

# NOTICE OF MEETING



## *CITY OF BRANSON*

### **BOARD OF ALDERMEN**

*Special Meeting – Thursday, December 29, 2011 – 6:00 p.m.*  
Council Chambers – Branson City Hall – 110 W. Maddux

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### **AGENDA**

**Meeting Called to Order**  
**Roll Call**

#### **CONSENT AGENDA:**

- 1) Final Reading of Substitute Bill No. 4058 approving an agreement with CPG Partners, L.P., related to the transfer of the interest of CPG Partners, L.P. in certain land and improvements to the city; approving execution of a lease termination, assignment of lease agreements and a management agreement all with CPG Partners, L.P. in connection therewith; and authorizing the execution of certain documents and the taking of certain actions in connection therewith.**

[Black Lined Version]

#### **REGULAR**

#### **ADJOURN INTO EXECUTIVE SESSION**

**Closed Executive Session pursuant to 610.021.1 RSMo for litigation.**

#### **ADJOURN**

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For more information please visit [www.cityofbranson.org](http://www.cityofbranson.org) or contact:

Lisa Westfall, City Clerk, 417-337-8522

Jerry Adams, Public Information Director, 417-337-8548

**Branson Board of Aldermen  
Staff Report and Recommendation**

**ITEM/SUBJECT:** READING OF A SUBSTITUTE BILL APPROVING AN AGREEMENT WITH CPG PARTNERS, L.P., RELATED TO THE TRANSFER OF THE INTEREST OF CPG PARTNERS, L.P. IN CERTAIN LAND AND IMPROVEMENTS TO THE CITY; APPROVING EXECUTION OF A LEASE TERMINATION, ASSIGNMENT OF LEASE AGREEMENTS AND A MANAGEMENT AGREEMENT ALL WITH CPG PARTNERS, L.P. IN CONNECTION THEREWITH; AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS AND THE TAKING OF CERTAIN ACTIONS IN CONNECTION THEREWITH.

**FIRST READING:** DECEMBER 27, 2011

**FINAL READING:** DECEMBER 29, 2011

**INITIATED BY:** ADMINISTRATION

**CITY ADMINISTRATOR RECOMMENDATION:**

Recommend approval of the substitute bill.

**STAFF REPORT:**

On Monday, December 19, the Board heard discussion concerning the transfer of the interest of Factory Merchant's Mall to the City. City staff was directed to relay the Board's concerns to Simon Properties. After further discussion with Simon Properties, it was agreed that Simon would pay the City \$300,000 at closing, which is scheduled to occur no later than January 5, 2012. Additional language was added to the agreement to clarify tenant leases and Rick McConnell with Gilmore & Bell will be here to answer any questions concerning these changes. It is also estimated the City's annual property and liability insurance rates will increase by \$5,000 - \$7,000 a year.

A blackline version of the agreement is attached behind this staff report with the final version attached as an exhibit to the ordinance.

**STAFF RECOMMENDATION:**

Staff recommends approval of the substitute bill.

**PROPOSED MOTION:**

Move to approve the substitute bill.

**FINANCIAL REVIEW:** N/A

**ATTACHED INFORMATION:** Black Line Version of Agreement with CPG Partners, L.P.

**AN ORDINANCE APPROVING AN AGREEMENT WITH CPG PARTNERS, L.P., RELATED TO THE TRANSFER OF THE INTEREST OF CPG PARTNERS, L.P. IN CERTAIN LAND AND IMPROVEMENTS TO THE CITY; APPROVING EXECUTION OF A LEASE TERMINATION, ASSIGNMENT OF LEASE AGREEMENTS AND A MANAGEMENT AGREEMENT ALL WITH CPG PARTNERS, L.P. IN CONNECTION THEREWITH; AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS AND THE TAKING OF CERTAIN ACTIONS IN CONNECTION THEREWITH.**

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**WHEREAS;** the City of Branson (the “City”) owns property consisting of approximately 120 acres fronting West Highway 76, known as the Old Branson Airport; and

**WHEREAS;** H & W Development Co. entered into a lease agreement for the redevelopment and use of a portion of the Old Branson Airport property; originally dated July 30, 1986, as amended and supplemented from time to time (the “Lease”); and

**WHEREAS;** through amendments, supplements and assignments to and of the Lease, CPG Partners, L.P. (“CPG”) is the current lessee under the Lease; and

**WHEREAS;** CPG owns certain property adjacent to the Old Branson Airport that is not subject to the Lease (the “Additional Property”); and

**WHEREAS;** CPG has requested to terminate the Lease and will convey its interest in the land and improvements subject to the Lease along with the Additional Property to the City; and

**WHEREAS,** in order to complete such conveyances and terminate the Lease the Board of Aldermen desire to approve certain documents and authorize certain actions as provided herein.

**WHEREAS,** on December 19, 2011 the Board postponed the First Reading of Bill No. 4057 for additional discussion and as a result substantial changes were made to the agreement requiring the drafting of this substitute bill.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, AS FOLLOWS:**

Section 1: The Board of Aldermen hereby approves the Agreement attached hereto as Exhibit “1” including the Lease Termination attached thereto as Exhibit F, Assignment of Lease Agreements attached thereto as Exhibit J and Management Agreement attached thereto as Exhibit K and authorizes the Mayor to execute all of such documents.

Section 2: The officers, agents and employees of the City, including the Mayor, City Administrator, Finance Director and City Clerk are hereby authorized and directed to execute all documents, and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and to make any changes or additions in this Ordinance and the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they determine to be in the City’s best interest, and the execution or taking of such action shall be conclusive evidence of such determination.

Section 3: This ordinance shall be in full force and effect from and after its passage and approval.

Read, this first time on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.


Read, this second time, passed, and truly agreed to by the Board of Aldermen of City of Branson, Missouri this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Raeanne Presley  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lisa K Westfall  
City Clerk

  
\_\_\_\_\_  
Gilmore & Bell, P.C.  
Special Counsel

## AGREEMENT

THIS AGREEMENT (this "Agreement"), dated as of December \_\_, 2011 (the "Effective Date"), is made between:

CPG Partners, L.P. a Delaware limited partnership  
105 Eisenhower Parkway  
Roseland, NJ 07068

"CPG-LP"

and

CITY OF BRANSON, MISSOURI  
a municipal corporation and political subdivision of the State of Missouri  
110 W. Maddux  
Branson, MO 65616  
Attention: City Administrator

"City"

### BACKGROUND

A. City is the owner of the fee interest in the real property located in Branson, Taney County, Missouri, described on the attached Exhibit A (together with all rights and interests in improvements, easements and other hereditaments and appurtenances referred to in this Agreement as the "Land").

B. CPG-LP is the owner of the leasehold estate created by a lease of the Land between the City, as lessor, and CPG-LP, as lessee, that is more fully described on the attached Exhibit B (the "Lease").

C. CPG-LP owns the real property described on the attached Exhibit C (together with all rights and interests in improvements, easements and other hereditaments and appurtenances referred to in this Agreement as the "Adjacent Land"). CPG Holdings, LLC, a Delaware limited liability company ("CPG-LLC") is the general partner of CPG-LP.

D. For purposes of this Agreement, "Property" shall mean:

1. Any and all interest of CPG-LP in the Land;
2. The Adjacent Land.
3. All buildings, improvements and fixtures located on the Land and the Adjacent Land, and all apparatus, machinery, equipment and appliances located on or used in connection with the operation, use or occupancy of the Land or the Adjacent Land.
4. All personal property of CPG-LP located on or use in connection with the Land or the Adjacent Land.
5. All of the interest of CPG-LP in any intangible personal property now or hereafter owned by CPG-LP and used in the ownership, use and operation of the Land (and the improvements on the Land) and the Adjacent Land, including, to the extent that the same are approved and accepted by City pursuant to this Agreement, any leases (including the leases described on the attached Exhibit D, the "Tenant Leases") any contract or lease rights, agreements, utility contracts or other rights relating to the ownership, use and operation of the Land and the Adjacent Land and the improvements located thereon. Notwithstanding the foregoing, CPG-LP shall not be

required to deliver to the City any intangible personal property or information which is proprietary, sensitive or which constitutes a trade secret and the same shall not be deemed to be included within the Property.

E. CPG-LP desires to sell, release and convey to City any and all interest in the Land and the Property of CPG-LP, CPG-LLC, and any parties affiliated with either of them. City is willing, upon the terms of this Agreement, to acquire the Property such that upon the closing of the transactions contemplated by this Agreement, City will be the owner in fee simple of the Land and the Adjacent Land and all hereditaments and appurtenances to the Land and the Adjacent Land free and clear of the Lease and all other encumbrances, except only Permitted Encumbrances (defined below).

## AGREEMENTS

1. **Property.** By way of transactions described in and contemplated by this Agreement, CPG-LP will sell the Property to City subject to only the Permitted Exceptions (defined below) and pay to the City at the Closing the amount of \$300,000 as additional consideration and as an inducement for the City to enter into and perform the transactions contemplated by this Agreement.

2. **Purchase Price.** The consideration for the acquisition by the City of the Property shall include the termination of the Lease and a purchase price of TEN DOLLARS (the "Purchase Price") to be paid at Closing (defined below).

3. **Prorations.** CPG-LP shall at or prior to Closing pay all 2011 and prior years' taxes, general and special, and all assessments, which are a lien on the Property (whether or not City may be exempt from paying the taxes or assessments), and there will be no proration with respect to such taxes and assessments. Rentals payable under the Lease and the Tenant Leases will be prorated as of December 31, 2011. All prepaid rents and deposits, as well as all monetary obligations on the part of the lessor(s) under the Tenant Leases shall be paid to City at Closing.

4. **Closing Date.** The closing under this Agreement (the "Closing") shall take place at the offices of the Title Company (defined below) at a date and time to be mutually agreed upon by the parties, but no later than January 5, 2012, unless a later date is agreed to by the parties (the "Closing Date"). CPG-LP shall deliver possession of the Property to City upon Closing in the same condition as it was on the Effective Date, reasonable wear and tear excepted, subject to repairs or improvements, if any, required to be completed by this Agreement.

5. **Deliveries.** CPG-LP shall, within five (5) days after the date of this Agreement (the "Delivery Date"), deliver or cause to be delivered to City the following (the "Deliveries"):

(a) UCC search reports from the Secretaries of State of Delaware and Missouri, covering CPG-LP and CPG-LLC relating to the Property in any way.

(b) A title insurance commitment for the Property (the "Commitment"), by the terms of which Great American Title Company of Branson, Missouri, or another title insurance company reasonably acceptable to City (the "Title Company") agrees to issue to City at Closing an ALTA Owner's Policy of Title Insurance (the "Title Policy") in the amount of \$7,000,000, insuring a merchantable fee simple title in City as of the time of the recording of the deed to City; and legible copies of all documents referred to in the commitment (preferably in PDF electronic format). The Title Policy shall contain no "standard" exceptions other than a survey exception limited to matters not disclosed by the public record if City does not obtain a survey of the Property in accordance with this Agreement.

(c) Copies of all Tenant Leases and any related agreements and correspondence.

(d) Copies of all existing and proposed easements, covenants, restrictions, agreements or other documents, not disclosed in the Commitment, that affect the Property (including without limitation any agreements with respect to ongoing maintenance and upkeep of the Property) or will in any way be binding upon City from and after Closing, or if no such documents exist a certification by CPG-LP to that effect.

(e) Copies of the most recent tax bills for the Property.

(f) Financial statements with respect to the income and expense of the property for the years 2010 and 2011, audited if available.

(g) Balance sheet for CPG-LP for the years 2010 and year to date 2011 (as current as are available).

(h) Copies of any environmental reports, engineering reports, soil reports, letters of non-compliance from any governmental agencies, surveys, plats, development plans, and correspondence relating to the Property in CPG-LP's or CPG-LLC's possession or control.

(i) A "Phase I" environmental assessment in form, and conducted by a qualified environmental professional, reasonably acceptable to City (the "Environmental Report").

(j) A Rent Roll for the property setting forth information related to all existing leases.

#### **6. Inspections.**

(a) CPG-LP shall provide reasonable access to City and City's agents from the Effective Date until Closing (the "Review Period"), for all or any of the following to be done at City's option and City's expense (collectively, the "Assessments"):

(i) A current survey (the "Survey") of the Property, provided that the parties will use their best commercial efforts to have the Title Company remove the standard survey exception from the Title Policy if the City does not obtain a current survey;

(ii) Physical condition inspections of the Property.

(iii) An environmental assessment conducted in accordance with the provisions of the "Environmental Matters" section below by a qualified environmental professional reasonably acceptable to the City (the "Environmental Assessment")

#### **7. City's Objections.**

(a) **Title.** If the Deliveries or the Assessments disclose any title defects or encumbrances to which the City reasonably objects ("Title Objections"), City may, prior to the expiration of the Review Period, deliver written notice to CPG-LP specifying City's objections. CPG-LP shall remedy all Title Objections susceptible of being remedied and shall deliver to City, prior to the Closing Date, a revised Commitment reflecting that the Title Objections have been cured. If CPG-LP fails to or is unable to cure, remove or otherwise correct any of the Title Objections to the satisfaction of City, then City may either: (a) elect to accept such Title Policy as CPG-LP is able to deliver and proceed to Closing, or (b) terminate this Agreement. Any matters disclosed by the Title Policy acceptable to City will be deemed "Permitted Exceptions".

(b) **Physical Condition.** If City is not satisfied with the results of the Assessments (including any Environmental Assessment), City shall give CPG-LP written notice specifying City's objections prior to the expiration of the Review Period. CPG-LP shall have until Closing Date to cure the objections. If City is not satisfied with CPG-LP's attempts to cure the objections, City may terminate this Agreement at any time prior to Closing.

