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OPERATION AND EASEMENT AGREEMENT

BETWEEN

TARGET CORPORATION

AND

WEINGARTEN MILLER EQUIWEST SALT LAKE LLC

For  
300 West Town Center Shopping Center  
Salt Lake City, Utah

**OPERATION AND EASEMENT AGREEMENT  
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## **EXHIBITS**

- Exhibit A** Legal Description of Target Tract
- Exhibit B** Legal Description of Developer Tract
- Exhibit C** Design of Signs
- Exhibit D** Architectural Theme
- Exhibit E** Submission Guidelines
- Exhibit X** Site Plan

## OPERATION AND EASEMENT AGREEMENT

THIS OPERATION AND EASEMENT AGREEMENT ("OEA") is made and entered into as of the 16<sup>th</sup> day of October, 2009, between TARGET CORPORATION, a Minnesota corporation ("Target") and Weingarten Miller EquiWest Salt Lake LLC, a Colorado limited liability company ("Developer").

### WITNESSETH

WHEREAS, Target is the owner of certain real estate located in Salt Lake County, Utah, legally described in Exhibit A attached hereto and identified on Exhibit X (the "Site Plan") attached hereto as the "Target Tract"; and

WHEREAS, Developer is the owner of certain real estate legally described in Exhibit B attached hereto and identified on the Site Plan as the "Developer Tract"; and

WHEREAS, the Target Tract and the Developer Tract (collectively, the "Shopping Center") are contiguous and adjacent to each other as shown on the Site Plan; and

WHEREAS, the signatories hereto intend to develop and operate their respective Tracts in conjunction with each other as integral parts of a retail shopping complex, but not a planned or common interest development/community, and in order to effectuate the common use and operation of their respective Tracts they desire to enter into certain covenants and agreements, and to grant to each other certain reciprocal easements, in, to, over, and across their respective Tracts.

NOW, THEREFORE, in consideration of the premises, the covenants and agreements hereinafter set forth and in furtherance of the parties' understanding, it is agreed as follows:

### ARTICLE I - DEFINITIONS

#### 1.1 Approving Party

"Approving Party" shall mean the Party designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this OEA. There shall be one (1) Approving Party representing the Developer Tract and one (1) Approving Party representing the Target Tract. Each Approving Party shall have absolute discretion to make the decisions and/or give the approvals expressly designated to be made and/or given on behalf of the real estate represented by such position regardless of whether the Approving Party then owns all or less than all of the Developer Tract or the Target Tract, as the case may be. The Party designated as Approving Party for the Developer Tract shall have the right to assign such status to any other Party owning a Parcel (defined in Section 1.13) within the Developer Tract; provided, however, if such assignment is not made in writing, then the status of Approving Party for the Developer Tract shall automatically be deemed assigned to the Party acquiring all of the Developer Tract or

the last Parcel of the Developer Tract owned by the Party then holding the status of Approving Party for the Developer Tract. The Party designated as Approving Party for the Target Tract shall have the right to assign such status to any other Party owning a Parcel within the Target Tract; provided, however, if such assignment is not made in writing, then the status of Approving Party for the Target Tract shall automatically be deemed assigned to the Party acquiring all of the Target Tract or the last Parcel of the Target Tract owned by the Party then holding the status of Approving Party for the Target Tract. Developer shall be the initial Approving Party for the Developer Tract; Target shall be the initial Approving Party for the Target Tract.

### 1.2 Building

“Building” shall mean any permanently enclosed structure placed, constructed or located on a Parcel, which, for the purpose of this OEA, shall include any building appurtenances, such as appurtenant canopies, supports, loading docks, truck ramps, and other outward extensions of such structure, and shall further include any garden center or similarly enclosed or semi-enclosed selling area exclusive of Outside Sales Areas.

### 1.3 Building Area

“Building Area” shall mean the limited areas of the Shopping Center within which Buildings may be constructed, placed or located and within which shall be located all building appurtenances such as stairs leading to or from a door, trash containers or compactors, canopies, supports, loading docks, truck ramps, and other outward extensions of such structure. Building Areas are designated on the Site Plan. One or more Buildings may be located within a Building Area.

### 1.4 Common Area

“Common Area” shall mean all areas within the exterior boundaries of the Shopping Center, exclusive of (i) any Building and the appurtenances thereto referenced in Section 1.2 above, and (ii) any Outside Sales Area (defined in Section 1.12) during the period such area is used for sales and/or display purposes.

### 1.5 Constant Dollars

“Constant Dollars” shall mean the value of the U.S. dollar to which such phrase refers, as adjusted from time to time. An adjustment shall occur on the 1st day of June of the sixth (6th) full calendar year following the date of this OEA, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The “Base Index Number” shall be the level of the Index for the year this OEA commences; the “Current Index Number” shall be the level of the Index for the year preceding the adjustment year; the “Index” shall be the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the

Index is materially changed, then the Approving Parties shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

#### 1.6 Floor Area

“Floor Area” shall mean the aggregate number of square feet of:

- (A) Space contained on each floor within a Building, including any mezzanine or basement space, as measured from the exterior faces of the exterior walls or store front and/or the center line of any common walls; provided, however, that the following areas shall not be included in such calculation: (i) space attributable to any multi-deck, platform, rack or other multi-level system used solely for the storage of merchandise which is located above ground floor, and (ii) space used solely for Building utilities or mechanical equipment;
- (B) Space exceeding fifteen thousand (15,000) square feet within an Outside Sales Area; and
- (C) Space exclusively used for outdoor seating for customers of Restaurants and/or other food service businesses; provided, however, that for the purpose of determining parking requirements pursuant to Section 3.2.5 below, space used for outdoor seating that does not exceed ten percent (10%) of indoor Floor Area used for Restaurant (but not specifically for kitchen) purposes by the Occupant exclusively using such outdoor seating shall be excluded from Floor Area.

Within thirty (30) days after receipt of a request, a Party shall certify to the requesting Party the amount of Floor Area applicable to such Party’s Parcel. If any Party causes an as-built survey to be prepared with respect to any portion of the Shopping Center, such Party shall furnish a copy of such survey to the other Parties for informational purposes only.

During any period of rebuilding, repairing, replacement or reconstruction of a Building, the Floor Area previously attributable to that Parcel shall be deemed to be the same as existed immediately prior to such period. Upon completion of such rebuilding, repairing, replacement or reconstruction, the Party owning such Parcel shall cause a new determination of Floor Area for such Parcel to be made in the manner described above, and such determination shall be sent to any other Party requesting the same.

1.7 Governmental Authorities

“Governmental Authorities” shall mean any federal, state, county, city or local governmental or quasi-governmental authority, entity or body (or any department or agency thereof) exercising jurisdiction over a particular subject matter.

1.8 Governmental Requirements

“Governmental Requirements” shall mean all applicable laws, statutes, ordinances, codes, rules, regulations, orders, and applicable judicial decisions or decrees, as presently existing and hereafter amended, of any Governmental Authorities.

1.9 Occupant

“Occupant” shall mean any Person from time to time entitled to the use and occupancy of any portion of a Building in the Shopping Center under an ownership right or under any lease, sublease, license, concession, or other similar agreement.

1.10 Operator

“Operator” shall mean the Person, if any, designated from time to time by the Approving Parties to maintain and operate the Common Area of the Shopping Center. The Person designated as Operator shall serve in such capacity until such person resigns upon at least 60-days prior written notice, or is removed by the Approving Parties. The Approving Parties hereby designate Developer as the initial Operator, and Developer hereby accepts such appointment pursuant to the “Agreed and Accepted” form annexed hereto. During any period an Operator is not designated, then each Party shall maintain and operate its own Parcel pursuant to Article IV hereof.

1.11 Outparcel

“Outparcel” shall mean each of the following Parcels of the Developer Tract depicted as follows on the Site Plan: “Outparcel 1”, “Outparcel 2”, “Outparcel 3” and “Outparcel 4”. All of the terms and provisions of this OEA shall be applicable to each of the Outparcels except as expressly set forth otherwise in this OEA.

1.12 Outside Sales Area

“Outside Sales Area” shall mean those areas, if any, designated on the Site Plan which from time to time may be used for sales and/or display purposes; provided, however, with respect to any Outside Sales Area located outside of a Building Area, the Parties acknowledge and agree that the actual location of such Outside Sales Area may vary from time to time, subject to the approval of the Approving Parties. During the period an Outside Sales Area is: (i) used for sales and/or display purposes, such area shall not be considered part of the Common Area, and (ii) not used for sales, display and/or storage purposes, such area shall be considered part of the Common Area; provided, however, if the Outside Sales Area is located within a Building Area, such area may be used for the location of Buildings.



1.13 Parcel

“Parcel” shall mean each separately subdivided portion of land composing any of the Tracts within the Shopping Center. The foregoing shall be deemed to include any portion of real estate within the Shopping Center which is separately designated by name on the Site Plan (such as an Outparcel) and/or has a distinct legal description within the legal descriptions attached to this OEA, even if such portions of real estate have not been “subdivided” or “platted” in accordance with Governmental Requirements. If a Tract is composed of only one (1) Parcel then such Tract is also a Parcel.

1.14 Parcel 5 and Parcel 6

“Parcel 5” shall mean that portion of the Developer Tract identified as such on the Site Plan. “Parcel 6” shall mean that portion of the Developer Tract identified as such on the Site Plan.

1.15 Party

“Party” shall mean each signatory hereto and its respective successors and assigns during the period of such Person’s fee ownership of any Parcel within the Shopping Center. A Party transferring all or any portion of its fee interest in the Shopping Center shall give notice to all other Parties and Operator, if any, of such transfer and shall include in such notice at least the following information:

- (A) The name and address of the new Party;
- (B) A copy of the deed evidencing the transfer and setting forth the legal description of the portion of the Tract transferred by such Party; and
- (C) If the new Party is the designated Approving Party for the Tract of which the transferred Parcel is a part.

Each Party shall be liable for the performance of all covenants, obligations and undertakings applicable to the Parcel or portion thereof owned by it that accrue during the period of such ownership, and such liability shall continue with respect to the Parcel transferred by such Party until the notice of transfer set forth above is given. Until such notice of transfer is given, the transferring Party shall (for the purpose of this OEA only) be the transferee’s agent. Once the notice of transfer is given, the transferring Party shall be released from all obligations pertaining to any Parcel transferred arising subsequent to the notice of transfer. For the purpose of this Section only, if the notice of transfer is given pursuant to the provisions of Section 6.4, the effective date of such notice shall be the date such notice is sent. Notwithstanding anything to the contrary, if a notice of transfer is given, any payment made by a Party to the transferor within thirty (30) days of such notice shall be deemed properly paid and the transferor and the transferee shall resolve any necessary adjustments and/or prorations regarding such payment between themselves.

If a Parcel is owned by more than one (1) Party, the Party or Parties holding at least fifty-one percent (51%) of the ownership interest in such Parcel shall designate in writing one (1) Person to represent all owners of the Parcel and such designated Person shall be deemed the Person authorized to give consents and/or approvals, and join in the execution of amendments to the extent applicable as set forth in Section 6.8.5, pursuant to this OEA for such Parcel.

Nothing contained herein to the contrary shall affect the existence, priority, validity or enforceability of any lien permitted hereunder which is recorded against the transferred portion of the Shopping Center prior to receipt of such notice of transfer by the Party filing such lien.

#### 1.16 Permittee

“Permittee” shall mean all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended development, use and occupancy of the Shopping Center. Persons engaged in civic, public, charitable or political activities within the Shopping Center, including but not limited to the activities set forth below, shall not be considered Permittees:

- (A) Exhibiting any placard, sign or notice.
- (B) Distributing any circular, handbill, placard or booklet.
- (C) Soliciting memberships, signatures or contributions for private, civic, public, charitable or political purposes.
- (D) Parading, picketing or demonstrating.
- (E) Failing to follow regulations established by the Parties relating to the use and operation of the Shopping Center.

#### 1.17 Person

“Person” shall mean any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or Governmental Authority.

#### 1.18 Restaurant

“Restaurant” shall mean any operation or business which requires a governmental permit, license and/or authorization to prepare and/or serve food for either on or off-site consumption; provided, however, notwithstanding anything contained herein to the contrary, a supermarket, grocery store or similar operation shall not be deemed a Restaurant.

1.19 Tract

“Tract” shall mean either the Target Tract and/or the Developer Tract as defined in the recitals to this OEA. Notwithstanding the transfer of any portion of the Target Tract and/or Developer Tract, the Parcel transferred shall continue to remain part of such Tract and subject to all the applicable provisions of this OEA relating to such Tract.

1.20 Unlimited Area Building Grouping

“Unlimited Area Building Grouping” shall mean the Building Areas identified as such on the Site Plan and that collectively provide protection for an “unlimited area building” referenced in Section 3.3.4 hereof.

1.21 Utility Lines

“Utility Lines” shall mean those facilities and systems for the transmission of utility services, including the drainage and storage of surface water. “Common Utility Lines” shall mean those Utility Lines that are designated as such by the Approving Parties and which are installed to provide the applicable service for the benefit of more than one (1) Party. “Separate Utility Lines” shall mean those Utility Lines that are installed to provide the applicable service for the benefit of one (1) Party and/or which are not Common Utility Lines. For the purpose of this OEA, the portion of a Utility Line extending between a Common Utility Line and a Building shall be considered a Separate Utility Line. Utility Lines installed pursuant to this OEA shall only provide service necessary for the development and/or operation of the Shopping Center.

