DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is entered into this 17th day of December, 2015, by and between the City of Crescent Springs, Kentucky, a Kentucky Municipality of the Fourth Class (the “City”) and TriStar Ventures LLC, a Kentucky limited liability company (the “Developer”).

BACKGROUND:

1. The City Zoning Code and land use map provides for a certain zoning identified as mixed land use zone (“MLU-2”) which is applicable to a certain tract of land bounded by Anderson Road, Ireland Avenue and Queen City Avenue more fully described in Exhibit “A” and depicted on the Stage I Development Plan attached as Exhibit “B-1”.

2. TriStar is currently negotiating and will, when the conveyance is completed, become the fee simple title owner of a 3.2 acre, more or less, tract of real property located in the MLU-2 zone on the Northerly side of Anderson Road, South of Queen City Avenue, and North of Ireland Avenue, in Crescent Springs, Kentucky, (the “Site”) which is more particularly described on the attached Exhibit “A”; and

3. The Developer has requested the City Council approve its proposed Stage I Development Plan Exhibit B-1 (“Stage I Plan”) and the proposed Phase I of the Stage II Development Plan detailing the construction of the site infrastructure, including but not limited to roads, utilities, drainage and site work grading, Exhibit B-2 (“Stage II – Phase I Plan”), as part of the Developer’s multi-phase planned development and construction of a retail center in a MLU-2 zone (the “Project”), to be known as Crescent Springs Commons (“Commons”); and

4. The Developer or the Developer’s tenant for each of the Areas to be developed shall be required to submit supplemental detailed plans including final building plans, final grading plans and site specific design plans, including signage and landscaping (Stage II Phase II Plans). The Developer’s proposed Tenant for Area No 1, AutoZone Development LLC, has leased Area No 1, subject to satisfaction of its contingencies for development, and is preparing final building plans, fine grading plans, site specific design plans (Stage II-Phase II-A Plans) for above ground improvements to be constructed in Area No 1 of the Project {Area No 1 as depicted in Drawing C3-0, the Site and Roadway Plan of the Stage II-Phase I Plan}; and

5. The Developer, after the City’s final approval of the Stage I Plan and Stage II-Phase I Plan for this Site, shall complete the acquisition of the Site. Upon completion of the purchase of the real estate described in Exhibit A, Developer shall record a plat of the real estate as combined into a single development Project (the “Plat”), which substantially incorporates and contains all provisions of the Stage I Plan and the Stage II-Phase I Plan, as approved by the City and reviewed by the Kenton County Planning Commission (“KCPC”) and the Planning and Development Services of Kenton County (“PDSKC”). After approval of the Stage I Plan, the Stage II-Phase I Plan, and closing on purchase of the real estate, the Developer intends to promptly commence the construction work on the Project, in substantial conformity with the approved plans required to build the Project contemplated by this Agreement. A copy of the Stage I Plan is attached as Exhibit B-1, the Stage II-Phase I Plan attached as Exhibit B-2, and the Design Guidelines attached as Exhibit B-3; and

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6. After approval of the Stage II-Phase II-A Plans, by the City, AutoZone intends to promptly commence construction of the improvements to Area No 1 of the Project; and

7. To achieve the mutually desirable objectives for this Project and in order to complete this Project in conformity with the conditions of Stage I and Stage II approvals, the City and the Developer agree that a development agreement is needed and choose to enter into and adopt such an agreement.

AGREEMENT

The City and the Developer, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, and in consideration of the promises, terms, conditions and mutual covenants and undertakings contained in this Agreement agree as follows:

ARTICLE 1 – BACKGROUND STATEMENTS

All of the above Background statements are adopted and made a part of this Agreement.

ARTICLE 2 - DEFINITIONS

The following term when used in this Agreement shall have the meanings set forth below:

A. “Amenities” means the improvements for the public space planned in the Commons or other improvements for landscaping and lighting the public streets and interior roads of the Commons.

B. “Area” means one of the discreet areas for development within the Project as depicted in the Site and Road Plan attached as Sheet C3-0 of Exhibit “B-2”, the Stage II-Phase I Plan, as labeled Area No 1, Area No 2 and Area No 3.

C. “AutoZone” means AutoZone Development LLC, its successors or assigns.

D. “City” means the City of Crescent Springs, Kentucky.

E. “Commons” means the Crescent Springs Commons, being all of the commercial development located on the Site and depicted in Exhibits B-1 and B-2.

F. “Developer” means TriStar Ventures LLC, a Kentucky limited liability company, its successors and assigns, the developer and owner of the Site, by purchase or currently under contract to purchase.

G. “KCPC” means the Kenton County Planning Commission.

H. “Lease” means any lease of Area within the Commons between the Developer or Owner and an exclusive occupant of the Area, or in the case of a multi-tenant building constructed in an Area, the lease of a discreet space within the building to a tenant.

I. “Owner” means each person that acquires from the Developer, consistent with the Zoning Code, a fee simple ownership interest in one or all of the Areas within the Commons.

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J. "Party" means the City, Developer or any other persons becoming a party to this Agreement in accordance with the terms hereof. "Parties" is the collective reference to the City and/or Developer and/or any other persons becoming a party to the Agreement.

K. "Person" means any natural person, partnership, limited partnership, limited liability company, corporation, association or other legal entity.