**8. Environmental Matters.** The scope, sequence and timing of the Environmental Assessment shall be at the discretion of City with due consideration for any disruption that could occur to the occupants of the Property; no invasive or destructive testing shall be done without CPG-LP's prior written consent. City may terminate this Agreement at any time prior to Closing if the Environmental Assessment reveals or, if at any time prior to the expiration of the Review Period, City otherwise becomes aware of, the existence of any violation of an environmental law that City is unwilling to accept. If the Environmental Report or the Environmental Assessment discloses the existence of hazardous substances on the Property, then CPG-LP shall proceed at its expense to remediate promptly the adverse condition, whether or not a Closing of the transactions contemplated by this Agreement occurs. In that case, CPG-LP shall also reimburse the City for costs incurred by the City for the Environmental Assessment.

**9. Representations.** CPG-LP covenants, represents and warrants to City, as follows:

(a) CPG-LP is a limited partnership duly organized and validly existing in good standing under the laws of the State of Delaware; this Agreement and all documents executed by CPG-LP which are to be delivered at Closing are or will at the time of Closing be duly authorized, executed and delivered, will be legal, valid and binding obligations of CPG-LP, and will not violate any provision of any judicial order, agreement, document or other instrument to which CPG-LP is a party or by which it is bound, or any law, statute, rule or regulation to which the CPG-LP or the Property is subject.

(b) CPG-LP is possessed and vested with full power and authority to enter into and consummate this Agreement and to perform its obligations under this Agreement.

(c) CPG-LP owns fee simple title to the Adjacent Property and is the sole owner and holder of the remainder of the Property, free and clear of all liens, claims and encumbrances other than the Tenant Leases.

(d) **Exhibit B** is a complete listing of all documents constituting or affecting the Lease; the Lease as constituted by the documents listed on **Exhibit B** be is in full force and effect without any other supplement or amendment.

(e) There are no leases, tenancies or other rental arrangements or rights of possession pertaining to any portion of the Property other than the Tenant Leases.

(f) The leases, rent rolls (including a rent roll to be completed based on the leases at the Property, a list of which is attached as **Exhibit E**), and income and expense reports, and all other books and records relating to the Property and all other contracts and documents delivered to City pursuant to this Agreement or in connection with the execution of this Agreement and at the time of Closing are true, complete and accurate, and will, at the time of Closing remain in full force and effect. Except as reflected on **Exhibit E**, there exist no prepaid rents or deposits on the part of any lessee under any Tenant Lease.

(g) CPG-LP has no knowledge of any legal actions, suits or other legal or administrative proceedings, pending or to the best of its knowledge threatened with respect to the Property, and CPG-LP is not aware of any facts which might result in any such action, suit or other proceedings which would be material. CPG-LP has no knowledge of any materially adverse facts or conditions relating to the Property or its present use which have not been specifically disclosed in writing by CPG-LP to City.

(h) CPG-LP has no knowledge of any special taxes or assessments levied against the Property which are not yet due and payable at the office of the tax collection authority having jurisdiction or any existing or proposed improvements to be paid for by special taxes or assessments subsequent to the date of this Agreement.

(i) The termination of the Lease and the payment of the Purchase Price constitute a fair value to CPG-LP for the release and conveyance of the Property to City. The making and delivery of the deeds and bill of sale on the part of CPG-LP are absolute conveyances and transfer the Property to City in effect as well as in form and are in no way intended as a mortgage, trust conveyance or security of any kind. This Agreement and the transactions contemplated by this Agreement were initiated at the request of CPG-LP and constitute the free and voluntary acts of CPG-LP. None of the conveyances is given as a preference against any creditors of CPG-LP, and at the time of Closing there is no person or entity other than CPG-LP interested either directly or indirectly in the Property. CPG-LP is solvent and there are no creditors whose rights would be prejudiced by the conveyances, except for the rights of certain trade creditors. CPG-LP is not obligated on any mortgage, deed of trust or debt that constitutes or is secured by a lien against any part of the Property. The conveyances contemplated by this Agreement are made by CPG-LP without duress, undue influence or any misrepresentation on the part of City or any agent or attorney for the City, it being the intention of CPG-LP as grantor of the above described deeds and conveyances to convey to City all of CPG-LP's right, title and interest in the Property.

(j) To the best knowledge of CPG-LP, the Property is in material compliance with all applicable environmental laws, rules, requirements, orders, directives, ordinances and regulations of the United States of America or any state, city or municipal government or lawful authority having jurisdiction, affecting the Property, including but not limited to, spill compensation and control laws and environmental cleanup responsibility laws. No portion of the Property, is presently or has previously been used for or in connection with the disposal of hazardous or toxic waste; no hazardous or toxic wastes are, or have in the past been located on or under or generated from any portion of the Property, except for those that may have been located or generated in a quantity and manner typically found in similar commercial properties and have not caused contamination to the Property that requires remediation under applicable law; no underground storage tanks are or have in the past been located below the surface of any portion of the Property; no portion of the Property is or has been included on any governmental agency's list of sites on or by which hazardous or toxic waste materials may be located or with respect to which remedial action may be necessary. No reports have been filed by CPG-LP, nor to CPG-LP's knowledge have any reports been filed by an authority having jurisdiction of any hazardous substance or hazardous waste upon the Property.

(k) Neither CPG-LP nor any of its partners is a "foreign person" under the Foreign Investment in Real Property Tax Act of 1980 FIRPTA.

(l) All statements made by CPG-LP in this Agreement are true and correct in all material respects and the information provided and to be provided by CPG-LP to City relating to this Agreement does not and will not contain any statement which, at the time and in the light of the circumstances under which it was made, is materially false or misleading with respect to any material fact, or omits to state any material fact (which is actually known by CPG-LP) necessary in order to make any statement false or misleading in any material respect.

**10. Survival of Representations and Agreements.** All representations, warranties and agreements contained in this Agreement or in any certificate, instrument or document delivered by or on behalf of either party to this Agreement or in connection with the transaction contemplated by this Agreement shall be deemed representations, warranties or agreements of that party, and shall survive, except to the extent waived by the party for whose benefit they exist, the Closing and delivery of deeds or the termination of this Agreement, for a period of 5 years after the Closing. CPG-LP agrees to indemnify and hold City harmless from and against any liabilities, claims, losses, costs, charges, expenses, and damages, including, but not limited to, reasonable attorneys' fees and costs incurred or sustained by City, by reason of:

a) Any claim or demand asserting liability by reason of any ownership interest in the Property or in the leasehold estate or interest created by the Lease; or

b) The failure of any representation or warranty made by CPG-LP in this Agreement except as may be disclosed in writing prior to closing.

**11. Closing.** The Closing shall be by escrow through the Title Company as follows:

(a) **CPG-LP.** On or before the Closing Date, CPG-LP shall deliver, in the case of documents, the following, fully executed and notarized and otherwise in recordable form, where applicable, to the Title Company and, in the case of funds, certified funds by cashier's check or by federal wire transfer to the Title Company's escrow account:

(i) A signed counterpart of a Lease Termination Agreement in form and substance conforming to the attached **Exhibit F**.

(ii) A quitclaim deed in form and substance conforming to the attached **Exhibit G**, quitclaiming all interest of CPG-LP in the entire quarter quarter section in which the Land is located.

(iii) A special warranty deed in form and substance conforming to the attached **Exhibit H**, conveying title to the Adjacent Land free and clear of all liens and encumbrances other than the Permitted Exceptions.

(iv) A Bill of Sale in form and substance conforming to the attached **Exhibit I** conveying the personal property included within the Property.

(v) A signed counterpart of a Tenant Lease Assignment in form and substance conforming to the attached **Exhibit J**.

(vi) A signed counterpart of a Property Management Agreement in form and substance conforming to the attached **Exhibit K**.

(vii) Cash or certified funds sufficient to satisfy any payment obligations of CPG-LP under this Agreement.

(b) **City.** On or before the Closing Date, City shall deliver to the Title Company in the case of documents, the following, fully executed and notarized and otherwise in recordable form, where applicable, to the Title Company and, in the case of funds, certified funds by cashier's check or by federal wire transfer to the Title Company's escrow account:

(i) A signed counterpart of a Lease Termination Agreement in form and substance conforming to the attached **Exhibit F**.

(ii) A signed counterpart of a Property Management Agreement in form and substance conforming to the attached **Exhibit K**

(iii) Cash or certified funds sufficient to satisfy any payment obligations of City under this Agreement.

Each party shall deliver all other documents reasonably necessary to complete the Closing and may deliver closing or escrow instructions to the Title Company consistent with the provisions of this Agreement.

**12. Apportionment of Costs.** Except as otherwise provided in this Agreement, each party shall be responsible for the payment of its own attorneys' fees incurred in connection with the transaction that is the subject of this Agreement. CPG-LP shall pay all charges and fees of the Title Company for or regarding the issuance of the Commitment and the Title Policy, including any costs imposed by reason of the issuance of subsequent Commitments to satisfy any Title Objections, the filing fees for recording the Deed, and any other fees charged by the Title Company, including closing fees, escrow fees, or any other recording costs. CPG-LP will also pay the cost of the Environmental Report.

**13. Tenant Leases - Post-Closing Management.** CPG-LP will manage the Property with respect to the Tenant Leases for a period of up to 6 months after Closing pursuant to a Property Management Agreement having the form and substance of the attached Exhibit J. CPG-LP and City will enter into the Property Management Agreement as part of the Closing. As set forth on Exhibit J, CPG-LP will in consultation with City, work with the lessees under the Tenant Leases to terminate, at no cost or expense to the City, the Tenant Leases remaining in effect after Closing. CPG-LP will take such measures as are approved by City. CPG-LP will indemnify, defend and hold City harmless from and against any and all fees, costs and expenses with regard to the termination of the Tenant Leases in accordance with the Property Management Agreement.

**14. Damage or Destruction.** CPG-LP shall bear the risk of loss to the Property until the Closing. If all or any portion of the Property is destroyed or materially damaged prior to Closing and CPG-LP shall promptly give City written notice of the event referencing this paragraph, and City shall then have the right to terminate this Agreement by giving notice to CPG-LP within five (5) days after the date of the written notice by CPG-LP. If City does not elect to exercise the right to terminate, this Agreement shall remain in full force and effect and at Closing CPG-LP shall assign to City all of CPG-LP's right, title and interest in and to any insurance proceeds payable by reason of the event.

**15. Default and Remedies.**

(a) **Default by CPG-LP.** If CPG-LP defaults in the performance of its obligations under this Agreement, and does not cure the same within five (5) business days after receipt of written notice from City (or such longer time as reasonably necessary to effect such cure), City may, either: (i) terminate this Agreement, or (ii) elect to treat this Agreement as being in full force and effect, in which case City may take an action in equity, including but not limited to the remedy of specific performance. City shall not have the right to make a claim or otherwise bring an action for damages against CPG-LP if a Closing does not occur by reason of a default on the part of CPG-LP or otherwise. With respect to any of CPG-LP's obligations accruing after or surviving termination or Closing of this Agreement, City shall be entitled to all remedies provided by law and equity.

(b) **Default by City.** If City defaults in the performance of its obligations prior to Closing, CPG-LP may terminate this Agreement, in which event CPG-LP shall be entitled, as its sole remedy, to the payment of FIVE HUNDRED DOLLARS, as liquidated damages, the parties agreeing that CPG-LP's actual damages may be difficult to ascertain, and that the amount of the stated liquidated amount reasonably approximates the damages they would sustain as a result of a default by City.

**16. Brokers.** CPG-LP agrees to pay any and all commissions, brokers' or finders' fees or other like charges arising out of this Agreement or the transactions contemplated by this Agreement.

**17. Press Releases/Public Announcements.** No party to this Agreement shall make any press releases or public announcements regarding this transaction or the terms thereof without the prior written consent of the other party, which approval shall not be unreasonably withheld. The foregoing shall not restrict the City from publishing any public notices necessary for the consideration and approval of the Agreement by the Board of Aldermen or required by any applicable law, rule or regulation applicable to CPG-LP.

**18. Miscellaneous.**

(a) **Business Day.** A "business day" as used herein is a day other than a Saturday, Sunday or observed banking holiday by national banks in Branson, Missouri.

(b) **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement of the parties concerning the Property and supersedes any and all prior oral representations, covenants, understandings or agreements between the parties or their agents, and may be modified only by written agreement signed by both parties.

(c) **Governing Law.** This Agreement shall be governed by Missouri law.

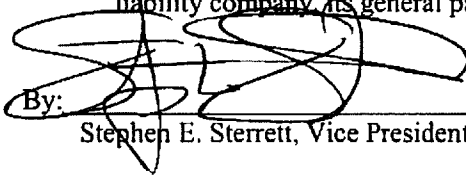
(d) **Notices.** All notices or deliveries required under this Agreement shall be hand delivered or given by mail (return receipt requested) or overnight courier (signature required) directed to City and CPG-LP at the address stated on the first page of this Agreement. All notices so given shall be considered effective if hand delivered, when received; if delivered by courier, one (1) business day after timely deposit with the courier service, charges prepaid; or if mailed, three (3) business days after deposit, first class postage prepaid, with the United States Postal Service. Either party may change the address to which future notices shall be sent by notice given in accordance with this Section.

**EXECUTED** as of the Effective Date written above.

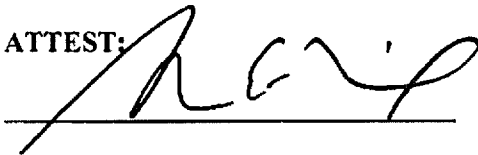
**CPG-LP**

**CPG Partners, L.P.** a Delaware limited partnership

By: CPG Holdings, LLC, a Delaware limited liability company, its general partner

By:   
Stephen E. Sterrett, Vice President

**ATTEST:**



**CITY:**

**CITY OF BRANSON, MISSOURI**

**ATTEST:**

\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**APPROVED AS TO FORM FOR THE CITY:**

\_\_\_\_\_  
Gilmore & Bell, P.C., Special Counsel

(c) **Governing Law.** This Agreement shall be governed by Missouri law.

