**Cross References:**

1. The Property – Limited Warranty Deed recorded February 13, 2012 as Instrument No. 120001475 in the Hancock County, Indiana Recorder’s Office.
2. Outlot Parcels – Limited Warranty Deed recorded June 25, 2018 as Instrument Number 201806345 in the Hancock County, Indiana Recorder’s Office.
3. The Plat and RDEs – plat of Retail Outlots at Gateway Crossing Section Six A as recorded in Plat Cabinet "C", Slide 254, Instrument Number 070003535.

#### DRAINAGE EASEMENT AND POND MAINTENANCE AGREEMENT

THIS DRAINAGE EASEMENT AND POND MAINTENANCE AGREEMENT (“Agreement”) is entered into as of the \_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ by and between MC Gateway Land LLC, an Indiana limited liability company (hereinafter referred to as “MC Gateway”), and Hard Work and Play LLC, a California limited liability company (“Outlot Owner”).

RECITALS:

1. MC Gateway owns a certain tract of land containing approximately 12.358 acres pursuant to Instrument Number 120001475 recorded in the Hancock County, Indiana Recorder’s Office, which tract of land is depicted on Exhibit A and legally described on Exhibit B (the “Property”), which exhibits are attached hereto and incorporated herein by reference.
2. MC Gateway intends to convey to Clover Communities McCordsville LLC a Delaware limited liability company (“Clover”), for development of a multi-family development a portion of the Property containing approximately 5.059 acres, legally described on Exhibit C and depicted on Exhibit A (the “Clover Land”), which exhibits are attached hereto and incorporated herein by reference.
3. MC Gateway shall retain ownership of certain improved property located adjacent to the Clover Land containing approximately 7.058 acres, legally described on Exhibit C and depicted on Exhibit A (“MC Gateway Retained Land”), which exhibits are attached hereto and incorporated herein by reference,.
4. Outlot Owner owns certain improved property consisting of approximately 1.97 acres pursuant to Instrument Number 201806345 recorded in the Hancock County, Indiana Recorder’s Office, which property is legally described on Exhibit E (“Outlot Parcels”), which exhibit is attached hereto and incorporated herein by reference, and depicted on Exhibit A.
5. There is a stormwater retention pond depicted on Exhibit A (the “Pond”, together with all related swales, outfalls, underground stormwater pipes and appurtenances, the “Stormwater Facility”), and located on a portion of the MC Gateway Retained Land, legally described on Exhibit D and depicted on Exhibit A (the “Pond Parcel”), which exhibits are attached hereto and incorporated herein by reference.
6. Pursuant to a certain plat of Retail Outlots at Gateway Crossing Section Six A as recorded in Plat Cabinet "C", Slide 254, Instrument Number 070003535 (the “Plat”), the Pond Parcel is burdened by two twenty-foot-wide Regulated Drainage Easements benefiting the Outlot Parcels(the “RDEs”), which RDEs drain into the Pond, as shown on the Plat.
7. One of the RDEs (the “Eastern RDE”) also burdens a portion of the Clover Land, as depicted on Exhibit A (the “Clover Burdened Portion”).
8. MC Gateway and Outlot Owner desire to enter into this Agreement in order to more specifically set forth the rights and obligations of MC Gateway and Outlot Owner relating to the Stormwater Facility.

NOW, THEREFORE, in consideration of the premises, the mutual rights and obligations hereunder and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MC Gateway and Outlot Owner hereby agree as follows:

