

DEVELOPMENT AGREEMENT

This Development Agreement is made this ____ day of _____, 2011, by and between the City of Lawrence, Kansas, a municipal corporation, George B. Leinmiller, Marlene J. Leinmiller, and EVC Naismith, L.C., a Kansas limited liability company.

RECITALS

- A.** The Kansas Department of Transportation ("KDOT") is the holder of that Right of Way on which 23rd Street/K-10 Highway ("the 23rd Street Right of Way") is located in Lawrence, Douglas County, Kansas.
- B.** Pursuant to an agreement with KDOT, the City of Lawrence, Kansas ("the City"), maintains the 23rd Street Right of Way.
- C.** EVC Naismith, L.C. ("EVC"), owns certain real property, known as Lot 1, Block 9, South Hills, a Subdivision in the City of Lawrence, Kansas (the "EVC Property"), which is adjacent to and along the 23rd Street Right of Way.
- D.** George B. Leinmiller and Marlene J. Leinmiller (collectively, "the Leinmillers") own certain real property, known as Lots A1, A2, and B, Replat of South Hills No. 3, a Subdivision in the City of Lawrence, Kansas (the "Leinmiller Property"), which is adjacent to and along the 23rd Street Right of Way.
- E.** EVC wishes to redevelop its property, has submitted to the City a Site Plan, and has agreed, in exchange for approval of that Site Plan, to redevelop two access entrances ("Access Entrances") (identified on the map, which is affixed hereto as Exhibit A, as "West Entrance" and "East Entrance") that would permit ingress and egress from the 23rd Street Right of Way to and from the Leinmiller Property for the mutual benefit of the EVC Property and the Leinmiller Property.
- F.** The City has agreed, subject to EVC's and the Leinmillers' execution of this Development Agreement and compliance with the terms of this Development Agreement, to reimburse EVC for certain of its costs associated with the redevelopment of the Access Entrances.

AGREEMENT

NOW THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties agree as follows:

1. **Approved Public Improvement Plan.** As a condition for receiving Site Plan approval for the redevelopment of its property, EVC agrees to redevelop the Access Entrances (as identified on Exhibit A as West Entrance and East Entrance). EVC has or will submit to the City Engineer, for his approval, a Public Improvement Plan, setting forth in detail its plan for redeveloping the Access Entrances. EVC further agrees that no work shall be commenced on the Access Entrances until the City Engineer approves EVC's Public Improvement Plan. A copy of the approved Public Improvement Plan shall be affixed hereto as Exhibit B and shall be incorporated herein by reference as if set forth in full.
2. **Scope of Work.** Once the Public Improvement Plan is approved by the City Engineer, EVC agrees that, at its sole cost and expense, it shall cause the Access Entrances to be redeveloped in a good and workmanlike manner and in accordance with the approved Public Improvement Plan. EVC also agrees that the work on the Access Entrances shall be completed to the City's reasonable satisfaction that the same is in accordance with the Approved Public Improvement Plan. The City agrees that EVC shall be permitted to redevelop the Access Entrances without posting a bond or providing a letter of credit. The Leinmillers agree to permit EVC access to their property in order to perform the work.
3. **Request for Reimbursement.** Once the redevelopment of the Access Entrances is completed to the City's reasonable satisfaction that the same is in accordance with the Approved Public Improvement Plan, EVC shall submit to the City Engineer a letter requesting reimbursement for costs and expenses. The letter shall be accompanied by copies of vouchers, invoices, payment records, cancelled checks, or whatever documents are necessary to substantiate EVC's costs and expenses related to the redevelopment of the Access Entrances.
4. **Reimbursement.** Once the City Engineer has reviewed the documents submitted by EVC to substantiate its costs and expenses and finds that said costs and expenses are substantiated, the City Engineer will approve reimbursement to EVC for the actual costs and expenses of the project to a maximum of \$50,000.00. If the costs of the project exceed \$50,000.00, then EVC agrees that it will be responsible for any costs and expenses that exceed \$50,000.00.
5. **Cross Access and Parking.** The City, the Leinmillers, and EVC hereby acknowledge and reaffirm the Cross Access and Parking Easement entered into by and between the Leinmillers and EVC on or about June 22, 2011. A copy of that Cross Access and Parking Easement is affixed hereto as Exhibit C and shall be incorporated herein by reference as if set forth in full.