L. "Plan" means a development plan approved by the City from time to time including but not limited to the Stage I and Stage II plans.

M. "Project" means the construction and development of a multi-use and multi-tenant retail and shopping facilities on the Areas within the Site that will be known as the Commons.

N. "REA" means the Reciprocal Easement Agreement imposed upon the Commons for creating and establishing permanent easements for ingress and egress over Sarah Lane and Emily Drive and establishing permanent easements for the installation, repair, maintenance, replacement and improvement of necessary infrastructure, including but not limited to utilities and storm water control.

O. "Site" shall mean the lands described in Exhibit A and depicted in Exhibit B-1.

P. "Soft Costs", including "Engineering and Financing Costs" means the cost of engineering, legal, financing costs, land cost for public space and public roads, City of Crescent Springs' review, interest, any out-of-pocket or costs which are associated with project improvements and not construction costs.

Q. "Stage I Development Plan" means that certain development plan dated July 8, 2015, prepared by Prism Engineering & Design Group, LLC, and recommended for approval by the KCPC on August 6, 2015, attached as Exhibit B-1.

R. "Stage II-Phase I Plan" means the Stage II Plans submitted by or on behalf of the Developer for construction and installation of the infrastructure for the Project, including but not limited to the rough site grading and elevations, roads, utilities, sidewalks, traffic control devices, and site drainage for the Project, Exhibit B-2.

S. "Stage II-Phase II Plan" means the detailed construction drawings, building plans, parking lot configurations, lighting, above ground improvements, elevations, colors, and final grading plans for the specific improvements to be erected and installed in a designated Area of the Project as approved by the City.

T. "Stage II-Phase II-A Plan" means the detailed construction drawings, building plans, parking lot configurations, lighting, above ground improvements, elevations, colors, and final grading plans for the specific improvements to be erected and installed by AutoZone in Area A of the Project as approved by the City. Such plans shall include black glass fake windows that cover not less than thirty percent (30%) of the exterior portion on three sides of the building. In addition, all downspouts shall be hidden or built into the wall. All roof top mounted HVAC shall be sufficiently screened with materials color compatible with the exterior walls such that the HVAC equipment is not visible from adjacent properties or streets.
U. "Tenant" means each person or legal entity who leases retail, commercial or office space from the Developer in the Site or who owns and occupies an Area in the Commons or a discreet space within a multi-tenant building on an Area.

V. "Traffic Study" means the Traffic Impact Study dated September 25, 2015, prepared by Diane B. Zimmerman Traffic Engineering, LLC.

W. "Zoning Code" means the City Zoning Code and other applicable land use and building regulations of the City of Crescent Springs, Kentucky.

ARTICLE 3 – PURPOSE AND SCOPE

A. Purpose. The purpose of the Parties in entering into this Agreement is to set forth the mutual understandings, agreements, obligations and responsibilities of the Developer and the City required to commence and complete the development of the Project on the Site according to the Stage I Plan, the Stage II-Phase I Plan, and subsequently submitted Stage II-Phase II Plans that have been mutually reviewed and agreed to by the City and the Developer.

B. Scope. In relation to the foregoing, the Parties agree their respective scope of work is as follows:

1) The City’s scope of work ("City’s Work") is to generally assist Developer to the extent necessary in dealing with other governmental entities to obtain encroachment or access permits required, if any, for infrastructure related work, to vacate that part of Ireland Avenue adjacent to Walgreens between the proposed Sarah Lane and existing Anderson Road, to convert the 3-way signal traffic control light at Anderson and Clock Tower Way to a 4-signal traffic control light the cost of which will be paid by the Developer, and to do and to perform all other acts required under the Kentucky Revised Statutes as amended in connection with the approval of the Project.

2) The Developer’s scope of work ("Developer’s Work") is to ensure that the Site will consist of the development of the Site and the reasonably prompt construction of a multi-phase commercial retail shopping center as tenants for such space are procured, incorporating an AutoZone parts store on Area No 1, and improving Area No 2 and Area No 3 with compatible retail facilities, restaurants, drive-through facilities, and/or professional services center, in a manner to be complementary, using materials and elements mutually agreed to between the Developer and the City. Developer agrees to commence construction on any buildings for Area No 2 or Area No 3 when fifty percent (50%) or more of the net leasable building space is under lease or contract. The Developer and the City agree that the City, through its duly authorized representative, shall before construction of any structure within the Site, have the opportunity for comments, suggestions and general approval rights on the design of the buildings and structures located within the Commons in order to determine and ensure the design compatibility of any structures are in accordance with the approved Design Guidelines. Material changes or modifications to the Stage I Plan and/or Stage II-Phase I Plan, or any approved Stage II-Phase II shall be permitted with prior approval of the City. For all buildings in Area No 2 and Area No 3, all downspouts shall be hidden or built into the wall. All roof top mounted HVAC shall be sufficiently screened with materials color compatible with the exterior walls such that the HVAC equipment is not visible from adjacent properties or streets.
ARTICLE 4 – OBLIGATIONS OF THE PARTIES

1. Obligations of the City.

In order for the scope of City Work to be met, the City shall undertake the following tasks:

a. The City shall use its best efforts to assist Developer to obtain approval of any necessary encroachment rights or permits to construct an entrance from the Commons onto Anderson Road at the intersection of Clock Tower Way, an entrance from Sarah Lane onto Queen City Avenue, and an entrance from Sarah Lane onto Ireland Avenue.

