. The hydrant dedicated to the FDC does not count towards the building coverage.

**Per sheet 8 all sides are within 300' of a hydrant.**

- b. The existing turning template shall be replaced with the turning template for the Township T-2 fire apparatus. The T-2 fire apparatus template can be found on the Township website. A detail for the fire apparatus shall be shown on the plan.

**Corrected turning template was used.**

- c. Fire lane no parking signs shall be shown.

**Fire Lane sign added to east side entrance drive.**

9. Sheet 9, Detail Sheet:

- a. The final Chambermaxx design must include the method of maintaining the system.

**Chamber Maxx had developed a O & M manual for this system – it will be included in the storm report. – See Post Construction O & M**

10. Sheet 10, Site Drainage Plan:

- a. Drainage Area 3 should be revised to include the off-site drainage areas south of the property line.

**Area 3 revised.**



11. Sheet 14, Landscape Plan:

- a. All existing (to remain) and proposed utilities, including underground storage, must be shown on this sheet to verify no conflicts.

**All utilities shown.**

- b. Trees must maintain a minimum of 10 horizontal feet from water, sanitary, and storm pipes.

**Done**

- c. Light poles should be shown on this sheet.

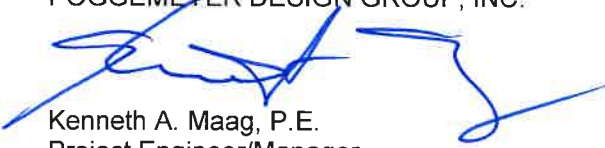
**Site lighting shown on plans.**

12. WCRC and WCWRC approvals are required prior to Township Final Site Plan approval. Further coordination with these agencies may result in modifications to this preliminary site plan. It is the applicant's responsibility to coordinate with all outside agencies early in the site plan development process to ensure all agency requirements are adhered to and revisions of the site plan are limited.
13. Prior to a pre-construction meeting, the Applicant shall provide a performance guarantee to the Township in accordance with Section 3.09 of the Zoning Ordinance.
14. With each re-submittal, the preparer shall provide a written summary of revisions made to the plans.

If you have any questions, please do not hesitate to contact our office.

Sincerely,

POGGEMEYER DESIGN GROUP, INC.

  
Kenneth A. Maag, P.E.  
Project Engineer/Manager

KAM/sjl





**Pittsfield Charter Township**  
**Department of Utilities & Municipal Services**

6201 West Michigan Avenue, Ann Arbor, MI 48108  
Phone: (734) 822-3101 • Fax: (734) 944-1103  
Website: [www.pittsfield-mi.gov](http://www.pittsfield-mi.gov)

**Mandy Grewal, Supervisor**

June 4, 2021

JJ Alaily  
ICAP Development  
833 East Michigan Ave. Suite 540  
Milwaukee, WI 53202

**SUBJECT: Planning Commission Action Letter  
CSPA 21-06 La Z Boy**

Dear Mr. Alaily,

This is to advise you that at a regular meeting of the Pittsfield Township Planning Commission held on June 3, 2021, the following action was taken on your project cited above:

**Motion by Commissioner Williams, supported by Commissioner Harris, to approve  
CSPA 21-06 La Z Boy with the following conditions:**

- 1. Label loading area on site plan**
- 2. Provide cross access agreement**
- 3. Provide full landscape plan**
- 4. Provide lighting plan**

**ROLL CALL**

**YES: WILLIAMS, HARRIS, RALPH, KIBLER, YOUNG, PAYNE,  
JAFFER**

**NO:**

**ABSENT: None**

**ABSTAIN: None**

**MOTION APPROVED**

Sincerely,

*Benjamin R. Carlisle*

Benjamin R. Carlisle, AICP  
Township Planning Consultant

BC:jsd

I:\PlanningEngCode\Developments-Petitions\CSPA\2021\CSPA 21-06 Lazboy - 3020 Loehr Road>Action Letters\CSPA 21-06 Action Letter 2021-06-04.doc

**DECLARATION OF  
RECIPROCAL EASEMENT AGREEMENT**

THIS DECLARATION OF RECIPROCAL EASEMENT AGREEMENT ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by [INSERT ICAP ENTITY] (collectively, "Declarant").

