

Prepared by and Return to:  
**MICHAEL S. WEINER, ESQUIRE**  
Sachs Sax Caplan, P.L.  
6111 Broken Sound Parkway NW, Suite 200  
Boca Raton, FL 33487

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THIS SPACE FOR RECORDER'S USE  
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**DECLARATION OF RESTRICTIONS AND RIGHTS**

THIS DECLARATION OF RESTRICTIONS AND RIGHTS (“Declaration”) is made and entered into this 12<sup>th</sup> day of December, 2017, by **NCC ROSEBUD TWO, LLC**, with an address of 101 Se 4th Avenue, Delray Beach, FL 33483 (“Declarant”), which is the owner of the real property situate in Palm Beach County, Florida, as more particularly described in **Exhibit “A”** attached hereto (the “Property”).

**RECITALS:**

**WHEREAS**, Declarant is in the process of re-platting the Property into three (3) separate independent parcels. A copy of the proposed re-plat is attached hereto as **Exhibit “B”** (“Re-plat”);

**WHEREAS**, Parcel A of the Re-Plat will be referred to herein as “Shopping Plaza Parcel”;

**WHEREAS**, Parcel B of the Re-Plat will be referred to herein as the “Corner Parcel”;

**WHEREAS**, Parcel C of the Re-Plat will be referred to herein as the “Bank Parcel”;

**WHEREAS**, the Shopping Plaza Parcel, Corner Parcel and Bank Parcel will sometimes be hereinafter referred to herein as the “Shopping Center Properties”; the “Properties”; or the “Total Property”;

**WHEREAS**, the main common area portion of the Shopping Center Properties which is the shared ingress/egress roadways labeled “roadway area” and more particularly described in **Exhibit “C”** attached hereto, shall be referred to herein as the “Main Common Area”;

**WHEREAS**, Declarant wishes to provide for certain rights as to maintenance and ingress and egress with respect to the Shopping Center Properties;

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, and other good and valuable considerations, the receipt and adequacy of which are hereby acknowledged, the Declarant hereby agree as follows:

**Article 1. Recitals and Benefitted and Burdened Properties.**

1.1 The foregoing Recitals are true and correct and are incorporated herein as if fully rewritten below. All capitalized terms defined in the Declaration shall have the same meaning when used herein, unless otherwise specifically indicated.

**Article 2. Declaration Runs With Land.**

2.1. This Declaration, and the rights and obligations of the parties hereunder, is intended to and shall run with the real property benefitted and burdened hereby, and shall bind and, inure to the benefit of, the parties and their respective successors in title.

2.2. In the event of any conveyance or other disposition of title to any Property, the transferee or the person (or persons), who otherwise succeed to title shall be deemed to have assumed all of the covenants and obligations of the owner of such Property or portion thereof, as the case may be.

**Article 3. Definitions:**

3.1. In this Declaration, the following words and phrases shall have the following meanings:

“Alteration” means any alteration, addition, construction, improvement, modification, restoration or repair.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to be closed in the State of Florida.

“Common Area” is hereby defined to mean all areas within the Properties designed for the non-exclusive use, including parking lots, alleyways, drives, driving pathways, roadways, walkways, drainage pipes, conduit and other ancillary equipment for storm water runoff and retention and the like designed for pedestrian and vehicular ingress and egress to the Properties from publicly dedicated rights-of-ways over and across Properties and for the storm water drainage and retention of and for the Properties. This right of drainage and the rights ingress and egress shall not include a right over, under, across and above any such portion of the Properties upon which is now, or hereafter constructed, in accordance with applicable governmental authority approval, improvements other than paved, pipes, conduit or other areas specifically designed for vehicular and pedestrian ingress and egress or drainage to and from the Properties.

“Common Area Improvements” shall mean all improvements to be made to the common areas including but not limited to the following:

(a) Storm water drains and retention facilities, drainage systems, retention facilities and service and subsurface drainage necessary to serve the Total Property;

(b) Parking areas, sidewalks and walkways driveways and roadways providing access to, across and around the parking areas, freestanding outdoor lighting fixtures, traffic and directional signs and markings and the striping of the parking areas contained within the latest approved Re-

Plat for the Properties;

(c) Underground sewer, gas, electrical, water, telephone and other utility mains, lines and facilities;

(d) Landscaping; and

(e) Any other improvements to be made to the Common Area under this Declaration.

“Common Restoration” means a restoration which may be required as a result of damage or destruction affecting all or a portion of the Common Area and which requires coordination between the Owners to effectively restore the Common Area.

“Consultant” means any Person engaged by an Owner to furnish architectural, engineering, design, accounting, legal, or other professional services with respect to the design, construction, development, decoration, operation, maintenance, repair, or Alteration of any Property.

“Contractor” means a Person other than a Consultant employed by an Owner, or by any Person directly or indirectly in privity with such Owner (including every subcontractor of whatsoever tier), for the furnishing of Work.

“Employee” means an officer, director, employee or agent.

“Government Entity” means the United States, the State of Florida, the City of Delray Beach, and any and every other agency, authority, department, board, bureau, court, commission, or instrumentality or political subdivision of any of the foregoing or otherwise having applicable jurisdiction over the Total Property.

“Insurance Requirement(s)” means any rule, regulation, code, or requirement issued by any fire insurance rating bureau or anybody having similar functions and/or by any insurance company which has issued a policy of Required Insurance, as applicable.

“Law(s)” means each and every law, rule, regulation, order, ordinance, judgment, statute, requirement, code, or mandate of any kind whatsoever, present or future, issued by any Government Entity applicable to or affecting the applicable Property, and/or the use, occupancy, possession, operation, maintenance and/or Alteration of such Property.

“Owner(s)” means either Declarant or in the event of any conveyance or other disposition of title to any individual parcel, the transferee or the person (or persons), who otherwise succeed to title and shall be deemed to have assumed all of the covenants and obligations of the owner of such Property or portion thereof, as the case may be.

“Taxes” shall mean any and all of the following imposed by the City, the State, or any other Government Entity upon or with respect to each Owner’s Property, and/or each Owner’s Easements: (a) real and personal property taxes; (b) assessments of any kind; (c) water and sewer rents, rates and charges (excluding those measured by meter); (d) fees and charges for construction, maintenance, occupancy or use of any vault, passageway or space in, on, over or under the street or sidewalks adjacent to either Owner’s Property; (e) fines, penalties, interest, and similar charges,

if any, applicable to the foregoing, and all interest or costs attributable thereto; and (f) all increases in any of the foregoing, whether resulting from increases in rates, reassessments, or otherwise, and whether ordinary or extraordinary, foreseeable or unforeseeable.

