

**AGENDA
CITY OF SWARTZ CREEK
PLANNING COMMISSION
PAUL D. BUECHE MUNICIPAL BUILDING
VIRTUAL (ZOOM) MEETING AVAILABLE FOR GENERAL PUBLIC
TUESDAY, AUGUST 25, 2022, 7:00 P.M.**

- 1. CALL TO ORDER:**
- 2. PLEDGE OF ALLEGIANCE:**
- 3. ROLL CALL:** Binder, Campbell, Currier, Grimes, Henry, Keene, Krueger, Wyatt, Vacant
- 4. APPROVAL OF AGENDA:**
- 5. APPROVAL OF MINUTES:**
- 6. CORRESPONDENCE:**
 - A. Resolutions
 - B. Minutes: June 6, 2022
 - C. Staff Meeting Letter
 - D. Kroger Condominium Master Deed and Review Letters
- 7. MEETING OPENED TO PUBLIC (NON-PUBLIC HEARING ITEMS):**
- 8. BUSINESS:**
 - A. Kroger Condominium Review
- 9. MEETING OPENED TO THE PUBLIC:**
- 10. REMARKS BY PLANNING COMMISSION MEMBERS:**
- 11. ADJOURNMENT:**

**RESOLUTIONS
CITY OF SWARTZ CREEK
PLANNING COMMISSION
PAUL D. BUECHE MUNICIPAL BUILDING
TUESDAY, AUGUST 25, 2022, 7:00 P.M.**

Resolution No. 220825-01 **AGENDA OF AUGUST 25, 2022**

Motion by Planning Commission Member: _____

I Move the Swartz Creek Planning Commission approves the agenda for the August 16, 2022 Planning Commission meeting.

Second by Planning Commission Member: _____

Voting For: _____

Voting Against: _____

Resolution No. 220825-02 **MINUTES OF JUNE 7, 2022**

Motion by Planning Commission Member: _____

I Move the Swartz Creek Planning Commission approves the Minutes for the June 7, 2022 Planning Commission meeting.

Second by Planning Commission Member: _____

Voting For: _____

Voting Against: _____

Resolution No. 220825-03 **RESOLUTION TO APPROVE A CONDOMINIUM
MASTER DEED FOR 58-36-576-012 (KROGER)**

Motion by Planning Commission Member: _____

WHEREAS, Michigan Public Act 59 of 1978, the Condominium Act, as amended, provides the legal basis and requirements for newly established and converted condominiums in Michigan, and;

WHEREAS, the City of Swartz Creek Code of Ordinances, Appendix A, Article 11. Condominium Development Standards, provides standards for the review and approval of any condominiums within the City, and;

WHEREAS, the owner of 7084 Miller Road, PID 58-36-576-012, commonly referred to as Kroger, has petitioned to convert the site into a master deed condominium, and

WHEREAS, the city planner and city attorney have reviewed the master deed and have made recommendations for amendments.

NOW THEREFORE, BE IT RESOLVED, that the Swartz Creek Planning Commission approve the master deed and converted site plan condominium for PID 58-36-576-012, conditioned upon the incorporation all of the recommendations from the city planner and city attorney as included in the August 25, 2022 planning commission packet.

Second by Planning Commission Member: _____

Voting For: _____

Voting Against: _____

Resolution No. 220825-04 ADJOURN

Motion by Planning Commission Member: _____

I Move the Swartz Creek Planning Commission adjourns the August 25, 2022 Planning Commission meeting.

Second by Planning Commission Member: _____

Voting For: _____

Voting Against: _____

**CITY OF SWARTZ CREEK
VIRTUAL PLANNING COMMISSION BOARD MEETING
ACCESS INSTRUCTIONS
TUESDAY, AUGUST 25, 2022, 7:00 P.M.**

The Planning Commission meeting of August 25, 2022 at 7:00 p.m. will be conducted as a hybrid meeting, with commissioners, staff, consultants, petitioners, and public attending in-person. The meeting will also be held virtually (online and/or by phone) to non-commissioners, due to health concerns surrounding Coronavirus/COVID-19.

To comply with the **Americans with Disabilities Act (ADA)**, any citizen requesting accommodation to attend this meeting, and/or to obtain the notice in alternate formats, please contact Connie Olger, 810-429-2766 48 hours prior to meeting,

Zoom Instructions for Participants

To join the conference by phone:

1. On your phone, dial the teleconferencing number provided below.
2. Enter the **Meeting ID** number (also provided below) when prompted using your touch-tone (DTMF) keypad.

Before a videoconference:

1. You will need a computer, tablet, or smartphone with speaker or headphones. You will have the opportunity to check your audio immediately upon joining a meeting.
2. Details, phone numbers, and links to videoconference or conference call is provide below. The details include a link to “**Join via computer**” as well as phone numbers for a conference call option. It will also include the 9-digit Meeting ID.

To join the videoconference:

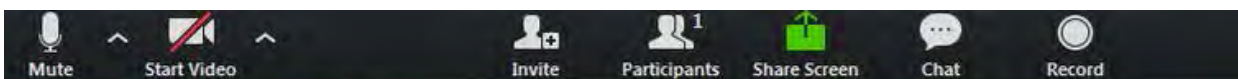
1. At the start time of your meeting, enter the link to join via computer. You may be instructed to download the Zoom application.
2. You have an opportunity to test your audio at this point by clicking on “Test Computer Audio.” Once you are satisfied that your audio works, click on “Join audio by computer.”

You may also join a meeting without the link by going to join.zoom.us on any browser and entering the Meeting ID provided below.

If you are having trouble hearing the meeting, you can join via telephone while remaining on the video conference:

1. On your phone, dial the teleconferencing number provided below.
2. Enter the **Meeting ID number** (also provided below) when prompted using your touchtone (DTMF) keypad.
3. If you have already joined the meeting via computer, you will have the option to enter your participant ID to be associated with your computer.

Participant controls in the lower left corner of the Zoom screen:



Using the icons in the lower left corner of the Zoom screen you can:

- Mute/Unmute your microphone (far left)
- Turn on/off camera (“Start/Stop Video”)
- Invite other participants
- View participant list-opens a pop-out screen that includes a “Raise Hand” icon that you may use to raise a virtual hand during Call to the Public
- Change your screen name that is seen in the participant list and video window
- Share your screen

Somewhere (usually upper right corner on your computer screen) on your Zoom screen you will also see a choice to toggle between “speaker” and “gallery” view. “Speaker view” show the active speaker.

Topic: City of Swartz Creek Planning Commission Meeting

Time: August 25, 2022 07:00 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/83096401128>

Meeting ID: 830 9640 1128

One tap mobile

+13017158592,,83096401128# US (Washington DC)

+13126266799,,83096401128# US (Chicago)

Dial by your location

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

Meeting ID: 830 9640 1128

If you have any further questions or concern, please contact 810-429-2766 or email colger@cityofswartzcreek.org. A copy of this notice will be posted at City Hall, 8083 Civic Drive, Swartz Creek, Michigan.

CITY OF SWARTZ CREEK VIRTUAL (ELECTRONIC) MEETING RULES AND PROCEDURES

In order to conduct an effective, open, accessible, and professional meeting, the following protocols shall apply. These protocols are derived from the standard practices of Swartz Creek public meetings, Roberts Rules of Order, and city board & commission procedures. These procedures are adopted to govern participation by staff, councilpersons and members of the public in all City meetings held electronically pursuant to PA 228 of 2020. Note that these protocols do not replace or eliminate established procedures or practices. Their purpose is to augment standing expectations so that practices can be adapted to a virtual meeting format.

The following shall apply to virtual meetings of the city's public bodies that are held in accordance with the Open Meetings Act.

1. Meetings of the City Council, Planning Commission, Zoning Board of Appeals, Downtown Development Authority, Park Board, or committees thereunder may meet electronically or permit electronic participation in such meetings insofar as (1) the Michigan Department of Health and Human Services restricts the number of persons who can gather indoors due to the COVID-19 pandemic; (2) persons have an illness, injury, disability or other health-related condition that poses a risk to the personal health or safety of members of the public or the public body if they were to participate in person; or (3) there is in place a statewide or local state of emergency or state of disaster declared pursuant to law or charter by the governor or other person authorized to declare a state of emergency or disaster.
2. All meetings held hereunder must provide for two-way communication so that members of the public body can hear and respond to members of the general public, and vice versa.
3. Members of the public body who participate remotely must announce at the outset of the meeting that he/she is in fact attending the meeting remotely and by further identifying the specific physical location (by county, township, village and state) where he/she is located. The meeting minutes must include this information.
4. Notice of any meeting held electronically must be posted at the City Offices at least 18 hours before the meeting begins and must clearly explain the following:
 - (a) why the public body is meeting electronically;
 - (b) how members of the public may participate in the meeting electronically, including the specific telephone number, internet address or similar log-in information needed to participate in the meeting;
 - (c) how members of the public may contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting;
 - (d) how persons with disabilities may participate in the meeting.
5. The notice identified above must also be posted on the City's website homepage or on a separate webpage dedicated to public notices for non-regularly scheduled or electronic public meetings that is accessible through a prominent and conspicuous link on the website's homepage that clearly describes the meeting's purpose.

6. The City must also post on the City website an agenda of the meeting at least 2 hours before the meeting begins.
7. Members of the public may offer comment only when the Chair recognizes them and under rules established by the City.
8. Members of the public who participate in a meeting held electronically may be excluded from participation in a closed session that is convened and held in compliance with the Open Meetings Act.

MAINTAINING ORDER

Public body members and all individuals participating shall preserve order and shall do nothing to interrupt or delay the proceedings of public body.

All speakers shall identify themselves prior to each comment that follows another speaker, and they shall also indicate termination of their comment. For example, "Adam Zettel speaking. There were no new water main breaks to report last month. That is all."

Any participants found to disrupt a meeting shall be promptly removed by the city clerk or by order of the Mayor. Profanity in visual or auditory form is prohibited.

The public body members, participating staff, and recognized staff/consultants/presenters shall be the only participants not muted by default. All other members must request to speak by raising their digital hand on the Zoom application or by dialing *9 on their phone.

MOTIONS & RESOLUTIONS

All Motions and Resolutions, whenever possible, shall be pre-written and in the positive, meaning yes is approved and no is defeated. All motions shall require support. A public body member whom reads/moves for a motion may oppose, argue against or vote no on the motion.

PUBLIC ADDRESS OF BOARD OR COMMISSION

The public shall be allowed to address a public body under the following conditions:

1. Each person who wishes to address the public body will be first recognized by the Mayor or Chair and requested to state his / her name and address. This applies to staff, petitioners, consultants, and similar participants.
2. Individuals shall seek to be recognized by raising their digital hand as appropriate on the digital application.
3. Petitioners are encouraged to appropriately identify their digital presence so they can be easily recognized during business. If you intend to call in only, please notify the clerk in advance of your phone number.
4. The city clerk shall unmute participants and the members of the public based upon the direction of the mayor or chair. Participants not recognized for this purpose shall be muted by default, including staff, petitioners, and consultants.
5. Individuals shall be allowed five (5) minutes to address the public body, unless special permission is otherwise requested and granted by the Mayor or Chair.
6. There shall be no questioning of speakers by the audience; however, the public body, upon recognition of the Mayor or Chair, may question the speaker.

7. No one shall be allowed to address the public body more than once unless special permission is requested, and granted by the Mayor or Chair.
8. One spokesperson for a group attending together will be allowed five (5) minutes to address the public body unless special permission has been requested, and granted by the Mayor or Chair.
9. Those addressing the public body shall refrain from being repetitive of information already presented.
10. All comments and / or questions shall be directed to and through the Mayor or Chair.
11. Public comments (those not on the agenda as speakers, petitioners, staff, and consultants) are reserved for the two "Public Comment" sections of the agenda and public hearings.

VOTING RECORD OF PUBLIC BODIES

All motions, ordinances, and resolutions shall be taken by "YES" and "NO" voice vote and the vote of each member entered upon the journal.

**CITY OF SWARTZ CREEK
SWARTZ CREEK, MICHIGAN
MINUTES OF PLANNING COMMISSION MEETING
June 7, 2022**

Meeting called to order at 7:00 p.m. by Commissioner Wyatt

Pledge of Allegiance.

ROLL CALL:

Commissioners present: Binder, Campbell, Keene, Grimes, Krueger, Henry, Currier, Wyatt.

Commissioners absent: Vacant.

Staff present: Adam Zettel, City Manager.

Others present: James Barclay, Rae Lynn Hicks, George Hicks.

Others Virtually Present: None.

APPROVAL OF AGENDA:

Resolution No. 220607-01

(Carried)

Motion by Planning Commission Member Henry
Second by Planning Commission Member Binder

I Move the Swartz Creek Planning Commission approves the agenda for the June 7, 2022, Planning Commission meeting.

Unanimous Voice Vote
Motion Declared Carried

MINUTES OF MARCH 8, 2022

Resolution No. 220607-02

(Carried)

Motion by Planning Commission Member Binder
Second by Planning Commission Member Grimes

I Move the Swartz Creek Planning Commission approves the Minutes for the March 8, 2022, Planning Commission meeting.

Unanimous Voice Vote
Motion Declared Carried

MEETING OPENED TO THE PUBLIC:

None.

BUSINESS:

Master Plan Presentation

Carmine Avantini CIB, gave a quick overview of the plan and reviewed the steps completed. The next step is for the commission to recommend the plan be approved by city council for final approval. Commissioners pointed out some scrivener errors that needed to be fixed.

Master Plan Public Hearing

Open: 7:38 p.m.

Rae Lynn Hicks 8373 Miller Road very readable and believes the council will like it and she was very impressed.

Closed: 7:39 p.m.

RESOLUTION TO APPROVE THE 2022 MASTER PLAN

Resolution No. 220607-03

(Carried)

Motion by Planning Commission Member Krueger
Second by Planning Commission Member Currier

WHEREAS, Michigan Public Act 33 of 2008, the Michigan Planning Enabling Act, requires a community to adopt a master plan and sets forth the procedures for such plan review and adoption, and;

WHEREAS, the City of Swartz Creek Planning Commission is currently developing a Master Plan, and;

WHEREAS, a draft of the plan has been circulated for public review and comment, and

WHEREAS, a public hearing was held regarding the plan on June 7, 2022.

NOW THEREFORE, BE IT RESOLVED, that the Swartz Creek Planning Commission recommends that the Swartz Creek City Council approve and adopt the plan in accordance with the Planning Enabling Act (PA 33 of 2008, as amended).

YES: Keene, Grimes, Krueger, Henry, Currier, Wyatt, Binder, Campbell.
NO: None. Motion Declared Carried.

Meeting Open to Public:

None.

Remarks by Planning Commission:

Commissioner Binder question about a property with a pond on Miller Road east of Tallmadge. Mr. Zettel responded the property has an enforcement order put in on it.

Commissioner Krueger wanted to thank everyone for the work on the Master Plan.

Commissioner Henry thinks the plan is robust and he thinks it will age well.

Commissioner Grimes believes it is much more hands down much more concise than the last master plan.

Commissioner Wyatt asked if there was an update on the trail. Mr. Zettel responded we are trying to expedite the process with Consumers Energy on the power line issues but the trail construction is continuing for now.

Adjourn

Resolution No. 220607-04

(Carried)

Motion by Planning Commission Member Grimes
Second by Planning Commission Member Krueger

I Move the Swartz Creek Planning Commission adjourns the June 7, 2022, Planning Commission meeting.

Unanimous Voice Vote
Motion Declared Carried

Meeting adjourned at 7:55 p.m.

Betty Binder, Secretary



Adam Zettel, AICP

City Manager
azettel@cityofswartzcreek.org

Date: August 18, 2022

To: Planning Commissioners
From: Adam Zettel, AICP
RE: August 25, 2022 Planning Commission Meeting

Hello everyone,

We will be meeting at 7:00 p.m. on August 25, 2022. Commissioners MUST attend in-person. However, we shall be conducting the meeting using the Zoom application for the benefit of the general public.