**RECITALS**

A. Declarant warrants it is the owner of that certain real property situated in the Township of Pittsfield, Washtenaw County, Michigan, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (as set forth on Exhibit A, "Parcel A" and "Parcel B")

B. Pursuant and subject to the terms of this Agreement, Declarant desires to impose certain easements upon the Parcels, as defined herein, for the mutual and reciprocal benefit and complement of Parcel A and Parcel B and the present and future owners and occupants thereof.

C. Declarant desires to establish certain covenants, conditions and restrictions encumbering Parcel A and Parcel B.

NOW, THEREFORE, in consideration of the foregoing recitals and of the covenants herein contained, Declarant, on behalf of itself and its respective successors and assigns, declares as follows:

**AGREEMENTS**

1. Definitions. The Recitals above are incorporated herein by reference. For purposes hereof:

1.1. The term "Owner" or "Owners" shall mean the Parcel A Owner (as to Parcel A) and the Parcel B Owner (as to Parcel B), and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the Real Property as defined on Exhibit A, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such Real Property.

1.2. The term "Parcel" or "Parcels" shall mean each separately identified parcel of real property now constituting a part of the Real Property as described on Exhibit A, that is, Parcel A and Parcel B.

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Return address:  
Robert W. Habich  
Davis & Kuelthau, s.c.  
111 East Kilbourn Avenue, Suite 1400  
Milwaukee, WI 53202

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L-12-07-115-011  
Tax Parcel No.

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1.3. The term “Permittees” shall mean the tenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Parcel, and/or (ii) such tenant(s) or occupant(s).

1.4. The term “Common Area” shall mean those portions of Parcel A and Parcel B, that are outside of exterior walls of buildings, or other structures from time to time located on the Parcels (including any appurtenant canopies, supports, drive-thru lanes, loading docks, truck ramps or other outward extensions of buildings), and which are either unimproved, or are improved as (without limitation) parking areas, landscaped areas, driveways, roadways, walkways, light standards, curbing, paving, entrances, exits, common signs and other similar exterior site improvements, which are intended for the common use of Permittees and Owners.

1.5. The term “Site Plan” shall mean that site plan of the Parcels attached hereto as Exhibit B and by reference made a part hereof. Except as may be otherwise provided in this Agreement, the Site Plan is for identification purposes only.

1.6. The term “Critical Access Drives” shall mean those driveways and driveway improvements, paving, curbing, entrances and exits, in the location on the Parcels as shown cross-hatched or otherwise marked on the Exhibit B.

1.7. The term “Storm Water Management System” shall mean all pipes, lines, conduits and other apparatuses installed on a Parcel for the collection, retention, detention and distribution of storm and surface water runoff.

## 2. Easements.

2.1. Grant of Easements. Subject to any express conditions, limitations or reservations contained herein, Declarant hereby grants, establishes, covenants and agrees that the specified Parcels, and all Owners and Permittees of the specified Parcels, shall be benefited and burdened by the following nonexclusive, perpetual easements appurtenant to the Parcels, which are hereby imposed upon the specified Parcels and all present and future Owner’s and Permittees of the Parcels:

(a) Ingress and Egress. An easement for reasonable vehicular and pedestrian ingress and egress over all driveways, roadways, and walkways (pedestrian ingress and egress only) as presently or hereafter constructed and constituting a part of the Common Areas of the Parcel A and Parcel B, including, without limitation, the Critical Access Drives, as depicted on Exhibit B, so as to provide for the passage and maneuvering of motor vehicles and pedestrians between all portions of the Common Area of the Parcels intended for such purposes, and to and from all abutting streets or rights of way furnishing access to such Parcels.

