

continues to perform construction on said site improvements, it shall be presumed that DEVELOPER has elected to continue such construction and in such event if DEVELOPER fails to complete the site improvements by the dates specified in Exhibit E, then MERCANTILE may charge DEVELOPER, as liquidated damages, the sum of \$3,000.00 per day, which sum DEVELOPER agrees to pay on demand, for each day between such required completion and the later date, if any, that the same are actually completed by DEVELOPER. If DEVELOPER has failed to complete, or caused to be completed, the construction required by clauses (6) and (7) of Section II of Exhibit E by the dates therein stated, and MERCANTILE has not delayed or defaulted hereunder, MERCANTILE may, in any one of such events, so long as DEVELOPER is so in default, by notice to DEVELOPER, withhold opening MERCANTILE BUILDING for business, in which event DEVELOPER shall pay to MERCANTILE \$2,000.00 per day, as liquidated damages, for each day between the required completion date and the earlier of the date that the mall, shell and tenant requirements are actually completed, or the date that MERCANTILE opens its store for business. Any sum of money charged to DEVELOPER pursuant to this 5.3 shall bear interest from the date of MERCANTILE'S demand for payment thereof (or in the case of MERCANTILE'S CANCELLATION DAMAGES from the date of closing set by MERCANTILE) at the rate of 8 per centum per annum. MERCANTILE shall only be entitled to seek recovery from DEVELOPER of a per diem liquidated damage charge as to one item under Exhibit E and MERCANTILE agrees that it will not arbitrarily or maliciously charge such liquidated damages. DEVELOPER'S obligation at MERCANTILE'S option to repurchase MERCANTILE TRACT, MERCANTILE'S CANCELLATION DAMAGES and other sums of money charged to DEVELOPER pursuant to this 5.3, together with interest on such sums as aforesaid, shall be deemed secured by a lien against DEVELOPER TRACT, and the buildings and other improvements thereon, which lien may be foreclosed by a suit in equity or in any other manner required or permitted by law subject to any then existing encumbrance, lease or easement on or affecting DEVELOPER'S TRACT and/or the improvements thereon and not extinguish or disturb the same. DEVELOPER shall, upon demand by MERCANTILE, execute such instruments as MERCANTILE requests in order to record said lien, but this shall not be construed to affect the automatic accrual of such lien as aforesaid.

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