We have a site plan review for this meeting. Don't get too excited. This one is more of a technical and procedural review. Kroger is converting their site into a condominium. This means that they seek to separate the retail units on the site (such as Subway) into separate tax parcels. To do so, the zoning ordinance requires planning commission approval.

Typically, any master deed that is used to create the condominium form of ownership is approved in tandem with applicable site plans. However, since this site is existing, we need only concern ourselves with the master deed itself. With that in mind, the planner and city attorney have reviewed and made recommendations to the master deed to ensure it conforms to our ordinance standards, as well as to the practical considerations of the existing site.

I have included the modified master deed and bylaws that includes all the mark-ups of the city planning and city attorney. I also expect Mr. Stritmatter, the city attorney, to join us at the meeting. If the petitioner is agreeable to making the changes, we should be able to have the planning commission affirm approval of a condominium for this site.

That is all for now. Contact me with questions or comments. If I get other materials, I will send them along!

Sincerely,

8083 Civic Drive
Swartz Creek Michigan 48473
Phone: (810)-635-4464 Fax: (810)-635-2887
www.cityofswartzcreek.org <ftp://cityofswartzcreek.org>

August 25, 2022
Planning Commission



Adam H. Zettel, AICP
City Manager
City of Swartz Creek
azettel@cityofswartzcreek.org



Where Friendships Last Forever

APPLICATION FOR SITE PLAN REVIEW

City of Swartz Creek
(An Equal Opportunity Employer)

8083 Civic Drive
Swartz Creek, MI 48473
810-635-4464

Date: ____/____/____

File No: _____

Fee Received: _____ Receipt No: _____

NOTICE TO APPLICANT:

Regular meetings of the Swartz Creek Planning commission are held on the first Tuesday of each month at 7:00 PM, at the City Hall, 8083 Civic Dr. Application for site plan review shall be filed at least twenty (20) days before the scheduled meeting date.

Applicant should be familiar with all aspects of the City's Zoning Appendix A pertinent to the site plan application, including but not limited to: the appropriate level of site plan review, the site plan process, review standards, performance guarantees, use restrictions, landscaping, parking, design standards, fees, and enforcement.

TO THE PLANNING COMMISSION:

I, (We), the undersigned, do hereby respectfully make application and petition the Planning Commission to recommend approval of the attached site plan as hereinafter requested, and in support of this application, the following facts are shown.

Furthermore, I (We) have attached proof of ownership, information regarding the number of peak employees anticipated to accompany the site plan uses, and the names, addresses, and telephone/fax numbers of any and all engineers, attorneys, architects, and other professionals associated with this project.

The property is located and described, as follows:

Assessment Roll Description No. 58- 36 - 576 - 012 ,

Address: 7084 Miller Road

Other description: Kroger & Shops

It has a frontage of: 651.73 feet and a depth of: 688.31 feet. Total acreage is: 8.47

PRESENT ZONING: GBD/PUDD

If the property is in acreage, and is not therefore a part of a recorded plat: The subject property is located and described as follows: (indicate total acreage also).

Assessment Roll Description No. 58-____-____-____,

SITE PLAN APPLICANT INFORMATION:

Name: The Kroger Company

Address: 1014 Vine Street, Cincinnati, OH 45202-1100

Phone Number: (937) 594-3399 Email Address: Taylor.Spears@kroger.com

SUBJECT PROPERTY IS OWNED BY:

Name: Topvalco, Inc. (Kroger)

Address: 1014 Vine Street, Cincinnati OH 45202-1100

Phone Number: (937) 594-3399

It is proposed that the property will be put to the following use:

The use of retail will remain the same. The request is to condominiumize the shops into one unit & the Kroger/ rest of the parcel into another unit.

It is proposed that the following building(s) will be constructed (note gross sq. ft of each):

Signature of Applicant: Taylor Spears Phone Number: 937-594-3399

Email Address: taylor.spears@kroger.com

Signature of Owner: Taylor Spears Phone Number: 937-594-3399

MASTER DEED
SWARTZ CREEK SIDE SHOPS

This Master Deed is made and executed on this ___ day of _____, 2022, by TOPVALCO, INC., an Ohio corporation, hereinafter referred to as the "Developer", whose address is c/o 2900 West Road STE 500, E. Lansing, Michigan 48823, in pursuance of the provisions of the Michigan Condominium Act (being Act 59 of the Public Acts of 1978, as amended).

WHEREAS, the Developer desires by recording this Master Deed, together with the Bylaws attached hereto as Exhibit A and the Condominium Subdivision Plan attached hereto as Exhibit B (both of which are hereby incorporated herein by reference and made a part hereof), to establish the real property described in Article II below, together with the improvements located and to be located thereon, and the appurtenances thereto, as a commercial Condominium Project under the provisions of the Act.

NOW, THEREFORE, the Developer does, upon the recording hereof, establish Swartz Creek Side Shops as a Condominium Project under the Act and does declare that Swartz Creek Side Shops shall, after such establishment, be held, conveyed, hypothecated, encumbered, leased, rented, occupied, improved, or in any other manner utilized, subject to the provisions of the Act, and to the covenants, conditions, restrictions, uses, limitations and affirmative obligations set forth in this Master Deed, the Bylaws and the Condominium Subdivision Plan, all of which shall be deemed to run with the land and shall be a burden and a benefit to the Developer and any persons acquiring or owning an interest in the Condominium Premises and their respective successors and assigns. This Master Deed, the Bylaws and the Condominium Subdivision Plan are generally for the benefit of the Owners of the Units in the Project and the covenants, conditions, restrictions, uses, limitations and affirmative obligations set forth therein apply to benefit the Owners solely. In furtherance of the establishment of the Condominium Project, it is provided as follows:

ARTICLE I

TITLE AND NATURE

The Condominium Project shall be known as Swartz Creek Side Shops, Genesee County Condominium Subdivision Plan No. _____. The Condominium Project is established in accordance with the Act. The Units contained in the Condominium, including the number, boundaries, dimensions and area of each, are set forth completely in the Condominium Subdivision Plan attached as Exhibit B hereto. Each Unit is intended for commercial use and is capable of individual utilization on account of having its own entrance from and exit to a Common Element of the Condominium Project. Each Co-owner in the Condominium Project shall have an exclusive right to the Co-owner's Unit and shall have undivided and inseparable rights to share with other Co-owners the General Common Elements of the Condominium Project as are designated by the Master Deed.

ARTICLE II

LEGAL DESCRIPTION

The land which is submitted to the Condominium Project established by this Master Deed is described as follows:

Land situated in the City of Swartz Creek, Genesee County, Michigan, described as:

Lots 7, 8, 9, 10, 11 & 12 of Cummings Berlin Acres, T7N-R5E, City of Swartz Creek, Genesee County, Michigan, as recorded in Liber 22, Page 21 of Genesee County Plat Records; and further described as: Part of the Southeast 1/4 of Section 36, T7N-R5E, City of Swartz Creek, Genesee County, Michigan, Beginning at a point on the North line of Cummings Berlin Acres that is N 88°03'46" W, 787.36 feet from the East 1/4 corner of said Section 36; thence S 33°27'20" E, 487.47 feet along the East line of Lot 7 of Cummings Berlin Acres; thence S 56°30'00" W, 651.73 feet along the North line of Miller Road; thence N 19°11'34" W, 466.75 feet (Recorded N 19°10'W, 466.68 feet); thence N 17°03'04" W, 359.46 feet (Recorded N 17°04' W, 359 feet); thence S 88°03'46" E, 533.88 feet along the North line of Cummings Berlin Acres to the point of beginning. Containing 8.47 acres, more or less.

Together with and subject to all other easements and restrictions of record and all governmental limitations. Further subject to the Developer's reservation of all the oil, gas and mineral rights in and under the land described in this Article II.

ARTICLE III

DEFINITIONS

Certain terms are utilized not only in this Master Deed and Exhibits A and B hereto, but are or may be used in various other instruments such as, by way of example and not limitation, deeds, mortgages, liens, land contracts, easements and other instruments affecting the establishment of, or transfer of, interests in Swartz Creek Side Shops as a condominium. Wherever used in such documents or any other pertinent instruments, the terms set forth below shall be defined as follows:

Section 1. Act. The "Act" means the Michigan Condominium Act, being Act 59 of the Public Acts of 1978, as amended.

Section 2. Administrator. The "Administrator" means the Co-owners' representative designated from time to time by the Bylaws to serve as the persons or entities to administer the General Common Elements in the Condominium Project as required by Section 54(1) of the Act.

Section 3. Approval By the City. "Approval By the City" (however stated in the Master Deed, Bylaws or other Condominium Documents) means the right by the City of Swartz Creek City Council, hereinafter referred to as the "City," to receive, reasonably in advance, the text of a Condominium Document proposed to be amended or a description of an action to be taken of such proposed amendment or action and to determine whether such amendment or action violates a City ordinance, rule, regulation, condition of site plan approval, or other lawful condition and, based thereon, to approve or disapprove the amendment or action provided, however, that, upon its review, any such approval may not be unreasonably withheld or arbitrarily denied by the City.

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Section 43. Bylaws. "Bylaws" means Exhibit A hereto, being the Bylaws setting forth the substantive rights and obligations of the Co-owners and required by Section 3(9) of the Act to be recorded as part of the Master Deed.

Section 54. Common Elements. "Common Elements", where used without modification, means both the General and Limited Common Elements described in Article IV hereof.

Section 65. Condominium Documents. "Condominium Documents" means and includes this Master Deed and Exhibits A and B hereto as the same may be amended from time to time.

Section 76. Condominium Premises. "Condominium Premises" means and includes the land described in Article II above, all improvements and structures now or hereafter located thereon, and all easements, rights and appurtenances belonging to Swartz Creek Side Shops as described above.

Section 87. Condominium Project, Condominium or Project. "Condominium Project", "Condominium" or "Project" each mean Swartz Creek Side Shops as a Condominium Project established in conformity with the Act.

Section 98. Condominium Subdivision Plan. "Condominium Subdivision Plan" means Exhibit B hereto.

Section 109. Co-owner or Owner. "Co-owner" means a person, firm, corporation, partnership, Administrator, trust or other legal entity or any combination thereof who or which own one or more Units in the Condominium Project. No tenant or occupant of the Project or any portion thereof shall solely by virtue of such tenancy or occupancy, be a Co-owner; all tenants and other occupants of the Project shall be Co-owners only to the extent that they own one or more Units in the Project, as provided in the immediately preceding sentence.

Section 110. Developer. "Developer" means TOPVALCO, INC., an Ohio corporation, which has made and executed this Master Deed, and its successors and assigns. Both successors and assigns shall always be deemed to be included within the term "Developer" whenever, however and wherever such term is used in the Condominium Documents.

Section 4412. Development and Sales Period. "Development and Sales Period" means that period during which the Developer still owns a Unit in the Condominium. Developer's rights under the Condominium Documents shall cease upon the ending of the "Development and Sales Period".

Section 4213. Unit or Condominium Unit. "Unit" or "Condominium Unit" each mean a single Unit in Swartz Creek Side Shops, as described in Article V, Section 1 below hereof and on Exhibit B hereto, and shall have the same meaning as the term "Condominium Unit" as defined in the Act. All structures and improvements now or hereafter located within the boundaries of a Unit shall be owned in their entirety by the Co-owner of the Unit within which they are located and shall not, unless otherwise expressly provided in the Condominium Documents, constitute Common Elements.

Whenever any reference herein is made to one gender, the same shall include a reference to any and all genders where the same would be appropriate; similarly, whenever a reference is made herein to the singular, a reference to the plural shall also be included where the same would be appropriate and vice versa.

ARTICLE IV

COMMON ELEMENTS

The Common Elements of the Project and the respective responsibilities for maintenance, decoration, repair or replacement thereof, are as follows:

Section 1. General Common Elements. The General Common Elements are:

(a) Electrical. The electrical transmission system throughout the Project to the extent that it serves all Units up to the point of the leads for the individual Units.

(b) Land. The land described in Article II hereof and designated on Exhibit B as General Common Elements, including the main service roads, the entrance area to the Project and any sidewalks and/or parking spaces not designated as Limited Common Elements.

~~(a)~~

(b)(c) Telephone and Telecommunications. The telephone and/or telecommunications system throughout the Project to the extent that it/they serve(s) all Units up to the point of the leads for the individual Units.

(c)(d) Gas. The gas distribution system throughout the Project to the extent that it serves all Units up to the point of the leads for the individual Units.

(d)(e) Water System. The water distribution system throughout the Project to the extent that it serves all Units up to the point of the leads for the individual Units.

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~~(e)~~**(f) Sanitary Sewer.** The sanitary sewer system throughout the Project to the extent that it serves all Units up to the point of the leads for the individual Units.

~~(f)~~**(g) Easements.** All beneficial easements that may exist or may be created in the Master Deed or otherwise for the benefit of all Units, including without limitation, the access drive easements, parking easements and reciprocal easements described in the easement.

(h) Storm Sewer. The entire storm sewer system located throughout the Project, including without limitation, any storm water detention basins and any and all storm water drainage pipes or other drainage structures of any nature utilized in connection therewith up to the point of entry to each Unit. ~~to the extent it serves both Units.~~

~~(g)~~**(i) Roadways and Parking Lots.** The main roadway(s) and parking areas in the Condominium Project shall be private roads and the sole responsibility of the Administrator. The City, or the Genesee County Road Commission, shall give final approval to the Developer for completing the Roads and Parking Lots identified in the construction plans for the Condominium Project.

~~(h)~~**(j) Other.** Such other elements of the Project not herein designated as General or Limited Common Elements which are not located within the perimeter of a Unit and which are intended for common use or are necessary to the existence, upkeep and safety of the Project.

Some or all of the utility lines, systems (including mains and service leads) and equipment may be owned by the local public authority or by the company that is providing the pertinent service. Accordingly, the mains for such utility lines, systems and equipment shall be General Common Elements only to the extent of the Co-owners' interest therein, if any, and the Developer makes no warranty whatever with respect to the nature or extent of such interest, if any.

Section 2. Limited Common Elements. Limited Common Elements shall be subject to the exclusive use and enjoyment of the Co-owner of the Unit to which such Limited Common Elements are appurtenant. The Limited Common Elements, as of the date of the Master Deed, are those portions of the water and sanitary sewer leads servicing an individual Unit and the utility leads (electrical, telephone and telecommunications, and gas) and related equipment servicing an individual Unit, which shall be limited in its use to the Unit being serviced. No other Limited Common Elements have been identified as of the date of recording the Master Deed.

Section 3. Responsibilities. The respective responsibilities for the maintenance, decoration, repair and replacement of the Common Elements and other improvements in the Condominium are as follows:

(a) Co-owner Responsibilities. Except as elsewhere provided in this Master Deed, each Co-owner individually shall be responsible for all construction, decoration, maintenance, repair and replacement of the building and other improvements located in the Co-owner's Unit (including the roof and building structure located within the Co-owner's Unit) and any and all Limited Common Elements servicing the Co-owner's Unit. None of the Co-owners, other than the Co-owner of Unit 1 but only when acting as the Administrator, shall be individually responsible for maintenance, repair or replacement of any General Common Elements except as may be specifically provided in the

Condominium Documents. Each Co-owner shall be responsible for the cost of usage of all utilities servicing the Co-owner's unit. Each Co-owner shall also be responsible for the maintenance and inspection of the fire alarms and fire suppression systems servicing the Co-owner's Unit and shall maintain the building located in the Co-owner's Unit in a first-class manner consistent with other first-class shopping centers in the area, and in compliance with all applicable laws, rules, codes and regulations.