(b) Storm Water Drainage. An easement upon, under, over, above and across the Common Areas for the discharge, drainage, use, detention and retention of storm water runoff, and to install, maintain, repair and replace storm water collection, retention, detention and distribution lines, conduits, pipes and other apparatus under and across the Common Areas as well as an easement for drainage of storm and surface water runoff from the Parcels and the

improvements thereon to flow and run through, into and out of any common storm sewer and drainage facilities on the Parcels. Each Owner shall maintain the Storm Water Management System located on its Parcel and the lines, conduits, pipes and facilities serving such Storm Water Management System located on the adjacent Parcel. The easement granted herein shall include, upon reasonable prior written notice to the applicable Parcel Owner, the right of reasonable ingress and egress as may be required to construct, replace, maintain and operate the Storm Water Management System. Once constructed, the Storm Water Management System shall not be materially modified, altered, relocated or otherwise changed, without the prior written consent of any Owner materially affected by such modification, alteration or relocation.

(c) Utilities. An easement under and across those parts of the Common Areas, as it may exist from time to time, for the installation, maintenance, repair and replacement of water mains, storm drains, sewers, water sprinkler system lines, telephone or electrical conduits or systems, cable, gas lines and other utility facilities necessary for the orderly development and operation of the Common Areas and each building from time to time located within the Parcels; provided that (i) the rights granted hereunder shall be available to the Owner(s) only in the event that the Owner wishing to install any utilities is unable, despite using commercially reasonable efforts, to install such utilities on such Owner's Parcel, (ii) the rights granted pursuant to the easements provided in this Section 2.1(c) shall at all times be exercised in such a manner as not to interfere materially with the normal operation of a Parcel and the businesses conducted therein, (iii) the exact location of any utilities shall be subject to the approval of the Owner(s) of the burdened Parcel(s), and (iv) except in an emergency, the right of any Owner to enter upon the Parcel of another Owner for the exercise of any right pursuant to the easements provided in this Section 2.1(c) shall be conditioned upon providing reasonable prior advance written notice to the other Owner as to the time and manner of entry. All such systems, structures, mains, sewers, conduits, lines and other public utilities shall be installed and maintained below the ground level or surface of the burdened Parcel (except for such parts thereof that cannot and are not intended to be placed below the surface, such as transformers and control panels, which shall be placed in such location as approved by the Owner of the affected Parcel).

2.2. Indemnification. Each Owner having rights with respect to an easement granted hereunder shall indemnify and hold the Owner whose Parcel is subject to the easement harmless from and against all claims, liabilities and expenses (including reasonable attorneys' fees) relating to accidents, injuries, loss, or damage of or to any person or property caused by the negligent, intentional or willful acts or omissions of such Owner, or those claiming through Owner arising out of the exercise of the easement rights set forth in this Agreement.

2.3. Access Opening. The opening(s) and access point(s) contemplated for the Critical Access Drives are shown on the Site Plan and such opening(s) and access point(s) between the Parcels for use of the Critical Access Drives, as contemplated pursuant to Section 2.1(a) above, are hereinafter called the "Access Openings." The Access Openings shall in no event be blocked, closed, altered, changed or removed and shall at all times remain in place as shown on the Site Plan. Except with respect to the Access Openings, each Owner shall be permitted to maintain curbing, landscaping or other improvements along the boundary line of its Parcel.

2.4. Reasonable Use of Easements.

(a) The easements herein above granted shall be used and enjoyed by each Owner and its Permittees in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of any other Owner or its Permittees at any time conducted on its Parcel, including, without limitation, public access to and from said business, and the receipt or delivery of merchandise in connection therewith.