“Work” means the employment and/or furnishing of labor, materials, equipment, supplies, tools, plant, scaffolding, transportation, temporary facilities, and other things and services of every kind in connection with an Alteration.

3.2. Certain other words and phrases are defined elsewhere in this Section or the other parts of this Declaration.

3.3. Wherever used in this Declaration:

(a) the words “include” or “including” shall be construed as incorporating, also, “but not limited to” or “without limitation”;

(b) the word “day” means a calendar day unless otherwise specified;

(c) each reference to a Property (or any part or component thereof) shall be deemed to include “and/or any portion thereof”;

(d) the word “notice” shall mean notice in writing (whether or not specifically so stated);

(e) the word “amended” means “amended, modified, extended, renewed, changed, or otherwise revised”; and the word “amendment” means “amendment, modification, extension, renewal, change, or other revision”;

(f) the word “tenant” includes a tenant, subtenant, undertenant, or occupant;

(g) the word “person” includes an individual person, corporation, partnership, trust, joint venture, proprietorship, government entity, estate or other incorporated or unincorporated enterprise, entity, or organization of any kind whatsoever;

(h) the word “damage” includes any and all damage or destruction resulting from fire or other casualty of any kind; and

(i) the word “systems” includes plumbing, heating, ventilation, air conditioning, elevators, other similar electrical and mechanical systems.

(j) the words “will” or “shall” shall have the same meaning, that is, indicating and meaning a compulsory act to be performed in accordance with this Declaration.

3.4. Wherever this Declaration imposes any obligation on an Owner, or provides that an Owner shall be responsible for any action or matter, the Declaration shall be construed to mean, unless specifically provided to the contrary, that such Owner shall perform or undertake the action or matter at such Owner’s sole and exclusive expense.

**Article 4. Easements:**

4.1. Declarant intends that the Properties shall be independently operated and maintained, except as specifically set forth in this Declaration.

4.2. Unless otherwise specifically stated, the easements, rights and privileges granted in this Declaration are solely for the benefit of the parties hereto, their tenants, lessees, subtenants, licensees, invitees, customers, employees, mortgagees, their collective successors and assigns, and such other parties as may become parties hereto in the future and that the granting of such easements, rights and privileges as well as the granting of such benefit of such grants are not intended to create, or shall be construed as creating, and any rights in and for the benefit of the general public. Anything herein to the contrary notwithstanding the rights and privileges granted hereby shall be exercised in a manner which does not unreasonably interfere with or unreasonably disrupt the normal use, business and occupation of the improvements located on the Properties for each Owner.

4.3. Declarant hereby grants to the Owner, and their respective successors and assigns, for the benefit of themselves, their tenants, lessees, subtenants, licensees, invitees, customers, employees, mortgagees, their collective successors and assigns, and such parties as may become parties hereto in the future, a perpetual, reciprocal nonexclusive right, privilege and easement to use all the Common Areas for the purposes of which Common Areas are intended and permitted to be used under the terms of this Declaration. These permitted uses include but are not limited to vehicular and pedestrian access, vehicular parking, drainage and other normal uses for such Common Areas.

4.4. Declarant hereby grants to the Owner, and their respective successors and assigns, a perpetual, reciprocal nonexclusive easement and right-of-way over, across, through and under the Common Area for access, installation, operation, maintenance, repair, relocation and removal of sewers, drainage systems, water and other utility mains, lines, connections and facilities serving the Properties, provided, however, that any such installation, operation, maintenance, repair, relocation, or removal does not unreasonably interfere with or unreasonably disrupt the use of either of the Properties.

4.5. Declarant hereby grants to the Owner, and their respective successors and assigns, a perpetual, reciprocal nonexclusive easement and right-of-way over, across, through and under the Common Area for access, installation, operation, maintenance, repair, relocation and removal of Off-Site Improvements which may serve or benefit the Properties.

4.6. Each Owner hereby grants to the other Owners, and their respective successors and assigns, a perpetual, reciprocal nonexclusive easement and right-of-way over, across, through and under the Common Area for access to the existing means for public ingress and egress, as it exists as of the date of this Declaration. Neither party may make or seek to make any material changes to the existing means of public ingress and egress as of the date of this Declaration, without permission of the other party, which approval shall not be unreasonably withheld.

4.7. Each Owner shall have reasonable access through the other Owner's Property for purposes applicable to the required maintenance or repairs, under this Declaration but in no event shall an Owner unreasonably interfere with the reasonable use of the other Owner's Property.

**Article 5. General Covenants:**

5.1. Each Owner agrees to pay, keep, perform, and observe its respective obligations and responsibilities under this Declaration.

5.2. Each Owner agrees to be solely responsible for any matter relating to the particular Owner's Property or use thereof and address such responsibility in a manner which does not unreasonably interfere with or unreasonably disrupt the other Owner's Property or the use thereof.

5.3. Any mortgage or deed of trust, lease, deed or other security interest affecting any portion of the Total Property shall be subject and subordinate to the terms of this Declaration, unless otherwise provided herein. Notwithstanding the above, any lien so created by this Declaration will be effective only upon the recording of such lien and shall be subordinate to any mortgage applicable to the Total Property. Any party foreclosing any such mortgage or deed of trust, lease, deed or other security interest or acquiring title by deed in lieu of foreclosure or trustee's sale shall acquire title to such premises subject to all the terms of this Declaration. Notwithstanding the foregoing, nothing herein contained shall be construed as creating an obligation hereunder upon any mortgagee or holder of other security interest including deed of trust prior to said Mortgagee or holder acquiring title by foreclosure or otherwise. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto that nothing in this Declaration, expressed or implied, shall confer upon any person, except as specifically set forth in the terms and conditions of this Declaration. Rights to a third party beneficiary are neither intended nor granted.

5.4. Nothing contained herein shall prevent any Owner from relocating, replacing, removing improvements, including but not limited to Common Area Improvements or other improvements located on such Owner's Property provided that such relocation, replacement or removal shall not adversely and materially impact:

(i) Pedestrian and vehicular ingress and egress from publicly dedicated rights of way to and from the Properties;

(ii) Drainage, flowage, retention or storage of stormwater for the benefit of the Properties (collectively "Drainage"); and

(iii) Locations of utilities through the Properties to publicly dedicated rights of way.

5.5. No Owner shall create or allow to exist, a condition, including but not limited to fences, barriers, walls or other impediments that may cause damage to the other Owner's Property or materially affect (i) ingress and egress to the other Owner's Property or (ii) Drainage.

5.6. In the event of a violation of any of the covenants contained herein, an Owner may avail itself of the remedies set forth in **Article 13** hereof.