1. MC Gateway hereby grants, for the benefit of the Clover Land, a perpetual right-of-way and easement appurtenant to the Clover Land upon, over, under, across, the Pond Parcel for the purpose of accessing, laying, operating, maintaining, cleaning, repairing, inspecting, replacing, relocating, and removing storm sewer pipe, manholes, ditches, swales, plantings and/or appurtenances, and the right to use, upgrade, repair, replace, improve, and maintain the Stormwater Facility so as to allow the flow of storm water from the Clover Land into the Stormwater Facility across the Pond Parcel.
2. The parties acknowledge that the Stormwater Facility is inadequately sized to serve the intended development of the Clover Land, the MC Gateway Retained Land, and the existing development of the Outlot Parcels, and MC Gateway hereby grants the Clover Land owner the right to, at the shared expense, as mutually agreed, of the Clover Land owner and the MC Gateway Retained Land owner, enlarge the existing Stormwater Facility on the Pond Parcel to accommodate the additional runoff at which time the Stormwater Facility shall be deemed to include the enlarged Stormwater Facility rather than the Stormwater Facility depicted and/or described on Exhibit D. Prior to commencing any work to enlarge the Stormwater Facility on the Pond Parcel, the Clover Land owner shall obtain all necessary permits and approvals from all appropriate county and other governmental authorities and the MC Gateway Retained Land owner shall cooperate, without condition or delay, with such effort by signing any applications or other documents required by such authorities, including any drainage easements on the Pond Parcel. In the event that following the Clover Land owner’s enlargement it is necessary to further enlarge the Stormwater Facility, the MC Gateway Retained Land owner shall have the right to perform such resizing at its sole cost and expense. Any enlargement of the Stormwater Facility pursuant to this Paragraph 2 shall be in strict accordance with plans that shall be approved by all appropriate county and other governmental authorities, and shall be completed in accordance with all permits and approvals issued by the appropriate county and other governmental authorities and all applicable governmental laws, regulations, statutes, ordinances, and other governmental enactments.
3. Unless otherwise agreed by the parties, the owner of the MC Gateway Retained Land shall be obligated to secure and maintain comprehensive general liability insurance on the Pond Parcel. The insurance shall be written on an occurrence-basis with limits of at least $1,000,000 combined single-limit per occurrence and $2,000,000 aggregate for personal injury, bodily injury and property damage. The costs of such insurance shall be split between the land owner based on based on the respective land owner’s Proportionate Share (defined herein) provided (1) such parties are listed as a ‘named insureds’ on such policy, and their lenders and affiliates are named as additional insureds, (2) evidence of such insurance is provided to such parties on request by a party and included with any reimbursement request, (3) the parties are given no less than thirty (30) days to make payment, and (4) any request for payment is accompanied by an itemized invoice(s) showing only the cost of insurance for the Pond Parcel. Notwithstanding anything to the contrary herein, the total insurance cost shall not exceed \_\_\_\_\_\_\_\_\_\_\_ ($\_\_\_\_\_\_\_\_) (the “Insurance Cost Threshold”).
4. The Clover Land owner shall have the right and the obligation to repair and maintain, including but not limited to capital repairs, the Stormwater Facility in accordance with all laws and regulations of authorities having jurisdiction over such matters (“Required Maintenance”). All costs and expenses associated with the Required Maintenance split between the land owners based on based on the respective land owner’s Proportionate Share (defined herein), and may be billed to the parties by the Clover Land owner in advance or arrears provided the parties are given no less than thirty (30) days to make payment. Any request for payment shall be accompanied by an itemized invoice(s) from the Clover Land owner. MC Gateway hereby grants to the Clover Land owner, together with its agents, employees, contractors, subcontractors, successors, and assigns, an access easement on, over, across, and under the Pond Parcel in order to maintain the Stormwater Facility. Notwithstanding anything to the contrary herein, to the extent Required Maintenance for any calendar year is anticipated to exceed Five Thousand and 00/100 Dollars in the aggregate ($5,000) (“Maintenance Cost Threshold”), the Clover Land owner shall provide advance notice to the other land owners. Upon receipt of such advance notice, the other land owners shall have thirty (30) days to submit competing bids for the Required Maintenance, at which point the Clover Land owner shall be permitted to proceed with the Required Maintenance using the lowest bid. In the event capital repairs exceeding the Maintenance Cost Threshold are necessary, the Clover Land owner shall be permitted to require advance deposits from the other land owners in the amount of their allocable share of the costs before proceeding with the work. A failure to timely reimburse the Clover Land owner or timely submit a deposit shall be a default entitling the Clover Land owner to the rights and remedies set forth herein.

Commencing in 2021, and continuing annually thereafter, the Insurance Cost Threshold and the Maintenance Cost Threshold may be increased in proportion to the changes in the Consumer Price Index Indianapolis All Items (CPI-U) using the most recent published change by the U.S. Bureau of Labor Statistics.