ARTICLE II - EASEMENTS

2.1 Ingress, Egress and Parking

2.1.1 During the term of this OEA, each Party hereby grants and conveys to each other Party for its use and for the use of its Permittees, in common with others entitled to use the same, a non-exclusive easement for the passage and parking of vehicles over and across the parking and driveway areas of the grantor's Parcel, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways and sidewalk areas of the grantor's Parcel, as the same may from time to time be constructed and maintained for such use. The easement herein established shall be appurtenant to and for the benefit of each grantee's Parcel, and shall be binding on, enforceable against and burden each grantor's Parcel. Such easement rights shall be subject to the following reservations as well as the other applicable provisions contained in this OEA:

- (A) Each Party reserves the right to close-off any portion of its Parcel for such reasonable period of time as may be legally necessary, in the opinion of such Party's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing-off any portion of its Parcel, such Party shall give written notice to each other Party of its intention to do so, and shall attempt to coordinate such closing-off with

each other Party so that no unreasonable interference with the passage of pedestrians or vehicles shall occur;

- (B) Each Party reserves the right at any time and from time to time to exclude and restrain any Person who is not a Permittee from using its Parcel; and
- (C) Each Party reserves the right to temporarily erect or place barriers in and around areas on its Parcel which are being constructed and/or repaired in order to insure either safety of Persons or protection of property.
- (D) Vehicles making deliveries to or pickups from a Party's Parcel shall not park on another Party's Parcel.

2.1.2 In addition to the easement specified in Section 2.1.1, the Parties hereby grant and convey to each other Party for its use and for the use of its Permittees, in common with others entitled to use the same, and subject to the reservations set forth in Section 2.1.1, a non-exclusive, perpetual easement for the passage and accommodation of pedestrians and vehicles (but not for parking purposes) upon, over and across that portion of each grantor's Parcel designated on the Site Plan as the Front Drive; such Drive to be as wide (curb to curb) as shown on the Site Plan, and shall contain two (2) lanes, one in each direction. The easement herein established shall be appurtenant to and for the benefit of each grantee's Parcel, and shall be binding on, enforceable against and burden each Parcel traversed thereby. During the term of this OEA, each portion of the Front Drive shall be maintained in accordance with the provisions governing the maintenance of the parking and driveways on each grantor's Parcel, and the Front Drive shall not be relocated without the approval of the Approving Parties.

After the termination of this OEA, that portion of the grantor's Tract on which the Front Drive is located shall be maintained in a safe, clean and good state of repair and condition by the grantor, at its sole cost and expense. Each grantor shall have the right at its expense, to relocate the portion of the Front Drive located on its Parcel so long as the relocated portion (i) continues to provide direct access, if any, to adjacent Parcels, and (ii) ties into/connects with the other portions of the Front Drive at the common boundaries. Notice of such relocation shall be provided to each grantee at least thirty (30) days prior to relocation.

2.1.3 In addition to the easements specified in Section 2.1.1 and Section 2.1.2, the Parties hereby grant and convey to each other Party (but excluding the Outparcels) for its use and for the use of its Permittees, in common with others entitled to use the same, and subject to the reservations set forth in Section 2.1.1, a non-exclusive, perpetual easement for the passage and accommodation of pedestrians and vehicles (but not for parking purposes) upon, over and across that portion of each grantor's Parcel designated on the Site Plan as the Service Drive; such Drive to be as wide (curb to curb) as shown on the Site Plan, and shall contain two (2) lanes, one in each direction. The easement herein established shall be appurtenant to and for the benefit of each grantee's Parcel (but excluding the Outparcels), and shall be binding on, enforceable against and burden each Parcel traversed thereby. During the term of this OEA, each portion of the Service Drive shall be

maintained in accordance with the provisions governing the maintenance of the parking and driveways on each grantor's Parcel, and the Service Drive shall not be relocated without the approval of the Approving Parties.

After the termination of this OEA, that portion of the grantor's Tract on which the Service Drive is located shall be maintained in a safe, clean and good state of repair and condition by the grantor, at its sole cost and expense. Each grantor shall have the right at its expense, to relocate the portion of the Service Drive located on its Parcel so long as the relocated portion (i) continues to provide direct access, if any, to adjacent Parcels, and (ii) ties into/connects with the other portions of the Service Drive at the common boundaries. Notice of such relocation shall be provided to each grantee at least thirty (30) days prior to relocation.

2.1.4 In the event a Party fails to perform its obligations under Section 2.1, any grantee shall have the right to claim a default pursuant to Section 6.1 and avail itself of all the provisions therein contained, including the right to lien a Defaulting Party's Parcel, and receive Interest on all sums expended to cure such default. This provision shall survive the termination of this OEA.

## 2.2 Utilities

2.2.1 Each Party hereby grants and conveys to each other Party non-exclusive, perpetual easements in, to, over, under, along and across those portions of the grantor's Parcel (exclusive of any portion located within Building Areas) necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, replacement, relocation, and removal of Utility Lines serving the grantee's Parcel. The initial location of any Utility Line shall be subject to the prior written approval of the Party whose Parcel is to be burdened thereby. Such easement area shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility company, or five (5) feet on each side of the centerline if the easement is granted to a Party. The grantee shall provide to the grantor a copy of an as-built survey showing the location of such Utility Line.

2.2.2 All Utility Lines shall be underground except:

- (A) Ground mounted electrical transformers;
- (B) As may be necessary during periods of construction, reconstruction, repair or temporary service;
- (C) As may be required by Governmental Authorities;
- (D) As may be required by the provider of such utility service;
- (E) As may be attached to a Building (e.g. solar panels); and
- (F) Fire hydrants.

At least thirty (30) days prior to utilizing the easement granted herein, the grantee shall provide the grantor with a written statement describing the need for such easement, shall identify the proposed location of the Utility Line, the nature of the service to be provided, the anticipated commencement and completion dates for the work. Prior to commencing any work on a grantor's Parcel, including any emergency work, the grantee shall provide to the grantor evidence of insurance coverage as required by Section 5.4.2.

2.2.3 Any Party and/or Parties electing to install a Separate Utility Line shall obtain all permits and approvals and shall pay all costs and expenses with respect to the initial construction and all subsequent maintenance, repair, replacement, removal, relocation or abandonment of the Separate Utility Line. The Separate Utility Line shall be maintained in a safe, clean and good state of repair and condition. The grantee(s) shall perform such work in compliance with all Governmental Requirements, as quickly as possible and after normal business hours whenever possible, and shall back fill and adequately compact the disturbed area to prevent voids and restore the surface to a condition equal to or better than that existing before such work was commenced. Except in the case of a maintenance emergency where such work may be initiated after reasonable notice, the grantee(s) shall provide the grantor with at least fifteen (15) days prior notice before commencement of any work. The grantee(s) of any Separate Utility Line agrees to defend, protect, indemnify and hold harmless the grantor from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the exercise of the right to install, maintain, repair, replace, remove, relocate and operate the Separate Utility Line; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or the willful act or omission of the grantor.

2.2.4 Except as may otherwise be agreed, the Parties electing to install a Common Utility Line shall obtain all necessary permits and approvals and shall pay all costs and expenses with respect to the initial construction of such Common Utility Line. Once constructed, Operator shall maintain, repair, replace, remove and/or relocate the Common Utility Line in a safe, clean and good state of repair and condition, and in compliance with all Governmental Requirements, as quickly as possible and after normal business hours whenever possible. All costs and expenses incurred by Operator with respect to any Common Utility Line shall be considered part of Common Area Maintenance Costs (defined in 4.3.1) and shall be payable pursuant to Section 4.3.3. If no Operator is designated, or following the expiration of this OEA, each Party benefiting from a particular Common Utility Line ("Cooperating Party") shall have the right to maintain, repair or replace such Common Utility Line without submission of a Budget or estimate of expenditures, except as hereinafter provided. If a Cooperating Party, in performing maintenance, repair or replacement of a Common Utility Line, is likely to incur costs of more than Twenty Thousand Dollars (\$20,000) in Constant Dollars for such work (or series of related or repeated circumstances), such Cooperating Party shall first notify the other Cooperating Parties of such estimate, and the Cooperating Parties shall prepare a list of qualified bidders, shall seek competitive bids from the list of qualified bidders, and shall select the lowest, responsive qualified bidder to perform the work. If a list of bidders is not jointly prepared within fifteen (15) days of the request for bidders, the Cooperating Party desiring to have the work performed shall have the right to let a contract for such work to a contractor of its choosing. After any costs (regardless of amount) for maintaining,

repairing or replacing a Common Utility Line has been incurred by an electing Cooperating Party, the Person incurring such costs, may send a statement of such costs, increased by an amount equal to the Administration Fee (defined in Section 4.3.1), together with a copy of any invoice reflecting a charge exceeding \$500.00, to each Cooperating Party benefiting from such Common Utility Line. Within thirty (30) days after receipt of the statement of costs incurred in accordance with the procedures set forth above, each Cooperating Party shall pay its allocable share of such costs as agreed upon when the Common Utility Line was installed, or if no separate cost sharing agreement was made, then in accordance with the sharing of Common Area Maintenance Costs. Except in the case of a maintenance emergency where such work may be initiated after reasonable notice, the grantor shall be provided with at least fifteen (15) days prior notice before commencement of any work.

As of the date of this OEA, the Approving Parties have agreed to install the following items as Common Utility Lines:

- (A) Sanitary sewer and water (fire and domestic) lines that loop around the Unlimited Area Building Grouping.
- (B) Storm water collection, transmission and retention system, including catch basins, stormwater pump, underground piping, conduits and mains, and the Underground Stormwater Detention Facility shown on the Site Plan, and Detention Ponds shown on the Site Plan, if any, within the Shopping Center.

Notwithstanding anything contained in this OEA to the contrary, the Underground Stormwater Detention Facility installed on the Target Tract and shown on the Site Plan shall be considered a Common Utility for which all Parties shall be obligated to contribute a pro rata share toward costs for maintenance, repair and replacement (said pro rata share being determined according to Section 4.3.3 during the term of this OEA and thereafter according to relative Parcel size.)

2.2.5 Each Party hereby grants and conveys to each other Party owning an adjacent Parcel the perpetual right and easement to discharge surface storm water drainage and/or runoff from the grantee's Parcel over, upon and across the Common Area of the grantor's Parcel, upon the following conditions and terms:

- (A) The surface elevations for the Shopping Center and the surface water drainage/retention system serving the Shopping Center shall be initially constructed in strict conformance with the plans and specifications approved by the Approving Parties; and
- (B) No Party shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Parcel if such alteration would materially increase the velocity, volume or flow of

surface water onto an adjacent Parcel either in the aggregate or by directing the flow of surface water to a limited area.

2.2.6 Each grantor shall have the right to relocate any Utility Line on its Parcel upon thirty (30) days prior written notice to the grantee(s), provided that such relocation:

- (A) Shall not be performed during the months of November, December or January;
- (B) Shall not interfere with or diminish the utility service to the grantee during the grantee's business hours; and if an electrical line/computer line is being relocated, then the grantor and grantee shall coordinate such interruption to eliminate any detrimental effects;
- (C) Shall not reduce or unreasonably impair the usefulness or function of such Utility Line;
- (D) Shall be performed without cost or expense to the grantee;
- (E) Shall be completed using materials and design standards which equal or exceed those originally used; and
- (F) Shall have been approved by the provider of such utility service and the appropriate Governmental Authorities.

Documentation of the relocated easement area, including the furnishing of an "as-built" survey to all grantees, shall be at the grantor's expense and shall be accomplished as soon as possible following completion of such relocation.

2.2.7 In the event a Party fails to perform its obligations under Section 2.2, any affected Party shall have the right to claim a default pursuant to Section 6.1 and avail itself of all the provisions therein contained, including the right to lien a Defaulting Party's Parcel, and receive Interest on all sums expended to cure such default. This provision shall survive the termination of this OEA.

### 2.3 Construction, Maintenance and Reconstruction

2.3.1 In order to accommodate any Building improvements which may inadvertently be constructed beyond a Parcel's boundary line, each Party grants to each other Party owning an adjacent Parcel, an easement, not to exceed a maximum lateral distance of six (6) inches, in, to, over, under, and across that portion of the grantor's Parcel adjacent to such common boundary line for the existence, maintenance and replacement of such encroaching Building improvements.



### 2.3.2

(A) In the event a constructing Party (the "Constructing Party") determines that it is necessary to place underground piers, footings and/or foundations ("Subsurface Construction Elements") across the boundary line of its Parcel, the Constructing Party shall advise the Party owning the adjacent Parcel (the "Adjacent Party") of the Constructing Party's construction requirements and shall provide plans and specifications relating thereto to the Adjacent Party, including proposed construction techniques for the Subsurface Construction Elements. Each Adjacent Party hereby grants and conveys to each Constructing Party for the benefit of its Parcel an easement, not to exceed a maximum lateral distance of five (5) feet, in, to, under, and across that portion of the Adjacent Party's Parcel not theretofore occupied by any then existing structure, for the installation, maintenance and replacement of such Subsurface Construction Elements; provided, however, that the Constructing Party shall have no right to use such easement if there is available to the Constructing Party a reasonable alternative construction method for the placement of the Subsurface Construction Elements entirely on the Constructing Party's Parcel.

The Adjacent Party reserves the right to require the Constructing Party to modify the design specifications for the Subsurface Construction Elements in order to permit the Adjacent Party the opportunity to utilize the same in connection with the construction of its Building so that each Party shall be able to place its Building immediately adjacent to the common boundary line. If a common Subsurface Construction Element is used by the Constructing Party and the Adjacent Party, each shall assume and pay its reasonable share of the cost and expense of the design and construction thereof.

(B) As of the date of this OEA, Target and Developer have agreed to construct shared footings under certain Building Areas, having endpoints approximately in each of the locations identified as "Shared Footing Endpoints" on the Site Plan; such shared footings shall be constructed pursuant to plans approved by both Target and Developer (the "Shared Footings"). Developer hereby grants and conveys to Target for the benefit of the Target Tract, an easement in, to, under and across those portions of the Developer Tract to be occupied by the Shared Footings for the installation, maintenance and replacement of the Shared Footings, and Target hereby grants and conveys to developer for the benefit of the Developer Tract, an easement in, to, under and across those portions of the Target Tract to be occupied by the Shared Footings for the installation, maintenance and replacement of the Shared Footings. In the event any Building utilizing the Shared Footings is destroyed and not replaced or is removed, those Shared Footing(s) also being used by another Building shall remain in place for the benefit of the other Building. Costs for maintenance of the Shared Footings shall be shared equally by the Parties owning the Buildings that benefit from the subject Shared Footings.