**Article 6. Authorized Representatives:**

6.1. Each Owner shall designate to the other in writing one (1) individual person (an

“Authorized Representative”) who will have full and complete authority to act for such Owner for all purposes of this Declaration. The acts of each Authorized Representative shall be the fully binding acts of the Owner so represented; and the other Owner shall be protected fully in relying upon, or dealing with, any one of such Authorized Representative. Either Owner may change its designation of an Authorized Representative by giving five (5) days’ prior notice in writing to the other Owner; but all prior acts of the former Authorized Representative shall remain binding upon the Owner.

6.2. Either Authorized Representative may require a meeting on behalf of the Owners upon not less than ten (10) days’ prior written notice to the other which shall state the purpose of the meeting. Unless otherwise agreed, all meetings shall take place on Business Days and during business hours.

**Article 7. Maintenance, Repairs and Construction:**

7.1. Except as otherwise provided in **Section 7.6**, each Owner shall be solely responsible for all maintenance and repairs with respect to its own Property, whether ordinary or extraordinary, foreseen or unforeseen, structural or nonstructural.

7.2. Except as otherwise provided in **Section 7.6**, each Owner of each Property shall operate, maintain and repair the landscaping, lighting, Common Area and utility facilities and systems on its Property at its sole cost and expense. Operation, maintenance and repair shall be done in a manner that is of a quality and level equal to other shopping centers of a first-class ranking. As to lighting, maintenance for lighting and electricity costs for lighting, all such costs shall be borne by each Owner for its Property independently.

7.3. Repair, operation and maintenance shall include, but not be limited to, the furnishing of and/or payment of, or for, electricity, water, gas, sewer use fees, if any, cleaning, policing, supervising, managing, and replacing all things necessary for the everyday use of the Common Area, utility facilities and systems in the manner and to the standards required herein. Without limitation as to the generality of the foregoing, each Owner shall make all necessary repairs and replacements on the surface of the parking areas and driveways (including re-paving any replacing markings) to such Owner’s Property in a manner consistent with shopping centers of a first class ranking, and so as to provide for the orderly parking of automobiles; and further shall place or replace adequate exit and entrance and other traffic control signs to direct traffic in and out of said parking areas.

7.4. In the event that (a) any Common Area; or (b) any utility facility or system that serves the Total Property is damaged or destroyed, and such Common Area, facility or system is located on the Property of one individual Owner, the Owner of such Property to which such damage or destruction has occurred shall promptly cause the repair, restoration or rebuilding thereof in accordance with this Declaration. In the event that such Owner fails to promptly cause the repair, restoration or rebuilding as required herein, then the other party shall have the right, but not the obligation, upon written notice to the other party, to cause the repair, restoration or rebuilding to at the other party’s cost and expense. Upon completion of the repair, restoration or rebuilding, the Owner making such repair, restoration or rebuilding shall submit an invoice to the other Owner for payment which payment shall be made within ten (10) days of receipt. If not paid in accordance with this paragraph, interest shall accrue at the highest rate allowed by law. In order to enforce

the payment of such repair, restoration and rebuilding, the party performing the repair shall have the right to file a lien against the other Owner's Property and such lien may be foreclosed in the same manner as a mortgage against the Property.

7.5. The following further agreements and restrictions apply as to each Owner's Property, the use thereof, and the construction thereon:

(i) In addition to the provisions of this **Article 7**, all utilities servicing the Properties shall be separated to the greatest reasonable extent possible. There will be no usage or contributions between utilities as to the other Owner's Property. Notwithstanding the foregoing, if one Owner requires access to the other Owner's Property in order to work on its utilities, such access shall be granted and the Owner making such utility repairs shall be responsible for all costs for same.

(ii) Neither party shall do anything that will jeopardize the South Florida Water Management District's approvals which are in place and benefit the Properties.

(iii) There shall be reasonable temporary construction easements granted, one to each other.

(iv) Any truck route into, on, over, through and out of the Properties shall be approved by the Owner burdened by such truck route in reasonable locations. Truck routes shall be over Common Area only.

(v) Lighting shall be coordinated so that the lighting schedule is coordinated for all Properties.

(vi) Each party shall maintain and repair its own Property without contribution from the other Owner, unless specifically set forth herein, including, without limitation, Section 7.6.

(vii) There will be no insurance requirements as to any Owner for the protection or benefit of the other Owners.

(viii) Irrigation shall be divided between the Properties such that each Owner will maintain, operate and pay for its own independent irrigation system.

(ix) In the event of any condemnation, each party is entitled to and retains any awards or compensation made for taking of any of such Owner's Property and there shall be no claims by the other party.

7.6 Notwithstanding anything contained herein to the contrary, the Owner of the Shopping Plaza Parcel shall be solely responsible for all maintenance and repairs with respect to the Main Common Area; provided, however, the other Owners shall reimburse the Owner of the Shopping Plaza Parcel for its Proportionate Share (as hereinafter defined) of the costs and expenses of said maintenance and/or repairs of the Main Common Area within thirty (30) days of such Owners' receipt of written notice from the Owner of the Shopping Plaza Parcel demanding reimbursement, along with evidence of payment of said costs and expenses. For purposes of this Declaration the term "Proportionate Share" shall mean as follows:

<u>Owner</u>	<u>Proportionate Share</u>
Shopping Plaza Parcel	88.21%
Corner Parcel	8.22%
Bank Parcel	3.57%
TOTAL	100.00%

**Article 8. Nuisances or Disturbances:**

8.1. Neither Owner (nor any tenant or other occupant of any Property) shall:

(a) do anything (or knowingly suffer anything to be done) on its Property which creates danger to individual persons or property on the other Owner's Property or which constitutes a public or private nuisance with respect to the other Owner's Property;

(b) cause (or knowingly allow) any waste, disfigurement, or damage to the other Owner's Property;

(c) use (or knowingly allow the use of) its Property in violation of Laws;

8.2. Neither Owner shall be responsible under **Article 13** for any events, or the acts or omissions of any Persons, which are beyond such Owner's reasonable control.

**Article 9. No Liens.**

9.1. Unless otherwise specified to the contrary in this Declaration, each Owner agrees that no work in or with respect to its Property shall result in any encumbrances on the other Owner's Property or on any real, personal, or other property of the other Owner; and neither Owner shall be responsible for work in or on the other Owner's Property.

9.2. If any contractor or other person claiming to have been employed (directly or indirectly) by or through an Owner (the "Contracting Owner") files a lien against the other Owner's Property, the contracting Owner shall satisfy, remove or discharge such lien at its expense by bonding, payment or otherwise within thirty (30) days after written notice of such lien. If the contracting Owner fails to do so, the other Owner may satisfy, remove or discharge such lien; and the contracting Owner shall pay all costs thereof (and all related fees and costs) incurred by the other Owner upon demand.