b. If it becomes necessary for the Developer to acquire real property to accomplish any of these infrastructure improvements, including the construction or new lanes of existing roadways, the acquisition of any right of way property shall be solely that of the Developer and shall be at no expense to the City.

c. The City shall, upon the Developer closing on and acquiring title to the Site, close that portion of the existing Ireland Avenue adjacent to the Walgreens and the Commons and lying South of the Southerly right of way line of proposed Sarah Lane, and allow Developer to enter that portion of the closed road as necessary to enable Developer to commence and complete Developer’s necessary site work, grading, and infrastructure improvements for the Project. As part of the closure, City and Developer will grant to Duke Energy such right of way or easements as necessary for Duke Energy to relocate a transmission power pole within the area of the closed Ireland Avenue.

d. The City shall, upon the Developer commencing construction of Sarah Lane and Emily Drive, undertake to legally vacate that portion of the existing Ireland Avenue adjacent to the Walgreens and the Commons and lying South of the Southerly right of way line of proposed Sarah Lane.

e. The City shall enact all necessary and appropriate legislative action necessary to approve this Agreement.

f. The obligations of the City under this Agreement, including the City’s obligations under this Section, are contingent upon Developer acquiring fee simple title to Site, excluding Ireland Avenue.

2. Obligations of the Developer.

a. The Developer shall use its best efforts to acquire fee simple title to the Site, and to purchase from the owner of the Walgreens premises that portion of vacated Ireland Avenue lying west of the centerline of vacated Ireland Avenue.
b. The Developer shall develop the Site and Commons, including but not limited to the Amenities, in substantial conformity with the Stage I Plan as amended from time to time and the approved Stage II-Phase I Plan as amended from time to time, the Plat and the Design Guidelines. Developer warrants and represents to the City that the Developer possesses signed, written contracts to purchase all parcels of land within the Site, except that portion of Ireland Avenue to be vacated, and has a tentative agreement with the Walgreens site owner to acquire the southwesterly half of Ireland Avenue to be vacated. Developer's obligation under this Agreement is contingent upon the closing of the acquisition of Site, except Ireland Avenue, from the current real property owners.

c. Developer agrees to promptly commence the Project, including construction of the infrastructure for the Commons, and construction of Emily Drive and Sarah Lane. Developer covenants that it has a ground lease with AutoZone Development Company wherein AutoZone will construct the approved improvements to Area No 1. Developer agrees to diligently develop and build an office, restaurant or commercial retail shopping center in Area No 2 and Area No 3 of the Commons as Tenants may be procured upon commercially reasonable terms, all of which construction shall be in general conformity to approved plans, elevation drawings and the Design Guidelines, as now or hereinafter mutually reviewed and approved by the Developer and the City, using those building materials and designs as more fully defined and set forth in the Design Guidelines, that are shown in the attached Exhibit B-3, subject, however, to modification of the Stage I Plan and Stage II-Phase I Plan as approved from time to time by the City. Developer shall require of each Tenant or entity constructing any improvements on the Site to comply with this Agreement and to submit all required Stage II Phase II Plans.

d. Utilities: The Developer shall be solely responsible to extend utility services within the Site to each Area and any improvements located on an Area within the Commons, of sufficient size and design to adequately service the improvements constructed.

e. Drainage: The Developer shall be solely responsible to extend surface and storm water drain facilities from the parking and improvements on each Area within the Commons of sufficient size to adequately service storm water runoff from the Site, and to interconnect such facilities to the City's existing storm water system.

f. Interior Access: The Developer shall impose as part of the Plat or the REA, private rights of way for ingress and egress over those portions of the Commons described as Sarah Lane and Emily Drive, which easements shall include the right of the public to access and travel over Sarah Lane and Emily Drive for ingress and egress to and from Anderson Road, Queen City Avenue and Ireland Avenue.

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g. Roadway Improvements within the Site: The Developer agrees and shall be solely responsible for the costs of construction of the interior roads within the Site and Commons, as set forth in the Stage I Plan and Stage II-Phase I Plan, and upon closure or vacation of Ireland Avenue, as may be necessary for the Developers site work and grading plans, to remove the existing road surface between Sarah Lane and Anderson Road, and consistent with the Stage II-Phase I Plan, and upon development of Area No 2, replacing the road surface with appropriate parking and/or landscaping in accordance with the Stage II–Phase II Plans ultimately approved for Area No 2.

(i) Public Roadway Improvements:

a. The Developer shall, prior to or at the same time as the initial construction work on the Site has begun, initiate any necessary approvals or encroachment rights from the appropriate governing authority over Anderson Road, Queen City Avenue and Ireland Avenue, and shall construct the entrances/exits from Sarah Lane and Emily Drive to adjacent City streets. The “Public Road Improvements” shall consist of the new entrances from Emily Drive onto Anderson Road, the new entrances from Sarah Lane onto Queen City Avenue and Ireland Avenue, and reconfiguring the stop light at Anderson Road and Clock Tower Way from a three-way signal to a four-way signal controlling the traffic at the intersection of Anderson Road-Clock Tower Way-Emily Drive. Included as part of the Public Road Improvements and prior to initial construction of roadway at the Site is the obligation of the Developer to submit and present for approval by the appropriate governmental entity having oversight and control of Anderson Road a preliminary traffic signal design for control of vehicular traffic at the intersection Anderson Road, Clock Tower Way and Emily Drive. Once approved the Developer shall be responsible for the installation and payment of all necessary traffic signal infrastructure and equipment at this intersection.