(b) Administrator's Responsibilities. The responsibility for the maintenance, repair and replacement of all General Common Elements, including the General Common Element utilities (to the extent not maintained by a governmental agency or public utility), shall be borne by the Administrator on behalf of both Co-owners. The Administrator shall also be responsible for the maintenance, repair and replacement of the following: (i) expenses incurred in connection with the operation and maintenance of both the Easement Agreement defined in Article VII, Section 6 below and the easements reserved and granted in Article VII, Section 6; (ii) costs incurred for lighting, which includes electricity and bulb replacement, for parking area (located in Unit 1) lights and pylon sign, if both Unit Owners/tenants appear on the sign; (iii) maintenance of landscaping and seasonal planting; (iv) sweeping of the parking area and sidewalks; (v) restriping, reseal coating and repaving of the parking area; (vi) handicap signage, stop signs, and other vehicular signage; (vii) central trash disposal (if Administrator elects to provide); and (viii) all water consumed in connection with the parking area. The Administrator shall be solely responsible for regular periodic inspection, maintenance, repair and (if and when necessary) replacement of the Storm Sewer and Sanitary Sewer lying within the Project as described in subsection 1(f) and 1(h) of this Article IV, and neither the City or any other public agency shall have any responsibility therefor. Each Co-owner's share of the expenses incurred by the Administrator as provided in this sub-paragraph (b) shall be allocated among the Units based on the percentages of value assigned to the Units in Article V, Section 2 below. The General Common Elements and other improvements listed above for which the Administrator is responsible, shall be maintained in good and sufficient condition, in accordance with maintenance standards set forth in Section 4 below, and in compliance with all applicable laws, rules, codes and regulations.

(c) Failure to Perform Administrator Responsibilities. In the event the Administrator fails to undertake any of its responsibilities as Administrator under the Master Deed and Bylaws, the other Owner shall have the right, but not the obligation, to take whatever action or actions it deems reasonably necessary to use self-help and undertake any such work for which the Administrator, in the first instance, is responsible hereunder. Such right shall be conditioned upon thirty (30) days' advance written notice to the Administrator (or in the event of an emergency after such notice as is practical under the circumstances), of the intention to take such action. Notwithstanding the foregoing, if the Administrator has commenced such cure in the thirty (30) day period with respect to a condition that is not susceptible of being cured within such thirty (30) day period, then the thirty (30) day period shall be extended as is reasonably necessary to complete the cure, provided that the Administrator shall cause such cure to proceed diligently with all due dispatch with continuity to completion. Failure of the other Owner to take any such self-help action shall not be deemed a waiver of its right to take any such action at a future time nor shall the other Owner be liable to anyone for failure to take any such self-help action. All costs incurred by the other Owner, after providing the notice required above to the Administrator, in performing any responsibilities which are required in the first instance to be undertaken by the Administrator shall be paid from the

assessments collected in accordance with Article II, Section 2 of the Bylaws. In the event the assessments collected in accordance with Article II, Section 2 of the Bylaws are insufficient to pay such costs, then all costs incurred by the other Owner in performing any responsibilities under this paragraph which are required in the first instance to be undertaken by the Administrator shall be assessed against the Administrator based on the Administrator's percentage of value set forth in Article V, Section 2 below. The Administrator shall pay the amount due within thirty (30) days after receipt of a written request for reimbursement together with copies of paid receipts for all such work. If the Administrator fails to timely pay any amount due hereunder, the amount due shall accrue interest at the rate of eight (8%) per annum from the due date until fully paid. Any costs assessed hereunder shall include not only the reasonable direct costs of such maintenance, repair or replacement but shall also include such reasonable indirect costs, including without limitation, reasonable legal fees, to have been incurred by it in taking such action. The Owner to whom any amount is due hereunder may enforce the collection of all such sums due by suit at law for a money judgment against the Administrator and other legal and equitable remedies to collect from the Administrator.

Section 4. Maintenance Standards. All portions of the Condominium for which the Administrator has the responsibility for maintenance, repair and replacement as set forth in Section 3(b) above shall at all times be maintained by the Administrator in a safe, clean, sightly, good and functional condition and state of repair, and in compliance with all applicable laws, rules, regulations, orders, and ordinances of governmental bodies and agencies exercising jurisdiction thereover and in compliance with the provisions of this Master Deed and the Bylaws. Upon failure of the Administrator to maintain any Common Element of the Project or a failure to perform the Administrator Responsibilities identified in Section 3(b) for the Project the City of Swartz Creek may in its sole discretion, after proper notice, make said maintenance repairs and bill the cost of said repairs or maintenance back to the Administrator in accordance with Section 3(c).

ARTICLE V

UNIT DESCRIPTION AND PERCENTAGE OF VALUE

Section 1. Description of Units. Each Unit in the Condominium Project is described in this paragraph with reference to the Condominium Subdivision Plan of Swartz Creek Side Shops as prepared by Flint Surveying & Engineering Co. Each Unit is defined with heavy outlines on the Condominium Subdivision Plan attached as Exhibit B.

Section 2. Percentage of Value. The percentage of value assigned to each Unit shall be as follows:

<u>Unit</u>	<u>Percentages of Value</u>
1	85.33%
2	<u>14.67%</u>
	100.00%

The percentages of value are based on the comparative areas of the Units and conclusion that there are no material differences in the area of the Units. The percentage of value assigned to each Unit shall be determinative of each Co-owner's respective share of the Common Elements of the Condominium Project and the proportionate share of each respective Co-owner in the proceeds and the expenses of administration as set forth in Article II of the Bylaws. The total value of the Project is 100%.

ARTICLE VI

CONVERTIBLE AREAS

Section 1. Designation of Convertible Areas. Subject to the approval by the City, the Units and Common Elements have been designated on the Condominium Subdivision Plan as Convertible Areas within which the Units and Common Elements may be modified and within which Units may be redefined as provided in Article VI herein.

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Section 2. Developer's Right to Modify Units and Common Elements. Subject to the approval by the City, the Developer reserves the right, in its sole discretion during a period ending six years from the date of recording this Master Deed, to modify the size, location, and configuration of any Unit that it owns in the Project, to make corresponding changes to the General Common Elements in the Project, and to create within Unit 1 one additional Unit; provided, however, any such modifications do not cause a change in the location, shape or dimensions of Unit 1 and/or the improvements located thereon, that would affect the accessibility of Unit 2 from the parking area, the entrances, and the exit ways that serve Unit 2, or the visibility of Unit 2's signs or storefront, without the Co-owner of Unit 2's prior written consent in each instance, such consent not to be unreasonably withheld, conditioned or delayed.

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Section 3. Compatibility of Improvements. If approved by the City, All modifications within the Convertible Areas described above shall be reasonably compatible with the structures on other portions of the Condominium Project. All such modifications shall also be of a nature permissible under the applicable ordinances of the City of Swartz Creek.

Section 4. Amendment of Master Deed. All modifications to Units and Common Elements made pursuant to this Article V~~II~~ shall require approval by the City, and be given effect by appropriate amendments to the Master Deed in the manner provided by law, which amendments shall be prepared by and at the discretion of the Developer and in which the percentages of value set forth in Article V hereof may be proportionately readjusted, if the Developer deems it to be applicable, in order to preserve a total value of 100% for the entire Project resulting from such amendments to this Master Deed. The precise determination of the readjustments in percentages of value shall be made within the sole judgment of Developer. Such readjustments, however, shall reflect a continuing reasonable relationship among percentages of value based upon the original method of determining percentages of value for the Project. Such amendments to the Master Deed shall also contain such further definitions and redefinitions of General or Limited Common Elements as may be necessary to adequately describe and service the Units and Common Elements being modified by such amendments, and are subject to approval by the City. In connection with any such amendments, Developer shall have the right to change the nature of any Common Element previously included in the Project for any purpose reasonably necessary to achieve the purposes of this Article.

Section 5. Consent of Interested Parties. All of the Co-owners and mortgagees of the Units and other persons interested or to become interested in the Project from time to time shall be deemed to have irrevocably and unanimately consented to such amendments to this Master Deed as may be proposed by the Developer to effectuate the foregoing. All such interested persons irrevocably appoint the Developer as agent and attorney for the purpose of execution of such amendments to the Master Deed and all other documents necessary to effectuate the foregoing. Such amendments may be ~~effected~~affected without the necessity of rerecording an entire Master Deed or the Exhibits thereto and may incorporate by reference all or any pertinent portions of this Master Deed and the Exhibits thereto.

ARTICLE VII

EASEMENTS

Section 1. Easement for Maintenance of Encroachments and Utilities. In the event any portion of a Unit or Common Element encroaches upon another Unit or Common Element due to shifting, settling or moving of a building, or due to survey errors, or construction deviations, reciprocal easements shall exist for the maintenance of such encroachment for so long as such encroachment exists, and for maintenance thereof after rebuilding in the event of any destruction. There shall be easements to, through and over those portions of the land, structures, building, improvements and walls (including interior Unit walls) contained therein for the continuing maintenance and repair of all utilities and mechanical equipment in the Condominium shared by all Units. Easements are hereby reserved for the purpose of support with respect to any Unit interior wall which supports a Common Element.

Section 2. Easements. The Administrator shall have the right to grant easements for utilities over, under and across the Condominium to appropriate governmental agencies or public or private utility companies and to transfer title of utilities to governmental agencies or to utility companies. Any such easement or transfer of title may be conveyed without the consent of any Co-owner, mortgagee or other person and shall be evidenced by an appropriate amendment to this Master Deed and to Exhibit B hereto, recorded in the Genesee County Records. All of the Co-owners and mortgagees of Units and other persons interested or to become interested in the Project from time to time shall be deemed to have irrevocably and

unanimously consented to such amendments to this Master Deed as may be required to effectuate the foregoing grant of easement or transfer of title. For clarity purposes, no easements can be granted over any Unit in the Condominium without the prior consent and agreement to grant the easement of the Co-owner of the Unit affected.

Section 3. Grant of Easements by Administrator. The Administrator shall be empowered and obligated to grant such easements, licenses, rights-of-entry and rights-of-way over, under and across the Condominium Project, but not including within a Unit without the written consent of any other Co-owner thereof, for utility purposes, including, but not limited to, water, electrical, telephone, telecommunications, gas, Storm Sewer and Sanitary Sewer mains for the use and benefit of any land which may be withdrawn therefrom. In the event Developer, its successors or assigns, utilizes, taps, ties into, extends or enlarges any utilities located in the Project, it shall be obligated to pay all of the expenses reasonably necessary to restore the Condominium Premises to their state immediately prior to such utilization, tapping, tying-in, extension or enlargement. These reservations may be exercised by Developer or any person or entity to whom or which it specifically assigns the same by recorded instrument for purposes of utilization, tapping, tying-in, extension or enlargement for the benefit of lands adjoining the Condominium, access purposes or other lawful purposes as may be necessary for the benefit of the Condominium Project.

Section 4. Easements for Access, Maintenance, Repair and Replacement. Each Co-owner and the Administrator and all public or private utility companies shall have such easements over, under, across and through the Condominium Project, including all Units and Common Elements, as may be reasonably necessary to develop, construct, market and operate any Units within the land described in Article II hereof, and also to fulfill any responsibilities of maintenance, repair, decoration or replacement which they or any of them are required or permitted to perform under the Condominium Documents or by law. These easements include, without any implication of limitation, the right of the Administrator to obtain access during reasonable hours and upon reasonable notice to water meters, sprinkler controls and valves and other Common Elements located within any Unit.

Section 5. Telecommunication Agreements. Each Unit Co-owner, as to the Co-owner's Unit, and the Administrator shall have the power to grant such easements, licenses and other rights of entry, use and access and to enter into any contract or agreement, including wiring agreements, right-of-way agreements, access agreements and multi-unit agreements and, to the extent allowed by law, contracts for sharing of any installation or periodic subscriber services fees as may be necessary, convenient or desirable to provide for telecommunications, videotext, broad band cable, satellite dish, earth antenna and similar services (collectively "Telecommunications"). To the extent that any easement, license or other right requires entry over, access to or use of another Co-owner's Unit or the building located within the other Co-owner's Unit, such Unit Co-owner's consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, in no event shall the Administrator enter into any contract or agreement or grant any easement, license or right of entry or do any other act or thing which will violate any provision of any federal, state or local law or ordinance. Any and all sums paid to the Administrator by any telecommunications or other company or entity in connection with such service, including fees, if any for the privilege of installing same or sharing periodic subscriber service fees, shall be receipts affecting the administration of the Condominium Project within the meaning of the Act and shall be paid over to and shall be the property of the Co-owners in an equal amount.

Section 6. Parking Area, Driveways and Utilities Easements. As of the date of recording of this Master Deed, the Condominium is subject to easements and other rights and obligations contained in a certain Easement Agreement dated September 9, 2002, recorded in Instrument No.: 200303120039669, Genesee County Records ("Easement Agreement"). The Easement Agreement automatically terminates when the term of a certain Land Lease Agreement between the Developer as lessor and the BSLM, L.L.C. as lessee dated September 9, 2002 ("Land Lease") either expires or terminates. For purposes of clarification and the removal of doubt, it is the intent that upon expiration of the Land Lease, the easements and covenants set forth below shall apply.

(a) Parking and Driveways. The Developer herein reserves and grants to the Co-owner of Unit 2 and its respective employees, agents, contractors, tenants, invitees, licensees and concessionaires, to take effect upon the expiration or termination of the Land Lease, a non-exclusive easement for the passage of and parking of vehicles, and for the passage and accommodation of pedestrians, over, across and through all areas within the exterior boundaries of Unit 1 which may now or hereafter be constructed, maintained and utilized for entrances, exits, driveways, parking lots and sidewalks ("Parking/Pedestrian Areas") but specifically excluding any building improvements located on Unit 1 and any future building areas, once developed as such. The Owner of Unit 1 shall at all times have full control, management and direction of the parking area and driveways, and shall have the right at any time to change the layout thereof, including the right to reasonably add to or subtract from their shape and size, as well as to alter their location provided; however, that no such change, addition, subtraction or relocation shall interfere with access to, or the visibility of Unit 2 and the improvements located thereon from the public right-of-way located in Miller Road. No fence or other barrier which would in any way prevent or obstruct the passage of pedestrian or vehicular traffic for the purposes herein permitted shall be erected or permitted within or across Unit 1, nor shall any fence or other barrier be erected or permitted which would unreasonably (i) restrict the visibility of Unit 2 improvements from public streets or thoroughfares adjoining Unit 2, or (ii) interfere with the ingress to or egress from Unit 2 to or from any public streets or thoroughfares adjoining Unit 1; provided, however, the foregoing provision shall not prohibit barricades erected and reasonably necessary in connection with the construction, reconstruction or repair and maintenance of improvements in Unit 1 (all such work to be conducted in a commercially reasonable expeditious manner so to minimize the interference with the use of Unit 2, and such work shall be diligently prosecuted to completion) or the erection or construction of limited curbing and other forms of traffic control within the boundaries of Unit 1. Even though a portion of Unit 1 may at any time be paved and used for parking, and vehicular and pedestrian passage, the Co-owner of Unit 1, its successors and assigns, shall not be prohibited from subsequently constructing additional improvements thereon and/or establish an additional Unit, provided that all governmental parking requirements and ingress and egress requirements for the Units 1 are complied with.

The Co-owner of Unit 1 reserves the right to temporarily close off a portion of Unit 1 for such reasonable periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing off any portion of Unit 1, the Co-owner of Unit 1 shall give written notice to the Co-owner of Unit 2 of its intention to do so, and shall coordinate such closing with the Co-owner of Unit 2 so that no unreasonable interference with the Co-owner of Unit 2's use of Unit 1 shall occur and shall make reasonable efforts, if possible, to provide for alternative means of vehicular and pedestrian ingress and egress and vehicular parking during such period of closure.

(b) **Utilities.** The Developer also reserves and hereby grants to the Co-owner of Unit 2, for the benefit of Unit 2, a non-exclusive easement and right to construct, install and utilize the common and separate utilities that benefit Unit 2 solely (the "Utilities") which may now or hereafter be established or located in, over, under, through and across Unit 1, including but not limited to water and gas mains, sanitary sewers, storm sewers and storm water drainage and detention basin, electrical power lines, telephone lines, and other pipes, ducts, conduits and facilities for Utilities. Further, the Co-owners shall have the right to extend, connect with and tap into Utilities which may now or hereafter be located in, over, under, through and across the other Co-owner's Unit in order to service all or any portion of the Co-owner's Unit, and the improvements now or hereafter located thereon. Upon exercising its right to tap into the Utilities, each Co-owner shall have the right to remove any improvements, but not any structures, to effect such tap-in and shall cause all work in connection therewith to be completed, including general clean-up and surface restoration, as quickly as reasonably practicable. This easement does not extend under building improvements or within five feet (5') thereof, unless agreed in advance and in writing by the owner of the building.