**Article 10. Estoppel Certificates.**

10.1. At either Owner's request, from time to time, the other Owner shall execute, acknowledge and deliver a written statement (each such, an "Estoppel Certificate") certifying whether, to the best of the certifying Owner's knowledge, and subject to any qualifications set forth in such Estoppel Certificate:

(a) this Declaration is valid and in full force and effect, and the certifying Owner has no setoffs, claims or defenses to enforcement of this Declaration;

(b) the certifying Owner has no claim, demand or cause of action against the other Owner arising out of or by virtue of this Declaration or otherwise; and

(c) the other Owner is not in default in the performance of its obligations under this Declaration, and the certifying Owner has not given any notice of default to the other Owner.

**Article 11. Duration of Declaration.**

11.1. The provisions of this Declaration shall be effective in perpetuity unless released in writing by the parties hereto or their respective successors or assigns.

11.2. Nothing in this Declaration shall be construed to diminish (or derogate) the title of either Owner in or to its Property or to revise or amend in any fashion, or to terminate, or to affect any merger of estates with respect to, the deeds by which either Owner acquired title to its Property (or any real property of either Owner).

11.3. Except as specifically set forth herein, nothing contained in this Declaration shall confer any rights on any owners, tenants, business customers, business invitees, agents and employees of either Property. This Declaration shall be strictly construed.

11.4. This Declaration shall be and constitute a covenant running with the land as to the Properties in the specific manner and mode set forth herein.

**Article 12. Limitation of Liability; Indemnification.**

12.1. Each Owner agrees to look solely to the other Owner's interest in the other Owner's Property (including any insurance proceeds or award) for the satisfaction of any right or remedy for the collection of a judgment (or other judicial process) requiring the payment of money, in the event of any liability of an Owner under this Declaration; and no other property or assets of an Owner shall be subject to levy, execution, attachment, or other enforcement procedure for the satisfaction of any remedies under or with respect to this Declaration.

12.2. Each Owner shall indemnify and hold harmless the other Owner and its employees from and against any and all loss or expense arising from (a) the wrongful conduct or gross negligence of an Owner and (b) any breach or default in the performance of any material obligation on an Owner's part to be performed under the terms of this Declaration, or (c) any acts of an Owner or any of Owner's employees or contractors; and in case any action or proceeding be brought against an Owner by reason of any such claim, such Owner, upon notice from the other Owner, shall defend the same at such Owner's expense.

**Article 13. Remedies.**

13.1. If either Owner shall violate or breach any of the provisions of this Declaration on such Owner's part to be observed or performed, including, without limitation, any breach of the Owner's obligation to maintain or repair, and shall fail to cure such violation or breach within ten (10) days after receipt of written notice of the same from the other Owner (or, with respect to any violation or breach of the same not reasonably susceptible to cure within such period, to commence such cure within such period and, thereafter, to prosecute such cure with due diligence to completion), the other Owner shall have the right to enter such Owner's Property and/or its appurtenant areas, if any, and, subject to the rights of tenants, if any, in such Owner's Property, summarily abate, remove, or cure such violation or breach without thereby being deemed guilty or liable in any manner of trespass. In addition, in the event that the cure of any such violation or breach is immediately necessary for the preservation or safety of either Property or for the safety of the occupants of either Property or other individuals or is required to avoid the suspension of any necessary service in either Property, the other Owner may take such action immediately, without prior notice and without allowing the defaulting Owner any period of time within which to cure or to commence to cure such violation or breach.

13.2. The violation or breach of the terms of this Declaration, beyond applicable notice and cure periods, with respect to any rights, easements, privileges, or licenses granted to the Owner shall give the non-defaulting Owner the right to enjoin, abate, or remedy the continuation or repetition of any such violation or breach by appropriate proceedings brought either at law or in equity.

13.3. The remedies specifically granted to each Owner in this **Article 13** or elsewhere in this Declaration shall be cumulative, shall be in addition to all other remedies obtainable at law or in equity and may be exercised at one time or at different times, concurrently or in any order, in the sole discretion of the Owner. Further, the exercise of any remedy shall not operate as a waiver, or preclude the exercise, of any other remedy.

**Article 14. Notices.**

14.1. All notices, demands, consents and approvals which may be or are required to be given by either party to the other hereunder shall be in writing and shall be deemed to have been fully given and received upon actual delivery (or refusal to accept delivery) to the address of all parties designated to receive notice as set forth below or to such other place as the party to be notified may from time to time designate by at least ten (10) business days notice to the other parties. Notices, demands, consents and approvals shall be deemed properly given only by: (a) personal delivery; or (b) sent by Federal Express or other nationally-recognized overnight delivery service; or (c) deposit in the United States mail certified, return receipt requested with postage prepaid. Until changed in the manner set forth above, the addresses for notice are as follows:

To Declarant:           C/O Menin Development, Inc.  
                                  101 SE 4th Avenue  
                                  Delray Beach, FL 33483

14.2. Every notice and demand shall be deemed to have been effective upon delivery by

registered or certified mail, properly addressed as aforesaid, postage prepaid, in the United States Mail, or two (2) days after posting, whichever is first to occur.

**Article 15. Signage.**

15.1 In the event any signage monument or other multi-signage structure (the “Multi-Signage Structure”) is installed in the Main Common Area, all Owners shall be allowed to have their signage installed thereon at their sole cost and expense; provided, however, (i) the signage reserved on the Multi-Signage Structure for the Shopping Plaza Parcel shall be no larger than three (3) times the size of the signage reserved for the Corner Parcel or the Bank Parcel, and (ii) the signage reserved on the on the Multi-Signage Structure for the Corner Parcel shall be approximately the same size as that reserved for the Bank Parcel.

15.2 The maintenance and repair of the Multi-Signage Structure shall be governed by **Section 7.6** above.

**Article 16. Miscellaneous.**

16.1. Each of the parties shall take such actions and sign and deliver such other instruments and documents as may be reasonable, necessary or appropriate to effectuate the transactions contemplated under this Declaration; provided, however, that the taking of such acts or the execution of such documents will not result in material cost or liability to the respective party which is not otherwise required under this Declaration.

16.2. This Declaration shall be governed and construed in accordance with the laws of the State of Florida (without regard to principles of conflicts of law).

16.3. This Declaration, together with the Schedules and Exhibits hereto, constitutes the entire Declaration between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings of the parties relating thereto.