(b) Once the Storm Water Management System is installed pursuant to the easement(s) granted in Section 2.1(b) hereof, and/or utility lines, systems and equipment are installed pursuant to the easement(s) granted in Section 2.1(c) hereof, no permanent building, structures (excluding paving, cement walks, drives, or patios, other similar material), or trees inconsistent with the use and enjoyment of such easements (excluding improvements typically found in common areas of shopping centers) shall be placed over or permitted to encroach upon the Storm Water Management System and utility installations. The Owner of the Parcel served by such installations shall not unreasonably withhold its consent to the reasonable relocation of such installations requested by the Owner of a Parcel where such installations are located, at such requesting Owner's sole cost and expense, so long as water detention and drainage services or utility services, as applicable, to the other Owner's Parcel are not unreasonably interrupted or diminished and the remaining provisions of this Section 2.4 are complied with.

(c) Once commenced, any construction undertaken in reliance upon an easement granted herein shall be diligently prosecuted to completion, so as to minimize any interference with the business of any other Owner and its Permittees. Except in cases of emergency, the right of any Owner to enter upon a Parcel of another Owner for the exercise of any right pursuant to the easements set forth, or to prosecute work on such Owner's own Parcel if the same interferes with utility or drainage easements or easements of ingress, egress or access to or in favor of another Owner's Parcel, shall be undertaken only in such a manner so as to minimize any interference with the business of the other Owner and its Permittees. In such case, no affirmative monetary obligation shall be imposed upon the other Owner, and the Owner undertaking such work shall with due diligence repair at its sole cost and expense any and all damage caused by such work and restore the affected portion of the Parcel upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the commencement of such work. In addition, the Owner undertaking such work shall pay all costs and expenses associated therewith and shall indemnify and hold harmless the other Owner(s) and its Permittees from all damages, losses, liens or claims attributable to the performance of such work.

## 2.5 Easement Protections.

(a) Neither the Declarant nor any Owner shall alter, relocate, close, or otherwise impair ingress and egress to a Parcel or a Parcel via the Critical Access Drives, as provided herein, without obtaining the prior written consent of all of the Owners.

(b) Notwithstanding anything to the contrary contained in this Agreement, in the event vehicular access to any Parcel is obstructed due to an obstruction on another Parcel (including, but not limited to, the Critical Access Drives) or an activity (each such

event, a "Obstruction Default") of another Owner or such Owner's Permittee(s) (an "Obstructing Party"), an Owner who is not committing the Obstruction Default (a "Non-Obstructing Party"), may notify such Obstructing Party by any means reasonable under the circumstances, including electronic mail or telephone, of the Obstruction Default and demand that the Obstruction Default be remedied. If, after 24 hours after such notice has been provided, such Obstructing Party has not (i) remedied the Obstruction Default or (ii) commenced to remedy the Obstruction Default and thereafter remedied such Obstruction Default within 24 hours or such longer time period as reasonably necessary to promptly remedy such Obstruction Default, the Non-Obstructing Party shall have the right (but not the obligation) to remedy the Obstruction Default (including the right to enter upon the Parcel of the Obstructing Party) and shall be reimbursed by the Obstructing Party for the reasonable costs for such remedy in accordance with the provisions of Section 8 below.

3. Maintenance.

3.1. General. Until such time as improvements are constructed on a Parcel, the Owner thereof shall maintain the same in a seeded, mowed, clean and neat condition and shall take such measures as are necessary to control grass, weeds, blowing dust, dirt, litter or debris.

3.2. Buildings and Appurtenances Thereto. Each Owner covenants to keep and maintain, at its sole cost and expense, the Common Areas, Critical Access Drives, Storm Water Management Systems, the building(s), signs, landscaping and sidewalks and any and other improvements located from time to time on its respective Parcel in good order, condition and repair, consistent with first-class retail development facilities in the county in which the Parcels are located. Such maintenance shall include, without limitation, the following:

(a) Clear snow in the Common Areas so as to provide safe functional use of such areas at all times;

(b) Mow or otherwise trim and regularly water and tend landscaped areas and replace landscaping material in the Common Areas;

(c) Restripe and replace markings on the surface of the parking areas located within the Common Areas and driveways, patch, repave and reseal all such paved areas as necessary, and replace all directional signs and pavement signs from time to time so as to provide for the orderly parking and flow of traffic of motor vehicles. Paving and striping materials used for any partial restriping or repaving shall be consistent with that used in the remainder of the Parcels;