b. The Developer shall have all Public Roadway Improvements completed and approved by the appropriate governmental entities and ready for full use by vehicular traffic before or at the same time as any occupancy permit is issued for any building or structure within the Site. The Developer shall have twelve (12) months from the day the Developer or AutoZone receives the initial construction permits for development of Area No 1 of the Commons to commence construction of the Stage II-Phase I and related Public Road Improvements.
c. The Developer agrees as part of these Public Road Improvements it has the responsibility and shall, at its sole cost, promptly apply for and obtain from, as the case may be, all governmental or private entity approvals to install all required traffic control devices, lights or signs, as required by the Traffic Study. All the traffic control devices, signs and signal lights, including pedestrian signal lights, shall be obtained and installed at no expense to the City.

d. Notwithstanding the foregoing, the City may, at its election and with concurrence of the Developer, install any part or all of the Public Road Improvements at the City’s cost, but the Developer shall promptly reimburse the City for such costs.

e. Pedestrian Access to the Commons; Landscaping:

(i) The City and the Developer agree that this Development is intended to be as “pedestrian friendly” as possible. To meet that objective, the Developer shall, in accordance with and substantially as depicted on the approved Stage I and Stage II-Phase I plans, design, construct, maintain, repair and replace sidewalks, pedestrian gathering areas, and crosswalks linking the entire Project area with existing surrounding sidewalks, using those materials identified in the Design Guidelines. Sidewalks adjacent to and within the Project Site shall be a minimum of five feet wide.

(ii) As part of these roadway and infrastructure improvements, Developer shall install the pedestrian access walks as set forth and depicted in the Site and Roadway Plan, and as each Area of the Commons is developed, the Developer, or in the case of a Tenant constructing a Tenant’s improvements to an Area, shall install the pedestrian access walks as set forth and depicted in the Stage II-Phase I or any subsequently approved Stage II-Phase II Plan for Area No 1, Area No 2 and Area No 3.

(iii) As part of the construction of building improvements to an Area, the Developer, or in the case of a Tenant constructing a Tenant’s improvements to an Area the Tenant, shall install the associated and appropriate landscaping, temporary and permanent lighting for each Area, all as depicted on the approved Stage I and Stage II-
Phase I plans ("Landscaping Plan") and the Plat. To the maximum extent reasonably feasible, Developer and any Tenant constructing improvements to an Area shall use plants and vegetation native to Northern Kentucky.

f. General Site Construction Matters:

Developer agrees to develop the Site in conformity with applicable City zoning requirements, rules and regulations, including without limitation, installation and maintenance of all lighting, screening, private parking and landscaping. The Design Guidelines for construction of the structures with the Site have been mutually agreed to between the City and the Developer and are set forth in the Design Guidelines, shown in Exhibit B-3, which are incorporated into and made a part of this Agreement.

g. Signage

Developer shall, according to the approved Stage I Plan and Stage II-Phase I Plan, design, construct, maintain, repair and replace, using those materials identified in the Design Guidelines, a single monument sign, not to exceed fourteen (14) feet in height, architecturally consistent with the general sign plan attached as Exhibit "C" ("Sign"), together with the landscaping associated with the Sign.

h. Area No 1:

Developer agrees to require that AutoZone, as the ground lease tenant for Area I, to construct the improvements to Area I in a manner consistent with the Stage II-Phase II-A Plan approved by the City, and to require that AutoZone diligently commence and complete construction work on Area No 1, to be completed and in compliance and conformity with the this Development Agreement and the Design Guidelines.

i. Area No 2 and Area No 3:

Developer, or any Tenant or entity leasing land or space from Developer, shall, prior to construction of any building improvements, submit to the City for review and approval appropriate Stage II-Phase II Plans. Developer, or in the case of a Tenant constructing a Tenant's improvements to an Area the Tenant, shall commence and complete the construction of the improvements to Area No 2 and Area No 3, and in connection with improvements, install such
parking, pedestrian access, landscaping, lighting and other amenities required by the approved Stage II-Phase II Plans.

j. Completion of Site Work

Developer agrees to exercise its best efforts to promptly achieve substantial completion of all infrastructure, road, and site improvements within the Site as shown on the Site and Roadway Plan, the approved Stage I Plan and Stage II-Phase I Plan within twenty four (24) months following the issuance of all governmental approvals for the Project for the Stage I Plan and Stage II-Phase I Plan. Developer shall exercise its best efforts to obtain said approvals. Developer shall at its sole cost, install the infrastructure, curbs, gutters, drains, utilities and access drives for the Commons consistent with the Stage II-Phase I Plan.