16.4. Except as expressly provided in this Declaration, no delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof or as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise hereunder. Except as otherwise provided in this Declaration, the rights and remedies of each party under this Declaration are cumulative and are not exclusive of any rights or remedies which the party may otherwise have at law or in equity. A waiver by any of the parties hereto of any of the obligations of the other parties under this Declaration shall not be construed to be a waiver of any subsequent breach of such obligation or a waiver of any breach of any other term, condition or provision of this Declaration.

16.5. This Declaration may be executed (a) in counterparts, a complete set of which together shall constitute an original and (b) in duplicates, each of which shall constitute an original. Copies of this Declaration showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals.

16.6. Each party (and each permitted assignee of any party) irrevocably submits to the jurisdiction of the courts of (and service of process in) the State of Florida, County of Palm Beach and agrees that any action or proceeding arising out of or relating to this Declaration may be brought and/or defended in such courts.

16.7. If any term, covenant, condition or provision of this Declaration is determined by a final judgment to be invalid or unenforceable, the remaining terms, covenants, conditions and provisions of this Declaration shall not be affected thereby; and each other term, covenant, condition and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

16.8. Nothing in this Declaration, express or implied, is intended:

- (a) to constitute Owners as partners or co-venturers; or
- (b) to waive any claim or right of any party hereto against any Person who is not a party hereto.

16.9. This Declaration shall be construed without regard to any presumption requiring construction against the party drafting this Declaration.

16.10. This Declaration shall be binding upon the respective permitted successors, assigns and legal representatives of the parties and shall inure to the benefit of and be enforceable by the parties and their respective permitted successors, assigns and legal representatives.

16.11. This Declaration shall be recorded in the Office of the Clerk of Palm Beach County, Florida in connection with the Properties.

16.12. The Article headings in this Declaration are for convenience only, shall in no way define or limit the scope or content of this Declaration, and shall not be considered in any construction or interpretation of this Declaration or any part hereof.

16.13. Wherever in this Declaration it is provided that an action shall be subject to the consent or approval of the other, such consent or approval shall not be unreasonably withheld or delayed. Unless otherwise specifically stated to be a longer period of time, in any case, where the consent or approval of a party has been requested, the failure of the party required to give or deny such consent or approval within thirty (30) days after request for approval or consent shall be conclusively deemed to be approval or consent, as the case may be.

**Article 17. Amendment.**

This Declaration may be modified or amended in whole or in part, at any time, and from time to time, by agreement between Declarant and Owners with the consent of any institutional mortgagee of record, their successors or assigns, which amendment shall be evidenced by an instrument recorded in the Public Records of Palm Beach County, Florida.

**Article 18. Attorneys' Fees.**

In the event it becomes necessary for either party hereto to file suit to enforce this Declaration or any provision contained herein, the party prevailing in such suit shall be entitled to recover, in addition to all other remedies or damages as herein provided, reasonable attorneys', paralegals', or expert witnesses' fees and costs incurred in such suit at trial or on appeal or in connection with any bankruptcy or similar proceedings.

**Article 19. WAIVER OF JURY TRIAL.**

**THE PARTIES HERETO DO HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVE ANY RIGHT ANY PARTY MAY HAVE TO A JURY TRIAL IN EVERY JURISDICTION IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR THEIR RESPECTIVE SUCCESSORS OR ASSIGNS IN RESPECT OF ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS DECLARATION.**

[SIGNATURE(S) ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Declaration on the day and year first above written.

WITNESSES:

NCC ROSEBUD TWO, LLC, a Florida limited liability company

*Abby Reuch Bennett*

Print Name: Abby Reuch Bennett

By:

*Marc Yavinsky*

Print Name: Marc Yavinsky

Title: Executive Vice President

Print Name: Michael Pereda

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of December 2017, by Marc Yavinsky, as Executive Vice President of NCC ROSEBUD TWO, LLC, a Florida limited liability company, on behalf of the company, who is personally known to me or has produced \_\_\_\_\_ as identification.

*Lori Lucas*

Signature of Notary Public

Lori Lucas

Print, Type, or Stamp Commissioned Name of Notary Public

My Commission Expires: 12/6/2019

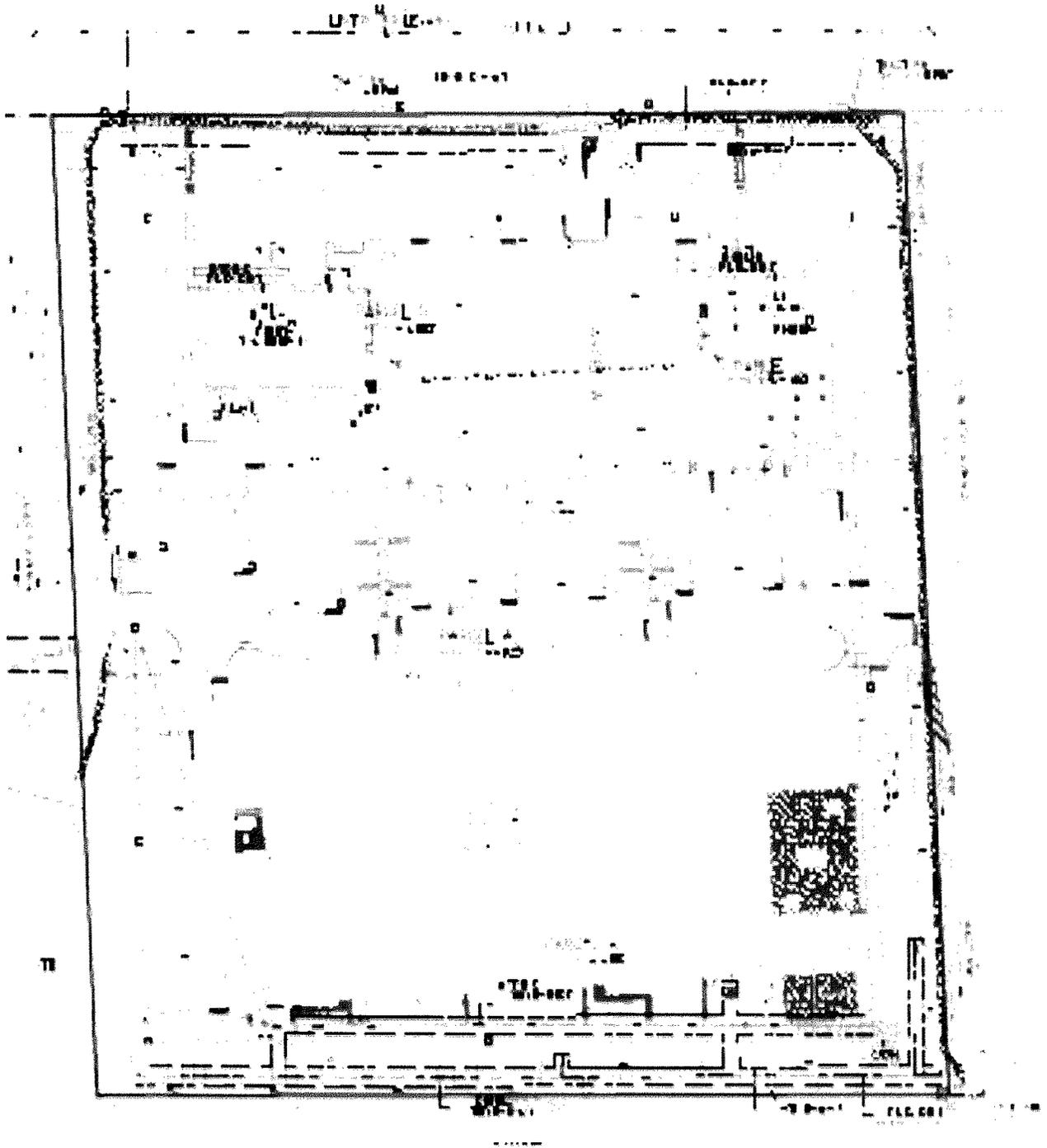
[SEAL]