2.3.3 The easements established under Sections 2.3.1 and 2.3.2 shall be appurtenant to and for the benefit of each grantee's Parcel, and shall be binding on, enforceable against and burden each grantor's Parcel. Notwithstanding such easement grant, nothing herein shall diminish or waive the right of a grantor to recover damages resulting from a grantee's failure to construct either its Building within the Building Area on its Parcel in the case of Section 2.3.1, or its

Subsurface Construction Element within the easement area limits in the case of Section 2.3.2(A). Such easements in each instance shall:

- (A) Continue in effect for the term of this OEA and thereafter for so long as the Building utilizing the easement area exists (including a reasonable period to permit reconstruction or replacement of such Building if the same shall be destroyed, damaged or demolished).
- (B) Include the reasonable right of access necessary to exercise and enjoy such grant upon terms and with the limitations described in Section 3.1.5.

2.3.4 With respect to Buildings constructed along the common boundary line of Parcels, nothing herein shall be deemed to create or establish:

- (A) A “common” or “party” wall to be shared with the adjacent Building.
- (B) The right for a Building to receive support from or apply pressure to the adjacent Building.

#### 2.4 Sign Easements

2.4.1 [Intentionally deleted.]

2.4.2 Pylon Signs.

(A) *Sign Structures.* The Parties intend to erect a sign structure, including cabinets for the identification panels, and wiring for power (collectively, “Sign 1”) on that portion of the Developer Tract designated on the Site Plan as “Sign Area 1” upon which certain identification panel(s) for Occupants of the Shopping Center may be installed, replaced, maintained and operated. The Parties also intend to erect a sign structure, including cabinets for the identification panels, and wiring for power (collectively, “Sign 4”) on that portion of the Target Tract designated on the Site Plan as “Sign Area 4” upon which certain identification panel(s) for Occupants of the Shopping Center may be installed, replaced, maintained and operated. For the purpose of this Section 2.4.2, all Persons entitled to place identification panels on Sign 1 or Sign 4 shall be called “Panel Beneficiaries”, and the rights and obligations of each such Panel Beneficiary with respect to the sign structure upon which it has rights to erect a panel (the “Allocable Share”) shall be based on the portion of panel area assigned to each on the subject sign structure, even if such identification panel area is not used. Initially, the design of Sign 1 and Sign 4, including the space for the various panel areas, shall be as shown for the subject sign structure on Exhibit C attached hereto (the “Sign Exhibit”); provided, however, that another sign structure design that reflects the panel area designation may be approved (a) during the term of the OEA by the Approving Parties, or (b) following the expiration of the OEA, by all of the Panel Beneficiaries for the subject sign structure. Each Person attaching an identification panel to Sign 1 or Sign 4 shall, at its sole cost and expense, (i) obtain all permits and approvals required for such installation, (ii) fabricate its

identification panel, install the panel and connect the panel to the power source provided, and (iii) maintain and/or replace the identification panel (including any backlit lighting) pursuant to Governmental Requirements, and in a safe condition and good state of repair. If Sign 1, Sign 4, or an identification panel on Sign 1 or Sign 4, is damaged by a Party, or anyone claiming by, through or under it, then such Party shall immediately cause the damage to be repaired.

(B) *Maintenence and Replacement.* The maintenance and/or replacement of Sign 1 and Sign 4 shall be performed by a Person designated by the majority of the Allocable Shares held by the Panel Beneficiaries for the subject sign structure. Developer and Target initially designate Operator to perform such maintenance. All costs and expenses incurred by Operator with respect to Sign 1 and Sign 4 shall be considered part of Common Area Maintenance costs, and shall be payable pursuant to Section 4.3.3. If no Operator is designated for the maintenance of the Common Area, or following the expiration of this OEA, the cost of maintenance and/or replacement for each of Sign 1 and Sign 4 shall be paid based upon the Allocable Share of each Panel Beneficiary with respect to the subject sign structure. If Sign Area 1 is no longer available for freestanding sign purposes because of a condemnation or any Governmental Requirements, whether before or after the expiration of this OEA, the owner of the Developer Tract shall designate a replacement Sign Area 1 area with comparable visibility as close to the original location as is reasonably possible. If Sign Area 4 is no longer available for freestanding sign purposes because of a condemnation or any Governmental Requirements, whether before or after the expiration of this OEA, the owner of the Target Tract shall designate a replacement Sign Area 4 area with comparable visibility as close to the original location as is reasonably possible. The Person designated by a majority of the Allocable Shares held by the Panel Beneficiaries for the subject sign structure (whether Sign 1 or Sign 4, as the case may be) shall be entitled to receive, and shall hold the proceeds in trust, any condemnation or other award paid relating to the displaced sign structure, including any relocation benefits, and such Person shall cause a new sign structure to be constructed in the replacement Sign Area (whether replacement Sign Area 1 or replacement Sign Area 4, as the case may be) in accordance with the design criteria then applicable. If the award received for the subject sign structure is less than the cost to replace it, then the Panel Beneficiaries for said sign shall pay the deficiency based on their respective Allocable Share. The award (whether paid separately or as part of a lump sum) attributable to each identification panel taken shall belong to the owner thereof.

(C) *Panel Easements Regarding Sign 1.* Developer shall have the right to grant easements for the blank identification panel areas shown for Sign 1 on the Sign Exhibit. Each such grant shall (a) automatically incorporate therein the provisions set forth above in Subsections 2.4.2(A) and 2.4.2(B) with respect to Sign 1, (b) recognize any prior panel easement grant, particularly the grant to Target specified below, and (c) specify which identification panel area on Sign 1 is the subject of the panel easement grant. Developer shall deliver a copy of the recorded easement to Target and each other Person holding a prior identification panel easement right with respect to Sign 1. All panel areas on Sign 1 not granted by Developer to Parties by easement are specifically reserved to Developer, subject to the restrictions set forth in Section 5.3.

Developer hereby grants and conveys to Target, its successors and assigns as the owner of the Target Tract, a perpetual easement for the right and privilege to place or affix identification

panel(s) of various sizes, but not more than three (3) in total, to Sign 1 in the cabinet space (both sides of structure) designated "Target" on the Sign Exhibit; the easement grant shall include reasonable access over, across and upon the Developer Tract to permit such identification panel(s) to be installed, replaced, maintained and operated. In the event Sign 1 is not initially constructed in accordance with Section 5.3.1, or is thereafter removed and not replaced, then the aforesaid easement grant to Target shall also include the right for Target to construct, reconstruct, replace, maintain and operate Sign 1 within the designated area, together with reasonable access over, under, upon, through and across the Developer Tract to install, replace, maintain, repair and operate a Separate Utility Line pursuant to the terms and provisions set forth in Section 2.2 above in order to provide such sign structure and identification panels with power. If Target elects to construct Sign 1, Target shall have the sole right to design the sign structure, including the number of panel areas to be located thereon, taking into account however, the panel requirements of those additional Panel Beneficiaries with respect to Sign 1, but only if such Persons have deposited with Target, in advance, an amount equal to 125% of their respective Allocable Share based on Target's reasonable estimate of the costs to be incurred by Target to obtain permits for, construction of, and bringing power to Sign 1. If any Panel Beneficiary does not make such deposit within thirty (30) days of receipt of Target's estimate, then such Person shall be deemed to have released, and hereby does release, all right, title and interest in and to Sign 1, specifically including the right to place an identification panel thereon. Upon a reconciliation of the costs of the new Sign 1, Target and the remaining Panel Beneficiaries with respect to Sign 1 shall adjust their payments and/or deposits, as the case may be, to equal each Person's Allocable Share. The foregoing easement, together with all rights and privileges specified, shall be for the benefit of the Target Tract and shall be binding on, enforceable against and burden the Developer Tract. Target shall have the right to release the easement, and upon such release Target shall remove its identification panel(s) and thereafter have no further rights, duties or responsibilities with respect to Sign 1.

(D) *Panel Easements Regarding Sign 4.* Developer shall have the right to grant easements for the blank identification panel areas shown for Sign 4 on the Sign Exhibit. Each such grant shall (a) automatically incorporate therein the provisions set forth above in Subsections 2.4.2(A) and 2.4.4(B) with respect to Sign 4, (b) recognize any prior panel easement grant, particularly the grant to Target specified below, and (c) specify which identification panel area on Sign 4 is the subject of the panel easement grant. Developer shall deliver a copy of the recorded easement to Target and each other Person holding a prior identification panel easement right with respect to Sign 4. All panel areas on Sign 4 not granted by Developer to Parties by easement are specifically reserved to Developer, subject to the restrictions set forth in Section 5.3.

Developer hereby grants and conveys to Target, its successors and assigns as the owner of the Target Tract, a perpetual easement for the right and privilege to place or affix identification panel(s) of various sizes, but not more than three (3) in total, to Sign 4 in the cabinet space (both sides of structure) designated "Target" on the Sign Exhibit. The foregoing easement, together with all rights and privileges specified, shall be for the benefit of and appurtenant to the Target Tract and shall be binding on, enforceable against and burden the Developer Tract. Target shall have the right to release the easement, and upon such release Target shall remove its identification panel(s) and thereafter have no further rights, duties or responsibilities with respect to Sign 4. Target hereby grants and conveys to Developer, its successors and assigns as the owner of the Developer Tract, a

perpetual easement for the construction, reconstruction, replacement, operation, maintenance and repair of Sign 4 located on the Target Tract as depicted on the Site Plan, including the right and privilege to place thereon or affix thereto identification panels, together with reasonable access over, under, upon, through and across the Target Tract to install, replace, maintain, repair and operate a Separate Utility Line pursuant to the terms and conditions set forth in Section 2.2 above in order to provide Sign 4 with power. The foregoing easement, together with the rights included therewith, shall be for the benefit of and appurtenant to the Developer Tract and shall be binding on, enforceable against and burden the Target Tract. Developer shall have the right to release the easement, and upon such release Developer shall remove that certain Sign 4, including its panels, and thereafter have no further rights, duties or responsibilities with respect to that certain Sign Area 4 and/or that certain Sign 4.

In the event Sign 4 is not initially constructed in accordance with Section 5.3.1, or is thereafter removed and not replaced, then the aforesaid easement grant to Target shall also include the right for Target to construct, reconstruct, replace, maintain and operate Sign 4 within the designated area. If Target elects to construct Sign 4, Target shall have the sole right to design the sign structure, including the number of panel areas to be located thereon, taking into account, however, the panel requirements of those additional Panel Beneficiaries with respect to Sign 4, but only if such Persons have deposited with Target, in advance, an amount equal to 125% of their respective Allocable Share based on Target's reasonable estimate of the costs to be incurred by Target to obtain permits for, construction of, and bringing power to Sign 4. If any Panel Beneficiary does not make such deposit within thirty (30) days of receipt of Target's estimate, then such Person shall be deemed to have released, and hereby does release, all right, title and interest in and to Sign 4, specifically including the right to place an identification panel thereon. Upon a reconciliation of the costs of the new Sign 4, Target and the remaining Panel Beneficiaries with respect to Sign 4 shall adjust their payments and/or deposits, as the case may be, to equal each Person's Allocable Share.

2.4.3 In the event a Party fails to perform its obligations under Section 2.4, any affected Party shall have a right to claim a default pursuant to Section 6.1, and avail itself of all the provisions therein contained, including the right to lien a Defaulting Party's Parcel, and receive interest on all sums expended to cure such default. This provision shall survive the termination of this OEA.

#### 2.5 Restriction

No Party shall grant any easement for the benefit of any property not within the Shopping Center; provided, however, that the foregoing shall not prohibit the granting or dedicating of utility easements by a Party on its Parcel to Governmental Authorities or to public utility companies for provision of Utility Lines to service all or a portion the Shopping Center. If a Utility Line is dedicated and accepted for maintenance by a Governmental Authority or public utility, then the operation and maintenance of such Utility Line shall thereafter be the responsibility of the Person accepting the dedication.

ARTICLE III - CONSTRUCTION

3.1 General Requirements

3.1.1 Each Party agrees that all construction activities performed or authorized by it within the Shopping Center shall be performed in compliance with all Governmental Requirements. All construction shall utilize new materials and shall be performed in a good, safe, workman-like manner.

3.1.2 Each Party further agrees that any construction activities performed or authorized by it shall not:

- (A) Cause any unreasonable increase in the cost of constructing improvements upon another Party's Parcel.
- (B) Unreasonably interfere with construction work being performed on any other part of the Shopping Center.
- (C) Unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Shopping Center by any other Party or its Permittees.
- (D) Cause any Building located on another Parcel to be in violation of any Governmental Requirements.

3.1.3 Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys fees and cost of suit, arising out of or resulting from any construction activities performed or authorized by such indemnifying Party; provided, however, that the foregoing shall not be applicable to either events or circumstances caused by the negligence or willful act or omission of such indemnified Party, its licensees, concessionaires, agents, servants, employees, or anyone claiming by, through, or under any of them, or claims covered by the release set forth in Section 5.4.3.

3.1.4 In connection with any construction, reconstruction, repair or maintenance on its Parcel, each Party reserves the right, at its expense, to create a temporary staging and/or storage area on its Parcel at such location as will not unreasonably interfere with access between such Parcel and the other areas of the Shopping Center. Prior to the commencement of any work that requires the establishment of a staging and/or storage area on its Parcel outside of a Building Area, a Party shall give at least thirty (30) days prior notice to the Approving Parties, for their approval, of the proposed location of such staging and/or storage area unless such area is located at least fifty (50) feet from another Party's Parcel. If substantial work is to be performed, the constructing Party shall, at the request of any Approving Party, fence such staging and/or storage area. Notwithstanding the

foregoing, if a business is operating on the Target Tract then no other Party's staging and/or storage area shall be located within one hundred (100) feet of the Target Tract, unless such area is located within a Building Area. If the Approving Parties do not approve the proposed location of the staging and/or storage area, the requesting Party shall modify the proposed location of the staging and/or storage area to satisfy the reasonable requirements of the Approving Parties. All storage of materials and the parking of construction vehicles, including vehicles of workers, shall occur only on the constructing Party's Parcel, and all laborers, suppliers, contractors and others connected with such construction activities shall use only the access points located upon the constructing Party's Parcel; provided however, that if no direct public access is available to the Parcel of the Party performing such construction then the Front Drive may be used for such access. Upon completion of such work, the constructing Party shall, at its expense, restore any damaged area to a condition equal to or better than that existing prior to commencement of such work.

