

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement"), dated as of the 15 day of November, 2017 (the "Effective Date"), is made by and between the City of Town and Country Missouri, a City of the Fourth Class ("Seller") and Brinkmann Holdings, LLC, a Missouri limited liability company ("Buyer").

### RECITALS

Buyer wishes to purchase certain real property of Seller's located in St. Louis County, Missouri, being a portion of that property commonly known and numbered as 13332, 13344 and 13360 Clayton Road, Town and Country, Missouri 63131, more particularly described as Lot 1, comprised of approximately 2.401 acres as more particularly hachured on Exhibit A attached hereto and incorporated herein (the exact legal description to be used for conveying and all other purposes to be that contained in the boundary adjustment plat, as confirmed by the ALTA survey later obtained by Buyer (the "Survey") to be mutually obtained and approved by Seller and Buyer), together with all improvements thereon and all rights and appurtenances thereto, and in a "pad ready" condition (the "Property"). The term "pad ready" as used herein shall mean that the subgrade of the land is delivered compacted and ready for footings and foundations in accordance with the "Site Improvement Plans" from Stock & Associates Consulting Engineers, Inc. dated 9/11/17, as revised, 09/25/17. Seller wishes to sell the Property to Buyer.

In consideration of the mutual agreements herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller agrees to sell to Buyer and Buyer agrees to purchase the Property from Seller, on the following terms and conditions:

1. Purchase Price; Payment. The total Purchase Price for the Property shall be Eight Hundred Ten Thousand Dollars (\$810,000.00) (the "Purchase Price"). The Purchase Price shall be payable by check or wire transfer of immediately available Federal funds at Closing.

2. Earnest Money Deposit. An earnest money deposit (the "Deposit") in the amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) shall be deposited with St. Louis Title, LLC, 7701 Forsyth Blvd., Suite 200, Clayton, MO 63105 Attn: Kelly Cochran (the "Title Company") by Buyer within three (3) business days following the Effective Date. The Deposit shall include all earnings thereon and shall be held as specifically provided in this Agreement and shall be applied to the Purchase Price at Closing.

3. Prorations. Real estate taxes and assessments and matters of income and expense, if any, and other matters customarily prorated in transactions of this nature, shall be prorated as of the Closing Date in the manner customary in St. Louis County, Missouri, Seller to have the last day. If the rate and/or amount of the property taxes for the year of the Closing are not available on the Closing Date, such taxes will be prorated based upon the prior tax year's assessment.

4. Closing Costs. Seller shall pay: (1) the costs, if any, of curing objections to the status of title and recording any curative title documents, if Seller has elected to cure; (2) the costs of satisfying any liens placed by Seller on the Property; (3) one-half the cost of the Survey; (4) one-half of the fee of the Title Company for acting as closing and escrow agent; and (5) Seller's attorney's fees. Buyer shall pay: (1) the cost of the policy of title insurance; (2) one-half the cost of the Survey;

(3) the costs of Buyer's due diligence investigations; (4) the costs of any environmental site assessment required by Buyer, (5) one-half of the fee of the Title Company for acting as closing and escrow agent; (6) the costs of recording the deed; and (7) Buyer's attorneys' fees.

5. Conditions Precedent to Buyer's Obligations to Close. The obligations of Buyer to consummate the transactions contemplated herein are subject to the satisfaction of the conditions set forth in this Section, within the period of time following the date of the execution of this Agreement and the date which is the latter of: (a) thirty (30) days after the land is "pad ready", or (b) thirty (30) days after any and all applicable permits, licenses and approvals from all applicable governing authorities relating to the Property are issued to Buyer (the "Due Diligence Period"). Seller shall provide to Buyer copies of existing surveys, title insurance policies, environmental reports and other due diligence documents listed on Schedule 1 in the possession or control of Seller within five (5) days following the Effective Date (collectively the "Due Diligence Documents"). In the event that on or before the expiration of the Due Diligence Period, any of the conditions set forth in this Section have not been fully satisfied or have not occurred, then Buyer may, at its option, terminate this Agreement or waive the unfulfilled conditions, unless Buyer or its affiliates have not diligently performed any agreed upon work under the Development Agreement. Within the Due Diligence Period, as the same may be extended, Buyer shall notify Seller in writing either (i) that the conditions in question have been fulfilled or waived, or (ii) that this Agreement is terminated pursuant to Section 6. In the event that no notice is given by Buyer within said period, Buyer shall be deemed to have waived its right to terminate the Agreement pursuant to this section. The conditions to Closing are as follows:

(a) Acceptable Title Report and Survey. Buyer, at its cost and expense, shall order a preliminary title report with respect to the Property ("Title Report") within ten (10) days of receipt of Seller's existing title insurance policy. The Title Report shall contain or be accompanied by an irrevocable commitment by the Title Company to issue an ALTA owner's extended coverage policy of title insurance (the "Title Policy") on the date of Closing. Buyer shall give Seller written notice within thirty (30) days after receipt by Buyer of the last of both the Title Report and Survey (with Buyer providing Seller with copies of both the Title Report and Survey upon Buyer's receipt), that the conditions of title and/or survey as set forth in the Title Report and Survey are, or are not satisfactory, and in the event that Buyer states that the conditions of such title and/or survey are not satisfactory (i) Buyer, at Buyer's option, may terminate this Agreement pursuant to the provisions of Section 6 hereof or (ii) Buyer may give Seller the option, at Seller's expense, to eliminate or modify all such unacceptable matters to the reasonable satisfaction of Buyer in which event the time for satisfaction of this condition shall automatically be extended to the date of Closing or such other date as may be mutually agreed to by Buyer and Seller. In the event Seller does not elect to attempt correction of such unacceptable matters, Buyer may terminate this Agreement pursuant to the provisions of Section 6 hereof or Buyer may accept title and survey subject to the objections, in which event said objections shall be deemed to have been waived for all purposes. In the event Seller elects to attempt to eliminate or modify such unacceptable matters but is unable to satisfy said objections prior to Closing, Buyer may, at its option: (A) accept title and survey subject to the objections raised by Buyer, in which event, said objections shall be deemed to be waived for all purposes; (B) terminate this Agreement, pursuant to the provisions of Section 6 hereof; or (C) extend the Closing date for a period of up to thirty (30) days, and upon the expiration of said period if Seller shall still have been unable to satisfy said objections, elect either (A) or (B) above.

(b) Inspection/Test/Feasibility Studies by Buyer. At any time during the term of this Agreement, Buyer and its agents, employees, contractors, and representatives, shall have the right, privilege, and license to enter upon the Property for the purpose of making any and all tests, inspections, investigations, feasibility studies, surveys, soil test borings, etc., of any kind or nature which Buyer, in Buyer's sole discretion, desires. Additionally, Seller shall assign to Buyer the recent due diligence reports (i.e. 2016-17) Seller had conducted upon the Property prior to the Effective Date, or the author thereof shall recertify the same to Buyer, or provide Buyer a reliance letter therefor). In the event that the results of these tests, inspections, investigations, feasibility studies or surveys, etc., are not satisfactory to Buyer for any reason in Buyer's sole and absolute discretion, Buyer may, in Buyer's sole discretion, terminate this Agreement pursuant to the provisions of Section 6 hereof.

(c) Easements. Seller shall grant (or vacate, as the case may be) to Buyer, at no cost to Buyer, easements (or vacate existing easements, as the case may be) over property adjacent to the Property (as defined herein) owned by Seller or any affiliate of Seller that Buyer reasonably deems necessary to (i) extend appropriate utilities to the Property, and, on a temporary basis, to (ii) provide reasonable access to such property for purposes of grading and construction consistent with Buyer's intended development on the Property. Such easements shall be located over such portions of the adjacent properties as Seller and Buyer mutually agree. In addition, Seller and Buyer shall mutually agree upon a Reciprocal Easement Agreement, substantially in the form of Exhibit B attached hereto and incorporated herein.

(d) Building and Sign Permits. All applicable governmental authorities shall have issued architectural review board approval and a building permit to Buyer (or its representatives) for the erection of all such building and sign improvements (specifically including all municipal code compliant signs) in accordance with the Buyer's plans and specifications (specifically including a building with a minimum of approximately 10,000 square feet of area and not to exceed 12,000 square feet of area). In the event that Buyer has not received such permits, then Buyer may, in its sole discretion, terminate this Agreement pursuant to the provisions of Section 6 hereof, unless failure to receive such permits is due to Buyer's delay in failing to timely apply for and diligently prosecute all necessary applications.