**EXHIBIT A**

TRACT A, B, AND C OF COSTCO WHOLESALE – DELRAY BEACH, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 65, PAGE 112, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

EXHIBIT B



**EXHIBIT C**

**DESCRIPTION:**

A PORTION OF TRACT A OF COSTCO WHOLESALE - DELRAY BEACH, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 65, PAGE 112, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

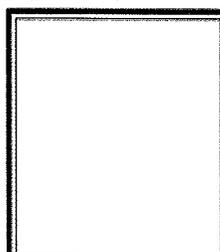
COMMENCING AT THE MOST NORTHERLY NORTHEAST CORNER OF SAID TRACT A; THENCE, ALONG THE NORTH LINE OF SAID TRACT A, SOUTH 89°54'0" WEST, A DISTANCE OF 194.43 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 37.38 FEET FROM WHICH A RADIAL LINE BEARS SOUTH 72°37'53" EAST AND THE POINT OF BEGINNING;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 1°55'09", A DISTANCE OF 9.08 FEET; THENCE SOUTH 03°55'41" EAST, A DISTANCE OF 50.40 FEET; THENCE SOUTH 02°44'02" EAST, A DISTANCE OF 249.28 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 3.00 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 4.71 FEET TO THE POINT OF TANGENCY; THENCE NORTH 87°15'58" EAST, A DISTANCE OF 164.96 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 5.40 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 67°38'57", A DISTANCE OF 6.38 FEET; THENCE NORTH 87°15'58" EAST, A DISTANCE OF 28.77 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 10.00 FEET FROM WHICH A RADIAL LINE BEARS NORTH 45°33'25" EAST; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 48°17'27", A DISTANCE OF 8.43 FEET TO THE POINT OF TANGENCY; THENCE NORTH 87°15'58" EAST, A DISTANCE OF 5.21 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 15.00 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 39°05'37", A DISTANCE OF 10.23 FEET TO A POINT OF INTERSECTION WITH THE EAST LINE OF SAID TRACT A; THENCE, ALONG SAID EAST LINE, SOUTH 02°44'02" EAST, A DISTANCE OF 43.89 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 15.00 FEET FROM WHICH A RADIAL LINE BEARS SOUTH 36°43'52" WEST; THENCE, DEPARTING SAID EAST LINE OF TRACT A, NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 39°27'54", A DISTANCE OF 10.33 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 87°15'58" WEST, A DISTANCE OF 1.97 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 15.00 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 49°53'42", A DISTANCE OF 13.06 FEET; THENCE SOUTH 87°15'33" WEST, A DISTANCE OF 35.74 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 23.00 FEET FROM WHICH A RADIAL LINE BEARS NORTH 56°19'13" WEST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 4°28'19", A DISTANCE OF 1.80 FEET TO THE POINT OF COMPOUND CURVATURE OF A CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 10.00 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 66°45'15", A DISTANCE OF 11.65 FEET TO THE POINT OF COMPOUND CURVATURE OF A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 13.90 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 55°11'15", A DISTANCE OF 13.39 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 87°15'58" WEST, A DISTANCE OF 387.08 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 124.00 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 27°57'27", A DISTANCE OF 60.51 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 141.97 FEET FROM WHICH A RADIAL LINE BEARS SOUTH 23°57'07" WEST; THENCE WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 31°30'32", A DISTANCE OF 78.07 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 30.13 FEET FROM WHICH A RADIAL LINE BEARS SOUTH 07°24'10" EAST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 32°33'06", A DISTANCE OF 17.12 FEET TO A POINT OF INTERSECTION WITH THE WEST LINE OF SAID TRACT A AND A POINT ON A NON-TANGENT CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 290.00 FEET FROM WHICH A RADIAL LINE BEARS NORTH 85°50'59" WEST;

DESCRIPTION CONTINUED ON SHEET 2 OF 4

SHEET 1 OF 4

**CAULFIELD & WHEELER, INC.**  
  
 CIVIL ENGINEERING - LAND SURVEYING  
 7900 GLADES ROAD - SUITE 100  
 BOCA RATON, FLORIDA 33434  
 PHONE (561) 392-1981 / FAX (561) 750-1452