3.1.5 The Parties hereby grant to each other and their respective contractors, materialmen and laborers a temporary license for access and/or use over and across the Common Area of the grantor's Parcel as shall be reasonably necessary for the grantee to construct and/or maintain improvements upon the grantee's Parcel; provided, however, that (i) such license shall be in effect only during such periods of time when actual construction and/or maintenance is being performed, (ii) the use of such license shall not unreasonably interfere with the use and operation of the Common Area by the other Parties or their Permittees, (iii) the use of such license shall not cause damage to the Common Area, and (iv) such license rights shall not be deemed to permit the use of the license area as a storage area for construction materials or equipment. Prior to exercising the rights granted herein, the grantee shall first provide the grantor with a written statement describing the need for such license and shall identify the area of use. Each grantee physically using a portion of the grantor's Parcel in connection with the construction and/or maintenance of the grantee's Parcel shall furnish a certificate or memorandum of insurance showing that its contractor has obtained the minimum insurance coverage required by Section 5.4.2, shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean the area, and restore and/or repair the affected portion of the grantor's Parcel to a condition which is equal to or better than the condition which existed prior to the commencement of such work. Notwithstanding the foregoing, in the event a dispute exists between the contractors, laborers, suppliers and/or others connected with such construction activities, each Party shall have the right to prohibit the contractors, laborers, suppliers and/or others working for another Party from using the Common Area on its Parcel.

### 3.2 Common Area

The Parties have agreed that the Common Area shall be constructed as shown on the Site Plan and any designated Common Utility Lines specified in Section 2.2.4 shall be installed as part of the initial Shopping Center development; provided, however, no fence or other barrier which would prevent or unreasonably obstruct the passage of pedestrian or vehicular travel shall be erected or permitted within or across the Common Area, exclusive of the limited curbing and other forms of traffic control depicted on the Site Plan, permitted staging and/or storage areas, and Outside Sales Areas. Contemporaneously with the construction of a Building upon its Parcel, the constructing Party shall cause the Common Area on its Parcel to be substantially completed no later than the day

the first Occupant of such Parcel opens for business with the public. At a minimum, the following general design standards shall be complied with throughout the term of this OEA:

3.2.1 The lighting system shall use a lamp source of metal halide, and shall be designed to produce a minimum maintained lighting intensity measured at grade at all points of at least:

- (A) 5.0 footcandles at curb in front of the entrance to any Building.
- (B) 5.0 footcandles at entry drives to the Shopping Center.
- (C) 5.0 footcandles in the general parking areas.
- (D) 3.0 footcandles at the perimeter of the parking areas.

Each Party may elect to control the lighting system located on its Parcel. The type and design of the Common Area light standards shall be approved by the Approving Parties.

3.2.2 The slope in the parking area shall not exceed a maximum of three percent (3%) nor be less than a minimum of one and one-half percent (1 1/2%), and the slope at all entrances to the Shopping Center shall not exceed a maximum of five percent (5%), unless Approving Parties agree to a different standard.

3.2.3 All sidewalks and pedestrian aisles shall be concrete or other materials approved by the Approving Parties; the automobile parking areas, driveways, and access roads shall be designed in conformity with the recommendations of a licensed soils engineer approved by the Approving Parties, which design shall require the installation of a suitable base and surfacing with an asphaltic concrete or concrete-wearing material.

3.2.4 Utility Lines that are placed underground shall be at depths designated by consultants approved by the Approving Parties. If surface water retention and/or detention areas are located outside of the general parking areas, such retention and/or detention areas shall be fenced or otherwise secured to impede public access thereto.

3.2.5 The parking area on the Target Tract, on Parcel 6, on Outparcel 1, on Outparcel 2, on Outparcel 3, and collectively on Outparcel 4 and Parcel 5 shall each contain sufficient ground level parking spaces, without reliance on parking spaces that may be available on another portion of the Shopping Center, in order to comply with the greater of Governmental Requirements or the following minimum requirements:

- (A) Four (4.00) parking spaces for each one thousand (1,000) square feet of Floor Area, plus for each single Restaurant, then six (6.00) additional



parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use; provided, however, that compact car parking spaces, which may not exceed twenty percent (20%) of total parking spaces, shall be located only in the areas, if any, designated on the Site Plan.

- (B) If a business use contains a drive-up unit (such as a remote banking teller or food ordering/dispensing facility), then there shall also be created space for stacking not less than three (3) automobiles for each drive-up unit aisle on such Parcel.

Notwithstanding anything to the contrary in this Section 3.2.5, to the extent that the number of parking spaces located on Parcel 6 at a given time exceeds the minimum number of parking spaces required for Parcel 6 under this Section 3.2.5 (the "Excess Parcel 6 Spaces"), Developer may count the Excess Parcel 6 Spaces towards achieving the sufficient number of parking spaces required for Outparcel 4 and Parcel 5, collectively, under Section 3.2.5 at the same given time if the same Party owns Parcel 5 and Parcel 6 at the same given time; provided, however, Developer may not under any circumstances count any excess parking spaces collectively located on Outparcel 4 and Parcel 5 towards achieving the sufficient number of parking spaces required on Parcel 6 under Section 3.2.5.

If a parking ratio calculation yields a requirement for a fractional parking space, an entire parking space shall be provided to meet that fractional parking space requirement.

If an Occupant operates a Restaurant incidental to its primary business purpose, then so long as such incidental operation continues, the portion of the Floor Area occupied by such Restaurant shall be excluded from the requirement of additional parking spaces for Restaurant use as set forth in (A) above. For the purpose of this clause only, a Restaurant shall be an "incidental operation" if it occupies less than seven percent (7%) of the Occupant's Floor Area and does not have a separate customer entry/exit door to the outside of the Building. In the event an Occupant utilizes Floor Area for Restaurant and other purposes, only the portion of Floor Area allocated for Restaurant purposes shall be subject to the increased parking requirements set forth above. In addition, up to three thousand (3,000) square feet of Floor Area devoted to Restaurant use located on Outparcel 4 shall be excluded from the requirement of additional parking spaces for Restaurant use as set forth at (A) above.

In the event of a condemnation of part of a Parcel or a sale or transfer in lieu thereof that reduces the number of usable parking spaces on such Parcel below that which is required herein, the Party whose Parcel is so affected shall use its best efforts (including using proceeds from the condemnation award or settlement) to restore and/or substitute ground-level parking spaces in order to comply with the parking requirements set forth in this OEA. If such compliance is not reasonably possible, such Party shall not be deemed in default hereunder, but such Party shall not be permitted to expand the amount of Floor Area located on its Parcel. If such Floor Area is thereafter reduced other than by casualty, then the Floor Area on such Parcel may not subsequently be increased unless the parking requirements set forth above are satisfied.

Temporary unavailability of parking spaces caused by uses or promotions permitted under this OEA shall not result in or be deemed a violation of this Section 3.2.5.

3.2.6 No Party shall make changes to the improved Common Area, except that each Party hereby reserves the right, from time to time without obtaining the consent or approval of any other Party, to make at its own expense any insignificant change, modification or alteration in the portion of the Common Area on its Parcel, including the installation of convenience facilities such as mailboxes, public telephones, cart corrals, benches, bicycle racks, directional and/or parking information signs, provided that:

- (A) The accessibility of such Common Area for pedestrian and vehicular traffic (as it relates to the remainder of the Shopping Center) is not unreasonably restricted or hindered, and all parking stalls and rows and vehicular traffic lanes shall remain generally as shown on the Site Plan.
- (B) There shall be maintained at all times within such Common Area a sufficient number of vehicular parking spaces to meet the parking requirements set forth in Section 3.2.5; provided, however, that no more than two percent (2%) of the parking spaces depicted on the Site Plan for such Parcel shall be eliminated.
- (C) No Governmental Requirements shall be violated as a result of such action. Each Governmental Requirement applicable to such modifications shall be satisfied by the Party performing the same. Each action shall not result in any other Party being in violation of any Governmental Requirements.
- (D) No change shall be made in the access points between the Common Area and the adjacent public streets; provided, however, that additional access points may be created with the approval of the Approving Parties.
- (E) At least thirty (30) days prior to making any such change, modification or alteration (except in the case of emergency repairs or maintenance, in which event such notice shall be delivered as soon as possible), the Party desiring to do such work shall deliver to each Approving Party copies of the plans therefor, and provided further that, except in the case of emergency repairs or maintenance, such work shall not occur during the months of October, November, December or January.

The provisions of this Section 3.2.6 do not apply to any changes, modifications or alterations of Common Area located within (i) Building Areas, or (ii) Outside Sales Areas that result from or arise out of the use of such space from time to time as provided for in this OEA. By way of example, in the event that a Party's use of a Building Area makes it reasonably necessary to modify adjacent portions of the Common Area to effect the use of such Building

Area for a Building (e.g. an existing pedestrian sidewalk located within such Building Area is to be relocated partially within a driveway) then such Party may modify such Common Area so long as vehicular traffic (as it relates to the remainder of the Shopping Center) is not unreasonably restricted or hindered and all parking fields and vehicular traffic lanes shall remain generally as shown on the Site Plan.

### 3.3 Building Improvements

3.3.1 Building(s) and the appurtenances thereto referenced in Section 1.2 shall only be located within the Building Areas designated on the Site Plan. While it is acknowledged and agreed that no Party shall have an obligation to commence construction of any Building on its Parcel, each Party agrees that once it has commenced construction of a Building, such Building shall be completed within a reasonable time.

If the number of "square feet" of building space within the Shopping Center is restricted by Governmental Requirements, the Parties hereby allocate the permitted square footage as follows: (i) to the Target Tract, the number of square feet necessary to accommodate 137,600 square feet of Floor Area, plus any Outdoor Sales Area; and (ii) to the Developer Tract, the balance of such permitted square footage. The Parties understand that the calculation of Building sizes is based on the definition of "Floor Area" set forth in this OEA, and further that such term is unique to this OEA and is not intended to mirror the definition of "square feet" set forth in codes/regulations established by the local Governmental Authorities.

3.3.2 The Approving Parties have agreed upon an architecturally compatible theme for the exterior of all Buildings to be constructed, placed or located within the Shopping Center, as represented by the Building elevations (the "Theme") attached hereto as Exhibit D. Each Party agrees that any Building located on its Parcel shall comply with such Theme, shall not have backlit lighting for any awning or canopy forming a part thereof, and shall comply with the other requirements of the OEA. The Approving Parties have recognized that those Buildings located on Outparcel 1, Outparcel 2 and Outparcel 3 ("All Sided Buildings") are positioned in locations such that the rear and/or other portions of such Buildings may be visible to Permittees of other Buildings. In order to effectuate the implementation of the Theme throughout the Shopping Center the Approving Parties have agreed that the front, rear and all other sides of each All Sided Building shall comply with the depiction of the façade of such particular All Sided Building shown on the Theme, including without limitation, all materials, wall articulation, and colors shown on the Theme (the "All Side Requirements"). In addition, all trash containers and all recycling containers located on Outparcel 1, Outparcel 2 and Outparcel 3 must be enclosed and/or screened by a structure that complies with the Theme. In order to insure compliance with such Theme, each Party shall, at least thirty (30) days prior to the commencement of any work on its Parcel, submit to the Approving Parties for approval detailed plans ("Plans") as required by Exhibit E attached hereto covering the initial construction of each Building (and, with respect to Outparcel 1, Outparcel 2 and Outparcel 3, trash/recycling containers) and any additions, remodeling, reconstruction or other alteration thereto which changes the exterior thereof; provided, however, the Approving Parties waive the requirement for the submission of Plans (but not the requirement to comply with the Theme) for the initial Building to be constructed on the Target Tract if such Building reflects a prototype "Target" retail

store (provided that, for informational purposes, Target agrees to provide the other Approving Party with a CAD file containing the Building's footprint, utility connections and elevations). If an Approving Party should reject the Plans for not complying with the Theme, the submitting Party and the Approving Parties shall mutually consult to establish approved Plans for the proposed work. The Approving Parties shall not withhold approval of, or recommend changes in the Plans if the plans conform to the Theme and other requirements of the OEA. In no event shall an Approving Party require any other Party to utilize design standards superior to those utilized by the Approving Party in the construction of any Buildings on its Parcel; provided however, that any Approving Party may require that an All Sided Building meet the All Side Requirements. Approval of Plans by the Approving Parties shall not constitute assumption of responsibility for the accuracy, sufficiency or propriety thereof, nor shall such approval constitute a representation or warranty that the Plans comply with Governmental Requirements. No material deviation shall be made from the approved Plans.

3.3.3 The Parties hereby specifically consent to the placement of Buildings along their respective common boundary lines, and each Party agrees to support any request by another Party for a side-yard or setback variance if the same is required in order to accommodate such construction. Notwithstanding the foregoing, the wall, roof, foundation or other structural portion of one Building shall not receive support from, nor apply pressure to the other Building, provided that the Parties acknowledge that Buildings sharing footings pursuant to the easement in Section 2.3.2(B) above will both receive support from the Shared Footings being used by both of the subject Buildings (however there shall be no shared support or pressure above or beyond the subject Shared Footings). The front wall of any Building to be constructed immediately adjacent to the Building on the Target Tract shall be set back at least two (2) feet from the front wall of the Building on the Target Tract. The second Party to construct a Building along a common boundary line shall:

- (A) Cause such construction to be completed in a manner that the improvements on the adjoining Parcel are not damaged.
- (B) Undertake and assume the obligation of completing and maintaining the nominal attachment (flashing and seal) of its Building to that of the existing Building on the adjoining Parcel, it being the intent of the Parties to establish and maintain the appearance of one (1) continuous Building complex.