(d) **Notices.** All notices or deliveries required under this Agreement shall be hand delivered or given by mail (return receipt requested) or overnight courier (signature required) directed to City and CPG-LP at the address stated on the first page of this Agreement. All notices so given shall be considered effective if hand delivered, when received; if delivered by courier, one (1) business day after timely deposit with the courier service, charges prepaid; or if mailed, three (3) business days after deposit, first class postage prepaid, with the United States Postal Service. Either party may change the address to which future notices shall be sent by notice given in accordance with this Section.

**EXECUTED** as of the Effective Date written above.

**CPG-LP**

**CPG Partners, L.P.** a Delaware limited partnership

**ATTEST:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_

**CITY:**

**CITY OF BRANSON, MISSOURI**

**ATTEST:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM FOR THE CITY:**



\_\_\_\_\_  
Gilmore & Bell, P.C., Special Counsel

**EXHIBIT A**

**THE LAND**

**LEGAL DESCRIPTION**

[TO BE MUTUALLY CONFIRMED BY THE PARTIES]

**Tract A**

A tract of lands lying in the Southeast Quarter of the Southeast Quarter of Section 35, Township 23 North, Range 22 West of the 5th Principal Meridian, Taney County Missouri, and being more particularly described as follows:

**BEGINNING** at the northeast corner of the Southeast Quarter of the Southeast Quarter of said Section 35;

**THENCE** South 00°57'26" West, along the east line of said Section 35, a distance of 793.13 feet to a point on the northwesterly right-of-way line for Gretna Road, said point lying on a non-tangent curve, said point also being 540.96 feet North 00°57'26" East of the southeast corner of said Section 35;

**THENCE** Southwesterly, along said right-of-way line for Gretna Road (50 foot from centerline), the following three (3) courses:

1. Southwesterly on a non-tangent curve to the left having a radius of 300.00 feet (said curve subtended by a chord which bears South 21°37'39" West a chord distance of 306.27 feet) an arc distance of 321.43 feet to a point of tangency;
2. South 09°03'59" East a distance of 26.28 feet to a point of curvature;
3. Southwesterly on a curve to the right having a radius of 200.00 feet (said curve subtended by a chord which bears South 31°44'57" West a chord distance of 261.45 feet) an arc distance of 284.95 feet to a point on the south line of said Section 35, said point being 237.41 feet North 88°05'34" West of the southeast corner of said Section 35;

**THENCE** North 88°05'34" West, along the south line of the said Section 35, a distance of 936.78 feet to the southeast corner of the "White Water Lease";

**THENCE** North 04°18'30" East, along the east line of said "White Water Lease" a distance of 593.86 feet to the northeast corner of the "White Water Lease",

**THENCE** North 86°01'00" West, along the north line of the "White Water Lease" a distance of 300.00 feet;

**THENCE** North 00°02'42" West a distance of 200.00 feet;

**THENCE** North 48°29'18" East a distance of 287.31 feet;

**THENCE** South 89°33'51" East a distance of 700.00 feet;

**THENCE** North 01°03'25" East a distance of 299.93 feet to a point on the north line of the Southeast Quarter of the Southeast Quarter of said Section 35;

**THENCE** South 89°40'09" East, along said north line, a distance of 530.00 feet to the POINT OF BEGINNING.

Said tract containing 31.5449 acres, more or less.

## EXHIBIT B

### LEASE

[TO BE MUTUALLY CONFIRMED BY THE PARTIES]

1. Lease Agreement, dated July 30, 1986, between the City of Branson, Missouri ("City), as lessor and H&W Development Co. ("H&W), as lessee.
2. Amendment by Interlineation to Lease Agreement and Option Agreement dated November 24, 1987 between City and H&W
3. Consent by City, dated April 30, 1987, regarding financing by Third National Bank in Nashville and Angeles Financial Partners.
4. Assignment of Lease to Factory Merchants Venture dated May 26, 1987
5. Assignment of Lease dated August 31, 1987 assigning Lease from Factory Merchants Venture to H&W and Third National Bank in Nashville
6. Resolution No. 88-R22 of the City, dated March 28, 1988, approving signage plan.
7. Second Assignment of Lease dated September 14, 1988
8. Consent and Estoppel Certificate, dated September 26, 1988, between the City and Third National Bank in Nashville.
9. Assignment and Assumption of Ground Lease and Consent of Lessor dated July 31, 1989, assigning Lease from Branson Factory Merchants, Ltd. to Factory Merchants, Ltd.
10. Reassignment of Ground Lease and Leases dated June 12, 1990 from Third National Bank in Nashville to Branson Factory Merchants, Ltd.;
11. Reassignment of Ground Lease and Leases dated June 12, 1991 from H&W to Branson Factory Merchants, Ltd.
12. Assignment and Assumption of Ground Lease dated September 30, 1991 assigning Lease from Branson Factory Merchants, Ltd. to Factory Merchants of Branson, Inc
13. Addendum to Lease Agreement December 25, 1992, between the City and Factory Merchants Mall of Branson, Inc.
14. Ordinance 93-04 dated January 25, 1993 Approving Addendum to Lease Agreement
15. Resolution 94-R19 Amending the Lease Agreement dated March 28, 1994 between
16. Lessor and New Plan Factory Malls, Inc. ("Lessee");
17. Ordinance No. 95-073 dated June 12, 1995; and
18. Modification of Lease Agreement dated June 26, 1995 between Lessor and Lessee.

**EXHIBIT C**

**ADJACENT LAND**

**LEGAL DESCRIPTION**

[TO BE MUTUALLY CONFIRMED BY THE PARTIES]

**Tract B**

A tract of land lying in the Southwest Quarter of the Southwest Quarter of Section 36, Township 23 North, Range 22 West of the 5th Principal Meridian, Taney County, Missouri, and being more particularly described as follows:

BEGINNING at the northwest corner of the Southwest Quarter of the Southwest Quarter of said Section 36;

THENCE South 88°28'25" East, along the north line of the Southwest Quarter of the Southwest Quarter of said Section 36, a distance of 686.00 feet;

THENCE South 23°15'10" West a distance of 774.57 feet to a point of the northerly right-of-way line for Gretna Road;

THENCE Westerly, along said right-of-way line for Gretna Road (30 foot from centerline in part, 50 foot in part), the following three (3) courses:

1. Westerly on a non-tangent curve to the right having a radius of 370.00 feet (said curve subtended by a chord which bears South 81 °37'58" West a chord distance of 50.63 feet) an arc distance of 50.67 feet to a point of tangency;
2. South 85°33'22" West a distance of 289.69 feet to a point on a non-tangent curve;
3. Southwesterly on a curve to the left having a radius of 300.00 feet (said curve subtended by a chord which bears South 58°25'09" West a chord distance of 63.73) an arc distance of 63.85 feet to a point on the west line of said Section 36, said point being 540.96 feet North 00°57'26" East of the southwest corner of said Section 36;

THENCE North 00°57'26" East, along said west line of said Section 36 a distance of 793.23 feet to the POINT OF BEGINNING.

Also being the same premises conveyed pursuant to the deeds recorded in Book 321, page 3480 and Book 324, page 3294.

Said tract containing 9.1352 acres, more or less.

**EXHIBIT D**  
**TENANT LEASES**  
[on file with each Party]

**EXHIBIT E  
LIST OF LEASES**

Factory Merchants Branson				
Only Those Tenants Setup in CTI are Represented				
As of 11-2-2011				
DBA	Unit	Original Lease Date	Recent Action	Termination Date
Auntie Anne's	425A	05/21/06	1 Lease expires 12/31/11; Reminder sent 11/29/11.	12/31/11
Black & Dacker	743	04/06/09	2 Termination letter sent 11/29/11; effective 12/31/11.	12/31/11
Case XX Chicago Cutlery - TT	210	01/14/11	2 Termination letter sent 12/1/11; effective 12/31/11.	12/31/11
Comingware Corelle Revere - TT	27	10/30/00	2 Termination letter sent 11/29/11; effective 12/31/11.	12/31/11
Crocs - TT	6-38	08/30/08	2 Termination letter sent 12/1/11; effective 12/31/11.	12/31/11
Fuller Brush Company	12	03/12/88	2 Termination letter sent 11/29/11; effective 12/31/11.	12/31/11
IZOD	951	06/21/88	2 Termination letter sent 11/29/11; effective 12/31/11.	12/31/11
Jones New York Outlet	949	09/27/04	1 Lease expires 12/31/11; Reminder sent 11/29/11.	12/31/11
Limited Editions For Her	10A	05/28/08	2 Termination letter sent 11/29/11; effective 12/31/11.	12/31/11
Reebok	12E	05/11/04	1 Lease expires 12/31/11; Reminder sent 11/29/11.	12/31/11
Socks Galore	417	07/14/03	2 Termination letter sent 11/29/11; effective 12/31/11.	12/31/11
Tools & More	14	02/24/97	2 Termination letter sent 11/29/11; effective 12/31/11.	12/31/11
Totes/Sunglass World	416	11/16/09	1 Lease expires 12/31/11; Reminder sent 11/29/11.	12/31/11
Titanic Branson - TT	4-23	10/03/08	2 Termination letter sent 12/1/11; effective 1/15/12.	1/15/12
Coach	11E	10/18/11	2 Termination sent; Extended through 1/31/12.	1/31/12
Dress Barn	415	06/27/92	2 Termination letter sent 11/30/11, effective 2/29/12.	2/29/12
Dress Barn Woman	313	02/18/94	2 Termination letter sent 11/30/11, effective 2/29/12.	2/29/12
Motherhood Maternity Outlet	10LC	12/29/94	3 Natural Expiration 02/29/12.	2/29/12
Red Wing Shoes	419	01/27/05	3 Natural Expiration 04/30/12.	4/30/12
Van Heusen Factory Outlet	950	06/21/88	3 Natural Expiration 06/30/12.	6/30/12
Bon Worth	25	02/22/91	4 None	
Carter's	11	05/20/98	4 None	
Comingware Corelle Revere	848	08/25/88	4 None	
Crocs	636		4 None	
Easy Spirit	28	06/01/03	4 None	
FEB Restaurant Equipment & Sup	641	08/10/07	4 None	
Hush Puppies and Family	529	12/29/88	4 None	
Kitchen Collection	13	01/28/10	4 None	
Lane Bryant	634	10/21/08	4 None	
L'eggs Hanes Bali Playtex	314	07/27/87	4 None	
Mobilemoney	AT01	07/12/08	4 None	
The Uniform Outlet	26	10/23/07	4 None	
Tuesday Morning	11C	05/28/05	4 None	
Walnut Bowl/Chicago Cutlery	212	03/12/91	4 None	

**EXHIBIT F**

**LEASE TERMINATION**

**THIS AGREEMENT**, dated December \_\_\_, 2011, is made by and among

**CITY OF BRANSON, MISSOURI**  
a municipal corporation and political subdivision of the State  
of Missouri  
110 W. Maddux  
Branson, MO 65616  
Attention: City Administrator

**CPG PARTNERS, L.P.**, a Delaware limited partnership  
105 Eisenhower Parkway  
Roseland, NJ 07068

“Grantors” and “Grantees”

concerning the following recorded instruments:

Document	Date Recorded	Document No.	Book	Page
Lease Agreement				
Assignment of Lease				

**Agreements:**

The parties identified above as both Grantors and Grantees are parties to the Lease Agreement and/or one or more of the other ancillary documents listed above, affecting the real estate (the “Property”) in Taney County, Missouri, described on **Exhibit A** attached to and by this reference made a part of this agreement.

Grantors acknowledge that the term of the Lease Agreement has expired by its terms or has been terminated. Accordingly, the Property and all other property covered by the Lease Agreement are unencumbered by the Lease Agreement and the other listed documents.

**Signatures**

**CITY OF BRANSON, MISSOURI**

**CPG PARTNERS, L.P.**, a Delaware limited partnership  
By: **CPG HOLDINGS, LLC**, a Delaware limited liability  
company, its general partner

[ACKNOWLEDGMENTS]  
Exhibit A: Legal Description [Tract A]

**EXHIBIT G**

**MISSOURI QUITCLAIM DEED**

**THIS INDENTURE**, dated December \_\_\_, 2011, by and between

**CPG PARTNERS, L.P.**, a Delaware limited partnership  
105 Eisenhower Parkway  
Roseland, NJ 07068

“Grantor”, and

**CITY OF BRANSON, MISSOURI**  
a municipal corporation and political subdivision of the State  
of Missouri  
110 W. Maddux  
Branson, MO 65616  
Attention: City Administrator

“Grantee”

**WITNESSETH**, That Grantor, in consideration of the sum of Ten Dollars and other good and valuable consideration paid to Grantor by Grantee (the receipt of which is hereby acknowledged) does by these presents, **REMISE, RELEASE, and FOREVER QUIT CLAIM** to Grantee, and its successors and assigns, the real estate in Taney County, Missouri, described as follows:

All of the South Half of the Southeast Quarter of Section 35, Township 23 North, Range 22 West of the 5th Principal Meridian, Taney County, Missouri;

**TO HAVE AND TO HOLD** the described premises, with all and singular the rights, privileges, appurtenances, and immunities belonging or in any way appertaining to the premises, to Grantee and to Grantee’s successors and assigns forever; so that neither Grantor nor its successors or assigns, nor any other person or persons, for Grantor or in Grantor’s name or behalf, will hereinafter claim or demand any right or title to the described premises or any part thereof, but they and each of them shall, by these presents, be excluded and forever barred.