6. **Indemnification.** During the time that this Development Agreement is in effect, (a) the Leinmillers agree to indemnify, defend, save, and hold harmless the City, its officers, commissioners, agents, employees, grantees, and assigns, from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including attorneys' fees, which relate to, arise out of, or are in any way related to the Leinmillers use, construction or maintenance of the Access Entrances, on account of any injury to persons or damage to property, and (b) EVC agrees to indemnify, defend, save, and hold harmless the City, its officers, commissioners, agents, employees, grantees, and assigns, from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including attorneys' fees, which relate to, arise out of, or are in any way related to EVC's use, construction or maintenance of the Access Entrances. This paragraph shall not apply to any injury or damage caused by the negligence of the City. Additionally, the City agrees not to waive any defenses that it might assert to any such claim.
7. **Term and Termination.** This Development Agreement shall expire, terminate, and automatically sunset one (1) year after the later to occur of: (a) completion and approval of the redevelopment work in accordance with Section 2, above, and (b) payment of the reimbursement in accordance with Section 4, above. If, for any reason, EVC is unable to redevelop the Access Entrances in good and workmanlike fashion, to the City's reasonable satisfaction that the same is in accordance with the Approved Public Improvement Plan, or is otherwise unable to complete the redevelopment of the Access Entrances as provided herein, then the City shall have the right to terminate this Agreement or shall have the right to complete the project as shown in Exhibit B.
8. **Binding Effect.** This Development Agreement shall, at all times, be binding upon the City, the Leinmiller Property, and EVC Property, and all owners of the said properties and all parties claiming by, through, or under them, and shall run with the land, and shall be for the benefit of and shall oblige all future owners of those properties; provided, however, that the rights, duties, and obligations of each owner, as set forth herein, shall cease with the termination of his, her, or its ownership of their respective property, or portion thereof, except for those duties and obligations arising during the period of his, her, or its ownership.
9. **Severability.** If any section, sentence, clause, or phrase of this Development Agreement is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this Development Agreement.
10. **Governing Law.** This License Agreement shall be construed and enforced in accordance with and shall be governed by the laws of the State of Kansas.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the City, the Leinmillers, and EVC have executed this License Agreement with the full intent to bind themselves and their successors and assigns.

**CITY OF LAWRENCE, KANSAS, a
municipal corporation**

DAVID L. CORLISS
City Manager

ACKNOWLEDGMENT

THE STATE OF KANSAS)
)
THE COUNTY OF DOUGLAS) ss:


BE IT REMEMBERED, that on this ____ day of _____, 2011, before me the undersigned, a notary public in and for the County and State aforesaid, came David L. Corliss, as City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

Notary Public

My Appointment Expires:

IN WITNESS WHEREOF, the City, the Leinmillers, and EVC have executed this License Agreement with the full intent to bind themselves and their successors and assigns.


GEORGE B. LEINMILLER


MARLENE J. LEINMILLER

ACKNOWLEDGMENT

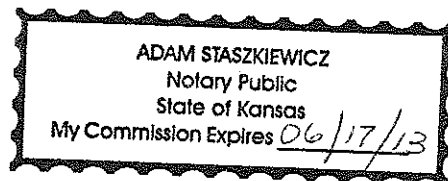
THE STATE OF KANSAS)
)
THE COUNTY OF DOUGLAS) SS:

BE IT REMEMBERED, that on this 21st day of July, 2011, before me the undersigned, a notary public in and for the County and State aforesaid, came George B. Leinmiller and Marlene J. Leinmiller, who are personally known to me to be the same persons who executed this instrument in writing, and said persons fully acknowledged this instrument to be their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.


Notary Public

My Appointment Expires: 06/17/13



IN WITNESS WHEREOF, the City, the Leinmillers, and EVC have executed this License Agreement with the full intent to bind themselves and their successors and assigns.