Along the common boundary line between the Building Areas on the Developer Tract and the Target Tract, Target agrees to use reasonable efforts to locate its Building wall eight (8) inches from the common boundary line, and Developer agrees to use reasonable efforts to locate its Building wall at least one (1) inch from the common boundary line, but in no event more than eight (8) inches therefrom.

3.3.4 The Parties acknowledge that Target initially proposes to construct on the Target Tract a Building which is classified as an "unlimited area building" under certain building codes; the term "unlimited area building", as used in this document, refers to a building that is

allowed to exceed area limitations stipulated in the applicable building code, not by virtue of its construction type, but as a condition of its isolation on the property and by its inclusion of a sprinkler system. The Parties agree that all Buildings constructed within the Unlimited Area Building Grouping shall comply with the following requirements:

- (A) No Building shall be constructed within sixty (60) feet of the Building Area on an adjoining Parcel unless such Building, hereinafter referred to as the "Adjacent Building," shall be located immediately adjacent to the common boundary line and is attached to the Building, if any, on the adjacent Parcel in accordance with Section 3.3.3.
- (B) If an Adjacent Building exists, then no Building shall be located within sixty (60) feet of the Adjacent Building unless such Building is attached to the Adjacent Building in accordance with Section 3.3.3; the Adjacent Building and all other Buildings on the Parcel that are attached to the Adjacent Building and to each other are hereinafter referred to as the "Building Group".
- (C) Any Building that is not part of the Building Group shall be located at least sixty (60) feet distant from the Building Group.
- (D) The Adjacent Building or the Building Group, as the case may be, shall comply with the building code requirements applicable to an "unlimited area building", including without limitation the installation of an approved sprinkler system for fire protection.

In addition to the requirements set forth above, the Parties agree that no Building shall initially be placed or constructed on their respective Parcels in a manner which will, based on then existing Governmental Requirements, either preclude the construction within the Unlimited Area Building Grouping of an "unlimited area building", or cause an existing "unlimited area building" thereon to no longer be in conformance with applicable building code requirements, it being understood and agreed, however, that subsequent changes in Governmental Requirements shall not obligate a Party to modify or alter its existing Building.

If required by any Governmental Authorities, each Party agrees to join in a recordable declaration that confirms the existence of a sixty (60) foot clear area around the Unlimited Area Building Grouping.

3.3.5 No Building shall exceed one (1) story, nor the following height restrictions:

- (i) On the Target Tract -- 30 feet

- (ii) On Outparcel 4, Parcel 5 and Parcel 6 – 24 feet, provided that up to thirty percent (30%) of the lineal footage of the frontage of any Building may have an architectural feature of up to 28 feet in height, so long as such architectural feature is not located within 25 feet of the Building Area on the Target Tract.
- (iii) On Outparcel 1, Outparcel 2 and Outparcel 3 – 24 feet, provided that up to ten percent (10%) of the lineal footage of the perimeter of any Building may have an architectural feature of up to 28 feet in height.

The height of any Building shall be measured perpendicular from the finished floor elevation to the top of the roof structure, including any screening, parapet, penthouse, mechanical equipment or similar appurtenance located on the roof of such Building. Any Party shall have the right to install, maintain, repair, replace and remove Communications Equipment (defined below) on the top of the Building on its Parcel which may extend above the height limits established above; provided, however, such Communication Equipment shall be set back from the front of the Building or screened in order to reduce visibility thereof by customers. As used herein, the phrase "Communications Equipment" means such things as satellite and microwave dishes, antennas and laser heads, together with associated equipment and cable.

### 3.4 Liens

3.4.1 In the event any mechanic's lien is recorded against the Parcel of one Party as a result of services performed or materials furnished for the use of another Party, the Party permitting or causing such lien agrees to defend, protect, indemnify and hold harmless each other Party and its Parcel from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from such lien. The Party permitting or causing such lien to be recorded shall have the right to contest the validity thereof in any manner such Party chooses so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such Party shall promptly, but within fifteen (15) days after the entry of a final judgment, pay in full the required amount, together with any interest, penalty, cost, or other charge necessary to release such lien of record.

3.4.2 Upon the request of the Party whose Parcel is subject to such lien, the Party permitting or causing such lien to be recorded agrees to promptly cause such lien to be released and discharged of record with respect to such Parcel by posting a bond or other security as shall be required by law to obtain such release and discharge. In the event the laws of the State within which the Shopping Center is located do not provide for a method to release real estate from a lien claim, then the Party permitting or causing such lien shall deposit with the Party whose Parcel is subject to such lien security (cash or other reasonably acceptable substitution) equal to 150% of the amount of the lien. The security shall be held until the contest provisions set forth in 3.4.1 are completed and the lien released; provided, however, that if either the lien is not contested and then released pursuant

to 3.4.1 above, or the Party permitting or causing such lien elects to satisfy the claim, then the security shall be used to pay the lien claim and obtain the release of record.

#### ARTICLE IV - MAINTENANCE AND REPAIR

##### 4.1 Utility Lines

Utility Lines shall be maintained as provided in Section 2.2.

##### 4.2 Common Area

4.2.1 Subject to the joint operation and maintenance responsibilities which may be assumed by Operator as set forth in Section 4.3, and independent obligations, if any, relating to Utility Lines and/or signs, each Party shall operate, maintain, and to the extent necessary due to ordinary wear and tear, repair and replace the Common Area on its Parcel in a sightly, safe condition and good state of repair at such Party's sole cost and expense. The unimproved Common Area shall be mowed and kept litter-free. The minimum standard of operation and maintenance for the improved Common Area shall be comparable to the standard of operation and maintenance followed in other first class retail developments of comparable size in the Salt Lake City metropolitan area; notwithstanding the foregoing, however, the Common Area shall be operated and maintained in compliance with all applicable Governmental Requirements, and the provisions of this OEA. All Common Area improvements shall be repaired or replaced with materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony of the Shopping Center as a whole. Such operation and maintenance obligation shall include but not be limited to the following:

- (A) Drive and Parking Areas. Maintaining, repairing and replacing all paved surfaces and curbs in a smooth and evenly covered condition, including, without limitation, (i) replacement of base, skin patch, resurfacing and, when necessary to restripe the parking area, resealing; (ii) restriping parking lots and drive lanes at least every 24 months, but in any event as necessary to clearly identify parking space designations, traffic direction designations, fire lanes, loading zones, no parking areas and pedestrian cross-walks and (iii) removal of ice, and when there is an accumulation of two (2) inches or more on surface, snow.
- (B) Debris and Refuse. Periodically removing papers, debris, filth, and refuse, including vacuuming and broom-sweeping of paved areas at least 5 days per week, but in any event to the extent necessary to keep the Common Area in a first class, clean and orderly condition. All sweeping shall be at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Area by Permittees.
- (C) Directional Signs and Markers. Maintaining, cleaning and replacing any appropriate directional, stop or handicapped parking signs or markers.

- (D) Lighting. Maintaining, cleaning and replacing Common Area lighting facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers, illuminating the Common Area pursuant to Section 5.2.1; provided however, exterior Building lighting fixtures, including any lighting fixtures associated with a canopy or other architectural feature forming a part of such Building, shall be considered a part of such Building, and the maintenance and replacement of such fixtures, and the cost of illumination, shall be the obligation of the Party upon whose Parcel such fixtures are located.
- (E) Landscaping. Maintaining and replacing all landscape plantings, trees and shrubs in an attractive, live and thriving condition, trimmed and weed-free; maintaining and replacing landscape planters, including those adjacent to exterior walls of Buildings; providing water for landscape irrigation through a properly maintained system, including performing any seasonal (start up and/or winterization) maintenance thereto, and any modifications to such system to satisfy governmental water allocation or emergency requirements.
- (F) Obstructions. Keeping the Common Area free from any obstructions, including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this OEA. Without waiving any rights to prevent the parking of vehicles on any other Parcel pursuant to the terms of this OEA, the Parties hereby agree that no vehicle may be parked within the Common Area of an Outparcel for a period of longer than 12 hours.
- (G) Sidewalks. Maintaining, cleaning and replacing sidewalks, including those adjacent to Buildings. Sidewalks for the Target Tract and those portions of the Developer Tract identified on the Site Plan as Outparcel 4, Parcel 5 and Parcel 6 shall be steam cleaned at least monthly and pressure washed periodically in the interim, and all other sidewalks shall be steam cleaned when reasonably appropriate and pressure washed periodically in the interim. All sidewalks shall be swept at appropriate intervals during such time as shall not interfere with the conduct of business or use of the Common Area, and shall be cleared of ice, and when there is an accumulation of 2 inches or more on the surface, snow.
- (H) Security Measures. Providing security measures, including personnel, for the Common Area, if reasonably required.
- (I) Traffic. Supervising traffic at public entrances and exits to the Parcel as conditions reasonably require in order to maintain an orderly and proper traffic flow.



- (J) Environmental Insurance. Annually paying to Developer a pro rata share of the premium applicable to the subject calendar year (based on an amortization of the premium over the life of the policy including any renewals or extensions) for a pollution legal liability policy covering certain risks pertaining to the Common Area.

Notwithstanding anything in Section 4.3 to the contrary, each Party shall have the obligation to operate, maintain, and repair, at its sole cost and expense, in a clean, sightly and safe condition, the following items (if any) located on its Parcel: any exterior shipping/receiving dock area; any truck ramp or truck parking area; any recycling center or similarly designated area for the collection of items intended for recycling; any refuse, compactors or dumpsters and the area where they are located; and any transformer and its pad area.

4.2.2 Subject to the provisions of Section 2.2.4 regarding Common Utility Lines and Section 2.4 regarding sign structures utilized by more than one Party, if any portion of the Common Area is damaged or destroyed by any cause whatsoever other than ordinary wear and tear, whether insured or uninsured, during the term of this OEA, the Party upon whose Parcel such Common Area is located shall repair or restore such Common Area at its sole cost and expense with all due diligence; provided, however, that no Party shall be required to expend more than \$250,000 in Constant Dollars in excess of insurance proceeds which may be available (or which would have been available except for such Party's election of deductibles or self-insurance, which amount such Party shall be responsible to contribute) for such repair or restoration. Notwithstanding the limitation set forth in the preceding sentence, a Party may require the Party upon whose Parcel such Common Area is located to do such restoration work if the requiring Party has agreed in writing to pay the costs in excess of \$250,000.00. Except to the extent limited by Section 5.4.3, if such damage or destruction of Common Area on a Parcel is caused in whole or in part by another Party or a third Person, the Party obligated to make such repair or restoration reserves and retains the right to proceed against such other Party or third Person for indemnity, contribution and/or damages.

#### 4.3 Joint Maintenance.

4.3.1 Prior to Operator commencing any operation and/or maintenance duties, Operator shall obtain, and thereafter maintain during the period of such operation and/or maintenance performance, the insurance required by Section 5.4.4. Commencing on the earlier of thirty (30) days prior to the date specified by the Occupant of the Target Tract that it intends to open for business with the general public, or the date the Approving Parties designate in writing, Operator shall operate and maintain the (i) Common Area of the Shopping Center in accordance with the requirements of Section 4.2.1, exclusive of any "capital improvements" which shall be the responsibility of the Party owning the affected Parcel as set forth in Section 4.2.1 and 4.2.2 above, (ii) Common Utility Lines, and (iii) the signs pursuant to Section 5.3.1. At least 30 days prior to any major work in the parking lots or drive areas, Operator shall advise the Approving Parties of the scope thereof, and the proposed commencement and completion dates; except in an emergency, such major work shall not be performed between October 15th and the following January 15th. Operator shall expend only such funds as are reasonably necessary for the operation and maintenance of the Common Area ("Common Area Maintenance Costs") and for the performance of other obligations

imposed on Operator pursuant to this OEA, and shall promptly pay all such costs when incurred. Within thirty (30) days following the commencement of such maintenance and operation, Operator shall provide the Approving Parties an estimated budget for the balance of the current calendar year containing the information required by Section 4.3.2, and each Party agrees to pay its share of Common Area Maintenance Costs actually incurred during the balance of such year, plus the Administration Fee (defined below), in accordance with Section 4.3.3. Operator may hire companies affiliated with it to perform the maintenance and operation of the Common Area, but only if the rates charged by such affiliates are competitive with those of other companies furnishing similar services in the metropolitan area in which the Shopping Center is located, it being agreed that this provision shall be construed strictly against Operator. Each Party hereby grants to Operator, its agents, contractors and employees, a license to enter upon its Parcel to discharge Operator's duties to operate and maintain the Common Area. Notwithstanding anything to the contrary, Common Area Maintenance Costs shall not include:

- (A) Any late charges or fees; any cost, fee, fine, penalty or similar charge arising out of or resulting from any violation by Operator or anyone else relating to the Shopping Center.
- (B) Any charge for electricity for Building accent lighting or architectural features, or any Building security lighting. Also, any charge for electricity to a Party that separately pays the cost of power to illuminate the Common Area on its Parcel.
- (C) Any charge for water to a Party that separately pays the cost of water for irrigating the landscaping upon its Parcel.
- (D) Any costs for promotional, marketing, seasonal or holiday events of any type including, without limitation, costs of promotional equipment, banners, decorations and/or lighting, or the cost of set up, take down or storing any of the foregoing.
- (E) Any costs to clean up or repair the Common Area resulting from any promotional, marketing, seasonal or holiday activities, or from construction, maintenance or replacement of a Party's Buildings.
- (F) Any costs associated with trash and/or garbage removal from a Party's Building, such removal obligation being the responsibility of the Party owning the Building.
- (G) Any costs resulting from or arising out of the repair or replacement of items covered by warranties or guaranties including, but not limited to, site improvements, signs, trees, plants or other landscaping.