(d) Maintain and replace the lighting fixtures, including, but not limited to, bulb replacement, fixture repairs and replacement and painting of such fixtures;

(e) Maintain the liability insurance on Common Area, naming the other Parcel Owners as additional insureds;

(f) Pay utility charges related to the Common Areas to the extent not separately metered;

(g) Pay any permits or license fees necessary to operate the Common Areas; and

(h) Maintain, repair and replace the Storm Water Management System and the Critical Access Drives, including restriping and repaving, and insuring the same.

Once constructed, in the event of any damage to or destruction of a building on any Parcel, the Owner of such Parcel shall, at its sole cost and expense, with due diligence either (a) repair, restore and rebuild such building to its condition prior to such damage or destruction (or with such changes as shall not conflict with this Agreement), or (b) within 60 days after such damage or destruction (or such longer time period as necessary for a formal police investigation to be completed and a reasonable period thereafter to), demolish and remove all portions of such damaged or destroyed building then remaining, including the debris resulting therefrom, and otherwise clean and restore the area affected by such casualty to a level, graded condition, and either pave or seed the affected area. Nothing contained in Section 3.2(b) shall be deemed to allow an Owner to avoid a more stringent obligation for repair, restoration and rebuilding contained in a lease or other written agreement between an Owner and such Owner's Permittee. Notwithstanding anything contained herein, if any Owner or Permittee causes damage to a Common Area, that Owner, or the Owner of the Permittee, shall be solely liable for all costs of repair or restoration.

3.3. Parking Requirements. Each Parcel shall comply with applicable governmental parking ratio requirements (including by variance or other similar governmental approval) without taking into account the parking provided on any other Owner's Parcel, such that each Parcel shall be self-sufficient for vehicular parking. Nothing contained herein shall grant any Owner or Permittee any parking rights on any other Owner's Parcel. No Parcel Owner or Permittee shall have any right to park in a Critical Access Drive.

3.4 Utilities. Each Owner shall at all times during the term hereof construct, operate and maintain or cause to be constructed, operated and maintained, in good order, condition and repair, at its sole expense, any utility or other installations serving the Parcel of such Owner and from time to time existing on the Parcel of another Owner, in accordance with the requirements of the easement therefor.

4. Construction of Improvements. Every building (including its appurtenant Common Area improvements), now or in the future constructed on the Parcels, shall be constructed, operated and maintained so that the same is in compliance with all applicable governmental requirements.

5. Insurance. Throughout the term of this Agreement, each Owner shall procure and maintain commercial general liability insurance occurring upon such Owner's Parcel, with limits of coverage that are at levels customarily maintained by businesses in the community in which the Parcels are located, and including each other Owner (provided the Owner obtaining such insurance has been supplied with the name of such other Owner in the event of a change thereof), as additional insureds.

6. Taxes and Assessments. Each Owner shall pay all taxes, assessments, or charges of any type levied or made by any governmental body or agency with respect to its Parcel.

7. No Rights in Public; No Implied Easements. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of Parcel A or Parcel B. Notwithstanding anything to the contrary contained herein, the Owners shall have the right to temporarily close the Critical Access Drives for as long as reasonably necessary, but no longer, to prevent the general public from acquiring any rights in the same. No easements, except those expressly set forth in Section 2 shall be implied by this Agreement.

8. Remedies and Enforcement.

8.1. All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner(s) and such Owner(s)'s Permittees shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance, and/or injunctive relief.