EVC NAISMITH, L.C.,



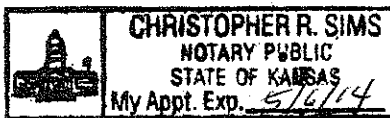
MARK R. McPHERSON
Manager

ACKNOWLEDGMENT

THE STATE OF Kansas)
)
THE COUNTY OF Johnson) ss:

BE IT REMEMBERED, that on this 20 day of July, 2011, before me the undersigned, a notary public in and for the County and State aforesaid, came Mark R. McPherson, as Manager of EVC Naismith, L.C., who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

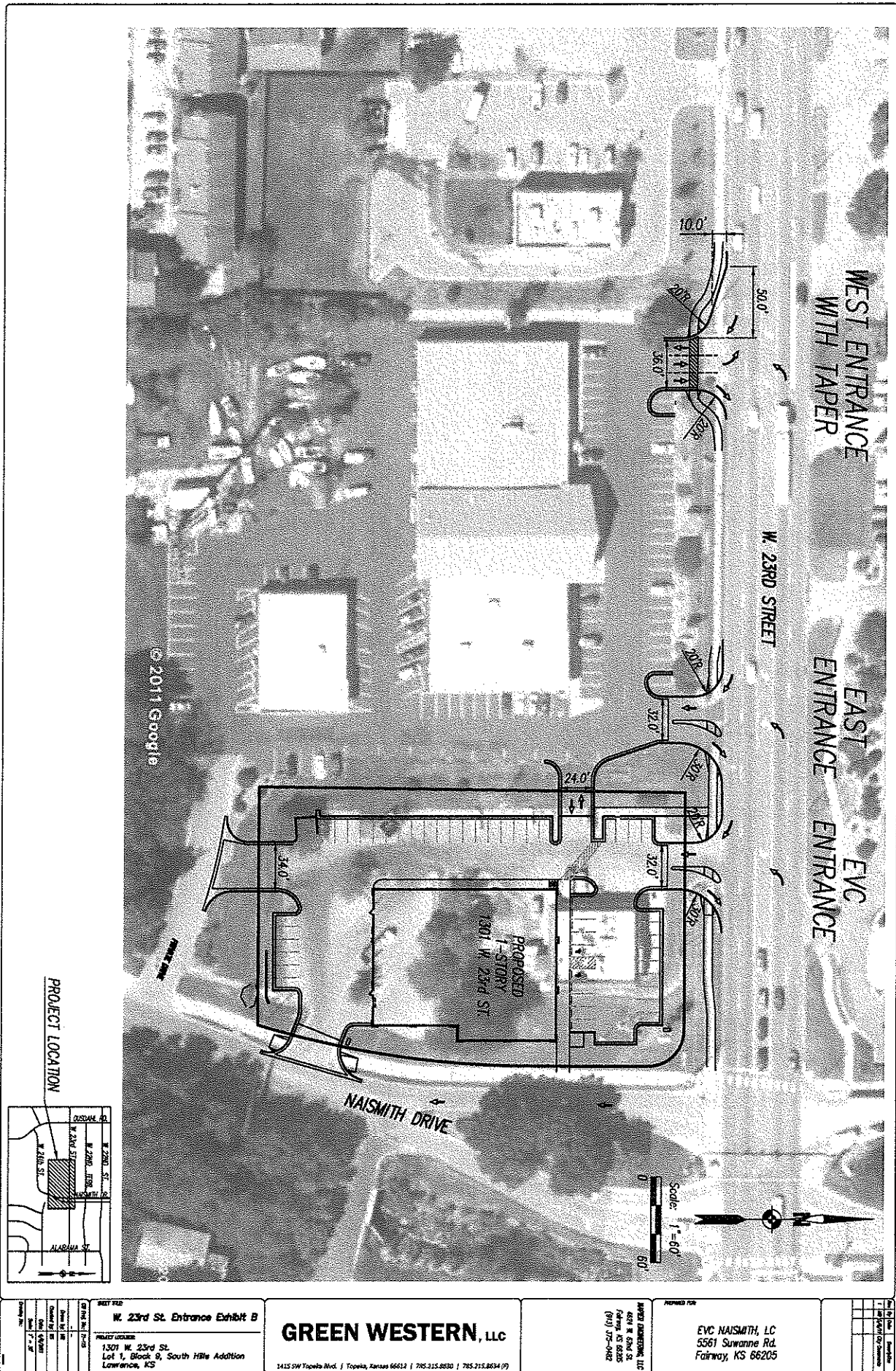

Notary Public

My Appointment Expires: 5/6/14

Exhibit A

Access Entrances – West Entrance and East Entrance

[See Attached]