“Proportionate Share” shall be calculated by taking the amount of the land area contained on each party’s parcel (excluding the Pond Parcel) in proportion to the total amount of land area on all parcels benefiting from this Agreement (parcel acreage/total acreage = percentage of cost sharing). The Proportionate Share currently reflects the following:

i. MC Gateway Retained Land (excluding the Pond Parcel)= [##]% ([##] acres)

ii. Clover Land = [##]% (5.3 acres)

iii. Outlot Owner = [##]% (1.97 acres)

[Clover and MC Gateway to insert terms resolving how billing will work when MC Gateway Retained Land is subdivided in future, and possible future transfer of Pond Maintenance to an HOA.]

1. The parties acknowledge and consent to Clover construction of a road on the Clover Land (the “Road”), a portion of which Road will be constructed and exist on the Clover Burdened Portion. If MC Gateway or Outlot Owner, in connection with exercising their rights related to the Eastern RDE, causes actual physical damages the Road necessitating repair, said party shall be obligated to reasonably restore the damaged portion of the Road to its preexisting condition immediately prior to such damage.
2. This Agreement shall be binding upon and shall inure to the benefit of the owners of the MC Gateway Retained Land, the Clover Land, and Outlot Parcels, and such parties’ respective successors and assigns in title, and the easement specified herein shall run with the MC Gateway Retained Land, Clover Land, and the Outlot Parcels, as applicable and be binding upon subsequent owners of the Clover Land, the MC Gateway Retained Land, and the Outlot Parcels.
3. In the event any party shall fail to perform any of its covenants and obligations within thirty (30) days after notice from another party of such failure (unless delayed in so doing because of inclemency of weather, acts of God or shortages of labor or materials), the noticing party may perform such covenants and obligations for the account of the nonperforming party and the reasonable cost thereof as incurred by the noticing party shall be an obligation of the nonperforming party. An action may be instituted in any court of competent jurisdiction in Hancock County, Indiana, against the nonperforming party for the recovery of such costs, together with reasonable attorneys’ fees and interest at the rate of ten percent (l0%) per annum accruing from the date such payment or performance was due. Further the noticing party shall have the right to place a lien on the Clover Land, the MC Gateway Land and/or the Outlot Parcels, as applicable based on the nonperforming party, for any delinquent amounts which lien may be perfected and enforced in accordance with the provisions for the perfection and enforcement of mechanics liens or common law liens in the State of Indiana as may exist from time to time or such other statutes as may hereafter be enacted for the enforcement of liens of the type provided for herein. Further, in the event of (a) a breach of paragraph 9 or 10; or (b) as a result of a party’s failure to perform any of its covenants and obligations there is imminent danger of damage to or destruction of the Clover Land, the MC Gateway Retained Land and/or the Outlot Parcels, a party may seek an injunction or other equitable remedy to enforce compliance with this Agreement. The foregoing remedies shall not limit, in any way, the respective land owners’ rights at law or in equity.
4. No party shall (i) permit third party landowners to cause additional drainage to emanate from such party’s property into the Stormwater Facility (except for existing normal sheet runoff from lands adjacent to the Clover Land), nor (ii) make any improvements, additions, alterations, modifications, repairs or reconstruction on such party’s property that increases the amount of runoff into the Stormwater Facility above the amount approved by the governmental authorities except as expressly permitted herein.
5. At no time shall any party knowingly permit any substance other than surface storm water runoff to pass into the Stormwater Facility and each party hereby indemnifies and holds each of the other parties harmless from all loss, liability, claims, expenses and damages which the indemnified party may suffer as a result of the passage of substances other than uncontaminated surface storm water runoff into the Stormwater Facility which substances emanate from the property of the indemnifying party. Notwithstanding the foregoing, contaminants associated with, and in amounts consistent with, stormwater runoff from parking lots, drives, and lawn care shall not be a violation of the foregoing.
6. Any notice, demands, requests or communication of any kind required or permitted hereunder shall be sufficiently given if sent by: (i) reputable overnight carrier; (ii) United States registered or certified mail, postage prepaid, return receipt requested; (iii) facsimile (with confirmation of receipt thereof); (iv) hand delivery; or (v) by receipted email provided notice is also sent by one of the other methods set forth above, to the address set forth below or at such other address each may designate from time to time.