Notwithstanding any other provision of this Agreement, to the extent that the Developer shall exclusively lease an Area to a Tenant, the Developer may by contract impose upon the Tenant the exclusive obligation to construct the improvements to the Area, including all associated infrastructure, parking areas, lighting, screening, private parking and landscaping in substantial conformity with approved Stage I and Stage II-Phase I plans, subject however to modification in accordance with applicable procedures, using those materials identified in the Design Guidelines. Developer may also, by lease or contract, impose upon such Tenant the continuing obligation to maintain the improvements to the Area, including all associated infrastructure, parking areas, lighting, screening, private parking and landscaping, in substantial conformity with approved Stage I and Stage II-Phase I or Stage II-Phase II plans. Should Developer convey in fee any part of all of an Area, in accordance with the Code, the new Owner shall be bound by the terms of this Agreement and the approved Plans for Stage I and Stage II for each Area. Any such lease identified in this section entered into on or after the effective date of this Agreement shall include text to incorporate by reference this Development Agreement. Any such improvements made by any tenant shall be constructed, completed and maintained in substantial conformity to the provisions set forth in this Development Agreement and Design Guidelines.

3. Financing of the Project:

a. Developer shall be solely responsible for arranging necessary financing for the Development and Project. Any mortgage or deed of trust granted
on the Site to secure such financing shall be expressly subject to, and any successor owner, bound by the terms of this Agreement, the Code and the approved Plans.

b. City Financial Concerns. The Developer shall require that as part of any construction or service related contract involving any contractor, including any subcontractor, supplier or equipment supplier or materialmen used or approved for any construction or service related work associated with this Project, a provision in such contract(s) which contractually requires each contractor, subcontractor, equipment supplier, and/or material supplier to be identified to the City, to obtain all necessary business licenses prior to the performance of any work, and to fully pay all business taxes resulting from said work.

4. Miscellaneous Site Usage Issues:

The City and Developer mutually agree to the following use limitations and restrictions which are not clearly identified or defined in the text for Permitted Use and Accessory Use in the Zoning Code for the MLU-2 zone, if any, shall be included in the Stage II approval. However, the Developer agrees as follows:

a. Developer agrees not to knowingly include in any lease any use by any tenant or user of the Site that is considered to be or can fall into the description of a sexually oriented business, as that term is defined by the City and interpreted by the Kentucky Courts.

b. The MLU-2 Code, as amended, permits “drive-thru” restaurants but only as a conditional use. To provide an interpretation to this term which may not be fully defined in the Zoning Code, the parties agree that such term may be interpreted and further defined to mean as follows:

DRIVE-THRU FACILITY: A facility which, by its design (e.g., window, counter, microphone/speaker, etc.), allows a customer of that facility to receive goods and/or services while remaining in their automobile at that facility and where the consumption/use of the product or service is intended to be elsewhere than on the premises.

c. The Developer agrees that “Drive-Thru” facilities includes, only by way of example, restaurants such as Starbucks, Arby’s, Wendy’s, Burger King, McDonald’s, Taco Bell, or Kentucky Fried Chicken, or any similar local, regional or national fast food restaurants (the “Drive Thru Restaurants”).

d. Precluded from operation on the Commons shall be any sexually oriented business, billiard hall, laundromat, auto body repair shop, new and used truck sales, new and used boat and boat trailer sales, gasoline sales, nail salons, massage parlors, pawn shops, check cashing stores, pay-day loan stores, and second hand re-sale shops, except second hand retail shops dealing in high-end luxury goods or unless part of a national or regional
franchise or chain of re-sale shops dealing in quality goods. No retailer at the Site or tenant to the Commons shall provide or permit any outdoor display of retail product or services.

e. With respect to the tenant of Area No 1, AutoZone, or any successor automotive parts retail dealer it shall not allow, nor shall it permit either any of its customers or employees to perform any automotive repair, service or maintenance work on any motor vehicle parked or located within proximity of its retail store. Provided, however, that the employees of the Tenant of Area No 1, AutoZone, may perform customary diagnostic testing and courtesy installation of windshield wipers, batteries and other minor items that are customarily performed in such tenant’s other stores, as long as such tenant’s employees properly dispose of retired components. The AutoZone employees shall not perform oil changes, install brake fluid or perform other repairs involving fluid exchange. Tenant shall post a sign in its store that customers are not permitted to work on their vehicles in the parking lot; provided, however, that the tenant shall make reasonable effort to enforce such restriction, inform its customers of the restriction, and require its customers to adhere to such restrictions.

f. In the event a tenant or occupant of any Area within the Commons shall breach any of the restrictions contained in this Agreement, including but not limited to engaging in any of the activities prohibited by Section 4d and 4e, the Developer shall have the right to enforce the restrictions by any method at law or in equity, including injunctive relief barring such prohibited activities.

g. Developer, on behalf of its Tenants, shall establish by lease or the REA locations to be used for the unloading of vehicle delivery trucks to the businesses in the Commons. All deliveries shall, to the extent reasonably possible, be from the designated service areas within each Area. Once the improvements to an Area have been constructed, the Tenants shall not be permitted to park vehicles on Anderson Road, Emily Drive, Sarah Lane, Queen City Avenue and Ireland Avenue for purposes of loading or unloading goods for delivery to or pick-up from the Tenant.

h. In the case of an allowed Drive-Thru Facility, the facility shall be designed to accommodate planned vehicular traffic to avoid having vehicular traffic to “stack” or back-up onto Sarah Lane or Emily Drive.

i. The Developer, through covenants or leases, shall prohibit overnight parking of vehicles, including trailers, in the Commons.