**IN WITNESS WHEREOF**, Grantor has caused this instrument to be executed on the date written above.

**Signatures**

**CPG PARTNERS, L.P.**, a Delaware limited partnership  
By: **CPG HOLDINGS, LLC**, a Delaware limited liability  
company, its general partner

[Acknowledgment]

**EXHIBIT H**

**MISSOURI SPECIAL WARRANTY DEED**

**THIS INDENTURE**, dated December \_\_, 2011, by and between

**CPG PARTNERS, L.P.**, a Delaware limited partnership  
105 Eisenhower Parkway  
Roseland, NJ 07068

"Grantor", and

**CITY OF BRANSON, MISSOURI**  
a municipal corporation and political subdivision of the State  
of Missouri  
110 W. Maddux  
Branson, MO 65616  
Attention: City Administrator

"Grantee"

**WITNESSETH**, That Grantor, in consideration of the sum of Ten Dollars and other good and valuable consideration paid to Grantor by Grantee (the receipt of which is hereby acknowledged) does by these presents, **SELL** and **CONVEY** to Grantee, and its successors and assigns, the real estate in Taney County, Missouri, described as follows:

See **EXHIBIT A** attached to and by this reference incorporated into this deed;

**SUBJECT TO:** (a) easements, restrictions, reservations, and other agreements of record, if any, (b) taxes and assessments, general and special, if any; and (c) rights of the public in and to the parts thereof in streets, roads, or alleys.

**TO HAVE AND TO HOLD** the described premises, with all and singular the rights, privileges, appurtenances, and immunities belonging or in any way appertaining to the premises, to Grantee and to Grantee's successors and assigns forever; Grantor covenanting that the premises are free and clear from any encumbrance done or suffered by Grantor, except as provided above; and that Grantor will warrant and defend the title to the premises to Grantee and to Grantee's successors and assigns forever, against the lawful claims and demands of all persons claiming under Grantor, except as provided above.

**IN WITNESS WHEREOF**, Grantor has caused this instrument to be executed on the date written above.

**Signatures**

**CPG PARTNERS, L.P.**, a Delaware limited partnership  
By: **CPG HOLDINGS, LLC**, a Delaware limited liability  
company, its general partner

[Acknowledgment]  
Exhibit A: Legal Description [Tract B]

**EXHIBIT I**

**BILL OF SALE**

**BILL OF SALE**

**CPG PARTNERS, L.P.**, a Delaware limited partnership, ("CPG-LP"), for and in consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, has **BARGAINED** and **SOLD**, and by these presents does now **GRANT** and **CONVEY**, all of its right, title and interest, in and to the machinery and equipment and other personal property generally described on the attached **Exhibit A** unto the **CITY OF BRANSON, MISSOURI**, a municipal corporation and political subdivision of the State of Missouri ("City"), and its successors and assigns, forever.

CPG-LP represents that it is the owner of the machinery, equipment and other personal property generally described on the attached **Exhibit A**, that CPG-LP for itself and its successors and assigns, warrants and agrees to defend the title to such assets, for the benefit of the City, its successors and assigns, against all persons.

**IN WITNESS WHEREOF**, CPG-LP has caused this Bill of Sale to be executed by its duly authorized officials as of December \_\_, 2011.

**CPG PARTNERS, L.P.**, a Delaware limited partnership  
By: **CPG HOLDINGS, LLC**, a Delaware limited liability  
company, its general partner

By \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A TO BILL OF SALE**

[Insert description of machinery, equipment and personal property]

**EXHIBIT J**

**ASSIGNMENT OF LEASE AGREEMENTS**

**THIS AGREEMENT**, dated December \_\_\_, 2011, is made by and between

**CPG PARTNERS, L.P.**, a Delaware limited partnership  
105 Eisenhower Parkway  
Roseland, NJ 07068

“Assignor” (Grantor), and

**CITY OF BRANSON, MISSOURI**  
a municipal corporation and political subdivision of  
the State of Missouri  
110 W. Maddux  
Branson, MO 65616  
Attention: City Administrator

“Assignee” (Grantee)

concerning the following instruments:

Documents	Date Recorded	Book	Page
See Exhibit B	N/A	N/A	N/A

**Recitals:**

- A. Assignor is the current landlord under the above referenced Documents; and
- B. Pursuant to the Agreement between the Assignor and Assignee, dated as of December \_\_\_, 2011, Assignor wishes to assign and transfer all of its interest in the Documents to Assignee.

**Agreements:**

- 1. Assignor hereby assigns and transfers its interest in the Documents to Assignee.
- 2. Assignor represents and warrants that it is fully authorized to assign its interests to Assignee.
- 3. Assign hereby accepts the assignment under each of the Documents.
- 4. Assignor and Assignee further agree to execute and deliver such other instruments and documents as may be necessary or proper to implement and confirm such assignment.
- 5. This Assignment shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns.
- 6. The relationship of the parties as to the Documents shall be governed by the Management Agreement between the parties of even date herewith.

**CPG PARTNERS, L.P.**, a Delaware limited partnership  
By: **CPG HOLDINGS, LLC**, a Delaware limited liability  
company, its general partner  
**CITY OF BRANSON, MISSOURI**

**[Acknowledgments]**

Add Exhibit A: Legal Description  
Add Exhibit B: List of Leases

**EXHIBIT K**

**PROPERTY MANAGEMENT AGREEMENT**

**MANAGEMENT AGREEMENT**

THIS MANAGEMENT AGREEMENT (the "Agreement") is made as of the \_\_\_\_ day of January , 2012 ("Effective Date") by and between the City of Branson, Missouri, a municipal corporation and political subdivision of the State of Missouri ("Owner"), and CPG Partners, L.P., a Delaware limited partnership ("Manager").

**RECITALS:**

A. Manager has until the effective date of this Agreement operated that certain real property together with any buildings and improvements thereon erected, located in Branson, Taney County, Missouri, as each is more particularly described on Exhibit A attached hereto (such land, improvements and any other improvements now or hereafter located thereon is hereinafter collectively referred to as the "Project" or the "Center") under a ground lease by which Owner leased the Center to Manager.

B. The Manager has conveyed all its interest in the Center, including adjacent land Manager owned in fee simple and described on Exhibit B attached hereto, to Owner.

C. In order to provide an orderly transition of ownership and to minimize the adverse effects of discontinuing the operation of the Project as a shopping center, Owner wishes to retain the services of Manager to continue to manage, operate, maintain and service operate the Project as manager for up to six (6) months from the Effective Date, or longer by mutual written agreement, for the purpose of ceasing retail activities at the Center and arranging for the termination of tenant leases at the Center and any vendor or supplier agreements existing for the Center in consultation with and at the direction of Owner, and for the performance on behalf of Owner of certain of its obligations with respect thereto, as more particularly set forth below.

D. Manager is willing to perform or to cause to be performed such services pursuant to the terms of this Management Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and of the full and faithful performance by Owner and Manager of all terms, conditions and obligations respectively imposed on each hereunder, the parties hereto, intending legally to be bound, agree as follows:

**1. Appointment.**

1.1 **Appointment of Manager.** Subject to the terms and provisions of this Agreement and for the term set forth in Section 7 hereof (the "Term"), Owner hereby appoints Manager as managing agent for the management of the Project with the responsibilities and obligations and upon the terms and conditions set forth herein, and Manager, by its execution hereof, hereby accepts such appointment.

**2. Management Services.**

2.1 **Management of the Project.** Manager shall manage, operate, maintain, de-lease

and service the Center. The services performed and provided by Manager hereunder shall be of a scope and quality not less than those generally performed and provided by professional managers of other similar manufacturer's outlet shopping centers in the United States. Manager and Owner understand that the services to be provided under this Agreement are designed to wind down and cease operations of a retail shopping center at the Project and arrange for the termination of all leases, vendor and supplier agreements at the Center during the Term of this Agreement.

**2.2 Specific Duties and Services of Manager.** Without limiting the duties, responsibilities and obligations of Manager under any other provisions of this Agreement, Manager shall have the following duties, responsibilities and obligations and shall perform the following services, provided however, that Manager shall not be obligated to expend its own funds in connection with the performance of any such duty or obligation:

**A. Monies Collected.** Collect all rent and other payments due from tenants in the Project, in accordance with their respective leases, and any sums otherwise due Owner with respect to the Project in the ordinary course of business. Owner authorizes Manager to request, demand, collect, receive and at the request of any tenant, give receipts for all such rent and other charges which may at any time be or become due to Owner and to institute legal proceedings in the name of Owner for the collection thereof and, with the approval of Owner, institute legal proceedings for the dispossession of tenants and other persons from the Project. Monies collected by Manager shall be paid to Owner not later than the 15<sup>th</sup> day (or next succeeding business day if the 15<sup>th</sup> is not a business day) of the month subsequent to receipt of such monies by Manager. Manager shall withhold from such amounts fees and expenses due to Manager as set forth in Section 5 and Section 6, and provide a full accounting to the Owner. The provisions of this subparagraph A shall survive termination of this Agreement.

**B. Obligations Under Basic Documents.** Duly and punctually perform and comply with all of the obligations, terms and conditions required to be performed or complied with by Owner under any lease, deed of trust, mortgage, deed to secure debt or similar debt instrument, easement, covenant, restriction or other such agreement encumbering or pertaining to the Project and relating to the management, operation, maintenance, leasing, servicing and financing thereof (collectively, the "Basic Documents"), including without limitation, the timely payment of all sums required to be paid thereunder, for the purpose of preserving the interests of Owner in the Project and preventing the occurrence of any default by Owner under the Basic Documents.

**C. Taxes; Insurance; Permits.** If applicable, duly and punctually pay on behalf of Owner all taxes, including without limitation, real estate and personal property taxes, assessments and insurance premiums payable with respect to the Project or any part thereof, and obtain on behalf of Owner all permits, licenses and governmental authorizations required with respect to the maintenance and operation of the Project.

**D. Repairs and Maintenance.** Make all repairs, and perform all maintenance (including normal preventive maintenance) on the buildings, appurtenances and grounds comprising the Project as required to be made by Owner under the Basic Documents and in a manner consistent with Manager's obligations to maintain the Center as a manufacturer's outlet shopping center in accordance with commercially reasonable standards. Manager shall obtain the written consent of Owner to make repairs or perform maintenance where the one-time or cumulative contract cost of such repair or maintenance is in excess of \$2,500.

E. **Equipment and Supplies.** Make all arrangements for the furnishing to the Project of utility, maintenance and other services, including without limitation, extermination, trash disposal and paving, and for the acquisition of equipment and supplies as necessary for the management, operation, maintenance and servicing of the Project as required of Owner under the Basic Documents. Such arrangements shall include the negotiation of and entering into contracts for services necessary for the operation and maintenance of the Project.

F. **Insurance Coverage.** Cause to be placed and kept in force the amounts and types of insurances as typically required for comparable Centers; and same shall in all events comply with the requirements of the Basic Documents. Owner shall be named as an additional insured on all such insurance policies.

G. **Personnel.** Retain or contract for such personnel as may be necessary in order for Manager to perform its obligations hereunder.

H. **Compliance with Laws.** Take such action as may be necessary to comply with any and all present and future laws, ordinances, orders, rules, regulations and/or requirements affecting the Project by any Federal, state, county or municipal authority or court having jurisdiction thereover, and orders of the local Board of Fire Underwriters, insurance services offices or other similar bodies.

I. **Notices.** Promptly deliver to Owner a copy of each notice received from any mortgagee, ground lessor or other party to any of the Basic Documents given pursuant thereto or relating thereto. Manager shall also deliver to Owner notice of any lawsuits, condemnation proceedings, rezoning or other governmental orders or actions that become known to Manager and that might in any way materially adversely affect the Project or any interest of Owner whatsoever.

3. **Leasing Services.**

3.1. **Leasing.** Subject to Section 3.2, Manager is hereby appointed and accepts the appointment as leasing agent of Owner for the purposes of management and termination of existing leases and vendor/supplier agreements for the Project during the Term of this Agreement. Manager shall not enter into any new leases or vendor/supplier agreements for the Project during the Term of this Agreement.

3.2. **Lease and Vendor/Supplier Agreement Termination.** Manager recognizes that Owner desires to minimize the adverse reaction to the termination of leases and vendor/supplier agreements in the Center. Manager will consult with Owner in order to agree on a plan of lease termination for all leases and vendor/supplier agreements in the Center within six (6) months of the date of this Agreement such that the Center will be unoccupied by any tenants and no vendor/supplier agreements will exist at the end of said six (6) month period. Owner and Manager may make reasonable changes to the agreed upon plan throughout the Term of this Agreement as mutually agreed upon in writing. Manager will diligently exercise necessary activities, including negotiating with tenants, vendors and suppliers and giving requisite notices in order to accomplish the agreed upon plan. Any costs associated with terminating the tenant leases and obtaining possession of units upon such termination (including without limitation any consideration to be paid to such tenants in order to obtain early termination of leases and delivery of possession of the leased premises), as well as terminating vendor and supplier agreements (including without limitation early termination fees

and similar expenses) will be promptly paid by Manager.

**4. Fees Payable Hereunder.**

**4.1 Compensation for Management and Leasing Services.**

(a) Owner shall owe Manager as compensation for all services to be rendered hereunder a management fee (the "Management Fee") equal to five percent (5%) of the "Gross Income," as such term is defined in Section 4.1(b) below.

(b) The term "Gross Income" shall mean, with respect to each calendar month hereof, without duplication, all income paid or to be paid to the Owner by any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity during such period in connection with the ownership or operation of the Project, including, without limitation, all expense reimbursements and other amounts receivable from tenants, but excluding any money paid by potential and actual tenants as "key money," determined pursuant to the accrual method of accounting in accordance with GAAP, consistently applied. In addition, the calculation of Gross Income shall include all collected actual percentage rental income accrued and attributable to the period of time in question.