(e) Approval of Development Plan and Boundary Adjustment Plat. All applicable governmental authorities shall have approved Buyer's Site Development Plan for development of the Property, which shall contain all the elements necessary for Site Plan approval, as well as the Boundary Adjustment Plat (the "BAP") for the Property and Seller's adjacent property, which BAP approval process shall be accomplished by Seller. In the event that Buyer has not received such approval, Buyer in its sole discretion may terminate this Agreement pursuant to Section 6 hereof.

(f) Use of Property. All certificates, permits, and licenses from each governmental authority having jurisdiction over any part of the Property as are necessary to permit the use of the improvements thereon shall be in full force and effect and Seller shall have furnished to Buyer photostatic copies of all such certificates, permits, and licenses in Seller's possession (originals shall be delivered to Buyer at Closing). Buyer covenants and agrees to use its best efforts to lease a portion of the Property improvements (anticipated to be approximately 4,000 square feet of area) to a Restaurant, Traditional lessee/user. In the event that Buyer has not received such permits, then Buyer may, in its sole discretion, terminate this Agreement pursuant to the provisions

of Section 6 hereof, unless failure to receive such permits is due to Buyer's delay in failing to timely apply for and diligently prosecute all necessary applications.

(g) Seller Covenant Regarding Permits, Licenses and Approvals. Seller hereby covenants and agrees that it shall not unreasonably withhold, condition or delay the issuance of any permits, licenses or approvals sought by Buyer in connection with the Property. Seller shall have an affirmative obligation hereunder to diligently prosecute the same to completion.

6. Buyer's Termination Right. Within the Due Diligence Period, Buyer may elect for any reason or no reason not to go forward to Closing which election shall be made by notice describing such reason, if any (pursuant to Section 14 hereof) to Seller given within the Due Diligence Period (a failure to give such notice within such time being deemed a waiver of such termination right), in which event this Agreement and all rights, duties and obligations of Buyer and Seller shall terminate and the Deposit shall be returned to Buyer.

7. Time and Place of Closing. Unless otherwise agreed in writing by the parties, the closing and transfer of title to the Property (the "Closing") shall take place in escrow through the offices of the Title Company on a date mutually agreeable to Seller and Buyer within thirty (30) days after expiration of the Due Diligence Period (the "Closing Date").

8. Representations and Warranties.

Seller warrants and represents as follows as of the date of this Agreement and as of the Closing Date and where indicated covenants and agrees as follows: (a) Seller is a Missouri City of the Fourth Class, has full power and authority to enter into and perform this Agreement in accordance with its terms, and the person executing this Agreement on behalf of Seller has been duly authorized to do so; (b) Seller is the owner in fee simple of the Property; (c) there is no litigation or proceeding pending or, to the best of Seller's knowledge, threatened against Seller relating to the Property; (d) no condemnation or eminent domain proceedings are now pending or threatened concerning the Property, and Seller has received no notice from any governmental agency or authority or other potential condemner concerning any right of way, utility or other taking which may affect the Property; (e) to the best of Seller's knowledge, the Property presently complies with all applicable federal, state and local laws pertaining to the quality of the environment (the "Environmental Laws"); (f) except as shown on Seller's Phase 1 report, to the best of Seller's knowledge, the Property does not now contain and to the best of Seller's knowledge has not contained any underground storage tanks, substances regulated by the Environmental Laws and, the Property is not listed on any state or federal environmental remediation priority list; (g) Seller has used no substance regulated by the Environmental Laws at the Property and has not permitted any other person to do so; and (h) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code, or under comparable state statutes which are applicable to this transaction. Seller agrees to furnish to Buyer copies of any notice, claim or demand received by Seller during the pendency of this Agreement which would materially change any representation given by Seller herein. The provisions of this section shall survive the Closing.