If to Clover: Clover Communities Gateway LLC

c/o Clover Management West, Inc.

348 Harris Hill Road

Williamsville, NY 14221

Attn: Teia Marie Bui, Esq.

Phone No.: (716) 688-4503

Email: tbui@clovergroupinc.com

If to MC Gateway: M C Gateway Land LLC

9102 East Meridian St., Suite 230

Indianapolis, IN 46260

Attn: Christopher V. McCrea

Phone No.: (317) 663-8446

Email: cmccrea@mccreapg.com

If to Outlot Owner:

Any such notice, demand, request or communication shall be deemed to have been duly given or served on the date shown on the return receipt or other evidence of delivery if mailed, the first business day following the date sent if by overnight carrier, or on the date shown on the confirmation receipt if faxed.

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1. The obligations of each party hereunder shall not be deemed personal to such party after such party shall no longer hold fee simple title to the property benefited or burdened by this Easement. Each party shall, however, remain responsible and able for obligation arising prior to the transfer of title jointly and severally with the successor landowner.
2. Except for required maintenance and repair of the Stormwater Facility and the completion of the improvements contemplated in Section 2, no improvements, excavations, changes in grade or other work shall be done upon the Stormwater Facility by any party hereto, nor shall the Stormwater Facility be otherwise altered by any party hereto from their natural or improved existing state, without the prior written approval of the other parties, which consent shall not be unreasonably withheld, conditioned or delayed.
3. Each party agrees that it shall not permit any swimming, rafting, skating, or other recreational activities on the Pond.
4. No party or other persons shall take or remove any water from or out of the Pond, or utilize the water contained therein for any purposes, including, without limitation, connection with any sprinkler or irrigation systems.
5. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as may be reasonably requested by a party or that are reasonably required by or desirable in connection with any covenants, conditions, or restrictions applicable to the Property that are in effect on or prior to the date hereof (collectively “Covenants”), in order to carry out the intent and accomplish the purposes of this Agreement.
6. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, including but not limited to due to any Covenants, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the court or other tribunal making such determination is authorized and instructed to modify this Agreement so as to effect the original intent of the parties as closely as possible so that the transactions and agreements contemplated herein are consummated as originally contemplated to the fullest extent possible.
7. The recitals are a material part of this Agreement and are hereby incorporated by reference.
8. Each party covenants that the Stormwater Facility shall be free and clear of all liens and encumbrances except the lien of current taxes not delinquent and subordinate mortgages.
9. This Agreement may be executed in separate counterparts, each of which when so executed shall be an original, but all of such counterparts shall together constitute but one and the same instrument.

[*Signature pages follow*]

IN WITNESS WHEREOF, this Drainage Easement and Pond Maintenance Agreement has been executed as of the date written in the acknowledgment section below.

**MC GATEWAY**:

M C GATEWAY LAND, LLC

By:

Printed: Christopher McCrea

Title:

STATE OF )

) SS:

COUNTY OF )

Before me, a Notary Public in and for said County and State, personally appeared Christopher McCrea,the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of M C Gateway Land, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_ 2020.

My Commission Expires:   
 (Signature)

My County of Residence:   
 (printed name) Notary Public

**OUTLOT OWNER**:

Hard Work and Play LLC

By:

Printed:

Title:

STATE OF )

) SS:

COUNTY OF )

Before me, a Notary Public in and for said County and State, personally appeared ,the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of Hard Work and Play LLC, a California limited liability company, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_ 2020.

My Commission Expires:   
 (Signature)

My County of Residence:   
 (printed name) Notary Public

This instrument was prepared by and return after recording to:

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**EXHIBIT A**

**Depiction of the Property**

[*to be attached*]

**EXHIBIT B**

**Legal Description of the Property**

[*to be attached*]

**EXHIBIT C**

**Legal description of Clover Land**

[*to be attached*]

**EXHIBIT D**

**Legal description of Pond Parcel**

[*to be attached*]

**EXHIBIT E**

**Legal description of Outlot Parcel**

[*to be attached*]