(c) **Amendment.** So long as the Developer, or any entities related to or affiliated with, or any subsidiary of it, has a legal or equitable interest in Unit 1, this Section 6 shall not be modified, amended or terminated without the prior approval by the City, and written consent of the Developer or, as applicable, any entities related to or affiliated with, or any subsidiary of it, that has a legal or equitable interest in Unit 1, which consent may be given or withheld in its sole discretion.

(d) **Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of Unit 1 or to the general public, or for the general public or for any public use or purpose whatsoever; it being the intention and understanding of the parties hereto that this Section shall be strictly limited to, and for the purposes herein expressed solely for the benefit of, the parties hereto.

(e) **Indemnity.** Each Co-owner shall indemnify, defend and save harmless the other Co-owner, its partners, members, contractors, agents and employees, from all claims, losses and damages that arise from the Co-owner's exercise of its rights pursuant to this Section, including without limitation reasonable attorneys' fees, arising out of the Co-owner's exercise of its rights pursuant to this Section.

(f) **Run With the Land.** Easements granted in this Section 6 shall be deemed to run with the land and shall be a burden and a benefit to any persons or entities acquiring or owning an interest in the Condominium Premises and their respective successors and assigns.

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Section 7. Reciprocal Easement Agreement. The Project is subject to a certain Reciprocal Easement Agreement dated January 10, 2002 and recorded in Instrument No. 2002 08190093023 as amended by the First Amendment to Reciprocal Easement Agreement (collectively, "Reciprocal Easement Agreement"). The costs associated with the maintenance, repair and replacement of that portion of the shared roadway and/or driveway (easement) assigned in the Reciprocal Easement Agreement that lies within the Condominium shall be administered by the Administrator and the cost therefor allocated between the Units in the Condominium in accordance with the percentages of value set forth in Article V, Section 2 above.

ARTICLE VIII

PARTY WALL

Section 1. Party Wall. Any wall partition which is built as a part of the original construction of the building contained within a Unit and placed on the boundary line between the Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Repair and Maintenance. Repair and structural maintenance of any party wall placed on the boundary line between two Units shall be undertaken by the Administrator and the cost therefor borne proportionately by the Co-owners based on the percentage of value set forth in Article V above. The cost of maintenance and repair of the exterior of the party wall, including, without limitation, such attachments as insulation, wiring and drywall plaster, shall be borne solely by the Co-owner who makes use of or solely benefits from such exterior.

Section 3. Destruction of Wall. If the party wall is damaged or destroyed by fire or other casualty, the Administrator shall restore the wall to substantially its condition prior to such casualty and the expense of such restoration shall be borne proportionately by the Co-owners based on the percentage of value set forth in Article V above.

Section 4. Co-owner Responsibility for Repair. In the event the party wall is damaged or destroyed through the act or omissions of a Co-owner, its occupant or guest (whether or not such act or omission is negligent or otherwise culpable) so as to deprive the adjoining Co-owner of the full use and enjoyment of such wall, then the Co-owner causing such damage shall proceed to rebuild and repair the wall to substantially as good a condition as existed immediately prior to such damage or destruction and such responsible Co-owner shall bear the entire expense thereof including, if applicable, the expense of restoration of the exterior, including damaged attachments of the party wall benefitting the other Co-owner. In the event of an emergency caused by a Co-owner, the other Co-owner shall have the right to undertake the repair as is reasonably necessary after providing the Co-owner causing the damage with notice of the need to repair within a time period that is reasonably necessary in light of the nature of the emergency, and the Co-owner causing the damage shall be obligated to reimburse the Co-owner undertaking the repair within thirty (30) days of receipt of the invoice therefor with the corresponding back-up.

Section 5. Right of Contribution. The right of any Co-owner to contribution from the other Co-owner under this Article shall be appurtenant to the land and shall pass to such Co-owner's successors in title.

Section 6. Modification of the Party Wall. In addition to meeting other requirements of these restrictions and of any building code or similar regulations or ordinances, a Co-owner proposing to modify, make additions to or rebuild improvements in its Unit in any manner which requires any alteration of the party wall shall first obtain the written consent of the other Co-owner to such modification of the party wall, and is subject to approval by the City.

Section 7. Easement. Each Co-owner shall enjoy a perpetual easement for the continued use and support of those portions of the party wall lying within the boundaries of a Unit and to enter a Unit to undertake its respective installation, maintenance, repair and replacement obligations set forth in this Article VIII.

ARTICLE IX

AMENDMENT AND TERMINATION

This Master Deed, including Exhibit A (Bylaws) and Exhibit B (Condominium Subdivision Plan), may be amended only with approval by the City, and as provided herein or with the consent of all Co-owners and, to the extent an amendment is deemed material pursuant to Section 90a of the Act, the consent of all first mortgagees. This Master Deed may be terminated only with the consent of all Co-owners and of all first mortgages.

ARTICLE X

ASSIGNMENT

Any or all of the rights and powers granted or reserved to the Developer in the Condominium Documents or by law, including the power to approve or disapprove any act, use or proposed action or any other matter or thing, shall be assigned and transferred to the Co-owners upon the recording of a separate assignment in the office of the Genesee County Register of Deeds.

**[SIGNATURE AND NOTARY ACKNOWLEDGEMENT
APPEAR ON THE FOLLOWING PAGE]**

TOPVALCO, INC., an Ohio corporation

By: _____

Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Master Deed was acknowledged before me in _____
County, Michigan this ____ day of _____, 2022 by _____, the
_____ of TOPVALCO, INC., an Ohio corporation, on behalf of the corporation.

_____, Notary Public
_____, Michigan
Acting in _____ County, Michigan
My Commission Expires: _____

Master Deed drafted by and when recorded return to:
C. Kim Shierk
Williams, Williams, Rattner & Plunkett, P.C.
380 North Old Woodward Avenue, Suite 300
Birmingham, Michigan 48009

EXHIBIT A
SWARTZ CREEK SIDE SHOPS
BYLAWS

ARTICLE I
ADMINISTRATOR

Section 1. Initial Administration by Developer. Swartz Creek Side Shops, a Condominium Project located in the City of Swartz Creek, Genesee County, Michigan, shall be administered under the applicable laws of the State of Michigan. Upon establishment of the Condominium, the Developer shall serve as the Administrator designated to administer the affairs of the Condominium Project under Section 54(1) of the Act. The Developer will initially undertake the regular periodic requirements of the Condominium, and performing any other maintenance and fiscal responsibilities set forth in the Condominium Documents.

Section 2. Administration by the Co-owners. After the transfer of ownership of both Unit 1 and Unit 2 to a party unrelated to the Developer, the Co-owner of Unit 1 shall then act as the "Administrator". The Administrator shall be responsible for the management, maintenance, operation and administration of the General Common Elements, easements and affairs of the Condominium Project in accordance with the Condominium Documents, and the laws of the State of Michigan. All Co-owners in the Condominium and all persons using or entering upon or acquiring any interest in any Unit shall be subject to the provisions and terms set forth in the Condominium Documents. If the Co-owner of Unit 1 declines to be the Administrator, then the Co-owners shall unanimously agree to share the responsibility of the Administrator. The Administrator, in connection with undertaking its obligations as set forth herein, may engage a management agent, the fee for which shall also be considered an administrative expense of the Condominium, within the meaning of Section 54(4) of the Act.

Section 3. Failure to Perform Administrator Responsibilities. In the event the Administrator fails to perform the Administrator responsibilities set forth in the Condominium Documents, Article IV, Section 3(c), and Article IV, Section (4) of the Master Deed shall apply.

ARTICLE II
ASSESSMENTS

All expenses arising from the management, administration and operation of the Condominium Project in pursuance of the Condominium Documents and the Act shall be levied against the Units and the Co-owner thereof in accordance with the following provisions:

Section 1. Assessments for Common Elements. All costs incurred in satisfaction of any liability arising within, caused by, or connected with the General Common Elements and in fulfilling Administrator's responsibilities as set forth in Article IV, Section 3(b) of the Master Deed and elsewhere in the Master Deed and these Bylaws shall constitute expenditures affecting the administration of the Project and shall be allocated among the Units in the same percentage as set forth in Article V of the Master Deed. All sums received as the proceeds of, or pursuant to, any policy of insurance securing the interest of the Co-owners against liabilities or losses arising within, caused by, or connected with the improvements that are the responsibility of the

Administrator to maintain, repair and replace, shall constitute receipts affecting the administration of the Condominium Project, within the meaning of Section 54(4) of the Act.

Section 2. Determination of Assessments. Assessments shall be determined in accordance with the following provisions:

(a) **Regular Assessments.** Assessments shall be due and payable quarterly and based on an annual budget as provided for in sub-section (b) below, on a proportionate share basis determined by the percentages of value set forth in Article V, Section 2 of the Master Deed.

(b) **Annual Budget.** The Administrator shall establish an annual budget in advance for each fiscal year, projecting all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium Project based on recent past experience for all costs of operation, management, and maintenance in good repair of the General Common Elements and the other shared areas referenced in Article VII, Section 6 of the Master Deed, including capital repairs and replacements, if any.

The procedure for adopting the annual budget is as follows:

- The Administrator shall prepare and provide the other Co-owner with an annual budget no later than October 1st.
- The other Co-owner shall have the right to review the budget and present to the Administrator in writing any objections it may reasonably have during a period ending on October 15th. If Administrator receives no comments to the budget from the other Co-owner on or before October 15th, then the budget shall automatically be deemed approved by the other Co-owner.
- If the other Co-owner has comments to the Administrator's proposed budget, the Administrator and the other Co-owner shall work cooperatively to arrive at an agreed upon budget for all shared expenses on or before October 30th. If a budget is not approved by both the Administrator and the other Co-owner on or before October 30th, then the items in dispute shall be immediately presented to an arbitrator approved by both Co-owners whom has at least 10 years of experience managing commercial properties in the general geographic area of the Condominium, to render a decision regarding the items in dispute which decision shall be made no later than December 15th so that the operating budget is adopted by December 31st.
- The budget shall include a line item for a management fee for administering the Project to be payable to either the Administrator or a third-party management company

engaged to administer the day-to-day operations of the Project.

- The budget shall include a line item for a reserve that is a minimum of ten percent (10%) of the total budget.

(c) **Year-end Accounting.** Within ninety (90) days after the close of each calendar year or as soon thereafter as practicable, the Administrator shall calculate the actual amount of expenses payable for the subject calendar year and the allocation for that year. If the aggregate amount of the assessments paid by the Co-owners during the subject calendar year was lesser or greater than the percentage required of the Co-owners, then the difference shall be either charged to or credited against any other amounts due or to become by that Co-owner, as the case may be, within thirty (30) days of the date of the Administrator's written notice as to the actual costs for the subject calendar year. Any and all amounts that may be due as a result of underpayment by a Co-owner shall be due no later than thirty (30) days of the date of the Administrator's written notice of the year end accounting.

(d) **General.** It is understood that the Condominium Project and the Common Elements are to be maintained in good repair in accordance with a first-class manner consistent with other first class shopping centers in the area, and in compliance with all applicable laws, rules, codes and regulations, and the Administrator shall carry out the Administrator's duties in accordance with this understanding. Should the Administrator at any time decide, in its sole discretion: (1) that the assessments levied are or may prove to be insufficient, (a) to pay the costs of operation and management of the Condominium, (b) to provide replacements of existing Common Elements, (c) to provide additions to the Common Elements not exceeding \$1,500.00 annually for the entire Condominium Project, or (2) that an emergency exists, the Administrator shall have the authority to increase the general assessment or to levy such additional assessment or assessments as it shall deem to be necessary. The Administrator also shall have the authority, without Owner consent, to levy assessments pursuant to the provisions of Article V hereof. The discretionary authority of the Administrator to levy assessments pursuant to this subsection shall rest solely with the Administrator for the benefit of the Co-owners thereof, and shall not be enforceable by any creditors of the Administrator or of the Co-owners thereof.

Section 3. Payment of Assessments. Annual assessments as determined in accordance with Article II, Section 2(a) above shall be payable by Co-owners in such installments as the Administrator may reasonably determine, commencing with acceptance of a deed to or a land contract vendee's interest in a Unit, or with the acquisition of fee simple title to a Unit by any other means.

Section 4. Penalty for Default. The payment of an assessment shall be in default if such assessment, or any part thereof, is not paid to the Administrator in full on or before the due date for such payment. Each installment in default for five (5) or more days may bear interest from the initial due date thereof at the highest rate permitted by law. Each Co-owner (whether 1 or more persons) shall be, and remain, personally liable for the payment of all assessments (including fines for late payment and costs of collection and enforcement of payment) pertinent to his Unit which may be levied while such Co-owner is the owner thereof, except a land contract purchaser from any Co-owner, including Developer, shall be so personally liable and such land contract seller shall not be personally liable for all such assessment levied up to and including the date upon which such land contract seller actually takes possession of the Unit following

extinguishment of all rights of the land contract purchaser in the Unit. Payments on account of installments of assessments in default shall be applied as follows: first, to costs of collection and enforcement of payment, including reasonable attorney's fees; second, to any interest charges and fines for late payment on such installments; and third, to installments in default in order of their due dates.

Section 5. Waiver of Use or Abandonment of Unit. No Co-owner may exempt himself from liability for his contribution toward the expenses of administration by waiver of the use or enjoyment of any of the Common Elements or by the abandonment of his Unit or by waiver of use or enjoyment of rights reserved in the Master Deed.

Section 6. Enforcement.

(a) **Remedies.** In addition to any other remedies available to the Administrator, the Administrator may enforce collection of delinquent assessments by a suit at law for a money judgment or by foreclosure of the statutory lien that secures payment of assessments with the Administrator. In the event of default by any Co-owner in the payment of any installment of the annual assessment levied against his Unit, the Administrator shall have the right to declare all unpaid installments of the annual assessment for the pertinent fiscal year immediately due and payable. A Co-owner in default shall not be entitled to utilize any of the Common Elements of the Project; provided, however, this provision shall not operate to deprive any Co-owner of ingress or egress to and from his Unit. In a judicial foreclosure action, a receiver may be appointed to collect a reasonable rental for the Unit from the Co-owner thereof or any persons claiming under it. All of these remedies shall be cumulative and not alternative.

(b) **Foreclosure Proceedings.** Each Co-owner, and every other person who from time to time has any interest in the Project, shall be deemed to have granted to the Administrator the unqualified right to elect to foreclose the lien securing payment of assessments either by judicial action or by advertisement. The provisions of Michigan law pertaining to foreclosure of mortgages by judicial action and by advertisement, as the same may be amended from time to time are incorporated herein by reference for the purposes of establishing the alternative procedures to be followed in lien foreclosure actions and the rights and obligations of the parties to such actions. Further, each Co-owner and every other person who from time to time has any interest in the Project shall be deemed to have authorized and empowered the Administrator to sell or to cause to be sold the Unit with respect to which the assessment(s) is or are delinquent and to receive, hold and distribute the proceeds of such sale in accordance with the priorities established by applicable law. Each Co-owner of a Unit in the Project acknowledges that at the time of acquiring title to such Unit, he was notified of the provisions of this subparagraph and that he voluntarily, intelligently and knowingly waived notice of any proceedings brought by the Administrator to foreclose by advertisement the lien for nonpayment of assessments and a hearing on the same prior to the sale of the subject Unit.