(c) Within fifteen (15) days after the end of each calendar month of the Term hereof Manager shall provide Owner with a statement in reasonable detail setting forth the following costs, hereinafter referred to as the "Allocated Costs" incurred or accrued during the time period in question: (i) all common area maintenance costs and expenses of the Center, (ii) all promotion fund income from tenants of the Center, (iii) costs and expenses related to the corporate and regional operations departments of Manager which have been allocated to the Center based upon the proportion that the gross leasable area of the Center bears to the gross leasable area of all Centers bearing such costs and (iv) costs and expenses related to the leasing department and tenant improvement department of Manager allocated on the basis that the gross leasable area of the Center bears to the gross leasable area of all Centers bearing the costs of the leasing and tenant improvement departments relating to reletting space at all such Center. In no event shall the total Management Fee paid to Manager in any calendar month exceed the Allocated Costs for such month. In the event Owner has paid Manager any sums in excess of such Allocated Costs in any calendar month, Manager shall refund such amounts to Owner within fifteen (15) days after sending the statement of Allocated Costs.

**4.2 Miscellaneous.** Manager shall not be entitled to any fee other than that set forth in Section 4.1. In addition, all reasonable fees for legal services rendered in connection with tenant disputes will be paid by Manager, whether same are incurred by third parties and/or by employees of an entity affiliated with Owner or Manager.

**5. Accounting Records.** Manager shall maintain a comprehensive system of office records, books and accounts pertaining to the Project, in a manner satisfactory to Owner, which shall

belong to Owner. Owner and its designees shall have reasonable access at all times during normal working hours to such records, accounts and books and to all vouchers, files and all other materials pertaining to the Project and this Agreement, all of which Manager agrees to keep safe, available and separate from any records not related to the Project.

**6. Expenses.**

6.1 **Allocation.** Except as otherwise specifically provided in this Agreement, all obligations or expenses incurred hereunder with respect to the Project, including, but not limited to, the salaries and benefits of all on-site personnel, shall be for the account of, on behalf of and at the expense of Owner. It is acknowledged and agreed that Manager may enter into third party contracts and agreements which relate to the Center and to other properties owned or managed by Manager. The costs thereunder shall be allocated based upon the proportion that the gross leasable area of the Center bears to the gross leasable area of all Centers bearing such costs, and the appropriate portion allocable to the Center shall be due and owing by Owner hereunder.

6.2 **Reimbursement for Expenses.** Any payments made by Manager in the performance of its duties and obligations under this Agreement (other than payments which this Agreement specifically requires Manager to pay from its own funds) shall be made out of such funds as Manager may from time to time hold for the account of Owner. The obligation of Owner to reimburse expenses hereunder shall be limited to the amount of Gross Income generated by the Project less the Management Fee ("Net Revenue"). Any expenses in excess of Net Revenue shall be paid by Manager. Expenses shall be withheld by Manager from amounts forwarded to Owner as provided in Section 2.2.A

**7. Term and Termination.**

7.1 **Term.** The term of this Agreement ("Term") shall commence as of the Effective Date of this Agreement and shall continue for a period of six (6) months. The parties may mutually agree in writing to renew this agreement for successive periods of 30 days upon the expiration of the Term. Owner may elect to terminate this Agreement upon 30 days written notice to Manager.

7.2 **Survival of Obligations.** Obligations incurred or accruing during the Term (including without limitation those arising under Section 3.2 and Section 8) shall survive the expiration or other termination of the Term.

**8. Indemnification.**

Manager hereby absolutely, unconditionally and irrevocably covenants and agrees to indemnify, defend and hold harmless Owner its employees, agents, independent contractors and consultants from and against any and all claims, demands, liabilities, losses, fees, costs or expenses arising out of or in any way connected with (a) the termination of leases and vendor and supplier agreements pursuant to Section 3.2, or the failure to terminate all such leases and agreements within the specified 6 month period (or any extension agreed to by the parties in writing), or (b) any acts, omissions to act or forbearances of Manager, its agents, employees or representatives, which are found to be negligent or in willful violation of the duties of Manager set forth in this Agreement.

9. **No Waiver.** The failure of Owner to seek redress for breach, or to insist upon the strict performance, of any covenant, agreement, provision or condition of this Agreement at any time shall not constitute a waiver by Owner of any of its rights hereunder as to any other matter or at any other time and Owner shall have all remedies provided herein and by applicable law with respect to any subsequent act

which would have originally constituted a breach.

10. **Captions.** The captions of this Agreement are inserted only for the purpose of convenient reference and do not define, limit or prescribe the scope or intent of this Agreement or any part hereof.

11. **Entire Agreement.** This Agreement embodies the entire agreement and understanding of the parties and there are no further agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

12. **Governing Law.** The provisions hereof shall be governed and interpreted by the laws of the State of Missouri.

13. **Counterparts and Effectiveness.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument and may be executed and delivered by facsimile transmission with each party executing the agreement (or a counterpart thereto) and delivering such executed document by facsimile transmission with the original to follow by actual delivery. The parties hereto intend to be legally bound and obligated by this Agreement effective immediately upon the delivery of any such facsimile transmission.

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

**OWNER:**

THE CITY OF BRANSON, MISSOURI

**MANAGER:**

CPG PARTNERS, L.P., a Delaware limited partnership

By: CPG HOLDINGS, LLC, a Delaware limited liability company, its general partner

Add: Exhibit A

Add: Exhibit B

APPROVED AS TO FORM FOR THE CITY:

\_\_\_\_\_  
Gilmore & Bell, P.C., Special Counsel

# BLACK LINED VERSION

## AGREEMENT

**THIS AGREEMENT** (this “**Agreement**”), dated as of December \_\_, 2011 (the “**Effective Date**”), is made between:

**CPG Partners, L.P.**, a Delaware limited partnership  
105 Eisenhower Parkway  
Roseland, NJ 07068

“CPG-LP”

and

**CITY OF BRANSON, MISSOURI**  
a municipal corporation and political subdivision of the State of Missouri  
110 W. Maddux  
Branson, MO 65616  
Attention: City Administrator

“City”

### BACKGROUND

**A.** City is the owner of the fee interest in the real property located in Branson, Taney County, Missouri, described on the attached **Exhibit A** (together with all rights and interests in improvements, easements and other hereditaments and appurtenances referred to in this Agreement as the “Land”).

**B.** CPG-LP is the owner of the leasehold estate created by a lease of the Land between the City, as lessor, and CPG-LP, as lessee, that is more fully described on the attached **Exhibit B** (the “Lease”).

**C.** CPG-LP owns the real property described on the attached **Exhibit C** (together with all rights and interests in improvements, easements and other hereditaments and appurtenances referred to in this Agreement as the “Adjacent Land”). CPG Holdings, LLC, a Delaware limited liability company (“CPG-LLC”) is the general partner of CPG-LP.

**D.** For purposes of this Agreement, “Property” shall mean:

1. Any and all interest of CPG-LP in the Land;
2. The Adjacent Land.
3. All buildings, improvements and fixtures located on the Land and the Adjacent Land, and all apparatus, machinery, equipment and appliances located on or used in connection with the operation, use or occupancy of the Land or the Adjacent Land.
4. All personal property of CPG-LP located on or use in connection with the Land or the Adjacent Land.
5. All of the interest of CPG-LP in any intangible personal property now or hereafter owned by CPG-LP and used in the ownership, use and operation of the Land (and the improvements on the Land) and the Adjacent Land, including, to the extent that the same are approved and accepted by City pursuant to this Agreement, any leases (including the leases described on the attached **Exhibit D**, the “Tenant Leases”) any contract or lease rights, agreements, utility contracts or other rights relating to the ownership, use and operation of the Land and the Adjacent Land and the improvements located thereon. Notwithstanding the foregoing, CPG-LP shall not be

required to deliver to the City any intangible personal property or information which is proprietary, sensitive or which constitutes a trade secret and the same shall not be deemed to be included within the Property.

**E.** CPG-LP desires to sell, release and convey to City any and all interest in the Land and the Property of CPG-LP, CPG-LLC, and any parties affiliated with either of them. City is willing, upon the terms of this Agreement, to acquire the Property such that upon the closing of the transactions contemplated by this Agreement, City will be the owner in fee simple of the Land and the Adjacent Land and all hereditaments and appurtenances to the Land and the Adjacent Land free and clear of the Lease and all other encumbrances, except only Permitted Encumbrances (defined below).

## **AGREEMENTS**

**1. Property.** By way of transactions described in and contemplated by this Agreement, CPG-LP will sell the Property to City subject to only the Permitted Exceptions (defined below) **and pay to the City at the Closing the amount of \$300,000 as additional consideration and as an inducement for the City to enter into and perform the transactions contemplated by this Agreement.**

**2. Purchase Price.** The consideration for the acquisition by the City of the Property shall include the termination of the Lease and a purchase price of TEN DOLLARS (the “**Purchase Price**”) to be paid at Closing (defined below).

**3. Prorations.** CPG-LP shall at or prior to Closing pay all 2011 and prior years’ taxes, general and special, and all assessments, which are a lien on the Property (whether or not City may be exempt from paying the taxes or assessments), and there will be no proration with respect to such taxes and assessments. Rentals payable under the Lease and the Tenant Leases will be prorated as of December 31, 2011. All prepaid rents and deposits, as well as all monetary obligations on the part of the lessor(s) under the Tenant Leases shall be paid to City at Closing.

**4. Closing Date.** The closing under this Agreement (the “**Closing**”) shall take place at the offices of the Title Company (defined below) at a date and time to be mutually agreed upon by the parties, but no later than [~~December 30, 2014~~] **January 5, 2012**, unless a later date is agreed to by the parties (the “**Closing Date**”). CPG-LP shall deliver possession of the Property to City upon Closing in the same condition as it was on the Effective Date, reasonable wear and tear excepted, subject to repairs or improvements, if any, required to be completed by this Agreement.

**5. Deliveries.** CPG-LP shall, within five (5) days after the date of this Agreement (the “**Delivery Date**”), deliver or cause to be delivered to City the following (the “**Deliveries**”):

(a) UCC search reports from the Secretaries of State of Delaware and Missouri, covering CPG-LP and CPG-LLC relating to the Property in any way.

(b) A title insurance commitment for the Property (the “**Commitment**”), by the terms of which Great American Title Company of Branson, Missouri, or another title insurance company reasonably acceptable to City (the “**Title Company**”) agrees to issue to City at Closing an ALTA Owner’s Policy of Title Insurance (the “**Title Policy**”) in the amount of \$7,000,000, insuring a merchantable fee simple title in City as of the time of the recording of the deed to City; and legible copies of all documents referred to in the commitment (preferably in PDF electronic format). The Title Policy shall contain no “standard” exceptions other than a survey exception limited to matters not disclosed by the public record if City does not obtain a survey of the Property in accordance with this Agreement.

(c) Copies of all Tenant Leases and any related agreements and correspondence.

(d) Copies of all existing and proposed easements, covenants, restrictions, agreements or other documents, not disclosed in the Commitment, that affect the Property (including without limitation any agreements with respect to ongoing maintenance and upkeep of the Property) or will in any way be binding upon City from and after Closing, or if no such documents exist a certification by CPG-LP to that effect.

(e) Copies of the most recent tax bills for the Property.

(f) Financial statements with respect to the income and expense of the property for the years 2010 and 2011, audited if available.

(g) Balance sheet for CPG-LP for the years 2010 and year to date 2011 (as current as are available).

(h) Copies of any environmental reports, engineering reports, soil reports, letters of non-compliance from any governmental agencies, surveys, plats, development plans, and correspondence relating to the Property in CPG-LP's or CPG-LLC's possession or control.

(i) A "Phase I" environmental assessment in form, and conducted by a qualified environmental professional, reasonably acceptable to City (the "**Environmental Report**").

(j) A Rent Roll for the property setting forth information related to all existing leases.

## **6. Inspections.**

(a) CPG-LP shall provide reasonable access to City and City's agents from the Effective Date until Closing (the "**Review Period**"), for all or any of the following to be done at City's option and City's expense (collectively, the "**Assessments**"):

(i) A current survey (the "**Survey**") of the Property, provided that the parties will use their best commercial efforts to have the Title Company remove the standard survey exception from the Title Policy if the City does not obtain a current survey;

(ii) Physical condition inspections of the Property.

(iii) An environmental assessment conducted in accordance with the provisions of the "Environmental Matters" section below by a qualified environmental professional reasonably acceptable to the City (the "**Environmental Assessment**")

## **7. City's Objections.**

(a) **Title.** If the Deliveries or the Assessments disclose any title defects or encumbrances to which the City reasonably objects ("**Title Objections**"), City may, prior to the expiration of the Review Period, deliver written notice to CPG-LP specifying City's objections. CPG-LP shall remedy all Title Objections susceptible of being remedied and shall deliver to City, prior to the Closing Date, a revised Commitment reflecting that the Title Objections have been cured. If CPG-LP fails to or is unable to cure, remove or otherwise correct any of the Title Objections to the satisfaction of City, then City may either: (a) elect to accept such Title Policy as CPG-LP is able to deliver and proceed to Closing, or (b) terminate this Agreement. Any matters disclosed by the Title Policy acceptable to City will be deemed "**Permitted Exceptions**".

(b) **Physical Condition.** If City is not satisfied with the results of the Assessments (including any Environmental Assessment), City shall give CPG-LP written notice specifying City's objections prior to the expiration of the Review Period. CPG-LP shall have until Closing Date to cure the objections. If City is not satisfied with CPG-LP's attempts to cure the objections, City may terminate this Agreement at any time prior to Closing.

**8. Environmental Matters.** The scope, sequence and timing of the Environmental Assessment shall be at the discretion of City with due consideration for any disruption that could occur to the occupants of the Property; no invasive or destructive testing shall be done without CPG-LP's prior written consent. City may terminate this Agreement at any time prior to Closing if the Environmental Assessment reveals or, if at any time prior to the expiration of the Review Period, City otherwise becomes aware of, the existence of any violation of an environmental law that City is unwilling to accept. If the Environmental Report or the Environmental Assessment discloses the existence of hazardous substances on the Property, then CPG-LP shall proceed at its expense to remediate promptly the adverse condition, whether or not a Closing of the transactions contemplated by this Agreement occurs. In that case, CPG-LP shall also reimburse the City for costs incurred by the City for the Environmental Assessment.