- (H) Other than for a resurfacing, resealing and restriping of drive and parking areas which are considered maintenance items, any cost for replacement of base for drive and parking areas, such replacement being a "capital improvement" which is the responsibility of the Party owning the Parcel pursuant to the provisions of Section 4.2.1 and 4.2.2.
- (I) Any costs relating to the items referenced in the last paragraph of Section 4.2.1, which items shall remain the responsibility of the Party owning the affected Parcel.
- (J) Any matters covered by Section 4.4, which items shall remain the responsibility of the Party owning the affected Parcel.
- (K) Real property taxes and assessments on the Common Area.
- (L) Insurance costs and/or premiums regardless of whether any such insurance is required by this OEA, except for the insurance that Operator is required to maintain pursuant to Section 5.4.4 below and except for the contribution toward the insurance premium as referenced in Section 4.2.1(J) above.
- (M) Operator's profit, administrative and overhead costs including, but not limited to: office space, equipment and utilities; legal fees and/or costs; accounting and administrative service; Operator's personnel who are not permanently located at the Shopping Center (except for those employees who work at two (2) or more shopping centers for which Operator is responsible for common area maintenance, in which case the time each employee spends working at the Shopping Center may be included in Common Area Maintenance Costs provided such time is documented by Operator and written documentation of the same is provided to the Approving Parties); premiums relating to bonding over mechanic's liens; and costs relating to hiring, training, screening, drug testing and/or background checks of personnel.
- (N) Any fee or charge relating to the management and/or supervision of the operation of the Common Area, or any part thereof, paid to a third party, commercial management company or similar provider.
- (O) Entertainment, transportation, meals and lodging of anyone.
- (P) Any fee, assessment or charge for fire hydrants to a Party that separately pays such kind of imposition for fire hydrants located on its Parcel.

- (Q) Any costs, fees expenses and/or adjustments related to any Common Maintenance Costs submitted more than three (3) years after the date incurred by Operator.
- (R) The cost of any "capital improvements" since such work is not the responsibility of Operator but the responsibility of the owner of such Parcel pursuant to Section 4.2.1 and Section 4.2.2.

In lieu of Operator's profit, administrative charges, all indirect and/or other direct costs, and overhead expenses, Operator shall be permitted to charge an amount ("Administration Fee") computed by multiplying Common Area Maintenance Costs (exclusive of utility charges, and the portion of single purpose expenditures that exceed \$25,000), by eight percent (8%). If any of Operator's personnel at the Shopping Center perform services, functions or tasks in addition to Common Area duties, then the cost of such personnel shall be equitably allocated according to time spent performing such duties. The cost of work performed by Operator's personnel and/or affiliates that is includable in Common Area Maintenance Costs shall be charged at such individual's normal (no mark-up) hourly basis, including benefits; provided, however, that the total rate charged for such individual shall not exceed the rate charged for such work by competitive companies furnishing similar work in the metropolitan area in which the Shopping Center is located, it being agreed that this provision shall be construed strictly against Operator.

Notwithstanding anything contained herein to the contrary, as between Developer and Target, the terms of that certain Supplemental Agreement dated on or about the date of this OEA shall govern with respect to certain Common Area Maintenance provisions. The terms of the Supplemental Agreement shall run with the land and be binding upon and inure to the benefit of the Target Tract and the Developer Tract.

4.3.2 Operator shall, at least ninety (90) days prior to the beginning of each calendar year during the term of this OEA, submit to the Approving Parties an estimated budget ("Budget") for Common Area Maintenance Costs and the Administration Fee for operating and maintaining the Common Area for the ensuing calendar year. In the event an Approving Party believes the charge for a particular function is excessive, such Approving Party shall notify Operator of such belief, and thereupon Operator shall obtain no fewer than two (2) competitive bids for such function. Unless the existing provider's cost is lower, the lowest acceptable bidder shall be utilized as soon as the contract with the existing provider can be terminated without penalty. The Budget shall be in a form and content reasonably acceptable to the Approving Parties and shall identify separate cost estimates for at least the categories specified under Section 4.2.1, plus:

- (A) The Administration Fee.
- (B) Rental fees or purchase price of equipment and supplies used in maintaining, operating or repairing the Common Area.

- (C) Credit for any depreciation or trade-in allowance applicable to items purchased for Common Area purposes.
- (D) Maintenance of sign structure(s) pursuant to 5.3.1.
- (E) Maintenance of any Common Utility Line.

If an item of maintenance is to be accomplished in phases over a period of calendar years during the term of this OEA, such as an overlay of the drive and/or parking areas, then the Budget shall separately identify the cost attributable to the applicable calendar year (including the portion of the Common Area affected) and shall note the anticipated cost and timing (indicating the portion of the Common Area affected) of such phased work during succeeding calendar years. The cost of approved "phased" work shall be paid by the Parties approving the same, or their successors or assigns, as the case may be, notwithstanding that when such work is performed a Party may not then be participating in the joint maintenance of the Common Area.

If an Approving Party disapproves the proposed Budget, it shall consult with the other Approving Parties, and Operator to establish a final approved Budget. If a Budget for any calendar year is not approved (including the failure of Operator to submit a Budget) by December 1st of the preceding calendar year, Operator shall have the right, by written notice given prior to December 10th of such preceding calendar year, to terminate its operation and maintenance obligation with respect to the Common Area located on the Parcel of the disapproving Approving Party as of the following March 31<sup>st</sup>. If such notice is given, commencing on the following April 1st, such Approving Party shall (i) operate and maintain the Common Area on its Parcel, (ii) pay all costs and expenses incurred in connection with the operation and maintenance of the Common Area on its Parcel and (iii) continue to contribute towards the costs of Common Utility Lines, including any detention/retention ponds, regardless of location, the Common Area security program, if any, and all sign structures, all of which shall continue to be performed by Operator. Operator shall continue to maintain and operate the balance of the Common Area covered by its obligations. During the period from January 1<sup>st</sup> to March 31<sup>st</sup>, such Approving Party shall pay its share of the operation and maintenance of the Common Area pursuant to Section 4.3.3. If such notice is not timely given, then Operator shall continue to maintain and operate all of the Common Area located on the Parcel of the Approving Party for the next calendar year, and the items of disagreement shall be resolved as part of the Reconciliation process. Approval of the Budget, or any of the line items comprising a part thereof, shall not be considered a waiver of a Party's right to audit and/or contest, challenge or dispute the Reconciliation (defined in Section 4.3.3 below).

Operator shall use its diligent, good faith efforts to operate and maintain the Common Area in accordance with the Budget. Notwithstanding the foregoing, Operator shall have the right to make emergency repairs to the Common Area to prevent injury or damage to Persons or property, it being understood that Operator shall nevertheless advise each Party of such emergency condition as soon as reasonably possible, including the corrective measures taken and the cost thereof. If the cost of the emergency action exceeds \$10,000.00 in Constant Dollars,

then Operator shall submit a supplemental billing to each Party, together with evidence supporting such cost, and each Party shall pay its share thereof within thirty (30) days after receipt of such billing. If the cost limitation set forth above is not exceeded then such costs shall be included as part of Common Area Maintenance Costs for that year.

4.3.3 Common Area Maintenance Costs and the Administration Fee shall be allocated among the Tracts based on relative Floor Area as follows:

(A) To the Developer Tract For the first twelve (12) months following the earlier of the date that Operator commences joint maintenance of the Common Areas pursuant to Section 4.3.1, or the date that Target commences Common Area maintenance on the Target Tract: the greater of actual Floor Area on the Developer Tract or 40,000 square feet.

Thereafter: the greater of actual Floor Area on the Developer Tract or 60,000 square feet.

(B) To the Target Tract The greater of actual Floor Area on the Target Tract or 102,500 square feet.

In the event an existing Parcel is divided, the Party causing such division shall, at its expense, prorate the allocation of Common Area Maintenance Costs and the Administration Fee attributable to the original Parcel between the newly created Parcels, file a recorded declaration confirming such allocation and deliver a copy of such declaration to Operator and each other Party. Each Party shall pay to Operator in equal monthly payments, in advance, the share of Common Area Maintenance Costs and the Administration Fee attributable to such Party's Parcel based either upon the amount set forth in the approved Budget or, if a Budget is not approved, then the lesser of the amount set forth in the unapproved Budget or the monthly payment established for such Party for the prior year. Notwithstanding the provision for determining the amount of payment set forth in the immediately preceding sentence, in the event a Budget is not approved because Operator elected not to submit a Budget for consideration at least sixty (60) days prior to the beginning of the calendar year, then each Approving Party not receiving a Budget shall have the right to use its reasonable judgment to determine the amount of the Budget for the next calendar year, and each Party represented by such Approving Party shall pay to Operator monthly, in advance on the first day of the month, payments attributable to such Party's Parcel, based on the amount of the Budget established by that Approving Party. Within sixty (60) days after the end of each calendar year, Operator shall provide each Party with a statement certified by an authorized Person, together with supporting invoices and other materials setting forth the actual Common Area Maintenance Costs paid by Operator for the operation and maintenance of the Common Area (such statement and supporting data are collectively called the

"Reconciliation"), the Administration Fee, and the share of the aggregate thereof that is attributable to each Party's Parcel. The Reconciliation shall separately identify cost categories specified in Sections 4.2.1 and 4.3.2 and shall be in a form reasonably acceptable to the Approving Parties. If the amount paid with respect to a Parcel for such calendar year shall have exceeded the share allocable to such Parcel, Operator shall refund by check the excess to the Party owning such Parcel at the time the Reconciliation is delivered, or if the amount paid with respect to a Parcel for such calendar year shall be less than the share allocable to such Parcel, the Party owning such Parcel at the time such Reconciliation is delivered shall pay the balance of such Party's share to Operator within sixty (60) days after receipt of such Reconciliation, less any amounts disputed in writing, it being understood and agreed that the 60-day period only establishes the period for payment and is not to be construed as an acceptance of the Reconciliation. If Operator does not timely submit the Reconciliation, then such Party's payment period shall be extended an additional 60 days for a total of 120 days after receipt of the Reconciliation. If Operator does not refund amounts shown by the Reconciliation to be owed a Party, then such Party may offset the refund owed, plus Interest, against payments for Common Area Maintenance Costs and Administration Fee due for any future period. Notwithstanding anything contained herein to the contrary, if during a calendar year Operator resigns or is replaced, the replacement Operator shall be responsible for the Reconciliation adjustments, including any reimbursement due to a Party for such calendar year; in addition for a period of sixty (60) days after a substitution of Operator is made, any payment made by a Party to the prior Operator shall be deemed properly paid, and the old and new Operators shall resolve any necessary adjustments and/or prorrations regarding such payments between themselves.

Within three (3) years after the date of receipt of a Reconciliation, each Party shall have the right to audit Operator's books and records pertaining to the operation and maintenance of the Common Area for the calendar year covered by such Reconciliation. A Party shall notify Operator of such Party's intent to audit at least fifteen (15) days prior to the designated audit date. If such audit shall disclose any error in the determination of Common Area Maintenance Costs, the Administration Fee or any allocation thereof to a particular Parcel, the auditing Party shall provide Operator with a copy of the audit, and an appropriate adjustment shall be made forthwith. Notwithstanding anything to the contrary, the approval of a prior Reconciliation, or any line item comprising a part thereof, shall not be a waiver of a Party's right to challenge subsequent Reconciliations regarding such line item. The cost of any audit shall be assumed by the auditing Party unless such Party shall be entitled to a refund in excess of three percent (3%) of the amount calculated by Operator as such Party's share for the applicable calendar year, in which case Operator shall pay the cost of such audit. If Operator does not respond to the results of such audit within ninety (90) days after receipt of the audit, then the auditing Party shall have the right to offset the refund claimed, plus Interest, from the date Operator receives the audit, plus costs of the audit if appropriate, against subsequent payments due Operator; provided, however, Operator shall retain the right to dispute the results of such audit for a period of twelve (12) months following receipt of such audit, and Operator's election not to contest the results of such audit during the twelve-month period shall be deemed acceptance of such audit.

4.3.4 Operator agrees to defend, indemnify and hold each Party harmless from and against any mechanic's, materialmen's and/or laborer's liens, and all costs, expenses and

liabilities in connection therewith, including reasonable attorney's fees and court costs, arising out of the maintenance and operation by Operator of the Common Area and the performance of other functions expressly required of Operator by this OEA, and if any Parcel shall become subject to any such lien, Operator shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting such bond or other security as shall be required by law to obtain such release and discharge.

#### 4.3.5

(A) *Target Take-Over Rights.* Target shall have the right, upon giving not less than sixty (60) days written notice to Operator, to take-over and assume the operation and maintenance of the Common Area upon the Parcel owned by Target. Following the effective date of such take-over and assumption, Target shall operate and maintain the Common Area on its Parcel, and shall pay all costs and expenses incurred in connection therewith; provided, however, Operator shall continue to operate and maintain (i) Common Utility Lines, including any detention/retention ponds and facilities, regardless of location, (ii) the Common Area security program, and (iii) any sign structure upon which a Target panel is attached (collectively, the "Continuing Functions"). Upon the effective date of such take-over and assumption, Target shall be released from the obligation to contribute towards Common Area Maintenance Costs for the balance of the Common Area, except with respect to the Continuing Functions for which continued participation is mandatory or elected, and the Administration Fee payable by Target shall be based only on the cost of the Continuing Functions. Target's share of the cost of the Continuing Functions shall be paid in accordance with the allocation set forth in Section 4.3.3 so long as Operator is responsible for such functions; provided however, that all amounts shall be payable by Target at end of each calendar year. Operator shall continue to operate and maintain the balance of the Common Area in accordance with the standards set forth herein.

Target shall have the right to cause Operator to resume the operation and maintenance of the Common Area on the Parcel owned by Target upon the satisfaction of the following conditions:

- (a) Target shall give Operator at least sixty (60) days prior notice of Target's intention to have Operator resume the operation and maintenance of the Common Area on its Parcel; provided, however, such date for resumption shall always be the first day of a calendar quarter; and
- (b) Prior to the date established for Operator to resume the maintenance and operation thereof, Target shall, at its sole cost and expense, cause the Common Area on its Parcel to be at least equal to the same condition of maintenance then existing on the other portions of the Common Area then being maintained by Operator.



Provided the above conditions are satisfied, concurrently with the designated date, Operator shall resume full operation and maintenance of the Common Area located on the Parcel owned by Target and Target shall be responsible for its share of Common Area Maintenance Costs as set forth in Section 4.3.3 so long as Operator is responsible for such functions.