(c) **Notice of Action.** Notwithstanding the foregoing, neither a judicial foreclosure action nor a suit at law for a money judgment shall be commenced, nor shall any notice of foreclosure by advertisement be published, until the expiration of 10 days after mailing, by first class mail, postage prepaid, addressed to the delinquent Co-owner at its or their last known address, a written notice that 1 or more installments of the annual assessment levied against the pertinent Unit is or are delinquent and that the Administrator may invoke any of its remedies hereunder if the default is not cured within 10 days after the date of mailing. Such written notice shall be accompanied by a written affidavit of the Administrator that sets forth (i) the affiant's capacity to make the affidavit, (ii) the statutory and other authority for the lien, (iii) the amount outstanding (exclusive of interest, costs, attorney's fees and future assessments), (iv) the legal description of the subject Unit, and (v) the name(s) of the Co-owner of record. Such affidavit shall be recorded in the office of the Genesee County Register of Deeds ~~in the county in which the Project is located~~ prior to commencement of any foreclosure proceeding, but it need not have been recorded as of the date of mailing as aforesaid. If the delinquency is not cured within the 10-day period, the Administrator may take such remedial action as may be available to it hereunder or under Michigan law. In the event the Administrator elects to foreclose the lien by

advertisement, the Administrator shall so notify the delinquent Co-owner and shall inform him that he may request a judicial hearing by bringing suit against the Administrator.

(d) **Expenses of Collection.** The expenses incurred in collecting unpaid assessments, including late charges, interest, fines, costs, actual attorney's fees (not limited to statutory fees), advances for taxes or other liens and other costs shall be chargeable to the Co-owner in default and shall be secured by the lien on its Unit.

(e) **First Mortgagee's Right to Cure.** The holder of a first mortgage covering a Unit shall be provided with written notice of the Administrator's intent to proceed with either a judicial foreclosure action or a suit at law as reserved in this Section 6 and with a 30-day opportunity to cure prior to the commencement of any such legal action

Section 7. Liability of Mortgagee. Notwithstanding any other provisions of the Condominium Documents, the holder of any first mortgage covering any Unit in the Project which comes into possession of the Unit pursuant to the remedies provided in the mortgage or by deed (or assignment) in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the property free of any claims for unpaid assessments or charges against the mortgaged Unit which accrue prior to the time such holder or purchaser and his or her successors and assigns acquires title to the Unit.

Section 8. Property Taxes and Special Assessment. All property taxes and special assessments levied by any public taxing authority shall be assessed in accordance with Section 131 of the Act.

Section 9. Personal Property Tax Assessment. No tangible personal property is owned or possessed by the Co-owner in common and no such event is contemplated. In such event, however, the Administrator shall be assessed as the person or entity in possession of any tangible personal property of the Condominium owned or possessed in common by the Co-owners, and personal property taxes based thereon shall be treated as expenses of administration.

Section 10. Construction Lien. A construction lien otherwise arising under Act No. 497 of the Michigan Public Acts of 1980, as amended, shall be subject to Section 132 of the Act.

Section 11. Priority of First Mortgage; Lien for Taxes. Under the Act, unpaid Condominium assessments constitute a lien upon the Unit and the proceeds of sale thereof prior to all claims except real property taxes and first mortgages of record.

Section 12. Statement as to Unpaid Assessments. The purchaser or Owner of any Unit or any mortgagee of any Unit may request a statement of the Administrator to the amount of any unpaid assessments thereon, whether regular or special. Upon written request to the Administrator, the Administrator shall provide a written statement of such unpaid assessments, interest, late charges, fines, costs and other fees as may exist or a statement that none exist, which statement shall be binding for the period stated therein. Upon the payment of that sum within the period stated, the lien for assessments as to such Unit shall be deemed satisfied; provided, however, that the failure of a purchaser or Owner to request such statement at least 5 days prior to the closing of the purchase of such Unit shall render any unpaid assessments against the Condominium Unit together with interest, costs, fines, late charges and attorney fees, and the lien securing the same fully enforceable against such purchaser and the Unit itself, to the extent provided by the Act. Under the Act, unpaid Condominium assessments constitute a lien upon the

Unit and the proceeds of sale thereof prior to all claims except real property taxes and first mortgages of record.

ARTICLE III

DISPUTE RESOLUTION AND VOTING DEADLOCKS

Section 1. Purpose and Effect. In the event that disagreements between the Co-owners arise in the course of administration of the Condominium, it is the purpose of this Article III to provide a reasonably efficient and cost-effective method of resolving any such disagreements. Therefore, all disputes, disagreements, and/or voting deadlocks between Co-owners which arise under the Condominium Documents or the Condominium Act with respect to the administration of Swartz Creek Side Shops, except those concerning issues of title to any portion of the Condominium Premises, shall not be litigated in courts of competent jurisdiction. Instead, any such disputes, disagreements and/or voting deadlocks shall be resolved outside of court action by mediation or arbitration in accordance with the following provisions if the disputants are unable to otherwise reach a negotiated settlement. Thus, when a Co-owner has a complaint or a grievance or a voting deadlock (herein sometimes "complaint" and sometimes "dispute") that would otherwise be justiciable in a court of law, the following procedures, first requiring mediation, and then arbitration if mediation is unsuccessful, must be used.

Section 2. Mediation Procedure. If a dispute has arisen which has not otherwise been resolved, one party or the other shall initiate the following mediation procedure:

(a) **Commencement of Mediation.** Concurrently with a written notice of an intent to mediate, the complainant shall state the complaint in writing and deliver it in a timely manner to the other party ("respondent"). Timely means within six months of the occurrence of the "event(s)" giving rise to the complaint. The "event(s)" are those that would begin the running of the applicable statute of limitations if the complaint was litigated in a court of competent jurisdiction. Failure to meet the statute of limitations deadline shall bar the claim forever. The complaint need not follow any prescribed format, such as a court pleading, but need only state the complaint. A written request for relief is discretionary. The complainant shall also include in the complaint a written notice to the respondent that its complaint will be submitted to mediation, including a list of acceptable mediators. The respondent shall reply within seven (7) business days of receipt of notice with an acceptance of one of the mediator designees or shall submit an alternative list.

(b) **Failure To Agree As To Mediator.** If the parties are unable to agree within seven (7) business days of respondent's first response as to who will serve as the mediator, each party shall select from the other's list one name, with the determination of who serves to be made by a coin flip witnessed by two neutral observers.

(c) **Mediation Procedure.** The complaint and the notice to mediate must be delivered to the respondent's Unit, either by hand, or by fax, or by certified mail or by a recognized overnight delivery service such as Federal Express. The complainant shall, within ten (10) business days of the selection of the mediator, request that one of the following facilitative mediation (herein "mediation") procedures be employed: (a) the rules prescribed by a private provider of community dispute resolution services; or (b) the mediation procedures of a community dispute resolution center in Genesee County; or (c) any mediation process that is acceptable to the mediator, the complainant, and respondent. If the parties are unable to agree on the mediation process within thirty (30)

business days following delivery of the complaint, the community dispute resolution agency serving Genesee County shall handle the mediation according to its procedures.

(d) **Reply to Complaint.** The respondent shall reply to the complaint in writing within thirty (30) business days of the determination of the mediation procedure, according to the procedural requirements of the selected mediation process.

(e) **Time Period Within Which Mediation Shall Occur.** The dispute will be mediated within ninety (90) days following the submission of all required documents.

(f) **Engagement of Legal Counsel.** Either party may engage legal counsel to represent it in the mediation.

(g) **Costs of Mediation.** Mediation costs, which include filing fees, administrative fees, and mediator fees, will be shared equally by both parties. Each party shall pay its own legal counsel's fees incurred prior to and during the mediation process.

(h) **Good Faith Participation in Mediation** Neither party is bound to settle during mediation, but each of them is required to act in good faith.

(i) **Mediated Settlement Agreement.** A mediated settlement agreement shall be reduced to writing, which agreement shall be enforceable in a court of competent jurisdiction.

Section 3. Arbitration. If the mediation fails to produce a dispositive resolution of all of the issues in dispute, then the unresolved issues shall be resolved by a single arbitrator selected by the parties who shall be subject to the commercial arbitration rules of the American Arbitration Association. The arbitrator shall be an attorney, experienced in real estate common interest ownership law selected by agreement of all disputants. The panel of eligible arbitrators shall consist of the attorneys who are members of the Real Property Law Section of the Michigan State Bar. By agreement of all parties, an arbitrator who does not meet this criterion may be selected. If the parties are unable to agree on the arbitrator, the mediator shall make the choice. The mediator may not serve as the arbitrator. The arbitration shall be initiated within thirty (30) days following the mediator's written determination that some of the issues are unresolved; and the arbitration shall be completed within thirty (30) days thereafter. The parties shall participate in the arbitration process in good faith. The arbitrator may assess costs, excluding arbitration and pre-arbitration attorney fees, in an amount he or she deems appropriate. If no assessment is made, these costs will be shared equally by both parties. In the absence of the election and written consent of the parties to arbitrate, a Co-owner is not prohibited from petitioning a court of competent jurisdiction to resolve any dispute, claim or grievance. The election by the Co-owners to submit any dispute, claim or grievance to arbitration prohibits the parties from petitioning the courts regarding that dispute, claim or grievance.

ARTICLE IV

INSURANCE

Section 1. Responsibilities of Co-owners.

(a) Each Co-owner shall be responsible for obtaining special cause of loss coverage and replacement cost with respect all improvements located within the Unit and for its personal property located both within the Unit and elsewhere on the Condominium Project, which

coverage shall include the shared party wall. All such insurance shall include loss or damage by fire and the extended coverage hazards, vandalism, and malicious mischief, and shall be carried by each Co-owner in an amount equal to the full replacement value of the improvements located within the Co-owner's Unit. Each Co-owner shall also maintain or cause to be maintained in effect comprehensive general liability including personal liability coverage insurance covering the Unit and the improvements located thereon and its appurtenances and the sidewalks fronting thereon in a minimum amount of Two Million and 00/100 Dollars (\$2,000,000.00) for injury to or death of any one person, and Six Million and 00/100 Dollars (\$6,000,000.00) for injury to or death of any number of persons in one occurrence, and property damage liability insurance in the amount of One Million and 00/100 Dollars (\$1,000,000.00). Such insurance shall specifically insure the Unit Co-owner against all liability assumed by it hereunder, as well as liability imposed by law. It shall be each Co-owner's responsibility to determine by personal investigation or from its own insurance advisors the nature and extent of insurance coverage adequate to its needs and thereafter to obtain insurance coverage for its personal property located within its Unit or elsewhere on the Condominium and for its personal liability for occurrences within its Unit or upon the Common Elements, and the Administrator shall have absolutely no responsibility for obtaining such coverages. The insurance required by the Co-owner under this subsection can be provided by the Co-owner's tenant(s); for the purpose of clarity, however, it is the Co-owner's obligation to obtain the insurance, so if such insurance is not obtained by the Co-owner's tenant, the other Co-owner has the right to enforce the insurance requirements against the Co-owner whose tenant has failed to obtain the insurance.

(b) Each Co-owner will require its contractors to carry builder's risk insurance naming all Co-owners as named insureds, such insurance to be in an amount at least equal to the contract amount of the improvements to be placed on the Unit.

(c) Upon request of a Co-owner, the other Co-owner shall furnish to the requesting Co-owner certificates of insurance evidencing the type and amount of coverages set forth in this Section 1 and a provision that there will be no cancellation, reduction or non-renewal without giving the other Co-owner at least thirty (30) days prior written notice thereof. All insurance maintained in accordance herewith shall contain a waiver of subrogation against the other Co-owner, shall name the other Co-owner as an additional insured, and shall be carried by an insurer qualified to conduct business in the State of Michigan and rated "A+X111" or higher by A. M. Best Company's Key Rating Guide, Property-Casualty.

(d) The Administrator shall maintain liability insurance on the ~~parking area and driveways located in Unit 1~~ Common Elements in commercially reasonable amounts, which insurance shall name the other Co-owner(s) as an additional insured and shall be subject to the requirements of subparagraph (c), above, and the cost therefor shall be allocated among the Co-owners in the same percentages of value set forth in Article V, Section 2 of the Master Deed.

(e) The Administrator is authorized to carry liability insurance covering acts of the Administrator in such amounts as the Administrator shall deem appropriate.

(f) The Administrator shall carry liability insurance for the parking lot located within Unit 1 naming both Co-owners as additional insured or loss payees, and the cost therefor is an expense of administration of the Project.

Section 2. Waiver of Subrogation. The Co-owners shall use their best efforts to see that all property and liability insurance carried by them shall contain appropriate provisions whereby the insurer waives its right of subrogation as to any claims against any Co-owner.

Section 3. Premium Expenses and Self Insured. All premiums upon insurance purchased by the Co-owners shall be borne entirely by that Co-owner. Notwithstanding the foregoing, a Co-owner may self-insure so long as the net worth of Co-owner or its parent company is \$250,000,000 or greater, as shown for Co-owner or its parent company in the most recent 10-Q or 10-K filing with the U.S. Securities and Exchange Commission. Upon request, Co-owner shall furnish to other Co-owner a memorandum or a certificate of all insurance required under these Bylaws.

Section 4. Proceeds of Insurance. Proceeds of all insurance policies owned by the Administrator shall be received by the Administrator, held in a separate account and distributed to the Administrator, and the Co-owners and their mortgagees as their interests may appear; provided, however, whenever repair or reconstruction of the Condominium shall be required as provided in Article V of these Bylaws, the proceeds of any insurance received by the Administrator as a result of any loss requiring repair or reconstruction shall be applied for such repair or reconstruction.

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ARTICLE V

RECONSTRUCTION OR REPAIR

Section 1. Administrator Responsibility for Repair. Immediately after the occurrence of a casualty causing damage to a General Common Element or to any of the shared areas referenced in Article VII, Section 6 of the Master Deed, the Administrator shall obtain reliable and detailed estimates of the cost to place the damaged property in a condition as good as that existing before the damage. If the proceeds of insurance are not sufficient to defray the estimated cost of reconstruction or repair required to be performed by the Administrator, or if at any time during such reconstruction or repair, or upon completion of such reconstruction or repair, the funds for the payment of the cost thereof are insufficient, assessment shall be made against all Co-owners for the cost of reconstruction or repair of the damaged property in sufficient amounts to provide funds to pay the estimated or actual cost of repair.

Section 2. Co-owner's Responsibility. Each Co-owner shall be responsible for all maintenance, repair and replacement required within its Unit. This Section shall also be applicable in the event of destruction during the course of construction of improvements within a Unit. If any of the buildings are damaged by fire or other casualty (whether insured or not), the Co-owner upon whose Unit such building is located shall, subject to governmental regulations and/or insurance adjustment delays, promptly remove the debris resulting from such event and provide a sightly barrier, and within a reasonable time thereafter shall perform one of the following alternatives:

- (i) such Co-owner shall repair or restore the building so damaged to a complete structure, such repair or restoration to be performed in accordance with all applicable provisions of the Condominium Documents;
- (ii) such Co-owner shall erect another building in such location, such construction to be performed in accordance with all applicable provisions of the Condominium Documents; or
- (iii) such Co-owner shall demolish the damaged portion and/or the balance of such building and restore the cleared area to either a hard surface condition or a landscaped condition.

Within one hundred twenty (120) days from the date of the casualty, such Co-owner shall give notice to each other Co-owner of which alternative it elects.

Section 3. Timely Reconstruction and Repair. If damage to the General Common Elements adversely affects the appearance of the Project, the Administrator shall proceed with replacement of the damaged property without delay.

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Section 4. Eminent Domain. Section 133 of the Act and the following provisions shall control upon any taking by eminent domain:

(a) Taking of Unit. In the event of any taking of an entire Unit by eminent domain, the award for such taking shall be paid to the Co-owner of such Unit and the mortgagee thereof, as their interests may appear. After acceptance of such award by the Co-owner and his mortgagee, they shall be divested of all interest in the Condominium Project. In the event that any condemnation award shall become payable to any Co-owner whose Unit is not wholly taken by eminent domain, then such award shall be paid by the condemning authority to the Co-owner and his mortgagee, as their interests may appear.

(b) Taking of Common Elements. If there is any taking of any portion of the Condominium other than any Unit, but including that portion of Unit 1 identified as "parking area" on Exhibit B, the condemnation proceeds relative to such taking shall be paid to the Co-owners and their mortgagees in proportion to their respective interests in the Common Elements, including the parking area, and the affirmative vote of all Co-owners shall determine whether to rebuild, repair or replace the portion so taken or to take such other action as they deem appropriate.