DATE	11/02/17
DRAWN BY	DLS
F.B. / PG.	N/A
SCALE	AS SHOWN
JOB NO.	5417-ROAD

**NEW CENTURY COMMONS  
 ROADWAY  
 SKETCH OF DESCRIPTION**

**EXHIBIT C CONT.**

**DESCRIPTION: (CONTINUED)**

THENCE NORTHERLY ALONG SAID WEST LINE AND THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 6°49'49", A DISTANCE OF 34.87 FEET TO THE POINT OF TANGENCY; THENCE, CONTINUING ALONG SAID WEST LINE, NORTH 02°40'48" WEST, A DISTANCE OF 18.43 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 25.04 FEET FROM WHICH A RADIAL LINE BEARS NORTH 37°47'12" EAST; THENCE, DEPARTING SAID WEST LINE, SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 36°55'50", A DISTANCE OF 16.14 FEET; THENCE NORTH 88°53'41" EAST, A DISTANCE OF 5.77 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 101.35 FEET FROM WHICH A RADIAL LINE BEARS SOUTH 01°35'26" EAST; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 20°42'15", A DISTANCE OF 36.62 FEET; THENCE SOUTH 70°44'28" EAST, A DISTANCE OF 29.96 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 95.00 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 21°02'00", A DISTANCE OF 34.87 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 25.00 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 29°43'47", A DISTANCE OF 12.97 FEET TO THE POINT OF COMPOUND CURVATURE OF A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 100.00 FEET; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 131°7'46", A DISTANCE OF 23.21 FEET TO THE POINT OF TANGENCY; THENCE NORTH 87°15'58" EAST, A DISTANCE OF 205.62 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 3.00 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 4.77 FEET TO THE POINT OF TANGENCY; THENCE NORTH 02°44'02" WEST, A DISTANCE OF 249.03 FEET; THENCE NORTH 03°55'41" WEST, A DISTANCE OF 39.96 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 25.02 FEET FROM WHICH A RADIAL LINE BEARS SOUTH 86°14'39" WEST; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 59°15'40", A DISTANCE OF 25.88 FEET TO A POINT OF INTERSECTION WITH THE AFORESAID NORTH LINE OF TRACT A; THENCE, ALONG SAID NORTH LINE, NORTH 89°54'01" EAST, A DISTANCE OF 38.50 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED LANDS CONTAINING 24,701 SQUARE FEET/0.5671 ACRES MORE OR LESS,  
 SAID LANDS LYING IN THE TOWN OF DAVIE, BROWARD COUNTY, FLORIDA,  
 SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS, COVENANTS, AND RIGHTS-OF-WAY OF RECORD.

**NOTES:**

1. REPRODUCTIONS OF THIS SKETCH ARE NOT VALID UNLESS SEALED WITH AN EMBOSSED SURVEYOR'S SEAL.
2. LANDS SHOWN HEREON ARE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD.
3. BEARINGS SHOWN HEREON ARE RELATIVE TO A RECORD PLAT BEARING BEARING OF SOUTH 89°54'01" WEST ALONG THE NORTH LINE OF TRACT A, COSICO WHOLESAL - DELRAY BEACH, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 65, PAGE 112, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.
4. THE "LAND DESCRIPTION" HEREON WAS PROVIDED BY THE CLIENT.
5. DATA SHOWN HEREON WAS COMPILED FROM INSTRUMENTS OF RECORD AND DOES NOT CONSTITUTE A FIELD SURVEY AS SUCH.

**CERTIFICATE:**

I HEREBY CERTIFY THAT THE ATTACHED SKETCH OF DESCRIPTION OF THE HEREOF DESCRIBED PROPERTY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS PREPARED UNDER MY DIRECTION ON NOVEMBER 02, 2017. I FURTHER CERTIFY THAT THIS SKETCH OF DESCRIPTION MEETS THE STANDARDS OF PRACTICE SET FORTH IN CHAPTER 5J-17 ADOPTED BY THE FLORIDA BOARD OF SURVEYORS AND MAPPERS PURSUANT TO FLORIDA STATUTES 472.027.

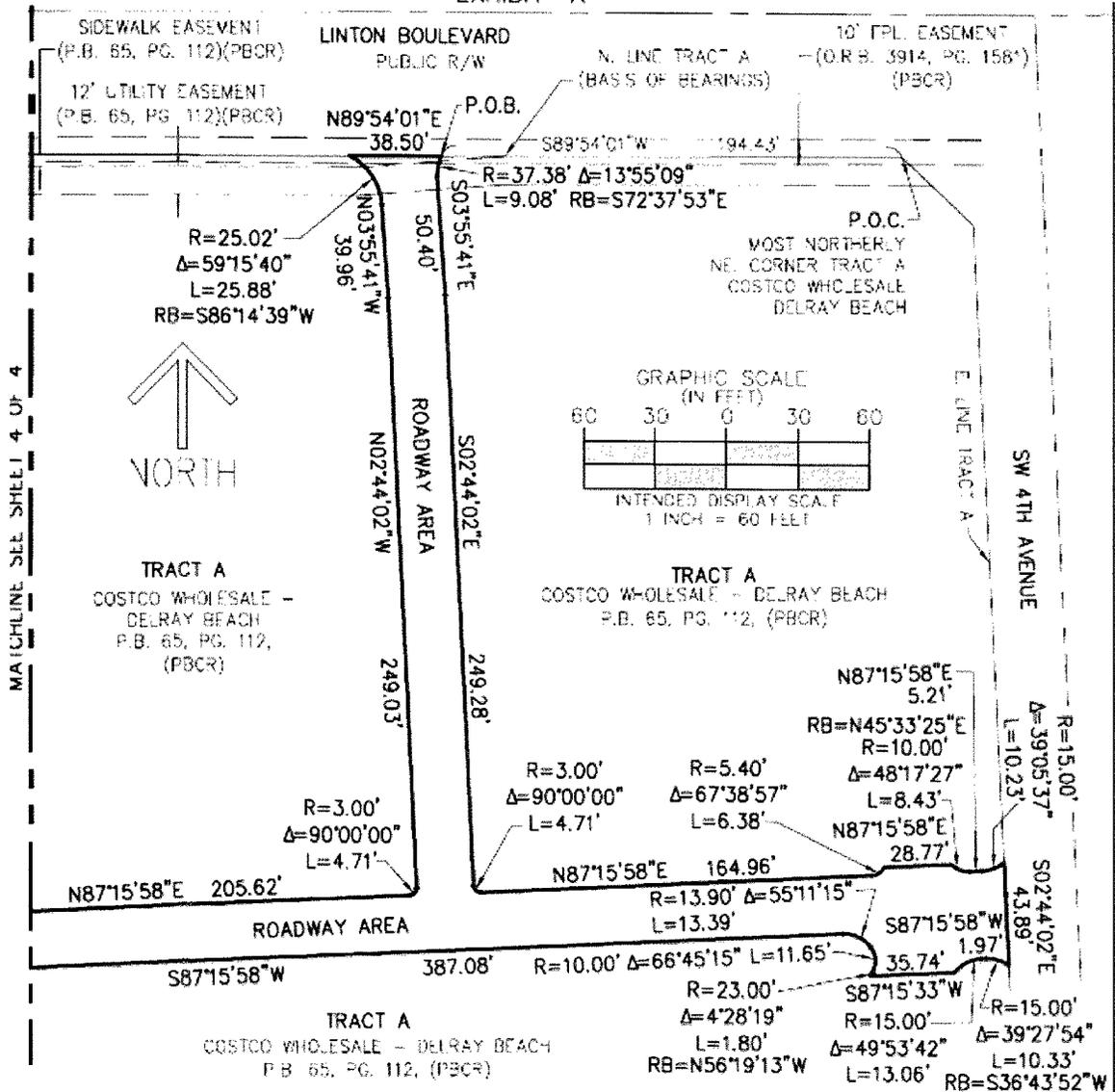
SHEET 2 OF 4

 <p><b>CAULFIELD &amp; WHEELER, INC.</b>          CIVIL ENGINEERING - LAND SURVEYING          7800 GLADES ROAD - SUITE 100          BOCA RATON, FLORIDA 33434          PHONE (561) 392-1991 / FAX (561) 750-1452</p>	<p>NEW CENTURY COMMONS          ROADWAY          SKETCH OF DESCRIPTION</p>
	<p>DAVID P. LINDLEY          REGISTERED LAND          SURVEYOR NO. 5005          STATE OF FLORIDA          LB# 3591</p>