Buyer warrants and represents as follows as of the date of this Agreement and as of the Closing Date and where indicated covenants and agrees as follows: (a) Buyer is a Missouri limited

liability company, has full power and authority to enter into and perform this Agreement in accordance with its terms, and the person executing this Agreement on behalf of Buyer has been duly authorized to do so; and (b) Buyer has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors, suffered the appointment of a receiver to take possession of substantially all of its assets, suffered the attachment or other judicial seizure of substantially all of its assets, admitted its inability to pay its debts as they come due, or made an offer of settlement, extension or compromise to its creditors generally.

The representations and warranties of Seller and Buyer set forth in Section 8 shall survive any Closing hereunder for a period of one (1) year.

9. Possession. Possession of the Property will be transferred to Buyer at the conclusion of the Closing with no tenancies or occupancies whatsoever, other than those of record and reflected on the Title Report and accepted by Buyer.

10. Eminent Domain. If, before Closing, any substantial portion of the Property is taken or threatened by eminent domain, or if there is a material obstruction of access because of a taking or threatened taking by eminent domain, Seller shall, within ten (10) days of such taking, notify Buyer thereof and Buyer shall have the option to: (a) terminate this Agreement upon notice to Seller given within ten (10) days after such notice from Seller, in which case the Deposit shall be returned to Buyer; or (b) proceed with the purchase of the Property without reduction in the Purchase Price, in which event Seller shall assign to Buyer all Seller's right, title and interest in all amounts due or collected by Seller as condemnation awards.

11. Closing Deliveries. At Closing and upon payment of the Purchase Price, Seller shall execute and deliver: (a) a special warranty deed in proper form for recording, duly executed, witnessed and acknowledged, so as to convey to Buyer the fee simple title to the Property; (b) an owner's affidavit and a non-foreign affidavit; (c) the easements referenced in Section 5(c), including, but not limited to the Reciprocal Easement Agreement; and (d) such further instruments of conveyance and other documents as may reasonably be required by the Title Company in order to consummate the transactions contemplated herein. At Closing Buyer shall pay the balance of the Purchase Price and shall execute and deliver such other documents as the Title Company may reasonably request to effect the transactions contemplated by this Agreement.

12. Remedies. If Seller defaults in the performance of Seller's obligations under this Agreement, or if any representation or warranty made by Seller herein proves to be false or misleading in any material respect, or if Seller breaches any representation or warranty made by Seller herein, then Buyer may either (a) receive the return of the Deposit and the reimbursement from Seller for all of Buyer's actual out-of-pocket expenses incurred by Buyer in connection with this Agreement and its purchase of the Property not to exceed \$25,000.00, which receipt shall operate to terminate this Agreement and release Seller from any and all liability hereunder or (b) enforce specific performance, or (c) exercise any remedy available at law or in equity. If Buyer defaults in the performance of Buyer's obligations under this Agreement, Seller's sole remedy shall be to terminate this Agreement and retain Deposit as agreed liquidated damages for such breach, and upon payment in full to Seller of the Deposit, the parties shall have no further rights, claims, liabilities or obligations under this Agreement.

13. Commissions. Seller and Buyer represent to each other that neither Seller (in the case of Seller's representation) nor Buyer (in the case of Buyer's representation) has dealt with nor does it have any knowledge of any broker or other person who has or may have any claim against Seller, Buyer or the Property for a brokerage commission, finder's fee or like payment arising out of or in connection with this transaction. Buyer shall indemnify and hold Seller harmless from any other claim arising by, through or under Buyer as a result of a breach of the foregoing representation in this paragraph, and Seller shall indemnify and hold Buyer harmless from any other claim arising by, through or under Seller as a result of a breach of the foregoing representation in this paragraph.

14. Notices. All notices to either party in connection with this Agreement shall be in writing, signed by the party, and shall be served (as an alternative to personal service) by registered or certified mail or overnight courier service, at the addresses set forth below or at such other address as has been substituted by notice given in the manner required hereby.