(c) Continuation of Condominium After Taking. In the event the Condominium Project continues after taking by eminent domain, then the remaining portion of the Condominium Project shall be re-surveyed and the Master Deed amended accordingly, and, if any Unit shall have been taken, then Article V of the Master Deed shall also be amended to reflect such taking and to proportionately readjust (if appropriate) the percentages of value of the remaining Co-owners based upon the continuing value of the Condominium of 100%. Such amendment may be effected by the execution of and the specific approval thereof by all Co-owners. Costs incurred to accomplish matters required by this subsection shall be borne equally by the Co-owners.

(d) Notification of Mortgagees. In the event any Unit in the Condominium, or any portion thereof, or the Common Elements or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Administrator promptly shall so notify each institutional holder of a first mortgage lien on any of the Units in the Condominium.

Section 5. Priority of Mortgagee Interests. Nothing contained in the Condominium Documents shall be construed to give a Co-owner or any other party priority over any rights of first mortgagees of Condominium Units pursuant to their mortgages in the case of a distribution to Co-owners of insurance proceeds or condemnation awards for losses to or a taking of Condominium Units and/or Common Elements.

**ARTICLE VI
RESTRICTIONS**

All of the Units in the Condominium shall be held used and enjoyed subject to the following limitations and restrictions.

Section 1. Prohibited Uses. Units in the Project, including all subdivision of Units created in the future, are subject to the restrictions and prohibited uses set forth in applicable Ordinances for the City of Swartz Creek. Further, no portion of the Condominium shall be used, directly or indirectly, for:

(a) No part of the Condominium, except for Unit 1, shall be used as a drug store or a business principally devoted to the sale of health and beauty aids or for a pharmacy department requiring the services of a registered pharmacist, provided that this restriction shall cease to be in force and effect if the occupant of the building located on Unit 1 fails to operate a drug store, or pharmacy department for a period of three hundred sixty-five (365) consecutive days or longer, commencing when such use ceases on Unit 1, except when such failure is caused by labor disputes, pandemic, force majeure (including reconstruction as a result of fire or other casualty) or conditions beyond the control of the occupant of the building situated on Unit 1.

(b) No part of the Condominium, except for Unit 1, shall be used as a food store or food department, or for the sale of groceries, meats, fish, produce, dairy products, bakery products, alcoholic beverages or any of them for off-premises consumption, provided that nothing herein shall prevent the sale of such products as an incidental part of a business so long as the total number of square feet devoted to the display for the sale of such products does not exceed five percent (5%) of the total square footage of the building improvements in which such products are sold or five hundred (500) square feet, including, in either case, one-half (1/2) of the aisle space adjacent to any display area, whichever is smaller, and further provided that this restriction shall cease to be in force and effect if the occupant of the building situated on Unit 1 fails to conduct a business for the sale of groceries, meats, fish, produce, dairy products, bakery products, alcoholic beverages or any of them for off-premises consumption, for three hundred sixty-five (365) consecutive days or longer, commencing when such use ceases on Unit 1, except when such failure is caused by labor disputes, pandemic, force majeure (including reconstruction as a result of a fire or other casualty) or conditions beyond the control of the occupant of the building situated on Unit 1.

(c) No part of the Condominium, except for Unit 1, shall be used for the sale of automotive fuel, including without limitation gasoline and diesel fuel, provided that this restriction shall cease to be in force or effect if the operator of any automotive fuel dispensing facility located on Unit 1 fails to conduct a business for the sale of automotive fuel for three hundred sixty five (365) consecutive days or longer, commencing when such use ceases on Unit 1, except when such failure is caused by labor disputes, pandemic, force majeure (including reconstruction as a result of a fire or other casualty) or conditions beyond the control of the operator.

(d) No part of the Condominium, except for Unit 1 provided that there is enough parking for the entire Condominium, shall be used as a non-retail business which requires extensive parking such that, at any time, the availability of convenient parking for the customers of any other business operated in the Condominium is reduced or eliminated, including without limitation a disco, nightclub, health spa, theater, bowling alley, bingo parlor or recreational center. No part of the Condominium, including Unit 1, shall be used as a business which principally features sexually explicit products or drug paraphernalia.

(e) So long as Unit 1 is either owned or leased by TOPVALCO, INC., an Ohio corporation, its affiliates and/or a subsidiary, TOPVALCO, INC., an Ohio corporation, its affiliates and/or a subsidiary, shall also have the right for the benefit of itself to enforce directly against the other Unit Owner, tenants, subtenants, licensees and occupants, the restrictions against use with respect to the other Units set forth in sub-sections (a) – (d) above; but nothing herein shall require or be deemed an undertaking by Unit 1 if it is either owned or leased by TOPVALCO, INC., an Ohio corporation, its affiliates and/or a subsidiary, to enforce the same.

Section 2. Leasing and Rental. A Co-owner (including the Developer) may lease its Unit and improvements within a Unit or portions thereof subject to the restrictions referenced in Section 1 of this Article VI without notice to or consent from any Co-owner or other person interested in the Project, except as otherwise provided in any mortgage on any Unit. The terms of all leases, occupancy agreements and occupancy arrangements shall incorporate, or be deemed to incorporate, all of the provisions of the Condominium Documents. All Co-owners, including the Developer, waive their right to receive from any Co-owner notice of his intent to lease his Unit and a copy of the proposed lease form, as provided in Section 112 of the Act. A Co-owner that leases its Unit shall notify the other Co-owner when acting as the Administrator hereunder of the name and address of the tenant under such lease. The tenant under such lease shall be referred to herein as an "Eligible Tenant." Each Eligible Tenant shall be entitled to prior written notice of any delinquency in the payment of assessments or charges owed by the Co-owner of the Unit leased by the Eligible Tenant and of any notice of default under the Condominium Documents sent to such Co-owner; provided, however, the other Co-owner when acting as the Administrator hereunder shall only be required to send notices to the last known address of an Eligible Tenant which is provided to the Administrator.

Section 3. Exterior Appearance. All alterations to the exterior appearance of the buildings shall be subject to the applicable City of Swartz Creek Ordinances and any applicable recorded documents and the prior written consent of the Developer, which consent is not to be unreasonably withheld or delayed. In the event that the Unit 2 Co-owner submits plans and specifications for Developer's approval, Developer shall be deemed to have approved such plans and specifications if Developer does not reject such plans and specifications within thirty (30) days of submission by the Unit 2 Co-owner. No Co-owner shall in any way restrict access to any plumbing, water line, water line valves, water meter, sprinkler system valves or any other element which affects an Administrator responsibility in any way. Should access to any facilities of any sort be required, the Administrator may remove any coverings or attachments of any nature that restrict such access and will have no responsibility for repairing, replacing or reinstalling any materials, whether or not installation thereof has been approved hereunder, that are damaged in the course of gaining such access, nor shall the Administrator be responsible for monetary damages of any sort arising out of actions taken to gain necessary access.

Section 4. Prohibited Activities. No obnoxious or offensive trade or activity shall be carried on, nor shall anything be done on property located in the Condominium which may be or become an annoyance or nuisance by reason of noxious, offensive, unhealthy and harmful odors, fumes, dust, smoke, waste, noise or vibration beyond that normally and reasonably expected for the use as permitted by the City of Swartz Creek ordinances and regulations or as may otherwise be prohibited by the Easement. No immoral, improper or unlawful activity shall be carried on in any Unit, nor shall anything be done which may be or become an annoyance or a nuisance to the Co-owners of the Condominium. No unreasonably noisy activity shall occur in any Unit at any time. No unusually flammable, explosive or hazardous materials may be stored within a Unit or

the improvements thereon without the written consent of the other Owners. No Co-owner shall do or permit anything to be done or keep or permit to be kept in its Unit anything that will increase the rate of insurance on the Condominium without the written approval of the Owner. Each Co-owner shall be accountable to the other Co-owner(s) for the conduct and behavior of its guests, tenants, employees, patrons or invitees transacting business in or visiting its Unit; and any damage to property of another Co-owner, caused by such guests, tenants, employees, patrons or invitees, shall be repaired at the sole expense of the Co-owner with whom said guests, tenants, employees, patrons, or invitees are transacting business or visiting. Unit Co-owner, their tenants, employees, guests, invitees and patrons shall not in any way obstruct use of the sidewalks located in the Project.

Section 5. Aesthetics. Except with approval from the other Co-owner, any portion of a Unit which is not enclosed by improvements, shall not be used for storage of supplies, materials, personal property or trash or refuse of any kind. All rubbish, trash, garbage and other waste shall be regularly removed from each Unit and shall not be allowed to accumulate therein. Trash receptacles shall be maintained in enclosed structures at all times and shall not be permitted to remain elsewhere on the Common Elements except for such short periods of time as may be reasonably necessary to permit periodic collection of trash. In general, no activity shall be carried on nor condition maintained by a Co-owner, either in its Unit or upon the Common Elements, which is detrimental to the appearance of the Condominium.

Section 6. Signs. No sign, poster or billboard of any kind shall be displayed anywhere in the Project, except project signs installed by the Developer and except project signs, ground signs, directional signs, building facade signs installed within a Unit indicating the name of the business, occupant(s) and/or Co-owner of the Unit; provided, however, that all signs, shall be high quality channel or individually lit letter signs and the materials and colors composing them, and their location shall be subject to applicable codes and ordinances and prior written approval of the Developer during the Development and Sales Period and shall be in compliance with all City of Swartz Creek ordinances and regulations. No box signs are permitted. All signs are also subject to signage restrictions set forth in Article VII, Section 6 of the Master Deed.

Section 7. Weapons. No Co-owner shall use or permit the use by any occupant, agent, employee, invitee, guest or patrons of any firearms or other similar dangerous weapons, projectiles or devices anywhere on or about the Condominium Premises.

Section 8. Co-owner Maintenance. Each Co-owner shall maintain its Unit in a safe, clean and sanitary condition. Each Co-owner shall also use due care to avoid damaging any of the Common Elements including, but not limited to, the telephone, water, gas, plumbing, electrical or other utility conduits and systems and any other Common Elements which are appurtenant to, or which may affect any other Unit. Each Co-owner shall be responsible for damages or costs resulting from negligent damage to or misuse of any of the Common Elements by it, or its tenants, guests, agents or invitees, unless such damages or costs are covered by insurance carried by the Condominium Project (in which case there shall be no such responsibility, unless reimbursement is excluded by virtue of a deductible provision, in which case the responsible Co-owner shall bear the expense to the extent of the deductible amount). Any costs or damages may be assessed to and collected from the responsible Co-owner in the manner provided in Article II hereof.

Section 9. Powers and Duties of Administrator. The Administrator shall have the powers and duties necessary for the administration of the General Common Elements in the Condominium.

Section 10. Other Duties. In addition to the foregoing general duties imposed by these Bylaws, the Administrator shall be responsible specifically for the following:

- (a) To manage and administer the affairs of and to maintain the General Common Elements.
- (b) To collect assessments from the Co-owners of the Condominium and to use the proceeds thereof for the purposes set forth in the Condominium Documents as provided in Article II above.
- (c) To contract for and employ persons, firms, corporations or other agents to assist in the maintenance and administration of the General Common Elements within the Condominium Project.
- (d) To enforce the provisions of the Condominium Documents.

Section 11. Reserved Rights of Developer.

(a) **Developer's Rights in Furtherance of Development and Sales.** None of the restrictions contained in this Article VI (except with respect to the restrictions set forth in Section 1 above) shall apply to the commercial activities or signs or billboards, if any, of the Developer during the Development and Sales Period. Notwithstanding anything to the contrary elsewhere herein contained, Developer shall have the right to maintain a construction office and storage areas incident to the foregoing and such access to, from and over the Project as may be reasonable to enable development and sale of the Project by Developer.

(b) **Enforcement of Bylaws.** The Condominium Project shall at all times be maintained in a manner consistent with the highest standards of similar developments located in the City of Swartz Creek for the benefit of the Co-owners and all persons interested in the Condominium. The Developer shall have the right to enforce these Bylaws throughout the Development and Sales Period notwithstanding that it may no longer own a Unit in the Condominium, which right of enforcement shall include (without limitation) an action to restrain any Co-owner from any activity prohibited by these Bylaws.

Section 12. Hazardous Materials. No Co-owner shall use or permit the use of Hazardous Materials (as hereinafter defined) on, about, under or in its Unit, or the Condominium Project, except in the ordinary course of its usual business operations conducted thereon which includes the use of a portion of Unit 1 as a fuel center, and any such use shall at all times be in compliance with all Environmental Laws (as hereinafter defined). Each Co-owner shall indemnify the other Co-owner from and against all claims, including but not limited to, costs of investigation, litigation and remedial response arising out of any Hazardous Materials used or permitted to be used by such Co-owner, whether or not in the ordinary course of business. "Hazardous Materials" shall mean petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law. "Environmental Laws" shall mean all laws which relate to or deal with human health or the environment, all as may be amended from time to time.

Section 13. General. The Developer may, in its sole discretion, waive any part of the restrictions set forth in this Article VI due to unusual topographic, natural or aesthetic considerations or other circumstances which the Developer deems compelling. Any such waiver

must be in writing and shall be limited to the Unit to which it pertains and shall not constitute a waiver as to enforcement of the restrictions as to any other Unit. Developer's rights under this Article VI may, in Developer's discretion, be assigned to the Administrator or other successor to Developer. Developer may construct any improvements upon the Condominium Premises that it may, in its sole discretion, elect to make without the necessity of prior consent from any Co-owner or any other person or entity, subject only to the express limitations contained in the Condominium Documents.

ARTICLE VII
MORTGAGES

Section 1. Notice to Administrator. Any Co-owner who mortgages its Unit shall notify the Administrator of the name and address of the mortgagee, and the Administrator shall maintain such information in a book entitled "Mortgages of Units". The Administrator may, at the written request of a mortgagee of any such Unit, report any unpaid assessments due from the Co-owner of such Unit. The Administrator shall give to the holder of any first mortgage covering any Unit in the Project written notification of any default in the performance of the obligations of the Co-owner of such Unit that is not cured within 60 days.

Section 2. Insurance. The Administrator shall notify each mortgagee of a Unit, of the name of each company insuring the Condominium against fire, perils covered by extended coverage, and vandalism and malicious mischief and the amounts of such coverage. In addition, the Administrator shall give each mortgagee, mortgage insurer and the guarantor of any mortgage on any Unit in the Condominium a timely written notice of any lapse, cancellation or material modification of any insurance policy maintained by the Administrator on behalf of the Co-owners.

Section 3. Notification of Meetings. Upon request submitted to the Administrator, any institutional holder of a first mortgage lien on any Unit in the Condominium, shall be entitled to receive written notification of every meeting of the Co-owners of the Condominium and to designate a representative to attend such meeting.

Section 4. Notification of Foreclosure. The mortgagee of first mortgage on a Unit shall give notice of foreclosure to the Administrator pursuant to Section 108(9) of the Act.

ARTICLE VIII
FINANCE

Section 1. Records. The Administrator shall keep detailed books of account showing all expenditures and receipts of administration, and which shall specify the maintenance and repair expenses of the Common Elements and any other expenses incurred by or on behalf of the Administrator and the Co-owners. Such accounts and all other Project records shall be open for inspection by the Co-owners and their mortgagees during reasonable working hours with respect to the General Common Elements. The Administrator shall prepare and distribute to each Co-owner at least once a year a financial statement, the contents of which shall be defined by the operating expenses of the Project. Except if opted out, as permitted by the Act on an annual basis by unanimous vote of the Co-owners, the books, records, and financial statements shall be independently audited or reviewed by a certified public accountant, as defined in Section 720 of the Occupational Code, 1980 PA 299, as amended from time to time. Any institutional holder of a first mortgage lien on any Unit in the Condominium shall be entitled to receive a copy of such annual audited financial statement within 90 days following the end of the fiscal year for operating

the Project upon request therefor. The costs of any such audit and any accounting expenses shall be expenses of administration.

Section 2. Fiscal Year. The fiscal year of the operation of the Project shall be an annual period commencing on January 1st of each year. The commencement date of the fiscal year shall be subject to change by the Co-owners for accounting reasons or other good cause.