8.2. Self-Help. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Agreement within thirty (30) days following receipt of written notice thereof by an Owner, or such Owner's Permittees (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), any Owner, or such Owner's Permittees, shall have the right to perform such obligation contained in this Agreement on behalf of such defaulting Owner and be reimbursed by such defaulting Owner upon demand for the reasonable costs thereof (which such written demand shall include reasonable supporting documentation of such costs) together with interest at the prime rate as published by the Wall Street Journal or, if the Wall Street Journal no longer publishes a prime rate, a comparably publication, plus two percent (2%) (not to exceed the maximum rate of interest allowed by law). Notwithstanding the foregoing, in the event of (i) an emergency or (ii) blockage or material impairment of the easement rights relating to the Critical Access Drives, an Owner, or such Owner's Permittees, may immediately cure the same and be reimbursed by the other Owner upon demand for the reasonable cost thereof together with interest at the prime rate, plus two percent (2%), as above described.

8.3. Lien Rights. Any claim for reimbursement, including interest as aforesaid, and all costs and expenses including reasonable attorneys' fees awarded to any Owner in enforcing any payment in any suit or proceeding under this Agreement shall be assessed against the defaulting Owner in favor of the prevailing party and shall constitute a lien ("Assessment Lien") against the Parcel of the defaulting Owner until paid, effective upon the recording of a notice of lien with respect thereto in the Office of the Register of Deeds of Washtenaw County, Michigan; provided, however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii) all liens recorded in the Office of the Register of Deeds of Washtenaw County, Michigan prior to the date of recordation of said notice of lien, and (iii) all leases entered into, whether or not recorded, prior



to the date of recordation of said notice of lien. All liens recorded subsequent to the recordation of the notice of lien described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Owner of any default for which a notice of lien was recorded, the party recording same shall record an appropriate release of such notice of lien and Assessment Lien. Notwithstanding anything to the contrary set forth in this Agreement, any and all Assessments Liens shall automatically be subject and subordinate to any current or future mortgage (or similar security instrument) recorded against any of the Parcels, and, although not necessary for subordination, the Parcel Owners shall nonetheless execute, upon request, documentation evidencing and confirming the subordination of the Assessment Lien.

8.4. Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

8.5. No Termination for Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Agreement. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Parcel made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Parcel covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

8.6. Irreparable Harm. In the event of a violation or threat thereof of any of the provisions of Section 2 of this Agreement, each Owner agrees that such violation or threat thereof shall cause the nondefaulting Owner and/or its Permittees to suffer irreparable harm and such nondefaulting Owner and its Permittees shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of Section 2 of this Agreement, the non-defaulting Owner, in addition to all remedies available at law or otherwise under this Agreement, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of Section 2 of this Agreement.

9. Term. The easements, covenants, conditions and restrictions contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the office of the Register of Deeds for Washtenaw County, Michigan and shall remain in full force and effect thereafter in perpetuity, unless this Agreement is modified, amended, canceled or terminated by the written consent of all then record Owners of Parcel A and Parcel B, in accordance with Section 10.2 hereof.

10. Miscellaneous.

10.1. Attorneys' Fees. In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

10.2. Amendment. The parties agree that the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of all Parcels, and evidenced by a document that has been fully executed and

acknowledged by all such record Owners and recorded in the official records of the Office of the Register of Deeds of Washtenaw County, Michigan.

10.3. Consents. Wherever in this Agreement the consent or approval of an Owner is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld, conditioned, or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the paragraph hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner under this Agreement, to be effective, must be given, denied or conditioned expressly and in writing.

10.4. No Waiver. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

10.5. No Agency. Nothing in this Agreement shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

10.6. Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

10.7. Grantee's Acceptance. The grantee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent owner of such Parcel, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.

10.8. Separability; Non-Merger. Each provision of this Agreement and the application thereof to the Parcels are hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the validity or enforceability of any provision of this Agreement is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of more than one Parcel by the same person or entity shall not terminate this Agreement, by merger of title or otherwise, nor in any manner affect or impair the validity or enforceability of this Agreement.

10.9. Time of Essence. Time is of the essence of this Agreement.

10.10. Entire Agreement. This Agreement contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby. All exhibits referenced herein are incorporated herein by this reference.