**9. Representations.** CPG-LP covenants, represents and warrants to City, as follows:

(a) CPG-LP is a limited partnership duly organized and validly existing in good standing under the laws of the State of Delaware; this Agreement and all documents executed by CPG-LP which are to be delivered at Closing are or will at the time of Closing be duly authorized, executed and delivered, will be legal, valid and binding obligations of CPG-LP, and will not violate any provision of any judicial order, agreement, document or other instrument to which CPG-LP is a party or by which it is bound, or any law, statute, rule or regulation to which the CPG-LP or the Property is subject.

(b) CPG-LP is possessed and vested with full power and authority to enter into and consummate this Agreement and to perform its obligations under this Agreement.

(c) CPG-LP owns fee simple title to the Adjacent Property and is the sole owner and holder of the remainder of the Property, free and clear of all liens, claims and encumbrances other than the Tenant Leases.

(d) **Exhibit B** is a complete listing of all documents constituting or affecting the Lease; the Lease as constituted by the documents listed on **Exhibit B** be is in full force and effect without any other supplement or amendment.

(e) There are no leases, tenancies or other rental arrangements or rights of possession pertaining to any portion of the Property other than the Tenant Leases.

(f) The leases, rent rolls (including a rent roll to be completed based on the leases at the Property, a list of which is attached as **Exhibit E**), and income and expense reports, and all other books and records relating to the Property and all other contracts and documents delivered to City pursuant to this Agreement or in connection with the execution of this Agreement and at the time of Closing are true, complete and accurate, and will, at the time of Closing remain in full force and effect. Except as reflected on **Exhibit E**, there exist no prepaid rents or deposits on the part of any lessee under any Tenant Lease.

(g) CPG-LP has no knowledge of any legal actions, suits or other legal or administrative proceedings, pending or to the best of its knowledge threatened with respect to the Property, and CPG-LP is not aware of any facts which might result in any such action, suit or other proceedings which would be material. CPG-LP has no knowledge of any materially adverse facts or conditions relating to the Property or its present use which have not been specifically disclosed in writing by CPG-LP to City.

(h) CPG-LP has no knowledge of any special taxes or assessments levied against the Property which are not yet due and payable at the office of the tax collection authority having jurisdiction or any existing or proposed improvements to be paid for by special taxes or assessments subsequent to the date of this Agreement.

(i) The termination of the Lease and the payment of the Purchase Price constitute a fair value to CPG-LP for the release and conveyance of the Property to City. The making and delivery of the deeds and bill of sale on the part of CPG-LP are absolute conveyances and transfer the Property to City in effect as well as in form and are in no way intended as a mortgage, trust conveyance or security of any kind. This Agreement and the transactions contemplated by this Agreement were initiated at the request of CPG-LP and constitute the free and voluntary acts of CPG-LP. None of the conveyances is given as a preference against any creditors of CPG-LP, and at the time of Closing there is no person or entity other than CPG-LP interested either directly or indirectly in the Property. CPG-LP is solvent and there are no creditors whose rights would be prejudiced by the conveyances, except for the rights of certain trade creditors. CPG-LP is not obligated on any mortgage, deed of trust or debt that constitutes or is secured by a lien against any part of the Property. The conveyances contemplated by this Agreement are made by CPG-LP without duress, undue influence or any misrepresentation on the part of City or any agent or attorney for the City, it being the intention of CPG-LP as grantor of the above described deeds and conveyances to convey to City all of CPG-LP's right, title and interest in the Property.

(j) To the best knowledge of CPG-LP, the Property is in material compliance with all applicable environmental laws, rules, requirements, orders, directives, ordinances and regulations of the United States of America or any state, city or municipal government or lawful authority having jurisdiction, affecting the Property, including but not limited to, spill compensation and control laws and environmental cleanup responsibility laws. No portion of the Property, is presently or has previously been used for or in connection with the disposal of hazardous or toxic waste; no hazardous or toxic wastes are, or have in the past been located on or under or generated from any portion of the Property, except for those that may have been located or generated in a quantity and manner typically found in similar commercial properties and have not caused contamination to the Property that requires remediation under applicable law; no underground storage tanks are or have in the past been located below the surface of any portion of the Property; no portion of the Property is or has been included on any governmental agency's list of sites on or by which hazardous or toxic waste materials may be located or with respect to which remedial action may be necessary. No reports have been filed by CPG-LP, nor to CPG-LP's knowledge have any reports been filed by an authority having jurisdiction of any hazardous substance or hazardous waste upon the Property.

(k) Neither CPG-LP nor any of its partners is a "foreign person" under the Foreign Investment in Real Property Tax Act of 1980 FIRPTA.

(l) All statements made by CPG-LP in this Agreement are true and correct in all material respects and the information provided and to be provided by CPG-LP to City relating to this Agreement does not and will not contain any statement which, at the time and in the light of the circumstances under which it was made, is materially false or misleading with respect to any material fact, or omits to state any material fact (which is actually known by CPG-LP) necessary in order to make any statement false or misleading in any material respect.

**10. Survival of Representations and Agreements.** All representations, warranties and agreements contained in this Agreement or in any certificate, instrument or document delivered by or on behalf of either party to this Agreement or in connection with the transaction contemplated by this Agreement shall be deemed representations, warranties or agreements of that party, and shall survive, except to the extent waived by the party for whose benefit they exist, the Closing and delivery of deeds or the termination of this Agreement, for a period of 5 years after the Closing. CPG-LP agrees to indemnify and hold City harmless from and against any liabilities, claims, losses, costs, charges, expenses, and damages, including, but not limited to, reasonable attorneys' fees and costs incurred or sustained by City, by reason of:

a) Any claim or demand asserting liability by reason of any ownership interest in the Property or in the leasehold estate or interest created by the Lease; or

b) The failure of any representation or warranty made by CPG-LP in this Agreement except as may be disclosed in writing prior to closing.

**11. Closing.** The Closing shall be by escrow through the Title Company as follows:

(a) **CPG-LP.** On or before the Closing Date, CPG-LP shall deliver, **in the case of documents, the following, fully executed and notarized and otherwise in recordable form, where applicable, to the Title Company and, in the case of funds, certified funds by cashier's check or by federal wire transfer to the Title Company's escrow account:**

(i) A signed counterpart of a Lease Termination Agreement in form and substance conforming to the attached **Exhibit F**.

(ii) A quitclaim deed in form and substance conforming to the attached **Exhibit G**, quitclaiming all interest of CPG-LP in the entire quarter quarter section in which the Land is located.

(iii) A special warranty deed in form and substance conforming to the attached **Exhibit H**, conveying title to the Adjacent Land free and clear of all liens and encumbrances other than the Permitted Exceptions.

(iv) A Bill of Sale in form and substance conforming to the attached **Exhibit I** conveying the personal property included within the Property.

(v) A signed counterpart of a Tenant Lease Assignment in form and substance conforming to the attached **Exhibit J**.

(vi) A signed counterpart of a Property Management Agreement in form and substance conforming to the attached **Exhibit K**.

(vii) Cash or certified funds sufficient to satisfy any payment obligations of CPG-LP under this Agreement.

(b) **City.** On or before the Closing Date, City shall deliver to the Title Company **in the case of documents, the following, fully executed and notarized and otherwise in recordable form, where applicable, to the Title Company and, in the case of funds,** certified funds by cashier's check or by federal wire transfer to the Title Company's escrow account [~~an amount equal to~~];

(i) A signed counterpart of a Lease Termination Agreement in form and substance conforming to the attached **Exhibit F**.

(ii) A signed counterpart of a Property Management Agreement in form and substance conforming to the attached **Exhibit K**

(iii) Cash or certified funds sufficient to satisfy any payment obligations of City under this Agreement.

Each party shall deliver all other documents reasonably necessary to complete the Closing and may deliver closing or escrow instructions to the Title Company consistent with the provisions of this Agreement.

**12. Apportionment of Costs.** Except as otherwise provided in this Agreement, each party shall be responsible for the payment of its own attorneys' fees incurred in connection with the transaction that is the subject of this Agreement. CPG-LP shall pay all charges and fees of the Title Company for or regarding the issuance of the Commitment and the Title Policy, including any costs imposed by reason of the issuance of subsequent Commitments to satisfy any Title Objections, the filing fees for recording the Deed, and any other fees charged by the Title Company, including closing fees, escrow fees, or any other recording costs. CPG-LP will also pay the cost of the Environmental Report.

**13. Tenant Leases - Post-Closing Management.** CPG-LP will manage the Property with respect to the Tenant Leases for a period of up to 6 months after Closing pursuant to a Property Management Agreement having the form and substance of the attached **Exhibit J**. CPG-LP and City will enter into the Property Management Agreement as part of the Closing. As set forth on Exhibit J, CPG-LP will in consultation with City, work with the lessees under the Tenant Leases to terminate, at no cost or expense to the City, the Tenant Leases remaining in effect after Closing. CPG-LP will take such measures as are approved by City. CPG-LP will indemnify, defend and hold City harmless from and against any and all fees, costs and expenses with regard to the termination of the Tenant Leases in accordance with the Property Management Agreement.

**14. Damage or Destruction.** CPG-LP shall bear the risk of loss to the Property until the Closing. If all or any portion of the Property is destroyed or materially damaged prior to Closing and CPG-LP shall promptly give City written notice of the event referencing this paragraph, and City shall then have the right to terminate this Agreement by giving notice to CPG-LP within five (5) days after the date of the written notice by CPG-LP. If City does not elect to exercise the right to terminate, this Agreement shall remain in full force and effect and at Closing CPG-LP shall assign to City all of CPG-LP's right, title and interest in and to any insurance proceeds payable by reason of the event.

**15. Default and Remedies.**

(a) **Default by CPG-LP.** If CPG-LP defaults in the performance of its obligations under this Agreement, and does not cure the same within five (5) business days after receipt of written notice from City (or such longer time as reasonably necessary to effect such cure), City may, either: (i) terminate this Agreement, or (ii) elect to treat this Agreement as being in full force and effect, in which case City may take an action in equity, including but not limited to the remedy of specific performance. City shall not have the right to make a claim or otherwise bring an action for damages against CPG-LP if a Closing does not occur by reason of a default on the part of CPG-LP or otherwise. With respect to any of CPG-LP's obligations accruing after or surviving termination or Closing of this Agreement, City shall be entitled to all remedies provided by law and equity.

(b) **Default by City.** If City defaults in the performance of its obligations prior to Closing, CPG-LP may terminate this Agreement, in which event CPG-LP shall be entitled, as its sole remedy, to the payment of FIVE HUNDRED DOLLARS, as liquidated damages, the parties agreeing that CPG-LP's actual damages may be difficult to ascertain, and that the amount of the stated liquidated amount reasonably approximates the damages they would sustain as a result of a default by City.

**16. Brokers.** CPG-LP agrees to pay any and all commissions, brokers' or finders' fees or other like charges arising out of this Agreement or the transactions contemplated by this Agreement.

**17. Press Releases/Public Announcements.** No party to this Agreement shall make any press releases or public announcements regarding this transaction or the terms thereof without the prior written consent of the other party, which approval shall not be unreasonably withheld. The foregoing shall not restrict the City from publishing any public notices necessary for the consideration and approval of the Agreement by the Board of Aldermen or required by any applicable law, rule or regulation applicable to CPG-LP.

**18. Miscellaneous.**

(a) **Business Day.** A "business day" as used herein is a day other than a Saturday, Sunday or observed banking holiday by national banks in Branson, Missouri.

(b) **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement of the parties concerning the Property and supersedes any and all prior oral representations, covenants, understandings or agreements between the parties or their agents, and may be modified only by written agreement signed by both parties.

(c) **Governing Law.** This Agreement shall be governed by Missouri law.

(d) **Notices.** All notices or deliveries required under this Agreement shall be hand delivered or given by mail (return receipt requested) or overnight courier (signature required) directed to City and CPG-LP at the address stated on the first page of this Agreement. All notices so given shall be considered effective if hand delivered, when received; if delivered by courier, one (1) business day after timely deposit with the courier service, charges prepaid; or if mailed, three (3) business days after deposit, first class postage prepaid, with the United States Postal Service. Either party may change the address to which future notices shall be sent by notice given in accordance with this Section.

**EXECUTED** as of the Effective Date written above.

**CPG-LP**

**CPG Partners, L.P.** a Delaware limited partnership

**ATTEST:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_

**CITY:**

**CITY OF BRANSON, MISSOURI**

**ATTEST:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM FOR THE CITY:

\_\_\_\_\_  
Gilmore & Bell, P.C., Special Counsel

**EXHIBIT A**

**THE LAND**

**LEGAL DESCRIPTION**

[TO BE MUTUALLY CONFIRMED BY THE PARTIES]

**Tract A**

A tract of lands lying in the Southeast Quarter of the Southeast Quarter of Section 35, Township 23 North, Range 22 West of the 5th Principal Meridian, Taney County Missouri, and being more particularly described as follows:

BEGINNING at the northeast corner of the Southeast Quarter of the Southeast Quarter of said Section 35;

THENCE South 00°57'26" West, along the east line of said Section 35, a distance of 793.13 feet to a point on the northwesterly right-of-way line for Gretna Road, said point lying on a non-tangent curve, said point also being 540.96 feet North 00°57'26" East of the southeast corner of said Section 35;

THENCE Southwesterly, along said right-of-way line for Gretna Road (50 foot from centerline), the following three (3) courses:

1. Southwesterly on a non-tangent curve to the left having a radius of 300.00 feet (said curve subtended by a chord which bears South 21°37'39" West a chord distance of 306.27 feet) an arc distance of 321.43 feet to a point of tangency;
2. South 09°03'59" East a distance of 26.28 feet to a point of curvature;
3. Southwesterly on a curve to the right having a radius of 200.00 feet (said curve subtended by a chord which bears South 31°44'57" West a chord distance of 261.45 feet) an arc distance of 284.95 feet to a point on the south line of said Section 35, said point being 237.41 feet North 88°05'34" West of the southeast corner of said Section 35;

THENCE North 88°05'34" West, along the south line of the said Section 35, a distance of 936.78 feet to the southeast corner of the "White Water Lease";

THENCE North 04°18'30" East, along the east line of said "White Water Lease" a distance of 593.86 feet to the northeast corner of the "White Water Lease",

THENCE **North** 86°01'00" West, along the north line of the "White Water Lease" a distance of 300.00 feet;

THENCE North 00°02'42" West a distance of 200.00 feet;

THENCE North 48°29'18" East a distance of 287.31 feet;

THENCE South 89°33'51" East a distance of 700.00 feet;

THENCE North 01°03'25" East a distance of 299.93 feet to a point on the north line of the Southeast Quarter of the Southeast Quarter of said Section 35;

THENCE South 89°40'09" East, along said north line, a distance of 530.00 feet to the POINT OF BEGINNING.