<p>PROJECT LOCATION</p> <p>1301 W. 23rd St. Lot 1, Block 9, South Hills Addition Lawrence, KS</p>	<p>PROJECT PREP</p> <p>W. 23rd St. Entrance Exhibit B</p>	<p>GREEN WESTERN, LLC</p> <p>1415 SW Topoka Blvd. Topoka, Kansas 66612 785.315.8830 785.215.8634 (P)</p>	<p>APPROVED FOR</p> <p>APRIL 2011</p> <p>4429 W. 23rd St. Fairway, KS 66205 (913) 375-4882</p>	<p>APPROVED FOR</p> <p>EVC NAISMITH, LC 5561 Suwanne Rd. Fairway, KS 66205</p>	<p>DATE</p> <p>11/11/11</p>
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Exhibit B

Approved Public Improvement Plan

[See Attached]

Exhibit C

Cross Access and Parking Easement

[See Attached]

CROSS ACCESS AND PARKING EASEMENT

This Cross Access and Parking Easement (this "Agreement") is entered into on this 22nd day of June 2011, by and between **George B. Leinmiller and Marlene J. Leinmiller**, as individuals (collectively, as "**Leinmiller**"), and **EVC Naismith, L.C.**, a Kansas limited liability company (as "**EVC**").

WHEREAS, Leinmiller is the owner of Lot A1, Lot A2, and Lot B, Replat of South Hills No. 3, a Subdivision in the City of Lawrence, Douglas County (the "**Leinmiller Property**"); and

WHEREAS, EVC is the owner of Lot 1, Block 9, South Hills, a Subdivision in the City of Lawrence, Douglas County, Kansas (the "**EVC Property**"); and

WHEREAS, Leinmiller and EVC desire to create a non-exclusive cross access and parking easement for ingress, egress, and parking for the joint use and benefit of the Leinmiller Property and the EVC Property (collectively, the "**Properties**").

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereby agree as follows:

1. Grant of Access and Parking Easements. Leinmiller and EVC grant, convey, and create the following non-exclusive perpetual joint and reciprocal easements for the mutual use and benefit of the Properties and all successors, assigns, and licensees of the Properties (collectively, the "**Easement Areas**"):

(a) Access, ingress, and egress upon, over, and across the access drive shown and labeled on **Exhibit "A"** attached hereto (the "**Access Drive**");

(b) Access, ingress, and egress upon, over, and across the drive areas located on the Properties, as the same may from time to time be constructed and maintained for such use (the "**Drive Areas**"), and

(c) Cross-parking of vehicles upon, over, and across the applicable parking areas the Properties, as the same may from time to time be constructed and maintained for such use (the "**Parking Areas**"); provided, however, Leinmiller and EVC agree that neither they nor their successors or assigns will directly or indirectly encourage or direct, or grant any other person or entity the power or authority to encourage or direct, any occupant, licensees, tenant, employee, contractor, agent, or other persons to park on the other party's property; and each party further agrees that the cross-parking rights granted herein (i) shall be strictly limited to and for the sole benefit of the then-current owners of the Properties, their occupants, licensees, and tenants, (ii) are private in nature and are not intended to be dedicated for public or governmental use as a result of this Agreement, (iii) shall not apply to delivery vehicles or any long-term parking, and (iv) shall not be taken into account when determining compliance with minimum parking requirements for each party's respective property pursuant to local code.

2. Initial Construction and Maintenance of Access Drive. The Access Drive if built shall be located and sized approximately as shown on **Exhibit "A"** attached hereto, subject to approval by applicable governmental entities. Leinmiller and EVC grant each other a temporary construction easement for construction and maintenance of the Access Drive and adjacent parking areas, provided that all such construction shall be performed in a workmanlike

CROSS ACCESS EASEMENT
PAGE 2 OF 5

manner and in such a way as not to unreasonably interfere with the continued use of the Properties. Leinmiller and EVC further agree and consent to the removal of striping or other markings which permit parking in front of the Access Drive as shown on **Exhibit "A"** attached hereto. EVC agrees to initially construct, and thereafter repair, replace, restore, clean, remove snow and ice, and otherwise maintain the Access Drive in good condition capable of continued use for its intended purpose, ordinary wear and tear excepted, consistent with the operation of other first class shopping centers located in the Lawrence, Kansas, area.