Section 3. Bank. The funds of the Co-owners for the Condominium Project may be deposited in such bank or savings association as may be designated by the Administrator. Any excess funds may be invested from time to time in accounts or deposit certificates of such bank or savings association as are insured by the applicable federal deposit insurers and may also be invested in interest-bearing obligations of the United States Government.

ARTICLE IX

INDEMNIFICATION OF CO-OWNERS

Each Co-owner shall be indemnified by the other Co-owners against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, whether or not he is an Administrator at the time such expenses are incurred, except in such cases wherein the Administrator is adjudged guilty of misconduct or negligence in the performance of his duties. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which the Co-owner may be entitled.

**ARTICLE X
AMENDMENTS**

Section 1. Agreement of Co-owners. Amendment to these Bylaws may be made only by the written agreement of all Co-owners and are subject to approval by the City of Swartz Creek City Council.

Section 2. Mortgagee Consent. The consent of any mortgagee to any amendment of these Bylaws shall be required only if the interest of any such mortgagee is material pursuant to Section 90a of the Act.

Section 3. When Effective. Any amendment to these Bylaws shall become effective upon recording of such amendment in the office of the Genesee County Register of Deeds.

**ARTICLE XI
COMPLIANCE**

The Co-owners and all present or future Co-owners, tenants, future tenants, or any other persons acquiring an interest in or using the Project in any manner are subject to and shall comply with the Act, as amended, and the mere acquisition, occupancy or rental of any Unit or an interest therein or the utilization of or entry upon the Condominium Premises shall signify that the Condominium Documents are accepted and ratified. In the event the Condominium Documents conflict with the provisions of the Act, the Act shall govern.

**ARTICLE XII
DEFINITIONS**

All terms used herein shall have the same meaning as set forth in the Master Deed to which these Bylaws are attached as an Exhibit or as set forth in the Act.

**ARTICLE XIII
REMEDIES FOR DEFAULT**

Any default by a Co-owner shall entitle the other Co-owner to the following relief:

Section 1. Legal Action. Failure to comply with any of the terms or provisions of the Condominium Documents shall be grounds for relief, which may include, without intending to limit the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien (if default in payment of assessment) or any combination thereof, and such relief may be sought by an aggrieved Co-owner.

Section 2. Recovery of Costs. In any proceeding arising because of an alleged default by any Co-owner, the other Co-owner(s), if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees (not limited to statutory fees) as may be determined by the court.

Section 3. Removal and Abatement. The violation of any of the provisions of the Condominium Documents shall also give the Co-owner the right, in addition to the rights set forth above, to enter upon the Common Elements, Limited or General, or into any Unit, where reasonably necessary, and summarily remove and abate, at the expense of the Co-owner in violation, any structure, thing or condition existing or maintained contrary to the provisions of the Condominium Documents. The Co-owner shall have no liability to the other Co-owner arising out of the exercise of its removal and abatement power authorized herein.

Section 4. Non-waiver of Right. The failure of the Administrator or of any Co-owner to enforce any right, provision, covenant or condition which may be granted by the Condominium Documents shall not constitute a waiver of the right to enforce such right, provision, covenant or condition in the future.

Section 5. Cumulative Rights, Remedies and Privileges. All rights, remedies and privileges granted to any Co-owner pursuant to any terms, provisions, covenants or conditions of the aforesaid Condominium Documents shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

Section 6. Enforcement of Provisions of Condominium Documents. A Co-owner may maintain an action against any other Co-owner acting as such or as the Administrator for injunctive relief or for damages or any combination thereof for noncompliance with the terms and provisions of the Condominium Documents or the Act. In addition to the foregoing, in the event the Administrator fails to perform its obligations as contained in the Condominium Documentation, then, after thirty (30) day written notice to the Administrator, the Owner bringing the claim shall be permitted to undertake the obligations of the Administrator.

ARTICLE XIV

SEVERABILITY

In the event that any of the terms, provisions or covenants of these Bylaws or the Condominium Documents are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify or impair in any manner whatsoever any of the other terms, provisions or covenants of such documents or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable.

EXHIBIT B TO MASTER DEED

ATTENTION:
 COUNTY REGISTER OF DEEDS
 THE CONDOMINIUM PLAN NUMBER MUST BE ASSIGNED
 IN CONSECUTIVE SEQUENCE. WHEN A NUMBER HAS
 BEEN ASSIGNED TO THIS PROJECT IT MUST BE
 PROPERLY SHOWN IN THE TITLE OF THIS SHEET AND
 IN THE SURVEYOR'S CERTIFICATE ON SHEET 2.

GENESEE COUNTY CONDOMINIUM
 SUBDIVISION PLAN NO. 355

EXHIBIT 'B' TO THE MASTER DEED OF:

SWARTZ CREEK SIDE SHOPS

PART OF THE EAST 1/2 OF SECTION 36
 T7N-R5E, CITY OF SWARTZ CREEK
 GENESEE COUNTY, MICHIGAN

SURVEYOR

F·S·E
Surveying & Engineering
 Since 1957
 5370 MILLER ROAD, SUITE 13 • SWARTZ CREEK, MI 48473
 PHONE: (610) 230-1333 FAX: (610) 230-7844

DEVELOPER

TOPVALCO, INC.

C/O 2900 WEST ROAD, STE. 500
 E. LANSING, MICHIGAN 48823

SHEET INDEX

1. COVER SHEET
2. SURVEY PLAN
3. SITE & EASEMENT PLAN
4. UTILITY PLAN
5. COORDINATE PLAN

DATE

KIM R. CARLSON
 PROFESSIONAL SURVEYOR
 LICENSE NO. 35892

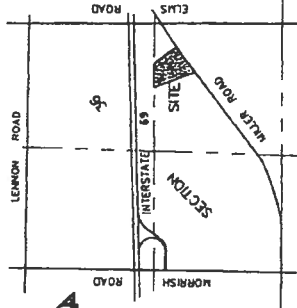
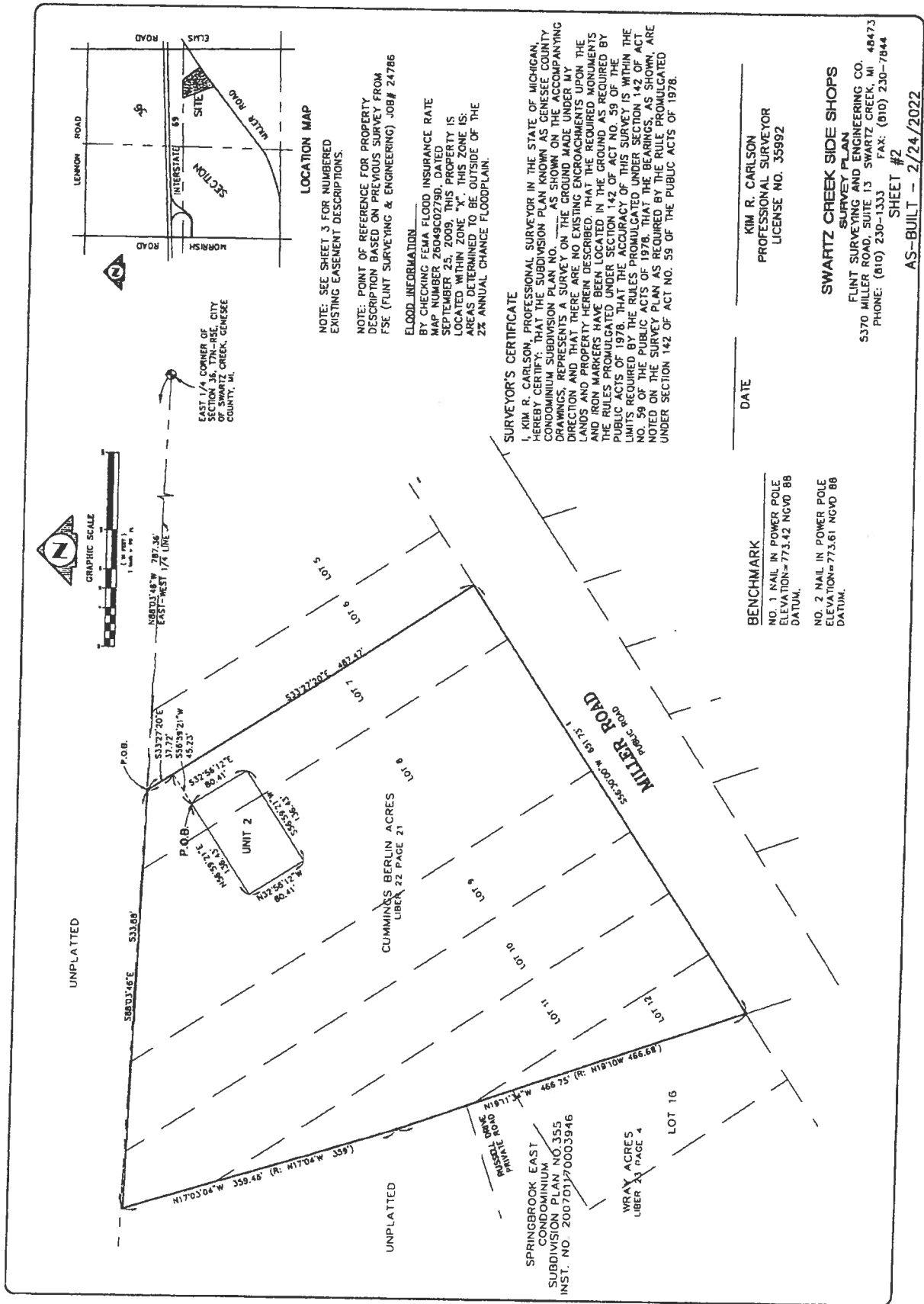
SWARTZ CREEK SIDE SHOPS
 COVER SHEET
 FLINT SURVEYING AND ENGINEERING CO.
 5370 MILLER ROAD, SUITE 13 SWARTZ CREEK, MI 48473
 PHONE: (610) 230-1333 FAX: (610) 230-7844
 SHEET #1

AS-BUILT - 2/24/2022

LEGAL DESCRIPTION:

LOTS 7, 8, 9, 10, 11 & 12 OF CUMMINGS BERLIN ACRES, T7N-R5E, CITY OF SWARTZ CREEK GENESEE COUNTY, MICHIGAN, AS RECORDED IN LIBER 22, PAGE 21, OF GENESEE COUNTY PLAT RECORDS; AND FURTHER DESCRIBED AS: PART OF THE SOUTHEAST 1/4 OF SECTION 36, T7N-R5E, CITY OF SWARTZ CREEK, GENESEE COUNTY, MICHIGAN, BEGINNING AT A POINT ON THE NORTH LINE OF CUMMINGS BERLIN ACRES THAT IS N 88°03'46" W, 787.36 FEET FROM THE EAST 1/4 CORNER OF SAID SECTION 36; THENCE S 33°27'20" E, 487.47 W, 651.73 FEET ALONG THE NORTH LINE OF LOT 7 OF CUMMINGS BERLIN ACRES; THENCE S 56°30'00" FEET (RECORDED N 19°10' W, 466.68 FEET); THENCE N 19°11'34" W, 466.75 FEET (RECORDED N 17°04' W, 359 FEET); THENCE S 68°03'46" E, 533.88 FEET ALONG THE NORTH LINE OF CUMMINGS BERLIN ACRES TO THE POINT OF BEGINNING, CONTAINING 8.47 ACRES, MORE OR LESS.

THIS CONDOMINIUM SUBDIVISION PLAN IS NOT REQUIRED TO CONTAIN DETAILED PROJECT DESIGN PLANS PREPARED BY THE APPROPRIATE LICENSED DESIGN PROFESSIONAL. SUCH PROJECT DESIGN PLANS ARE FILED, AS PART OF THE CONSTRUCTION PERMIT APPLICATION, WITH THE ENFORCING AGENCY FOR THE STATE CONSTRUCTION CODE IN THE RELEVANT GOVERNMENTAL SUBDIVISION. THE ENFORCING AGENCY MAY BE A LOCAL BUILDING DEPARTMENT OR THE STATE DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS.



LOCATION MAP

NOTE: SEE SHEET 3 FOR NUMBERED EXISTING EASEMENT DESCRIPTIONS.

NOTE: POINT OF REFERENCE FOR PROPERTY DESCRIPTION BASED ON PREVIOUS SURVEY FROM FSE (FLINT SURVEYING & ENGINEERING) JOB# 24786

FLOOD INFORMATION

BY CHECKING FEMA FLOOD INSURANCE RATE MAP NUMBER 26049C0279D, DATED SEPTEMBER 23, 2009, THIS PROPERTY IS LOCATED WITHIN ZONE "X". THIS ZONE IS: AREAS DETERMINED TO BE OUTSIDE OF THE 2% ANNUAL CHANCE FLOODPLAIN.

SURVEYOR'S CERTIFICATE

I, KIM R. CARLSON, PROFESSIONAL SURVEYOR IN THE STATE OF MICHIGAN, HEREBY CERTIFY THAT THE SUBDIVISION PLAN KNOWN AS GENESEE COUNTY CONDOMINIUM SUBDIVISION PLAN NO. 355 AS SHOWN ON THE ACCOMPANYING DRAWINGS, REPRESENTS A SURVEY ON THE GROUND MADE UNDER MY DIRECTION AND THAT THERE ARE NO EXISTING ENCROACHMENTS UPON THE LANDS AND PROPERTY HEREIN DESCRIBED IN THE REQUIRED MONUMENTS AND IRON MARKERS HAVE BEEN LOCATED IN THE MANNER AS REQUIRED BY THE RULES PROMULGATED UNDER SECTION 142 OF ACT NO. 59 OF THE PUBLIC ACTS OF 1978, THAT THE ACCURACY OF THIS SURVEY IS WITHIN THE LIMITS REQUIRED BY THE RULES PROMULGATED UNDER SECTION 142 OF ACT NO. 59 OF THE PUBLIC ACTS OF 1978, THAT THE BEARINGS AS SHOWN ARE NOTED ON THE SURVEY PLAN AS REQUIRED BY THE RULE PROMULGATED UNDER SECTION 142 OF ACT NO. 59 OF THE PUBLIC ACTS OF 1978.

BENCHMARK

NO. 1 NAIL IN POWER POLE
ELEVATION=773.42 NGVD 88 DATUM.