As to Buyer:  
Brinkmann Holdings, LLC  
16650 Chesterfield Grove Rd.  
Chesterfield, Missouri 63005  
Attention: Robert Brinkmann

As to Seller:  
City of Town and Country  
1011 Municipal Center Drive  
Town and Country, Missouri 63131  
Attention: City Administrator

With a copy to:  
Mary M. Machon, Esq.  
16650 Chesterfield Grove Rd.  
Chesterfield, Missouri 63005

With a copy to:  
Steven W. Garrett, Esq.  
Curtis Heinz Garrett & O'Keefe PC  
130 S. Bemiston, Suite 200  
Clayton, Missouri 63105

Any such notice or demand so served, shall constitute proper notice hereunder upon the date of delivery by the United States Postal Service or by such overnight courier.

15. Headings; Validity. The headings of the various sections hereof are intended solely for means of reference and are not intended for any purpose whatsoever to modify any of the provisions of this Agreement. If any of the provisions of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and every other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

16. Attorneys' Fees. In the event of any proceeding between the parties hereto to enforce any of the provisions of this Agreement, the prevailing party in such proceeding shall be entitled to an award of all costs and expenses, including reasonable attorneys' fees. This section shall survive the Closing or a prior termination hereof.

17. Time. Time is of the essence of this Agreement, provided that if any date upon which some action, notice or response is required of any party hereunder occurs on a weekend or national holiday, such action, notice or response shall not be required until the next succeeding business day.

18. Governing Law; Entire Agreement; Effect. This Agreement shall be governed by the laws of the state of Missouri. This Agreement and the Development Agreement, as well as any

easements referenced in Section 5(c) hereof between the parties supersede all prior agreements between the parties as to the Property, if any, and constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be modified or amended except by a writing executed by Buyer and Seller. The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the heirs, administrators, successors and assigns of the parties.

19. Gender; Plural; Singular. A reference in this Agreement to any gender, masculine, feminine or neuter, shall be deemed a reference to the other, and the singular shall be deemed to include the plural and vice versa, unless the context otherwise requires.

20. Assignment. Buyer may assign this Agreement without the consent of the Seller provided said assignment is to an entity owned or controlled by Robert G. Brinkmann. Otherwise, Buyer may not assign its rights under this Agreement without first obtaining Seller's written approval, which approval may not be unreasonably withheld, conditioned or delayed.

21. Development Agreement. The term "Development Agreement" as used herein shall be that certain Development Agreement by and between the Seller and Brinkmann Holdings, LLC dated on or about the date of this Agreement.

*[Signature Page Follows]*

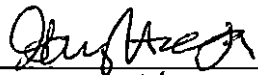
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

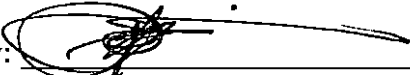
SELLER:

BUYER:

City of Town and Country Missouri, a  
Municipal Corporation

Brinkmann Holdings, LLC a Missouri Limited  
Liability Company

By:   
Name: Gary Hoelzer  
Title: City Administrator

By:   
Name: Robert G. Brinkmann  
Title: Managing Member



**Exhibit A**

**Depiction of the Property**

# TOWN SQUARE BOUNDARY ADJUSTMENT PLAT

A TRACT OF LAND BEING PART OF THE EAST HALF OF FRACTIONAL SECTION 24, TOWNSHIP 43 NORTH, RANGE 6 EAST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF TOWN AND COUNTRY, ST. LOUIS COUNTY, MISSOURI  
THIS PLAT CONTAINS 888.8 AC.