3. Ongoing Obligations and Covenants. Except as otherwise provided herein, Leinmiller and EVC each agree and covenant:

(a) Not to erect or allow any barriers, improvements, facilities, parking, or obstructions which unreasonably impair access to or use of the Easement Areas, except that each party reserves the right to close any portion of the Drive Areas and Parking Areas located on such party's respective property for reasonable periods of time as may be legally necessary in the opinion of such party's counsel to prevent the acquisition of prescriptive rights; and

(b) To repair, replace, restore, clean, remove snow and ice, and otherwise maintain the Easement Areas located upon such party's respective property (excluding the Access Drive, which shall be maintained by EVC pursuant to Section 2, above) in good condition capable of continued use for its intended purpose, ordinary wear and tear excepted, consistent with the operation of other first class shopping centers located in the Lawrence, Kansas, area; and

(c) Not to alter or modify the Access Drive in a manner which unreasonably interferes, impedes, or impairs continued use or access to the Access Drive; and

(d) To maintain comprehensive general liability insurance on the Easement Areas located upon such party's respective property; and

(e) To pay (or cause to be paid) before delinquency all real estate taxes and assessments levied on such party's respective property and improvements.

4. Setback. Leinmiller and EVC waive any and all setback requirements in favor of either party with respect to Parking Areas and Drive Areas located along the shared property line between the Leinmiller Property and the EVC Property. Building and structure setbacks are not modified by this Agreement.

5. Casualty and Condemnation. In the event that any material portion of the Access Drive or the Easement Areas, respectively, are destroyed or damaged by fire, casualty, or force majeure, or is condemned or transferred in lieu of condemnation, the owner of the affected property, at its option, shall clear and restore the Access Drive (or as much as practicable thereof in the event of condemnation) or Easement Areas, respectively, located on such party's property at its sole cost and expense. In the event the Access Drive or Easement Areas, respectively, cannot be reasonably reconstructed or relocated in a mutually reasonably acceptable location after any such casualty or condemnation event, this Agreement shall terminate upon written notice and the parties agree to jointly execute and file a confirmation of such termination in the public records.

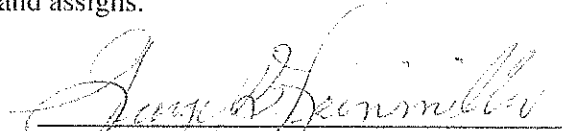
CROSS ACCESS EASEMENT
PAGE 3 OF 5

6. Perpetual Nature; Limitations. This Agreement shall be a perpetual burden and benefit upon both the Properties and shall run with the Properties and be binding on any successor in interest to any part or portion thereof. Except as otherwise expressly provided herein, this Agreement may be modified, amended, revoked, terminated, or released only by a written document signed by all of the parties in interest (or their successors or assigns) to the Property.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

CROSS ACCESS EASEMENT
PAGE 4 OF 5

IN WITNESS WHEREOF, Leinmiller and EVC have executed this Agreement with the full intent to bind themselves and their successors and assigns.

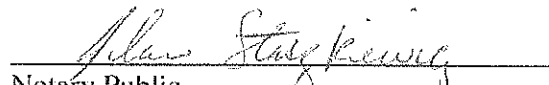

George B. Leinmiller


Marlene J. Leinmiller

THE STATE OF KANSAS)
) SS:
COUNTY OF DOUGLAS)

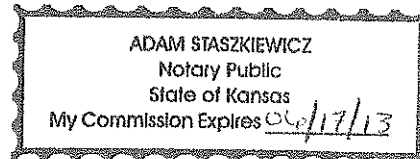
BE IT REMEMBERED, that on this 21st day of JUNE, 2011, before me the undersigned, a notary public in and for the County and State aforesaid, came George B. Leinmiller and Marlene J. Leinmiller, who are personally known to me to be the same persons who executed this instrument of writing, and said persons fully acknowledged this instrument to be their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.


Notary Public

My Appointment Expires:


06-17-2013



CROSS ACCESS EASEMENT
PAGE 5 OF 5

IN WITNESS WHEREOF, Leinmiller and EVC have executed this Agreement with the full intent to bind themselves and their successors and assigns.

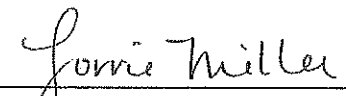
EVC Naismith, L.C.:

By: 
Mark R. McPherson, Manager

THE STATE OF KANSAS)
) SS:
COUNTY OF Johnson)

BE IT REMEMBERED, that on this 22nd day of June, 2011, before me the undersigned, a notary public in and for the County and State aforesaid, came Mark R. McPherson, as Manager of the EVC Naismith, L.C., who is personally known to me to be the same person who executed this instrument of writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.


Notary Public

My Appointment Expires:

2/22/2015



EXHIBIT "A"

ACCESS DRIVE