(B) *Outparcel Take-Over Rights.* Subject to the prior written consent of the Approving Party for the Developer Tract, the Party for each Outparcel shall have the right, upon giving not less than sixty (60) days written notice to Operator, to take-over and assume the operation and maintenance of the Common Area upon the Outparcel owned by such Party. Following the effective date of such take-over and assumption, the subject Party shall operate and maintain the Common Area on its Outparcel, and shall pay all costs and expenses incurred in connection therewith; provided, however, Operator shall continue to operate and maintain (i) Common Utility Lines, including any detention/retention ponds, regardless of location, (ii) the Common Area security program, (iii) any sign structure upon which said Party's panel is attached, and (iv) driveways within the Shopping Center that are adjacent to the subject Outparcel (collectively, the "Outparcel Continuing Functions"). Upon the effective date of such take-over and assumption, the subject Party shall be released from the obligation to contribute towards Common Area Maintenance Costs for the balance of the Common Area, except with respect to the Outparcel Continuing Functions as set forth below at Section 4.3.7.

The subject Party shall have the right to cause Operator to resume the operation and maintenance of the Common Area on its Outparcel upon the satisfaction of the following conditions:

- (a) The subject Party shall give Operator at least sixty (60) days prior notice of the Party's intention to have Operator resume the operation and maintenance of the Common Area on its Outparcel; provided, however, such date for resumption shall always be the first day of a calendar quarter; and
- (b) Prior to the date established for Operator to resume the maintenance and operation thereof, the subject Party shall, at its sole cost and expense, cause the Common Area on its Outparcel to be at least equal to the same condition of maintenance then existing on the other portions of the Common Area then being maintained by Operator.

Provided the above conditions are satisfied, concurrently with the designated date, Operator shall resume full operation and maintenance of the Common Area located on the subject Outparcel and the Party for said Outparcel shall be responsible for its share of Common Area Maintenance Costs as set forth in Section 4.3.3 so long as Operator is responsible for such functions.

4.3.6 In the event (i) Target elects to take over operation and maintenance of the Target Tract pursuant to Section 4.3.5, (ii) a Party separately pays an amount that would otherwise be part of Common Area Maintenance Costs, such as referenced in Section 4.3.1(B) and (C), or (iii) an Approving Party disapproves of the Budget and Operator elects not to operate and maintain such disapproving Party's Parcel as set forth in Section 4.3.2, then allocation of Common Area Maintenance Costs to the remaining Parties in each such circumstance shall be based on a fraction, the numerator of which is each Party's designated percentage share set forth above in Section 4.3.3, and the denominator is the total designated percentage shares of the remaining Parties.

4.3.7 As a contribution towards the Outparcel Continuing Functions, each Party that takes over maintenance of its Outparcel pursuant to Section 4.3.5(B) above shall, during the period of such take over, contribute a fixed sum agreed upon between Developer and the Party for the subject Outparcel (said fixed sum shall be in the amount of at least Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) per year and shall be subject to adjustment as hereinafter provided), in advance ("Annual Outparcel Contribution"). The Annual Outparcel Contribution shall be increased, commencing on the fifth (5th) anniversary of this OEA and each fifth (5th) anniversary thereafter, to an amount equal to 125% of the Annual Outparcel Contribution for the prior year. If Operator is maintaining the Shopping Center then, the Annual Outparcel Contributions shall be paid to Operator and applied towards the reduction of Common Area Maintenance Costs prior to allocation of Common Area Maintenance Costs and Administration Fee pursuant to Section 4.3.3 above; provided however, that if Target is maintaining the Common Area on the Target Tract the Annual Outparcel Contributions shall be equitably distributed to Parties incurring the costs in connection with the Outparcel Continuing Functions.

#### 4.4 Building; Outside Sales Area

4.4.1 After completion of construction of each such improvement on its Parcel, each Party covenants and agrees to maintain and keep the Buildings, the areas referred to in the last paragraph of Section 4.2.1, and any Outside Sales Area in first class condition and state of repair, in compliance with all Governmental Requirements, and in compliance with the provisions of this OEA, including either the Theme or the exterior architectural concept approved for such Building by the Approving Parties. Each Party further agrees to store all trash and garbage from its Buildings in adequate containers, to locate such containers so that they are not readily visible from the parking area, and to arrange for regular removal of such trash or garbage. Exterior Building lighting fixtures, including any light fixtures associated with a canopy or other architectural feature forming a part of such Building, shall be maintained, replaced and repaired as part of Building maintenance.

4.4.2 In the event any of the Buildings in the Shopping Center are damaged by fire or other casualty (whether insured or not), the Party upon whose Parcel such Building is located shall, subject to Governmental Requirements and/or insurance adjustment delays, immediately remove the debris resulting from such casualty and provide a sightly barrier, and within a reasonable time thereafter shall either (i) repair or restore the Building so damaged to a complete unit, such repair or restoration to be performed in accordance with all provisions of this OEA, or (ii) erect another Building in such location, such construction to be performed in accordance with all provisions of this OEA, or (iii) demolish the damaged portion and/or the balance of such Building

and restore the cleared area to either a hard surface condition or a landscaped condition in which event the area shall be Common Area until a replacement Building is erected; provided, however, that, notwithstanding terms of this OEA regarding the sharing of Common Area maintenance costs, all costs and expenses incurred in maintaining such hard surface or landscaped area shall be charged solely to the Party owning the Parcel upon which the same is located. Such Party shall have the option to choose which of the foregoing alternatives to perform, but such Party shall be obligated to perform one (1) of such alternatives. Such Party shall give notice to each other Party within ninety (90) days from the date of such casualty of which alternative such Party elects.

## ARTICLE V - OPERATION OF THE SHOPPING CENTER

### 5.1 Uses

5.1.1 The Shopping Center shall be used only for retail sales, offices, Restaurants or other permitted commercial purposes. "Business Office" shall mean an office which does not provide services directly to consumers; "Retail Office" shall mean an office which provides services directly to consumers, including but not limited to financial institutions, real estate, stock brokerage and title companies, travel and insurance agencies, and medical, dental and legal clinics. No more than ten percent (10%) of the total Floor Area on the Developer Tract may be used for Retail Office and/or Business Office purposes; provided, however, that office space used by an Occupant for administrative purposes, and which is not open to the general public, shall not be considered Retail Office or Business Office for the purpose of this limitation.

5.1.2 No use shall be permitted in the Shopping Center which is inconsistent with the operation of a first class retail shopping center. Without limiting the generality of the foregoing, the following uses shall not be permitted:

- (A) Any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any Building in the Shopping Center.
- (B) An operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation.
- (C) Any "second hand" store, "surplus" store, or pawn shop.
- (D) Any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.
- (E) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any Building.

- (F) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.
- (G) Any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to (i) nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Shopping Center is located, or (ii) retail dry cleaning facilities of not more than 2,000 square feet of Floor Area, provided that (a) there shall be no more than one (1) such retail dry cleaning facility on the Target Tract, (b) there shall be no more than one (1) such retail dry cleaning facility on the Developer Tract, and any such facility on the Developer Tract shall be located on an Outparcel, (c) in no event shall any amount expended with respect to Hazardous Materials in connection with the subject facility be included in Common Area Maintenance Costs, and (d) each such retail dry cleaning facility and the operator thereof must comply with the following requirements:

➤ all dry cleaning equipment, plant or facilities located within the Shopping Center must be a self-contained, environmentally safe "Green Earth" type dry cleaning plant where the operator thereof is required to (a) use only Exxon 2000 solvents or equivalent, such as Exxon DF 100, DF 2000, General Electric SB 32 or Niran Technologies PureDry dry cleaning solvents; (b) maintain a secondary containment system, including a drip pans to capture leaking solvent under the dry cleaning machine, any supplies and any waste containers; (c) plug all floor drains in the operator's premises to prevent spillage of solvent or solvent waste into the sewer system; (d) drain all solvent waste into sealed containers approved for that purpose; (e) arrange for a qualified disposal contractor to remove all solvent waste from the operator's premises no less frequently than once a month and to dispose of the solvent waste outside of the Shopping Center in compliance with Environmental Laws; and (f) treat all water condensation generated by the dry cleaning process as solvent waste, subject to the same requirements applicable to solvent waste under this paragraph; and where the operator is prohibited from storing any solvent supplies and waste containers anywhere within the Shopping Center outside of the operator's premises, and

➤ the operator of the subject facility must carry environmental insurance covering the cleanup of any spill in an amount equal to not less than two million dollars (\$2,000,000.00) and otherwise complying with Section 5.4.5 hereof, including with regard to

maximum deductible or self-insurance retention amounts naming all Parties as additional insureds.

- (H) Any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation.
- (I) Any bowling alley or skating rink.
- (J) Any movie theater or live performance theater.
- (K) Any hotel, motel, short or long term residential use, including but not limited to: single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments or lodging rooms.
- (L) Any veterinary hospital or animal raising or boarding facility; provided, however, this prohibition shall not be applicable to pet shops. Notwithstanding the forgoing exception, any veterinary or boarding services provided in connection with the operation of a pet shop shall only be incidental to such operation; the boarding of pets as a separate customer service shall be prohibited; all kennels, runs and pens shall be located inside the Building; and the combined incidental veterinary and boarding facilities shall occupy no more than fifteen percent (15%) of the Floor Area of the pet shop.
- (M) Any mortuary or funeral home.
- (N) Any establishment selling or exhibiting "obscene" material, except that this provision shall not prohibit either (x) first class national DVD retailers which rent primarily non- "X-rated" DVDs (that is, "G" to "R"-rated DVDs) but which also rent "X-rated" or "non-rated" DVDs for off-premises viewing only, provided such "X-rated" or "non-rated" DVDs, and the place and procedure for selection thereof (which shall not exceed in the aggregate fifty (50) square feet of Floor Area), precludes viewing or selection by minors, and provided that such establishment does not display any promotional, advertising or other depiction or description regarding any "X-rated" or "non-rated" DVD, or (y) first-class national book stores which are not perceived to be, nor hold themselves out as "adult" book stores, but which incidentally sell books magazines and other periodicals which may contain pornographic materials so long as such sale is not from any special or segregated section in the store and so long as such store does not display any promotional, advertising or other depiction or description in respect of any pornographic materials.

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- (O) Any establishment selling or exhibiting drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff.
  - (P) Any bar, tavern, Restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds thirty percent (30%) of the gross revenues of such business.
  - (Q) Any massage parlor or similar establishment.
  - (R) Any health spa, fitness center or workout facility exceeding 3,500 square feet of Floor Area, and in no event shall any such operation on the Developer Tract be located within three hundred (300) feet of the Target Tract, provided that the foregoing prohibitions shall not apply to a health spa, fitness center or workout facility located on Outparcel 4 so long as Outparcel 4 contains four (4) parking spaces per 1,000 square feet of Floor Area devoted to such use on Outparcel 4.
  - (S) Any flea market, amusement or video arcade, pool or billiard hall, car wash or dance hall.
  - (T) Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to (x) on-site employee training by an Occupant incidental to the conduct of its business at the Shopping Center, or (y) training classes offered to customers on an incidental basis relative to an otherwise permitted retail use, provided that said classes take place in no more than 3% of the Floor Area of the subject Occupant.
  - (U) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not be applicable to government sponsored gambling activities or charitable gambling activities, so long as such activities are incidental to the business operation being conducted by the Occupant.

5.1.3 No Party shall use, or permit the use of, Hazardous Materials on, about, under or in its Parcel, or the balance of the Shopping Center, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance

with all Environmental Laws. Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including but not limited to costs of investigation, remedial or removal response, and reasonable attorneys' fees and cost of suit, arising out of or resulting from any Hazardous Material used or permitted to be used by such Party, whether or not in the ordinary course of business.

For the purpose of this Section 5.1.3, the term (i) "Hazardous Materials" shall mean and refer to the following: petroleum products and fractions thereof, asbestos, asbestos containing materials, urea formaldehyde, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials, substances and wastes listed or identified in, or regulated by, any Environmental Law, and (ii) "Environmental Laws" shall mean and refer to the following: all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

5.1.4 No merchandise, equipment or services, including but not limited to vending machines, promotional devices and similar items, shall be displayed, offered for sale or lease, or stored within the Common Area; provided, however, the foregoing prohibition shall not be applicable to:

- (A) the storage of shopping carts on the Target Tract;
- (B) the installation of an "ATM" banking facility within an exterior wall of any Building;
- (C) the seasonal display and sale of bedding plants on the sidewalk in front of any Building located on the Target Tract;
- (D) the placement of bicycle racks and landscaping planters on the sidewalk in front of any Building;
- (E) the placement of spherical bollards (Target's brand) on the sidewalk in front of any Building on the Target Tract;
- (F) temporary Shopping Center promotions, except that no promotional activities will be allowed in the Common Area without the prior written approval of the Approving Parties;
- (G) any recycling center required by law, the location of which shall be subject to the approval of the Approving Parties;
- (H) outdoor seating shown on the Site Plan; or

(I) [Intentionally deleted.].

(J) any designated Outside Sales Area; provided, however, with respect to any Outside Sales Area which is not included within a Building Area, such space may be used not more than three (3) times per calendar year, and the duration of such use shall be subject to the following limitations: during the period commencing on October 15th and ending on December 27th -- no limitation on the number of days of consecutive use; during the period commencing February 15th and ending on July 10th -- not more than one hundred twenty-five (125) consecutive days of use; and, during any other period -- not more than thirty (30) consecutive days of use.

5.1.5 The following use and occupancy restrictions shall be applicable to the Developer Tract:

(A) No Restaurant shall be located thereon within three hundred (300) feet of the Building Area located on the Target Tract, except that this prohibition shall not apply to the Outparcels.

(B) [Intentionally deleted.]

(C) No store, department or operation of any size selling or offering for sale any pharmaceutical drugs requiring the services of a licensed pharmacist shall be permitted.