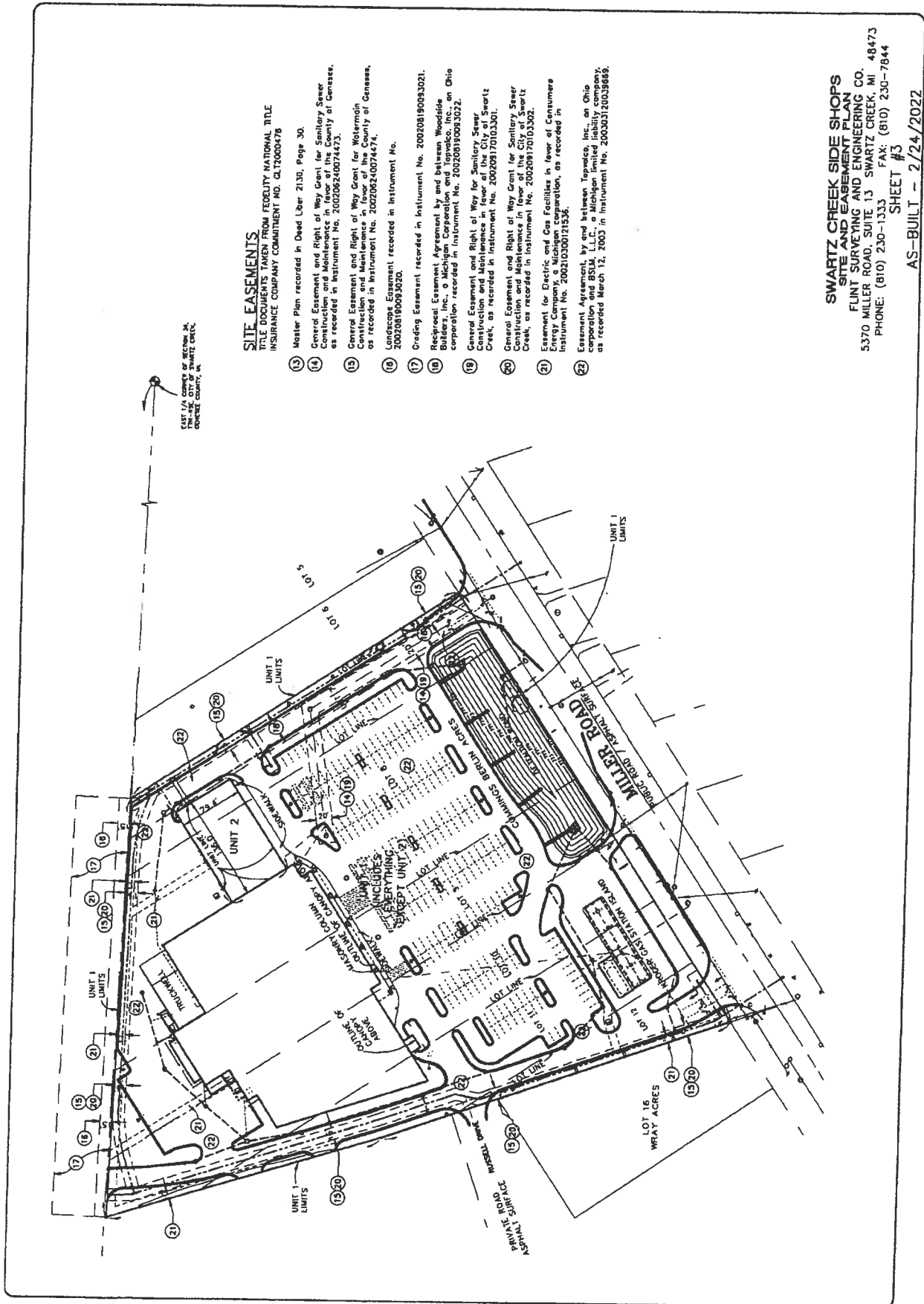
NO. 2 NAIL IN POWER POLE
ELEVATION=773.61 NGVD 88 DATUM.

DATE

KIM R. CARLSON
PROFESSIONAL SURVEYOR
LICENSE NO. 35992

SWARTZ CREEK SIDE SHOPS
SURVEY PLAN
FLINT SURVEYING AND ENGINEERING CO.
5370 MILLER ROAD, SUITE 13 SWARTZ CREEK, MI 48473
PHONE: (810) 230-1333 FAX: (810) 230-7844

AS-BUILT - 2/24/2022
SHEET #2



EAST 1/4 CORNER OF SECTION 16,
T17N-R15E, CITY OF SWARTZ CREEK,
GENESSEE COUNTY, MI

SITE EASEMENTS

TITLE DOCUMENTS TAKEN FROM FERGUSON NATIONAL TITLE
INSURANCE COMPANY COMMITMENT NO. CLT2000478

- 13 Master Plan recorded in Deed Liber 2130, Page 30.
- 14 General Easement and Right of Way Grant for Sanitary Sewer Construction and Maintenance in favor of the County of Genessee, as recorded in Instrument No. 200208190093072.
- 15 General Easement and Right of Way Grant for Watermain Construction and Maintenance in favor of the County of Genessee, as recorded in Instrument No. 200208190093074.
- 16 Landscape Easement recorded in Instrument No. 200208190093020.
- 17 Grading Easement recorded in Instrument No. 200208190093021.
- 18 Recreational Easement Agreement by and between Woodside Business Center, LLC, a Michigan Corporation and Tapscott, Inc., an Ohio corporation recorded in Instrument No. 200208190093072.
- 19 General Easement and Right of Way for Sanitary Sewer Construction and Maintenance in favor of the City of Swartz Creek, as recorded in Instrument No. 200208170103301.
- 20 General Easement and Right of Way Grant for Sanitary Sewer Construction and Maintenance in favor of the City of Swartz Creek, as recorded in Instrument No. 200208170103302.
- 21 Easement for Electric and Gas Facilities in favor of Consumers Energy Company, a Michigan corporation, as recorded in Instrument No. 200210300121536.
- 22 Easement Agreement, by and between Tapscott, Inc., an Ohio corporation and BSLM, L.L.C., a Michigan limited liability company, as recorded March 12, 2003 in Instrument No. 200303120039869.

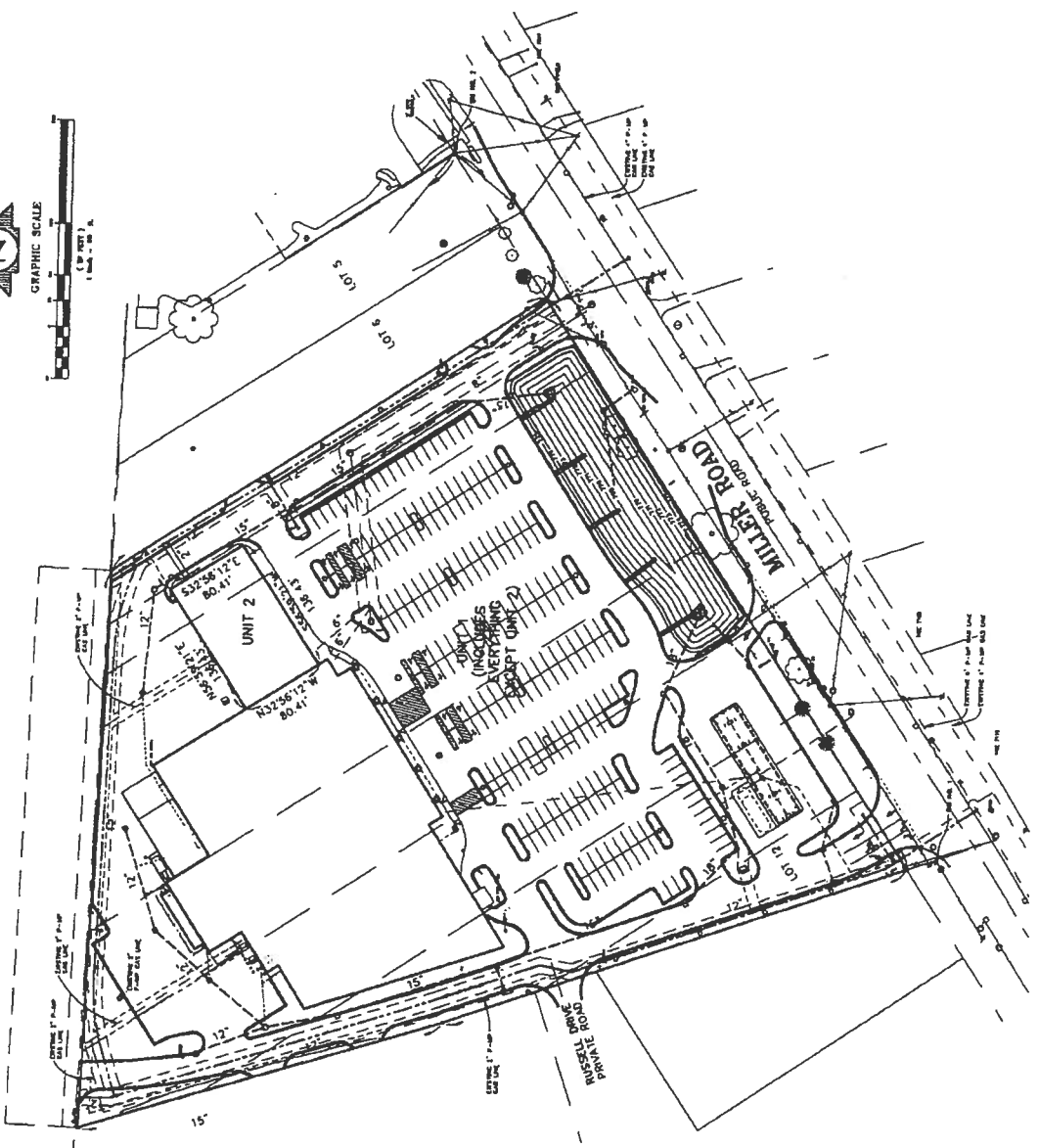
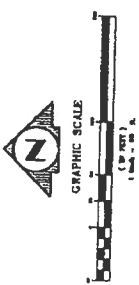
SWARTZ CREEK SIDE SHOPS
SITE AND EASEMENT PLAN
 FLINT SURVEYING AND ENGINEERING CO.
 5370 MILLER ROAD, SUITE 13 SWARTZ CREEK, MI 48473
 PHONE: (810) 230-1333 FAX: (810) 230-7844
 SHEET #3
 AS-BUILT - 2/24/2022

EXISTING UTILITIES
 ELECTRIC LOCATION PROVIDED BY
 FLINT POWER COMPANY
 GAS LOCATION BY CONSUMERS POWER
 COMPANY
 TELEPHONE LOCATION PROVIDED BY
 FRONTIER COMMUNICATIONS
 CABLE TV LOCATION PROVIDED
 BY COMCAST
 SANITARY SEWER AND WATER
 PROVIDED BY CITY OF SWARTZ CREEK

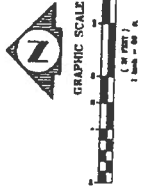
BENCHMARK
 NO. 1 NAIL IN POWER POLE
 ELEVATION=773.42 NGVD 88
 DATUM.
 NO. 2 NAIL IN POWER POLE
 ELEVATION=773.61 NGVD 88
 DATUM.

LEGEND

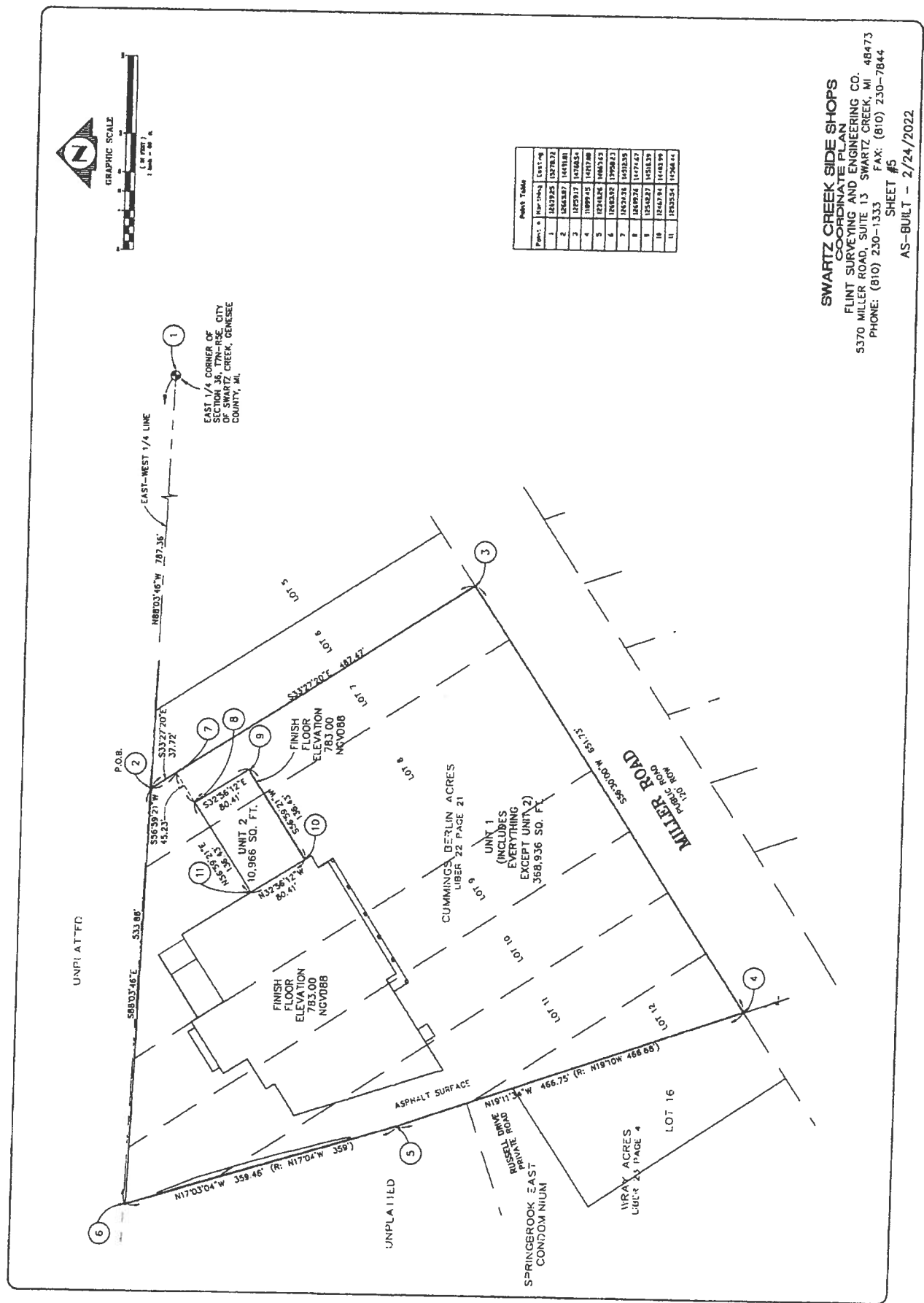
Symbol	Description
Circle with cross	Existing Utility Pole
Circle with dot	Proposed Utility Pole
Circle with 'X'	Existing Manhole
Circle with 'X'	Proposed Manhole
Circle with 'S'	Existing Sewer
Circle with 'S'	Proposed Sewer
Circle with 'W'	Existing Water
Circle with 'W'	Proposed Water
Circle with 'E'	Existing Electric
Circle with 'E'	Proposed Electric
Circle with 'G'	Existing Gas
Circle with 'G'	Proposed Gas
Circle with 'T'	Existing Telephone
Circle with 'T'	Proposed Telephone
Circle with 'C'	Existing Cable TV
Circle with 'C'	Proposed Cable TV
Circle with 'A'	Existing Access Point
Circle with 'A'	Proposed Access Point
Circle with 'V'	Existing Vertical Shaft
Circle with 'V'	Proposed Vertical Shaft
Circle with 'D'	Existing Drop
Circle with 'D'	Proposed Drop
Circle with 'R'	Existing Receiver
Circle with 'R'	Proposed Receiver
Circle with 'L'	Existing Lateral
Circle with 'L'	Proposed Lateral
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Circle with 'B'	Proposed Branch
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Circle with 'F'	Proposed Flow
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Circle with 'P'	Proposed Pump
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Circle with 'S'	Proposed Sump
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Circle with 'R'	Proposed Reservoir
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Circle with 'L'	Proposed Lake
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Circle with 'S'	Proposed Stone
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Circle with 'B'	Proposed Brick
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Circle with 'C'	Proposed Cloth
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Circle with 'P'	Proposed Paper
Circle with 'M'	Existing Metal
Circle with 'M'	Proposed Metal
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Circle with 'G'	Existing Glass
Circle with 'G'	Proposed Glass
Circle with 'C'	Existing Cloth
Circle with 'C'	Proposed Cloth
Circle with 'P'	Existing Paper
Circle with 'P'	Proposed Paper



**SWARTZ CREEK SIDE SHOPS
 UTILITY PLAN**
 FLINT SURVEYING AND ENGINEERING CO.
 5370 MILLER ROAD, SUITE 13 SWARTZ CREEK, MI 48473
 PHONE: (810) 230-1333 FAX: (810) 230-7844
 SHEET #4
 AS-BUILT - 2/24/2022



Point #	Nor (Feet)	East (Feet)
1	143325	13728.33
2	142437	14181.01
3	142937	13748.24
4	142937	13748.24
5	142937	13748.24
6	142937	13748.24
7	142937	13748.24
8	142937	13748.24
9	142937	13748.24
10	142937	13748.24
11	142937	13748.24



SWARTZ CREEK SIDE SHOPS
 COORDINATE PLAN
 FLINT SURVEYING AND ENGINEERING CO.
 5370 MILLER ROAD, SUITE 13 SWARTZ CREEK, MI 48473
 PHONE: (810) 230-1333 FAX: (810) 230-7844
 SHEET #5
 AS-BUILT - 2/24/2022