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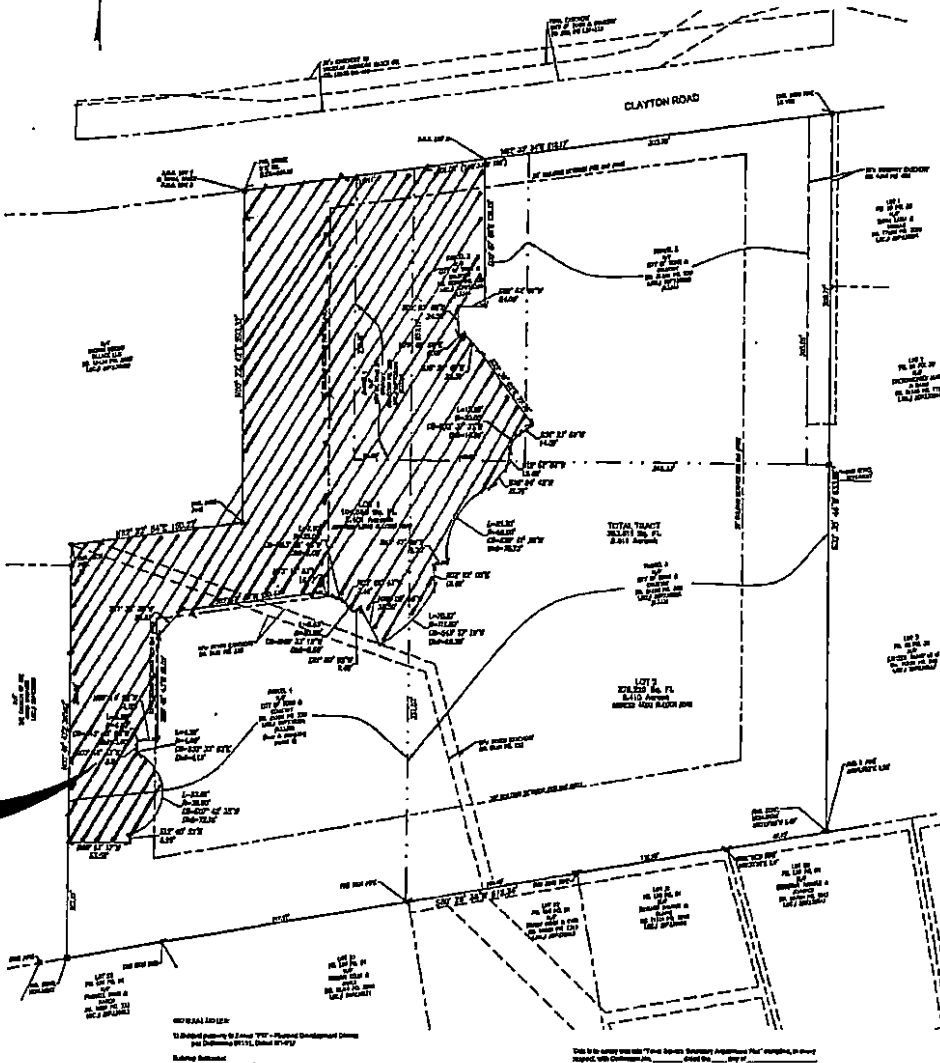
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PROPERTY DESCRIPTION - (SEE SECTION 10)

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PARCELS 21-30

PARCELS 31-40

PARCELS 41-50

PARCELS 51-60

PARCELS 61-70

PARCELS 71-80

PARCELS 81-90

PARCELS 91-100

PARCELS 1-10

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PARCELS 51-60

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PARCELS 71-80

PARCELS 81-90

PARCELS 91-100

PREPARED BY

STUCKE & JENSEN

CONSULTING ENGINEERS, ETC.

BOUNDARY ADJUSTMENT PLAT

TOWN & COUNTRY - TOWN SQUARE

1330 CLAYTON ROAD

CITY OF TOWN & COUNTRY, ST. LOUIS COUNTY, MISSOURI

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THE PLAT BOOK

CITY OF TOWN & COUNTRY

501 MUNICIPAL DRIVE

TOWN & COUNTRY, MO 63111

PH: 274-432-0100

THIS IS TO BE KEPT ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI, FOR THE CITY OF TOWN & COUNTRY, MISSOURI.

CITY OF TOWN & COUNTRY, MISSOURI

PLAT BOOK

**Exhibit B**

**Reciprocal Easement Agreement**

## **Schedule 1**

### **Due Diligence Documents**

1. Copies of the latest title commitment and title policy with respect to the Property;
2. The latest as-built plans or surveys of the Property prepared by a registered and licensed surveyor;
3. Copies of any zoning letters, zoning approvals and/or notices of zoning violations;
4. All insurance policies covering the Property, together with a history of claims for the last three (3) calendar years;
5. Copies of any documents relating to any pending lawsuits related to the Property; and
6. Any and all site plans, building plans and specifications, engineering plans, architectural reports, environmental reports, geological reports, eddy current wind and earthquake tests, owner's association manual, maintenance reports, ADA compliance reports, certificates of occupancy (for Seller and the tenants under the Leases), certificates of compliance of, on or affecting the Property.