j. Developer agrees, that as part of the infrastructure improvements of existing roadways, the access points at Emily Drive at its intersection with Anderson Road and Clock Tower Way shall contain three lanes of traffic: (1) a right turn entry from Anderson Avenue into Emily Drive; (2) a left turn lane from Emily Drive onto Anderson Road; and (3) a combined lane
to turn right from Emily Drive onto Anderson Road or to drive straight from Emily Road to Clock Tower Way. The Developer shall design, construct and improve these entry points in such a manner and with such appropriate traffic control devices to control vehicular traffic per the City Engineer’s approval.

k. All signage shall be consistent with and in compliance with the Design Guidelines and the Code.

l. The minimum size parking space shall be 9 X 18 feet. Provided, the Developer may design specific parking spaces for motorcycles, three wheeled vehicles, and low-speed (golf cart) vehicles. Handicapped accessible parking spaces shall be provided in each Area, consistent with the Code.

m. Seasonal sales outside of Premises within the Development shall be permitted only pursuant to permit issued by the City. No permanent outside sales are permitted without consent of the Developer and City.

n. If the Developer establishes a business owners association for the Commons, at the request of the City, a representative of the City shall be appointed as an ex-officio member of the association.

o. During construction of the Project, the Developer will use its best efforts to meet with the City and its designated representatives and to keep the City appraised of the progress of the construction.

p. In order to maintain the attractiveness and desirability of the entire Development, before completion of the Area No 2 and Area No 3 improvements, the Developer shall be solely responsible for and shall consistently and routinely police, maintain and remove and all litter, debris or other discarded materials that may be placed or located on any of the grounds within the Site or adjacent to the Site, including the surrounding roadways and entry access areas to the Site. After completion of the improvements to an Area, the Developer may, by contract or lease, impose such duties upon the Tenant.

q. A certificate of land use restrictions or memorandum of restrictions shall be filed with this document and recorded with the Kenton County Clerk in accordance KRS 100.3681 and 100.3683.

r. To the extent that the Developer may lease or transfer title to an Area (subject to and in compliance with all applicable regulations of the City), the obligations of the Developer herein may be assigned to a Tenant or Owner of the Area, and the terms, conditions and covenants of this Agreement shall be binding upon such Tenant or Owner.
5. **Enforcement:**

In the event of any continued condition or occurrence in violation of any of the terms, covenants and conditions of this Agreement by the Developer, an Owner or a Tenant for more than thirty (30) days following the receipt of written notice thereof from the City ("Notice"), unless the Developer, Owner or Tenant, as the case may be, has notified the City in writing that the responsible party has commenced curing the violation and will proceed diligently to cure the violation as soon as reasonably possible, the City may exercise any remedy available to the City at law or in equity and the Owner or Tenant, as the case may be, shall reimburse the City for reasonable attorney’s fees incurred due to Owner’s or Tenant’s violation. However, Owner and/or Tenant shall be given a reasonable opportunity during the aforementioned thirty (30) day period following its receipt of the Notice to present its objections in response thereto. Such objections shall be presented to the Crescent Springs City Zoning Administrator, who shall consider the supporting information provided by the Owner and/or its agents and representatives, and render a written determination hereto. Such determination may be appealed by either party pursuant to KRS 100.261.

**ARTICLE 5 – COSTS AND EXPENSES**

**City’s Work.** The Developer shall fully reimburse the City for all of the City’s actual costs to complete the Work the City is obligated to perform under this Agreement, including all reasonable attorney’s fees and engineering fees, including all costs and expenses associated with vacating the right of way for Ireland Avenue and movement or relocation of any utility lines or infrastructure. To the extent that the City shall incur and advance any costs for Work to be performed by the Developer, including but not limited to conversion of the 3-light signal at Anderson & Clock Tower Way into a 4-light signal, Developer shall reimburse City for the City’s actual costs.

**Developer’s Work.** The Developer shall perform the Developer’s Work at its own cost and expense.

**ARTICLE 6 – MANAGEMENT OF THE PROJECT**

A. **Control.** Developer shall have sole control over the Project and is entitled to take such action as is commercially proper and necessary to perform its obligations hereunder, provided that such actions of Developer shall not be inconsistent with the terms of this Agreement or contrary to law.

B. **Meetings.** Meetings of the City and Developer shall be held, at the request of either of the Parties at a mutually agreeable time and place. During such meetings the Developer shall present to the City’s designated representative(s) all updates and, if any, new plans and courses of action that Developer proposes for this Project. All meetings required to be held pursuant to the Kentucky Open Meetings Act shall be properly noticed and held.

C. **No Conflict.** The City acknowledges that Developer, and affiliates of Developer, have a number of development projects in the greater Cincinnati metropolitan area and that the activities of Developer and its affiliates with respect to such other projects shall not constitute a
conflict of interest or otherwise entitle the City to any claim against Developer, its affiliates, or any such other project, under this Agreement or otherwise.

ARTICLE 7 – REPRESENTATIONS AND WARRANTIES

Representations and Warranties of Developer. Developer represents and warrants to the City as follows:

A. Developer is a Kentucky limited liability company duly formed, validly existing and at the time of acquisition of the Site will be authorized to do business in the Commonwealth of Kentucky; and

B. Developer has full power and authority to enter into and perform this Agreement. The execution, delivery and performance of this Agreement and all transactions contemplated hereby have been duly authorized and approved by all necessary actions of the Developer, and are valid and binding obligations of Developer.