10.11. Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each Owner may change from time to time their respective address for notice hereunder by like notice to the other parties. The notice addresses of the Declarant (as current Owner of all Parcels) is as follows:

Declarant:                   **[INSERT ICAP ENTITY]**  
Attn. Brian R. Adamson  
833 E Michigan Street, Suite 540  
Milwaukee, WI 53202

With a copy to:

Davis & Kuelthau, s.c.  
Attention: Robert W. Habich  
111 East Kilbourn Avenue, Suite 1400  
Milwaukee, WI 53202

Parcel Owners:           To the Parcel Owner at the address on file with the applicable taxing authority for delivery of tax bills

10.12. Governing Law. The laws of the State of Michigan, without regard to its choice of law rules, shall govern the interpretation, validity, performance, and enforcement of this Agreement.

10.13. Estoppel Certificates. Each Owner, within ten (10) day of its receipt of a written request from the other Owner(s), shall from time to time provide the requesting Owner, a certificate binding upon such Owner stating: (a) to the best of such Owner's knowledge, whether any party to this Agreement is in default or violation of this Agreement and if so identifying such default or violation; and (b) that this Agreement is in full force and effect and identifying any amendments to the Agreement as of the date of such certificate.

10.14. Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Parcel, the parties agree that this Agreement shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

10.15. Extension of Time. It is hereby agreed that the terms set forth in this Agreement are to be extended beyond the applicable time period set forth in MCL 565.101-.107. Any party hereto, any successor or assign of any Owner, and/or any subsequent owner of the

Parcels may, from time to time, file of record the proper instrument for the purpose of extending the terms stated herein beyond the statutory period so that such easements and conditions are not terminated.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

[INSERT ICAP ENTITY]

By: \_\_\_\_\_  
Brian R. Adamson, Manager

STATE OF WISCONSIN )  
 ) ss.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, the above-named Brian R. Adamson, to me known to be the person who executed the foregoing instrument in his capacity as Manager of \_\_\_\_\_, to me known to be the same, and acknowledged that he executed the foregoing instrument in such capacity.

\_\_\_\_\_  
Notary Public  
My commission: \_\_\_\_\_

This document was drafted by Robert W. Habich of Davis & Kuelthau, s.c.

## EXHIBIT A

### **Legal Description of Parcels**

The following shall each be a "Parcel," shall together be defined as the "Parcels;" all Parcels together shall be defined as the "Real Property.":

#### Parcel A

Unit No. 2, Pittsfield Parkway, according to the Master Deed recorded in Liber 2885, Pages 748 through 810, inclusive, as amended by First Amendment to Master Deed recorded in Liber 3259, Pages 598 through 605, inclusive and by Second Amendment to Master Deed recorded in Liber 3409, Pages 596 through 600, inclusive and by Third Amendment to Master Deed recorded in Liber 3422, Pages 136 through 143, inclusive and by Fourth Amendment to Master Deed recorded in Liber 3533, Pages 604 through 609, inclusive, Washtenaw County Records, and designated as Washtenaw County Condominium Subdivision Plan No. 179, together with rights in the general common elements and the limited common elements as set forth in the above described Master Deed and all amendments thereto; and as described in Act 59 of the Public Acts of 1978, as amended.

#### Parcel B

Unit No. 3, Pittsfield Parkway, according to the Master Deed recorded in Liber 2885, Pages 748 through 810, inclusive, as amended by First Amendment to Master Deed recorded in Liber 3259, Pages 598 through 605, inclusive and by Second Amendment to Master Deed recorded in Liber 3409, Pages 596 through 600, inclusive and by Third Amendment to Master Deed recorded in Liber 3422, Pages 136 through 143, inclusive and by Fourth Amendment to Master Deed recorded in Liber 3533, Pages 604 through 609, inclusive, Washtenaw County Records, and designated as Washtenaw County Condominium Subdivision Plan No. 179, together with rights in the general common elements and the limited common elements as set forth in the above described Master Deed and all amendments thereto; and as described in Act 59 of the Public Acts of 1978, as amended.

**EXHIBIT B**

**Site Plan**