Said tract containing 31.5449 acres, more or less.

## **EXHIBIT B**

### **LEASE**

[TO BE MUTUALLY CONFIRMED BY THE PARTIES]

1. Lease Agreement, dated July 30, 1986, between the City of Branson, Missouri ("City), as lessor and H&W Development Co. ("H&W), as lessee.
2. Amendment by Interlineation to Lease Agreement and Option Agreement dated November 24, 1987 between City and H&W
3. Consent by City, dated April 30, 1987, regarding financing by Third National Bank in Nashville and Angeles Financial Partners.
4. Assignment of Lease to Factory Merchants Venture dated May 26, 1987
5. Assignment of Lease dated August 31, 1987 assigning Lease from Factory Merchants Venture to H&W and Third National Bank in Nashville
6. Resolution No. 88-R22 of the City, dated March 28, 1988, approving signage plan.
7. Second Assignment of Lease dated September 14, 1988
8. Consent and Estoppel Certificate, dated September 26, 1988, between the City and Third National Bank in Nashville.
9. Assignment and Assumption of Ground Lease and Consent of Lessor dated July 31, 1989, assigning Lease from Branson Factory Merchants, Ltd. to Factory Merchants, Ltd.
10. Reassignment of Ground Lease and Leases dated June 12, 1990 from Third National Bank in Nashville to Branson Factory Merchants, Ltd.;
11. Reassignment of Ground Lease and Leases dated June 12, 1991 from H&W to Branson Factory Merchants, Ltd.
12. Assignment and Assumption of Ground Lease dated September 30, 1991 assigning Lease from Branson Factory Merchants, Ltd. to Factory Merchants of Branson, Inc
13. Addendum to Lease Agreement December 25, 1992, between the City and Factory Merchants Mall of Branson, Inc.
14. Ordinance 93-04 dated January 25, 1993 Approving Addendum to Lease Agreement
15. Resolution 94-R19 Amending the Lease Agreement dated March 28, 1994 between
16. Lessor and New Plan Factory Malls, Inc. ("Lessee");
17. Ordinance No. 95-073 dated June 12, 1995; and
18. Modification of Lease Agreement dated June 26, 1995 between Lessor and Lessee.

**EXHIBIT C**

**ADJACENT LAND**

**LEGAL DESCRIPTION**

[TO BE MUTUALLY CONFIRMED BY THE PARTIES]

**Tract B**

A tract of land lying in the Southwest Quarter of the Southwest Quarter of Section 36, Township 23 North, Range 22 West of the 5th Principal Meridian, Taney County, Missouri, and being more particularly described as follows:

BEGINNING at the northwest corner of the Southwest Quarter of the Southwest Quarter of said Section 36;

THENCE South 88°28'25" East, along the north line of the Southwest Quarter of the Southwest Quarter of said Section 36, a distance of 686.00 feet;

THENCE South 23°15'10" West a distance of 774.57 feet to a point of the northerly right-of-way line for Gretna Road;

THENCE Westerly, along said right-of-way line for Gretna Road (30 foot from centerline in part, 50 foot in part), the following three (3) courses:

1. Westerly on a non-tangent curve to the right having a radius of 370.00 feet (said curve subtended by a chord which bears South 81 °37'58" West a chord distance of 50.63 feet) an arc distance of 50.67 feet to a point of tangency;
2. South 85°33'22" West a distance of 289.69 feet to a point on a non-tangent curve;
3. Southwesterly on a curve to the left having a radius of 300.00 feet (said curve subtended by a chord which bears South 58°25'09" West a chord distance of 63.73) an arc distance of 63.85 feet to a point on the west line of said Section 36, said point being 540.96 feet North 00°57'26" East of the southwest corner of said Section 36;

THENCE North 00°57'26" East, along said west line of said Section 36 a distance of 793.23 feet to the POINT OF BEGINNING.

Also being the same premises conveyed pursuant to the deeds recorded in Book 321, page 3480 and Book 324, page 3294.

Said tract containing 9.1352 acres, more or less.

**EXHIBIT D**

**TENANT LEASES**

[on file with each Party]

**EXHIBIT E**  
**LIST OF LEASES**

**EXHIBIT F**

**LEASE TERMINATION**

**THIS AGREEMENT**, dated December \_\_\_\_, 2011, is made by and among

**CITY OF BRANSON, MISSOURI**

a municipal corporation and political subdivision of the State  
of Missouri  
110 W. Maddux  
Branson, MO 65616  
Attention: City Administrator

**CPG PARTNERS, L.P.**, a Delaware limited partnership

105 Eisenhower Parkway  
Roseland, NJ 07068

“Grantors” and “Grantees”

concerning the following recorded instruments:

<b>Document</b>	<b>Date Recorded</b>	<b>Document No.</b>	<b>Book</b>	<b>Page</b>
Lease Agreement				
Assignment of Lease				

**Agreements:**

The parties identified above as both Grantors and Grantees are parties to the Lease Agreement and/or one or more of the other ancillary documents listed above, affecting the real estate (the “Property”) in Taney County, Missouri, described on **Exhibit A** attached to and by this reference made a part of this agreement.

Grantors acknowledge that the term of the Lease Agreement has expired by its terms or has been terminated. Accordingly, the Property and all other property covered by the Lease Agreement are unencumbered by the Lease Agreement and the other listed documents.

**Signatures**

**CITY OF BRANSON, MISSOURI**

**CPG PARTNERS, L.P.**, a Delaware limited partnership  
By: CPG HOLDINGS, LLC, a Delaware limited liability  
company, its general partner

[ACKNOWLEDGMENTS]  
Exhibit A: Legal Description [Tract A]

**EXHIBIT G**

**MISSOURI QUITCLAIM DEED**

**THIS INDENTURE**, dated December \_\_\_\_, 2011, by and between

**CPG PARTNERS, L.P.**, a Delaware limited partnership  
105 Eisenhower Parkway  
Roseland, NJ 07068

“Grantor”, and

**CITY OF BRANSON, MISSOURI**  
a municipal corporation and political subdivision of the State  
of Missouri  
110 W. Maddux  
Branson, MO 65616  
Attention: City Administrator

“Grantee”

**WITNESSETH**, That Grantor, in consideration of the sum of Ten Dollars and other good and valuable consideration paid to Grantor by Grantee (the receipt of which is hereby acknowledged) does by these presents, REMISE, RELEASE, and FOREVER QUIT CLAIM to Grantee, and its successors and assigns, the real estate in Taney County, Missouri, described as follows:

All of the South~~east Quarter~~ **Half** of the Southeast Quarter of Section 35, Township 23 North, Range 22 West of the 5th Principal Meridian, Taney County, Missouri;

**TO HAVE AND TO HOLD** the described premises, with all and singular the rights, privileges, appurtenances, and immunities belonging or in any way appertaining to the premises, to Grantee and to Grantee’s successors and assigns forever; so that neither Grantor nor its successors or assigns, nor any other person or persons, for Grantor or in Grantor’s name or behalf, will hereinafter claim or demand any right or title to the described premises or any part thereof, but they and each of them shall, by these presents, be excluded and forever barred.

**IN WITNESS WHEREOF**, Grantor has caused this instrument to be executed on the date written above.

**Signatures**

**CPG PARTNERS, L.P.**, a Delaware limited partnership  
By: CPG HOLDINGS, LLC, a Delaware limited liability  
company, its general partner

[Acknowledgment]

**EXHIBIT H**

**MISSOURI SPECIAL WARRANTY DEED**

**THIS INDENTURE**, dated December \_\_\_\_, 2011, by and between

**CPG PARTNERS, L.P.**, a Delaware limited partnership  
105 Eisenhower Parkway  
Roseland, NJ 07068

“Grantor”, and

**CITY OF BRANSON, MISSOURI**  
a municipal corporation and political subdivision of the State  
of Missouri  
110 W. Maddux  
Branson, MO 65616  
Attention: City Administrator

“Grantee”

**WITNESSETH**, That Grantor, in consideration of the sum of Ten Dollars and other good and valuable consideration paid to Grantor by Grantee (the receipt of which is hereby acknowledged) does by these presents, **SELL** and **CONVEY** to Grantee, and its successors and assigns, the real estate in Taney County, Missouri, described as follows:

See **EXHIBIT A** attached to and by this reference incorporated into this deed;

**SUBJECT TO:** (a) [~~liens, encumbrances,~~] easements, restrictions, reservations, and other agreements [~~and matters~~] of record, if any, (b) taxes and assessments, general and special, if any; and (c) rights of the public in and to the parts thereof in streets, roads, or alleys.

**TO HAVE AND TO HOLD** the described premises, with all and singular the rights, privileges, appurtenances, and immunities belonging or in any way appertaining to the premises, to Grantee and to Grantee’s successors and assigns forever; Grantor covenanting that the premises are free and clear from any encumbrance done or suffered by Grantor, except as provided above; and that Grantor will warrant and defend the title to the premises to Grantee and to Grantee’s successors and assigns forever, against the lawful claims and demands of all persons claiming under Grantor, except as provided above.

**IN WITNESS WHEREOF**, Grantor has caused this instrument to be executed on the date written above.

**Signatures**

**CPG PARTNERS, L.P.**, a Delaware limited partnership  
By: CPG HOLDINGS, LLC, a Delaware limited liability  
company, its general partner

[Acknowledgment]  
Exhibit A: Legal Description [Tract B]

**EXHIBIT I**

**BILL OF SALE**

**BILL OF SALE**

**CPG PARTNERS, L.P.**, a Delaware limited partnership, (“CPG-LP”), for and in consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, has **BARGAINED** and **SOLD**, and by these presents does now **GRANT** and **CONVEY**, all of its right, title and interest, in and to the machinery and equipment and other personal property generally described on the attached **Exhibit A** unto the **CITY OF BRANSON, MISSOURI**, a municipal corporation and political subdivision of the State of Missouri (“City”), and its successors and assigns, forever.

CPG-LP represents that it is the owner of the machinery, equipment and other personal property generally described on the attached **Exhibit A**, that CPG-LP for itself and its successors and assigns, warrants and agrees to defend the title to such assets, for the benefit of the City, its successors and assigns, against all persons.

**IN WITNESS WHEREOF**, CPG-LP has caused this Bill of Sale to be executed by its duly authorized officials as of December \_\_, 2011.

**CPG PARTNERS, L.P.**, a Delaware limited partnership  
By: CPG HOLDINGS, LLC, a Delaware limited liability  
company, its general partner

By \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A TO BILL OF SALE**

[Insert description of machinery, equipment and personal property]

**EXHIBIT J**

**ASSIGNMENT OF LEASE AGREEMENTS**

**THIS AGREEMENT**, dated December \_\_\_\_, 2011, is made by and between

**CPG PARTNERS, L.P.**, a Delaware limited partnership  
105 Eisenhower Parkway  
Roseland, NJ 07068

“Assignor” (Grantor), and

**CITY OF BRANSON, MISSOURI**  
a municipal corporation and political subdivision of  
the State of Missouri  
110 W. Maddux  
Branson, MO 65616  
Attention: City Administrator

“Assignee” (Grantee)

concerning the following instruments:

<b>Documents</b>	<b>Date Recorded</b>	<b>Book</b>	<b>Page</b>
See Exhibit B	N/A	N/A	N/A

**Recitals:**

A. Assignor is the current landlord under the above referenced Documents; and

B. Pursuant to the Agreement between the Assignor and Assignee, dated as of December \_\_\_\_, 2011, Assignor wishes to assign and transfer all of its interest in the Documents to Assignee.

**Agreements:**

1. Assignor hereby assigns and transfers its interest in the Documents to Assignee.
2. Assignor represents and warrants that it is fully authorized to assign its interests to Assignee.
3. Assign hereby accepts the assignment under each of the Documents.
4. Assignor and Assignee further agree to execute and deliver such other instruments and documents as may be necessary or proper to implement and confirm such assignment.
5. This Assignment shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns.
6. The relationship of the parties as to the Documents shall be governed by the Management Agreement between the parties of even date herewith.

**CPG PARTNERS, L.P.**, a Delaware limited partnership  
By: CPG HOLDINGS, LLC, a Delaware limited liability  
company, its general partner  
**CITY OF BRANSON, MISSOURI**

[Acknowledgments]

Add Exhibit A: Legal Description

Add Exhibit B: List of Leases

**EXHIBIT K**  
**PROPERTY MANAGEMENT AGREEMENT**  
**MANAGEMENT AGREEMENT**

THIS MANAGEMENT AGREEMENT (the “Agreement”) is made as of the \_\_\_\_ day of January , 2012 (“Effective Date”) by and between the City of Branson, Missouri, a municipal corporation and political subdivision of the State of Missouri (“Owner”), and CPG Partners, L.P., a Delaware limited partnership (“Manager”).