C. Developer has the financial ability to perform the Developer’s obligations under this Agreement.

ARTICLE 8 – INDEMNIFICATIONS

A. Indemnifications. Developer hereby agrees to indemnify and hold the City harmless and agrees to defend the City from and against any and all claims, losses, damages, demands, liabilities, obligations, penalties, actions or rights of action, judgments, suits, costs, expenses, or disbursements of any kind or nature which may arise as a result of:

1) Breach of this Agreement by Developer;

2) Anything done or omitted to be done through the negligence or intentional acts of Developer or of its staff, agents or employees; or

3) Any action by Developer or any of its officers, directors, employees, or agents, which action has not been authorized by the other.

B. Notice. The City shall promptly give Developer written notice of any and all claims, losses, damages, demands, liabilities, obligations, penalties, actions or rights of action, judgments, suits, costs, expenses, or disbursements of any kind of nature for which the City seeks indemnification.

C. Survival. The obligations of the Parties under this Article shall survive termination of this Agreement without limitation.

ARTICLE 9 – LIMITATION ON TRANSFERS AND NO ASSIGNMENTS OR THE RIGHTS AND INTERESTS UNDER THIS AGREEMENT

A. Limitation on Transfers of Agreement. No party hereunder shall have any right to and shall not pledge, hypotheicate, encumber, or otherwise subject all or any part of its interest in this Agreement or created by this Agreement to a security interest of any kind, without the prior written consent of the other Party.
B. **No Assignment of Rights and Delegation of Duties.** This Agreement is solely intended to be between the City and the Developer and for the purpose of redevelopment of the Site within the City as a quality first class, retail development consistent with the overall Site design and Plan as submitted and approved. To that end, neither the City nor the Developer, except to the extent otherwise herein provided and permitted, shall assign or be permitted to assign this Agreement. Provided, however, that as to the exclusive leasing of any Area to a Tenant, the Developer may by contract or lease, impose upon such Tenant the obligations of this Agreement as to such Area. After completion of the improvements required by the Plan, the continuing obligations of maintenance or other prospective duties may be assigned or transferred to the Tenant or new Owner as the case may be, and such Tenant or new Owner shall be required to assume such duties.

**ARTICLE 10 – MISCELLANEOUS**

A. **Duration.** The term of this Agreement shall commence on the date set forth above and shall remain in effect and as a continuing obligation of the Parties until the Commons has been fully developed and certificates of occupancy have been issued for all buildings constructed in the Commons. The restrictions on use and continuing obligations of this Agreement continue so long as the Project exists.

B. **Waiver.** The failure of any Party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of any right thereunder, nor shall it deprive that Party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be made in writing.

C. **Exhibits.** All Exhibits attached to or referred to in this Agreement shall be deemed to have been incorporated by reference as part of this Agreement whether or not physically attached to this Agreement. The summary of included Exhibits is:

- Exhibit A: Legal Description of tracts within Site;
- Exhibit B-1: Stage I Plan
- Exhibit B-2: Stage II-Phase I Plan
- Exhibit B-3: Design Guidelines
- Exhibit C: Monument Sign Plan

D. **Notices.** All Notices, requests, consents, approvals, demands and other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed to have been duly given when (a) delivered personally or (b) three business days after deposit in the United States Mail, postage prepaid, by certified mail, return receipt requested, or (c) by telegram, cable, e-mail or facsimile telephone transmission, if given below, or later provided, addressed as follows or to such other person or address as either party shall designate by notice to the other party given in accordance herewith:
Developer: TriStar Ventures LLC
Attn: Joseph Reding
The Reding Company LLC
2460 Executive Dr., Ste. 114
St. Charles, MO 63303
Ph: 636-477-8288
Fax: 636-477-6522
Cell: 314-791-3445
Email: jredco@sbcglobal.net

Copy to: David L Schank Companies
David L. Schank, CCIM
8134 New LaGrange Rd., Ste. 225
Louisville, KY 40222
Ph: 502-429-0059
Fax: 502-429-0337
Cell: 502-648-8710
Email: davidlschank@aol.com

City: City of Crescent Springs
Attn: Lou Hartfiel, Mayor
739 Buttermilk Pike
Crescent Springs, KY 41017
Facsimile: (859) 341-3518
Email: LHartfiel@crescent-springs.ky.us

Copy to: George Ripberger
City Administrator
ABC & Zoning Administrator
City of Crescent Springs
Ph: 859-341-3017
Ph: 859-344-0797
Cell: 859-760-0762
Fax: 859-344-0794
Email: rip3172@crescent-springs.ky.us

Copy to: Joseph L Baker, City Attorney
Ziegler & Schneider PSC
541 Buttermilk Pike
Crescent Springs, KY 41017
Fax: (859) 426-1300
Email: jlbaker@zslaw.com

E. Execution. Neither this Agreement nor any subsequent agreement amending or supplementing this Agreement shall be binding on the Parties unless and until it has been signed on their behalf by a duly authorized representative. Commencement of performance hereunder or under any subsequent agreement shall not constitute a waiver of this requirement. As used herein, the term “Agreement” shall mean this Agreement and any Exhibits hereto. This
Agreement may be executed in one or more counterparts by any Party hereto and by all Parties hereto in separate counterparts, each of which, when so executed and delivered to the other Parties, shall be deemed an original. All such counterparts together shall constitute one and the same instrument.

F. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, without regard to its rules as to conflicts of laws. The parties hereto further agree that any action, suit or proceeding in respect of or arising out of this Agreement, its validity or performance shall be initiated and prosecuted as to all parties and their heirs, successors and assigns and consent to and submit to the exercise of jurisdiction over its person by any court situated therein having jurisdiction over the subject matter.

G. **Relationship of the Parties.** Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the parties hereto shall be deemed or construed by the Parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association between any of the Parties to this Agreement.

H. **No Third Party Beneficiary.** Except as otherwise specified herein, the provisions of this Agreement are for the exclusive benefit of the City and the Developer and their successors and permitted assigns, and not for the benefit of any other person or entity, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any other person or entity.

I. **Dispute Resolution.** Both the Developer and the City agree that to carry out the spirit and intent behind this Agreement each shall cooperate with the other in furtherance of the objectives of this Agreement. If, however, a matter arises that is addressed in this Agreement or the interpretation of which cannot be mutually resolved and remains in dispute, the Developer and the City agree that an alternate dispute resolution is appropriate to resolve differences. To that end the Developer and the City agree to submit unresolved Agreement matters in dispute to mediation. In event that either Party notifies the other in writing that mediation is requested by such Party, the Party receiving the Notice shall have thirty (30) days in which to respond. Mediation shall be before the Circuit Court of Kenton County, Kentucky, determined by each party selecting and mutually agreeing upon a mediator and shall take place in Kenton County, Kentucky. The costs of mediation shall be equally shared and paid.

J. **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it was held to be invalid or unenforceable, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law, but only if and to the extent such enforcement would not materially and adversely frustrate the parties’ essential objectives as expressed herein.

K. **Diligent Performance.** With respect to any duty or obligation imposed on a party to this Agreement, unless a time limit is specified for the performance of such duty or obligation, it shall be the duty or obligation of such party to commence and perform the same in a diligent and workmanlike manner and to complete the performance of such duty or obligation as soon as
reasonably practicable after commencement of the performance thereof. Notwithstanding the
above, time is of the essence in regard to payment obligations.

L. **Time of the Essence.** Time is of the essence for all matters in this Agreement
herein and the Developer shall diligently pursue and complete its obligations hereunder.

M. **Force Majeure.** Developer shall not be in default in the performance of any
obligation on such party’s part to be performed under this Agreement, other than an obligation
requiring the payment of a sum of money, if and so long as the non-performance of such
obligation shall be directly caused by labor disputes, lockouts, acts of God, enemy action, civil
commotion, riot, governmental regulations not in effect at the date of execution of this
Agreement, conditions that could not have been reasonably foreseen by the claiming party,
inability to obtain construction materials or unavoidable casualty or other causes beyond the
reasonable control of Developer.

N. **Approvals.** Whenever a party to this Agreement is required to consent to, or
approve, an action by the other party or to approve any such action to be taken by another party,
unless the context clearly specifies a contrary intention or specific time limitation, such approval
or consent shall be given within ten (10) business days (i.e., Saturdays, Sundays and legal
holidays excluded) and shall not be unreasonably withheld or delayed by the party from whom
such approval or consent is required.

O. **Binding Effect.** This Agreement and all of the provisions hereof shall run with
the land and shall be binding upon and inure to the benefit of the Parties and their respective
successors and permitted assigns.

P. **Successors and Assigns/Memorandum of Agreement.** Subject to the limitations
in Section 5, the covenants, terms and conditions contained in this Agreement shall inure to the
benefit of, and be binding upon, the successors and assigns of the parties hereto, including any
person or entity to which the Developer may sell a Lot as defined in this Agreement. This
Agreement is a condition for the development of the Site and shall be a restriction that runs with
the land, and will be a part of the ordinances for the adoption of the Project in the MLU-2 zone.

Q. ** Entire Agreement/Merger.** This Agreement contains, the entire agreement
between the parties hereto with respect to the subject matter set forth herein and supersedes any
and all other agreements, oral or written, in respect to the subject matter of this Agreement.

1) As used herein the term “Agreement” shall mean this Development
Agreement, and the Exhibits attached hereto. This Agreement embodies the entire agreement,
and understanding of the parties hereto with respect to the subject matter herein contained, and
supersedes all prior agreements, correspondence, arrangements and understandings relating to
the subject matter hereof. No representation, promise, inducement or statement of intention has
been made by any party which has not been embodied in this agreement, and no party shall be
bound by or be liable for any alleged representation, promise, inducement or statement of
intention has been made by any party which has not been embodied in this Agreement, and no
party shall be bound by or be liable for any alleged representation, promise, inducement or
statement of intention not so set forth. This Agreement may be amended, modified, superseded,
or cancelled only by a written instrument signed by all of the parties hereto, and any of the terms,
provisions, and conditions hereof may be waived only by a written instrument signed by all of

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the parties hereto, and any of the terms, provisions, and conditions hereof may be waived only by a written instrument signed by the waiving party. Failure of any party at any time or times to require performance of any provision hereof shall not be considered to be a waiver of any succeeding breach of such provision by any party.

DEVELOPER:

TRISTAR VENTURES LLC

[Signature]

Joseph S. Reding and/or David L. Schank, Members
Dated this 17th December, 2015

CITY OF CRESCENT SPRINGS, KENTUCKY

[Signature]

Lou Hartfield, Mayor
Dated this 14th December, 2015