<p>DATE 11/02/17</p> <p>DRAWN BY DLS</p> <p>F.B./ PG. N/A</p> <p>SCALE AS SHOWN</p> <p>JOB NO. 5417-ROAD</p>
--

<p>DATE 11/02/17</p> <p>DRAWN BY DLS</p> <p>F.B./ PG. N/A</p> <p>SCALE AS SHOWN</p> <p>JOB NO. 5417-ROAD</p>
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EXHIBIT C CONT.



MATCHLINE SEE SHEET 4 OF 4

LEGEND/ABBREVIATIONS

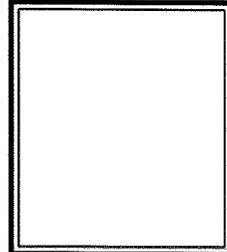
- |                                  |                                |                           |
|----------------------------------|--------------------------------|---------------------------|
| LB - LICENSED BUSINESS           | PCS - PAGES                    | RB - RADIAL BEARING       |
| O.R.B. - OFFICIAL RECORD BOOK    | P.O.B. - POINT OF BEGINNING    | Δ - DELTA (CENTRAL ANGLE) |
| PBCR - PALM BEACH COUNTY RECORDS | P.O.C. - POINT OF COMMENCEMENT | L - LENGTH                |
| P.B. - PLAT BOOK                 | R - RADIUS                     |                           |

SHEET 3 OF 4

**CAULFIELD & WHEELER, INC.**  
 CIVIL ENGINEERING - LAND SURVEYING  
 7900 GLADES ROAD - SUITE 100  
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 PHONE (561) 382-1991 / FAX (561) 750-1452

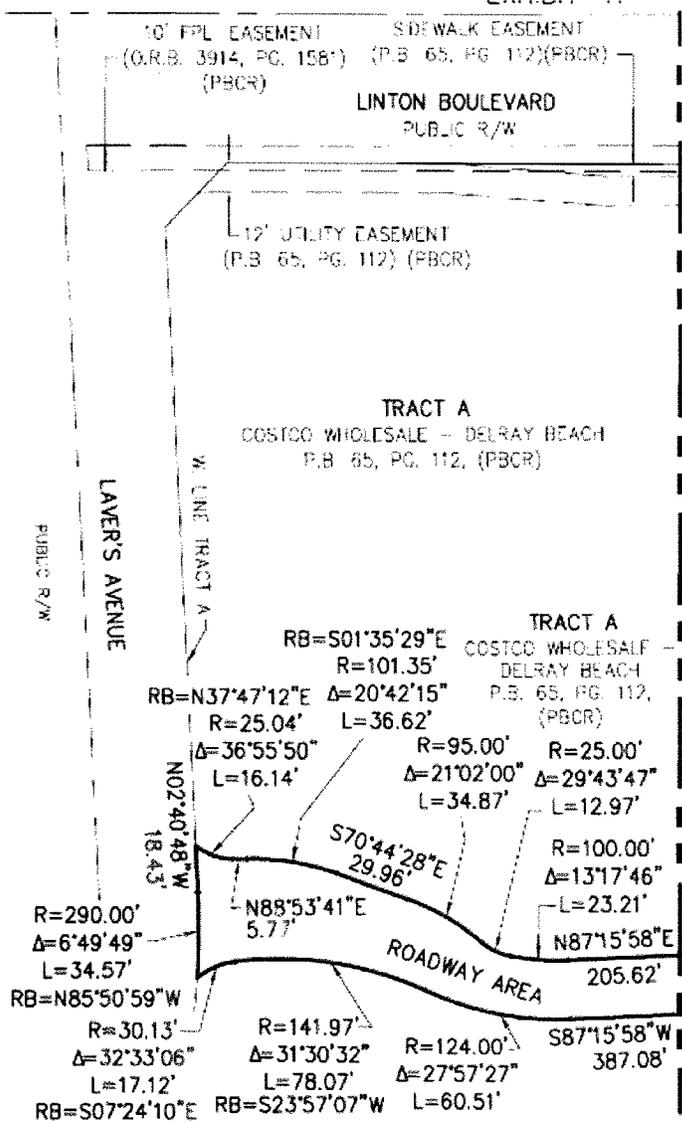
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NEW CENTURY COMMONS  
 ROADWAY  
 SKETCH OF DESCRIPTION

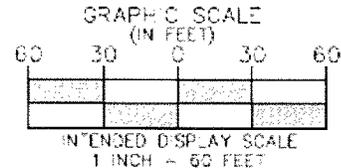


DATE	11/02/17
DRAWN BY	DLS
F.B./ PG.	N/A
SCALE	AS SHOWN
JOB NO.	5417-ROAD

EXHIBIT C CONT.



MATCHLINE SEE SHEET 3 OF 4



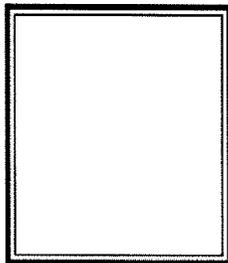
LEGEND/ABBREVIATIONS

- LB - LICENSED BUSINESS
- O.R.B. - OFFICIAL RECORD BOOK
- PBCR - PALM BEACH COUNTY RECORDS
- P.B. - PLAT BOOK
- PGS. - PAGES
- P.O.B. - POINT OF BEGINNING
- P.O.C. - POINT OF COMMENCEMENT
- R - RADIUS
- RB - RADIAL BEARING
- Δ - DELTA (CENTRAL ANGLE)
- L - LENGTH

SHEET 4 OF 4

**CAULFIELD & WHEELER, INC.**  
 CIVIL ENGINEERING - LAND SURVEYING  
 7900 GLADES ROAD - SUITE 100  
 BOCA RATON, FLORIDA 33434  
 PHONE (561) 392-1991 / FAX (561) 750-1452

NEW CENTURY COMMONS  
 ROADWAY  
 SKETCH OF DESCRIPTION



DATE	11/02/17
DRAWN BY	DLS
F.B./PG.	N/A
SCALE	AS SHOWN
JOB NO.	547-ROAD