**RECITALS:**

A. Manager has until the effective date of this Agreement operated that certain real property together with any buildings and improvements thereon erected, located in Branson, Taney County, Missouri, as each is more particularly described on **Exhibit A** attached hereto (such land, improvements and any other improvements now or hereafter located thereon is hereinafter collectively referred to as the “Project” or the “Center”) under a ground lease by which Owner leased the Center to Manager.

B. The Manager has conveyed all its interest in the Center, including adjacent land Manager owned in fee simple and described on **Exhibit B** attached hereto, to Owner.

C. In order to provide an orderly transition of ownership and to minimize the adverse effects of discontinuing the operation of the Project as a shopping center, Owner wishes to retain the services of Manager to continue to manage, operate, maintain and service operate the Project as manager for up to six (6) months from the Effective Date, or longer by mutual written agreement, for the purpose of ceasing retail activities at the Center and arranging for the termination of tenant leases at the Center and any vendor or supplier agreements existing for the Center in consultation with and at the direction of Owner, and for the performance on behalf of Owner of certain of its obligations with respect thereto, as more particularly set forth below.

D. Manager is willing to perform or to cause to be performed such services pursuant to the terms of this Management Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and of the full and faithful performance by Owner and Manager of all terms, conditions and obligations respectively imposed on each hereunder, the parties hereto, intending legally to be bound, agree as follows:

**1. Appointment.**

1.1 **Appointment of Manager.** Subject to the terms and provisions of this Agreement and for the term set forth in Section 7 hereof (the “Term”), Owner hereby appoints Manager as managing agent for the management of the Project with the responsibilities and obligations and upon the terms and conditions set forth herein, and Manager, by its execution hereof, hereby accepts such appointment.

**2. Management Services.**

2.1 **Management of the Project.** Manager shall manage, operate, maintain, de-lease

and service the Center. The services performed and provided by Manager hereunder shall be of a scope and quality not less than those generally performed and provided by professional managers of other similar manufacturer's outlet shopping centers in the United States. Manager and Owner understand that the services to be provided under this Agreement are designed to wind down and cease operations of a retail shopping center at the Project and arrange for the termination of all leases, vendor and supplier agreements at the Center during the Term of this Agreement.

2.2 **Specific Duties and Services of Manager.** Without limiting the duties, responsibilities and obligations of Manager under any other provisions of this Agreement, Manager shall have the following duties, responsibilities and obligations and shall perform the following services, provided however, that Manager shall not be obligated to expend its own funds in connection with the performance of any such duty or obligation:

A. **Monies Collected.** Collect all rent and other payments due from tenants in the Project, in accordance with their respective leases, and any sums otherwise due Owner with respect to the Project in the ordinary course of business. Owner authorizes Manager to request, demand, collect, receive and at the request of any tenant, give receipts for all such rent and other charges which may at any time be or become due to Owner and to institute legal proceedings in the name of Owner for the collection thereof and, with the approval of Owner, institute legal proceedings for the dispossession of tenants and other persons from the Project. Monies collected by Manager shall be paid to Owner not later than the 15<sup>th</sup> day (or next succeeding business day if the 15<sup>th</sup> is not a business day) of the month subsequent to receipt of such monies by Manager. Manager shall withhold from such amounts fees and expenses due to Manager as set forth in Section 5 and Section 6, and provide a full accounting to the Owner. The provisions of this subparagraph A shall survive termination of this Agreement.

B. **Obligations Under Basic Documents.** Duly and punctually perform and comply with all of the obligations, terms and conditions required to be performed or complied with by Owner under any lease, deed of trust, mortgage, deed to secure debt or similar debt instrument, easement, covenant, restriction or other such agreement encumbering or pertaining to the Project and relating to the management, operation, maintenance, leasing, servicing and financing thereof (collectively, the "Basic Documents"), including without limitation, the timely payment of all sums required to be paid thereunder, for the purpose of preserving the interests of Owner in the Project and preventing the occurrence of any default by Owner under the Basic Documents.

C. **Taxes; Insurance; Permits.** If applicable, duly and punctually pay on behalf of Owner all taxes, including without limitation, real estate and personal property taxes, assessments and insurance premiums payable with respect to the Project or any part thereof, and obtain on behalf of Owner all permits, licenses and governmental authorizations required with respect to the maintenance and operation of the Project.

D. **Repairs and Maintenance.** Make all repairs, and perform all maintenance (including normal preventive maintenance) on the buildings, appurtenances and grounds comprising the Project as required to be made by Owner under the Basic Documents and in a manner consistent with Manager's obligations to maintain the Center as a manufacturer's outlet shopping center in accordance with commercially reasonable standards. Manager shall obtain the written consent of Owner to make repairs or perform maintenance where the one-time or cumulative contract cost of such repair or maintenance is in excess of \$2,500.

E. **Equipment and Supplies.** Make all arrangements for the furnishing to the Project of utility, maintenance and other services, including without limitation, extermination, trash disposal and paving, and for the acquisition of equipment and supplies as necessary for the management, operation, maintenance and servicing of the Project as required of Owner under the Basic Documents. Such arrangements shall include the negotiation of and entering into contracts for services necessary for the operation and maintenance of the Project.

F. **Insurance Coverage.** Cause to be placed and kept in force the amounts and types of insurances as typically required for comparable Centers; and same shall in all events comply with the requirements of the Basic Documents. Owner shall be named as an additional insured on all such insurance policies.

G. **Personnel.** Retain or contract for such personnel as may be necessary in order for Manager to perform its obligations hereunder.

H. **Compliance with Laws.** Take such action as may be necessary to comply with any and all present and future laws, ordinances, orders, rules, regulations and/or requirements affecting the Project by any Federal, state, county or municipal authority or court having jurisdiction thereover, and orders of the local Board of Fire Underwriters, insurance services offices or other similar bodies.

I. **Notices.** Promptly deliver to Owner a copy of each notice received from any mortgagee, ground lessor or other party to any of the Basic Documents given pursuant thereto or relating thereto. Manager shall also deliver to Owner notice of any lawsuits, condemnation proceedings, rezoning or other governmental orders or actions that become known to Manager and that might in any way materially adversely affect the Project or any interest of Owner whatsoever.

### 3. **Leasing Services.**

3.1. **Leasing.** Subject to Section 3.2, Manager is hereby appointed and accepts the appointment as leasing agent of Owner for the purposes of management and termination of existing leases and vendor/supplier agreements for the Project during the Term of this Agreement. Manager shall not enter into any new leases or vendor/supplier agreements for the Project during the Term of this Agreement.

3.2. **Lease and Vendor/Supplier Agreement Termination.** Manager recognizes that Owner desires to minimize the adverse reaction to the termination of leases and vendor/supplier agreements in the Center. Manager will consult with Owner in order to agree on a plan of lease termination for all leases and vendor/supplier agreements in the Center within six (6) months of the date of this Agreement such that the Center will be unoccupied by any tenants and no vendor/supplier agreements will exist at the end of said six (6) month period. Owner and Manager may make reasonable changes to the agreed upon plan throughout the Term of this Agreement as mutually agreed upon in writing. Manager will diligently exercise necessary activities, including negotiating with tenants, vendors and suppliers and giving requisite notices in order to accomplish the agreed upon plan. Any costs associated with terminating the tenant leases and obtaining possession of units upon such termination (including without limitation any consideration to be paid to such tenants in order to obtain early termination of leases and delivery of possession of the leased premises), as well as terminating vendor and supplier agreements (including without limitation early termination fees

and similar expenses) will be promptly paid by Manager.

**4. Fees Payable Hereunder.**

**4.1 Compensation for Management and Leasing Services.**

(a) Owner shall owe Manager as compensation for all services to be rendered hereunder a management fee (the "Management Fee") equal to five percent (5%) of the "Gross Income," as such term is defined in Section 4.1(b) below.

(b) The term "Gross Income" shall mean, with respect to each calendar month hereof, without duplication, all income paid or to be paid to the Owner by any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity during such period in connection with the ownership or operation of the Project, including, without limitation, all expense reimbursements and other amounts receivable from tenants, but excluding any money paid by potential and actual tenants as "key money," determined pursuant to the accrual method of accounting in accordance with GAAP, consistently applied. In addition, the calculation of Gross Income shall include all collected actual percentage rental income accrued and attributable to the period of time in question.

(c) Within fifteen (15) days after the end of each calendar month of the Term hereof Manager shall provide Owner with a statement in reasonable detail setting forth the following costs, hereinafter referred to as the "Allocated Costs" incurred or accrued during the time period in question: (i) all common area maintenance costs and expenses of the Center, (ii) all promotion fund income from tenants of the Center, (iii) costs and expenses related to the corporate and regional operations departments of Manager which have been allocated to the Center based upon the proportion that the gross leasable area of the Center bears to the gross leasable area of all Centers bearing such costs and (iv) costs and expenses related to the leasing department and tenant improvement department of Manager allocated on the basis that the gross leasable area of the Center bears to the gross leasable area of all Centers bearing the costs of the leasing and tenant improvement departments relating to reletting space at all such Center. In no event shall the total Management Fee paid to Manager in any calendar month exceed the Allocated Costs for such month. In the event Owner has paid Manager any sums in excess of such Allocated Costs in any calendar month, Manager shall refund such amounts to Owner within fifteen (15) days after sending the statement of Allocated Costs.

**4.2 Miscellaneous.** Manager shall not be entitled to any fee other than that set forth in Section 4.1. In addition, all reasonable fees for legal services rendered in connection with tenant disputes will be paid by Manager, whether same are incurred by third parties and/or by employees of an entity affiliated with Owner or Manager.

**5. Accounting Records.** Manager shall maintain a comprehensive system of office records, books and accounts pertaining to the Project, in a manner satisfactory to Owner, which shall

belong to Owner. Owner and its designees shall have reasonable access at all times during normal working hours to such records, accounts and books and to all vouchers, files and all other materials pertaining to the Project and this Agreement, all of which Manager agrees to keep safe, available and separate from any records not related to the Project.

## **6. Expenses.**

6.1 **Allocation.** Except as otherwise specifically provided in this Agreement, all obligations or expenses incurred hereunder with respect to the Project, including, but not limited to, the salaries and benefits of all on-site personnel, shall be for the account of, on behalf of and at the expense of Owner. It is acknowledged and agreed that Manager may enter into third party contracts and agreements which relate to the Center and to other properties owned or managed by Manager. The costs thereunder shall be allocated based upon the proportion that the gross leasable area of the Center bears to the gross leasable area of all Centers bearing such costs, and the appropriate portion allocable to the Center shall be due and owing by Owner hereunder.

6.2 **Reimbursement for Expenses.** Any payments made by Manager in the performance of its duties and obligations under this Agreement (other than payments which this Agreement specifically requires Manager to pay from its own funds) shall be made out of such funds as Manager may from time to time hold for the account of Owner. The obligation of Owner to reimburse expenses hereunder shall be limited to the amount of Gross Income generated by the Project less the Management Fee ("Net Revenue"). Any expenses in excess of Net Revenue shall be paid by Manager. Expenses shall be withheld by Manager from amounts forwarded to Owner as provided in Section 2.2.A

## **7. Term and Termination.**

7.1 **Term.** The term of this Agreement ("Term") shall commence as of the Effective Date of this Agreement and shall continue for a period of six (6) months. The parties may mutually agree in writing to renew this agreement for successive periods of 30 days upon the expiration of the Term. Owner may elect to terminate this Agreement upon 30 days written notice to Manager.

**7.2 Survival of Obligations. Obligations incurred or accruing during the Term (including without limitation those arising under Section 3.2 and Section 8) shall survive the expiration or other termination of the Term.**

## **8. Indemnification.**

Manager hereby absolutely, unconditionally and irrevocably covenants and agrees to indemnify, defend and hold harmless Owner its employees, agents, independent contractors and consultants from and against any and all claims, demands, liabilities, losses, fees, costs or expenses arising out of or in any way connected with **(a) the termination of leases and vendor and supplier agreements pursuant to Section 3.2, or the failure to terminate all such leases and agreements within the specified 6 month period (or any extension agreed to by the parties in writing), or (b)** any acts, omissions to act or forbearances of Manager, its agents, employees or representatives, which are found to be negligent or in willful violation of the duties of Manager set forth in this Agreement [~~including without limitation the actions of Manager in terminating leases and vendor and supplier agreements pursuant to Section 3.2.~~].

9. **No Waiver.** The failure of Owner to seek redress for breach, or to insist upon the strict performance, of any covenant, agreement, provision or condition of this Agreement at any time shall not constitute a waiver by Owner of any of its rights hereunder as to any other matter or at any other time and

Owner shall have all remedies provided herein and by applicable law with respect to any subsequent act which would have originally constituted a breach.

**10. Captions.** The captions of this Agreement are inserted only for the purpose of convenient reference and do not define, limit or prescribe the scope or intent of this Agreement or any part hereof.

**11. Entire Agreement.** This Agreement embodies the entire agreement and understanding of the parties and there are no further agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

**12. Governing Law.** The provisions hereof shall be governed and interpreted by the laws of the State of Missouri.

**13. Counterparts and Effectiveness.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument and may be executed and delivered by facsimile transmission with each party executing the agreement (or a counterpart thereto) and delivering such executed document by facsimile transmission with the original to follow by actual delivery. The parties hereto intend to be legally bound and obligated by this Agreement effective immediately upon the delivery of any such facsimile transmission.

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

**OWNER:**  
THE CITY OF BRANSON, MISSOURI

**MANAGER:**  
CPG PARTNERS, L.P., a Delaware limited partnership  
By: CPG HOLDINGS, LLC, a Delaware limited liability company, its general partner

Add: Exhibit A  
Add: Exhibit B

APPROVED AS TO FORM FOR THE CITY:

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Gilmore & Bell, P.C., Special Counsel