(D) No pet shop shall be located thereon within three hundred (300) feet of the Building Area located on the Target Tract, provided that this prohibition shall not apply to Outparcel 4 and this prohibition shall not apply to the operation of either a Petsmart (as the same are operated nationally on the date of this OEA) or a Petco (as the same are operated nationally on the date of this OEA) on that portion of the Developer Tract identified on the Site Plan as Pad C.

(E) No gas station and/or other facility that dispenses gasoline, diesel or other petroleum products as fuel shall be permitted.

(F) No automotive service/repair station or any other facility that both sells and installs any lubricants, tires, batteries, transmissions, brake shoes or any other similar vehicle accessories shall be permitted.

(G) No liquor store offering the sale of alcoholic beverages for off-premises consumption shall be permitted within that portion of the Developer Tract contained in the Unlimited Area Building Grouping, nor shall any liquor



store offering the sale of alcoholic beverages for off-premises consumption exceeding 5,000 square feet of Floor Area be permitted.

(H) No freestanding convenience store shall be permitted.

(I) No Occupant of seventy five thousand (75,000) square feet of Floor Area or more shall be permitted.

5.1.6 The names "Target", "Greatland", "SuperTarget" or any variation using the name "Target" shall not be used to identify the Shopping Center or any business or trade conducted on the Developer Tract. Until the Approving Parties agree upon a name change, the Shopping Center shall be called "300 West Town Center."

5.1.7 Except to the extent required by law, no Permittee shall be charged for the right to use the Common Area; provided, however, for the purpose of this provision, a tax assessment or other form of governmental charge applicable to parking spaces or parking lots shall be deemed by the Approving Parties an imposition required by law.

5.1.8 Each Party shall use its reasonable efforts to cause the employees of the Occupants of its Parcel to park their vehicles only on such Parcel.

5.1.9 This OEA is not intended to, and does not, create or impose any obligation on a Party to operate, or continuously operate, a business or any particular business at the Shopping Center or on any Parcel.

## 5.2 Lighting

5.2.1 After completion of the Common Area lighting system on its Parcel, each Party hereby covenants and agrees to keep its Parcel fully illuminated from dusk to at least 10:30 p.m. unless the Approving Parties agree upon a different time. Each Party further agrees to keep any exterior Building security lights on from dusk until dawn. During the term of this OEA, each Party grants an irrevocable license to each other Party for the purpose of permitting the lighting from one Parcel to incidentally shine on the adjoining Parcel.

5.2.2 It is recognized that Occupants within the Shopping Center may be open for business at different hours, and that a Party may wish to have the Common Area lights on another Parcel be illuminated before or after the required time period. Accordingly, a Party ("Requesting Party") shall have the right, at any time, to require the Party that controls the lighting on such Parcel ("Requested Party") to keep the Common Area lights it controls operating as stipulated by the Requesting Party, provided that the Requesting Party notifies the Requested Party of such request not less than fifteen (15) days in advance. The Requesting Party shall state the period during which it wishes such Common Area lights to be kept operating and shall pay to the Requested Party a prepayment as follows:

- (A) If the period is less than thirty (30) days, then the prepayment shall be one hundred ten percent (110%) of the reasonable cost for such additional operation (including electrical power, bulbs and manpower), as estimated by the Requested Party; and
- (B) If the period is thirty (30) days or longer, then the prepayment shall be one hundred ten percent (110%) of the reasonable cost for such additional operation (including electrical power, bulbs and manpower) for thirty (30) days, as estimated by the Requested Party, and the Requesting Party shall renew such prepayment at the end of each thirty (30) day period.

If the Requesting Party is of the opinion that the estimated prepayment established by the Requested Party is greater than one hundred ten percent (110%) of such additional operation, the Parties shall attempt to agree upon the cost of such additional operation but if they cannot do so, then the amount the Requesting Party is obligated to pay shall be estimated by the electrical utility company furnishing such power, or if the electrical utility company elects not to do so, by a reputable electrical engineer. Upon the failure of a Requesting Party to pay the estimated amount or renew a prepayment as required hereby, the Requested Party shall have the right to discontinue such additional lighting and to exercise any other remedies herein provided. Any such request for additional lighting may be withdrawn or terminated at any time by written notice from the Requesting Party, and a new request or requests for changed hours of additional operation may be made from time to time.

### 5.3 Occupant Signs

5.3.1 No freestanding sign shall be permitted within the Shopping Center unless constructed in one of the specific areas designated on the Site Plan and only one (1) such sign structure may be located in each sign area. Each sign structure shall be utilized as follows:

“Sign 1”: The initial design criteria for this sign structure, and identification panel designations thereon, are shown on the Sign Exhibit. In the cabinet space designated “Target” for Sign 1 on the Sign Exhibit, Target shall have the right to attach one (1) identification panel to this sign structure for up to two (2) Occupants of the Target Tract, and in the blank cabinet space shown on the Sign Exhibit for Sign 1, Developer shall have the right to attach one (1) identification panel for up to three (3) Occupants of the Developer Tract. Sign 1 shall be located in the area identified on the Site Plan as “Sign Area 1.”

“Signs 2A, 2B & 2C”: The initial design criteria for each of these sign structures, and identification panel designations thereon, are shown on the Sign Exhibit. In the blank cabinet space shown on the Sign Exhibit for Sign 2, Developer shall have the right to attach one (1)

identification panel for up to five (5) Occupants of the Developer Tract. Sign 2A shall be located in the area identified on the Site Plan as "Sign Area 2A", Sign 2B shall be located in the area identified on the Site Plan as "Sign Area 2B", and Sign 2C shall be located in the area identified on the Site Plan as "Sign Area 2C."

"Sign 3": The initial design criteria for this sign structure, and identification panel designations thereon, are show on the Sign Exhibit. In the blank cabinet space shown on the Sign Exhibit for Sign 3, Developer shall have the right to attach one (1) identification panel to this sign structure for an Occupant of Outparcel 3. Sign 3 shall be located in the area identified on the Site Plan as "Sign Area 3."

"Sign 4": The initial design criteria for this sign structure, and identification panel designations thereon, are shown on the Sign Exhibit. In the cabinet space designated "Target" for Sign 4 on the Sign Exhibit, Target shall have the right to attach one (1) identification panel to this sign structure for up to two (2) Occupants of the Target Tract, and in the blank cabinet space shown on the Sign Exhibit for Sign 4, Developer shall have the right to attach one (1) identification panel for up to three (3) Occupants of the Developer Tract. Sign 4 shall be located in the area identified on the Site Plan as "Sign Area 4."

Developer agrees to cause Sign 1 and Sign 4 to be constructed in the locations designated on the Site Plan. Developer and Target shall cause their respective identification panels to be attached to the various sign structures when desired. Once constructed, each sign structure shall be maintained by Operator and such costs shall be part of Common Area Maintenance Costs; provided if there is no Operator, then Signs 1 and 4 shall be maintained as set forth above for in Section 2.4.2 and Signs 2A, 2B, 2C and 3 shall be maintained by the Party upon whose Parcel the subject sign structure is located, with pro rata contribution (based on relative panel size) for the costs thereof from each Party having rights to place a panel on the subject sign structure.

Each Party shall cause the identification panel (including any backlit lighting) of its Occupant attached to or forming a part of the sign structure to be maintained at its sole cost and expense pursuant to Governmental Requirements, in a safe condition and in a good state of repair. In the event a Party elects not to attach an identification panel to the sign structure when initially constructed, but later decides to have its Occupant's identification panel attached thereto, then the Party making such later decision shall pay all costs, regardless of nature or origin, necessary to permit the attachment of such identification panel to the sign structure; provided however, that none of the previously attached identification panels on such sign structure shall be required to be modified or relocated in order to permit the attachment of such additional identification panel.

The Approving Parties shall have the right to approve any change, modification or alteration to the design and size of the Pylon Sign, including the identification panels to be attached thereto; provided, however, that the identification panel for an Occupant of more than sixty thousand (60,000) square feet of Floor Area shall not be subject to the approval of the Approving Parties so long as such identification panel is the standard prototype panel for said Occupant, as the same exists from time to time. No "reader board" type sign shall be permitted within the Shopping Center.

5.3.2 Any Occupant occupying less than twenty-five thousand (25,000) square feet of Floor Area may have only one (1) identification sign placed on the exterior of the Building it occupies; provided, however, that if the space occupied by any such Occupant is located at a corner of a Building or is the entire Building, then such Occupant may have one (1) exterior identification sign on each of two (2) sides of the occupied Building. Any Occupant occupying at least twenty-five thousand (25,000) square feet of Floor Area may have more than one (1) identification sign placed on the exterior of the Building it occupies.

No identification sign attached to the exterior of a Building shall be:

- (A) Placed on canopy roofs extending above the Building roof, placed on penthouse walls, or placed so as to project more than two (2) feet above the parapet, canopy or top of the wall upon which it is mounted.
- (B) Placed at any angle to the Building; provided, however, the foregoing shall not apply to any sign located under a sidewalk canopy if such sign is at least eight (8) feet above the sidewalk.
- (C) Painted on the surface of any Building.
- (D) Flashing, moving or audible.
- (E) Made utilizing (i) exposed neon tubes, (ii) exposed LEDs (light emitting diodes), (iii) exposed ballast boxes, (iv) exposed transformers, or (v) exposed raceways unless such exposed raceways comply with the all of the following requirements: (a) the raceways shall not exceed eight inches (8") in depth and/or twelve (12") in height; (b) the color of the raceways are the same color as the materials upon which such raceways are located; (c) all transformers are remote mounted behind the Building fascia; and (d) the letters to be installed on the raceways do not exceed a height of thirty-six inches (36").
- (F) Made of paper or cardboard, or be temporary in nature (exclusive of contractor signs), or be a sticker or decal; provided, however, the foregoing shall not prohibit the placement at the entrance of each

Occupant's space of a small sticker or decal indicating hours of business, emergency telephone numbers, acceptance of credit cards and other similar items of information.

No Occupant of less than sixty thousand (60,000) square feet of Floor Area shall have an exterior sign which identifies leased departments and/or concessionaires operating under such Occupant's business or trade name, nor shall such sign identify specific brands or products for sale or services offered within a business establishment, unless such identification is used as part of the Occupant's trade name.

5.3.3 Notwithstanding anything contained herein to the contrary, each Party shall be permitted to place within the Common Area located on its Parcel the temporary display of leasing information and the temporary erection of one (1) sign identifying each contractor working on a construction job on its Parcel. Each Party shall have the obligation to operate, maintain and repair, in a clean, sightly and safe condition, all signs, including components thereof, located upon its Parcel pursuant to Section 5.3.2 or the provisions hereof.

5.3.4 Exclusive of signs permitted by Sections 5.3.2 and 5.3.3, no other form of exterior expressions, including, but not limited to, pennants, pictures, notices, flags, seasonal decorations, writings, lettering, designs or graphics, shall be placed on or attached to the exterior of any Building.

#### 5.4 Insurance

5.4.1 Each Party (as to its Parcel only) shall maintain in full force and effect at least the minimum insurance coverages in Constant Dollars set forth below:

- (A) Commercial General Liability Insurance with a combined single limit of liability of Five Million Dollars (\$5,000,000.00) in Constant Dollars for bodily injury, personal injury and property damage, arising out of any one occurrence. The other Parties shall be "additional insureds" under such policy as it applies to the insuring Party's Parcel. The insurance provided herein shall be considered "primary" insurance, and all limits of such policy shall be exhausted before insurance of another Party carried pursuant to this Section 5.4.1 is considered.
- (B) Workers' compensation and employer's liability insurance:
  - (i) Worker's compensation insurance as required by any applicable law or regulation.
  - (ii) Employer's liability insurance in the amount of \$1,000,000 each accident for bodily injury, \$1,000,000 policy limit for bodily injury

by disease and \$1,000,000 each employee for bodily injury by disease.

- (C) Automobile Liability Insurance for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceedings brought thereon, and all costs, losses, expenses and liability of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the injury to or death of any Person, or damage to the property of any Person located on the Parcel owned by each indemnifying Party; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or willful act or omission of such other Party, its licensees, concessionaires, agents, servants, or employees, or the agents, servants, or employees of any licensee or concessionaire thereof. In the event it is determined that such other Party was not at fault, then the indemnifying Party shall reimburse such other Party for all reasonable costs and/or expenses incurred by it defending against such claim or demand.

5.4.2 Prior to commencing any construction activities within the Shopping Center, each Party and Operator, as the case may be, shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverages in Constant Dollars set forth below:

- (A) Workers' compensation and employer's liability insurance:
  - (i) Worker's compensation insurance as required by any applicable law or regulation.
  - (ii) Employer's liability insurance in the amount of \$1,000,000 each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.
- (B) Commercial General Liability insurance covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability and coverages:
  - (i) Required coverages:
    - (1) Premises and Operations.

- (2) Products and Completed Operations.
  - (3) Contractual Liability, insuring the indemnity obligations assumed by contractor under the contract documents.
  - (4) Broad Form Property Damage (including Completed Operations).
  - (5) Explosion, Collapse and Underground Hazards.
  - (6) Personal Injury Liability.
- (ii) Minimum limits of liability:
- (1) \$1,000,000 each occurrence (for bodily injury and property damage).
  - (2) \$1,000,000 for Personal Injury Liability.
  - (3) \$2,000,000 aggregate for Products and Completed Operations.
  - (4) \$2,000,000 general aggregate applying separately to this project.
- (C) Automobile liability insurance, including coverage for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage. The contractor shall require each of his subcontractors to include in their liability insurance policies coverage for automobile contractual liability.
- (D) The contractor shall also carry umbrella/excess liability insurance in the amount of \$5,000,000. If there is no per project aggregate under the Commercial General Liability policy, the limit shall be \$10,000,000.

If the construction activities involve the use of another Parcel, then the constructing Party shall cause (x) the owner of such other Parcel to be an additional insured on each policy (for the Commercial General Liability policy, pursuant to a CG 2010 11-85 version Form B endorsement, or equivalent), (y) with respect to the work on such other Parcel, the coverage set forth in (B)-(ii)-(3) above to be extended for a three (3) year period following final completion of work, and (z) each such policy to provide that the same shall not be cancelled, allowed to expire, nor

reduced in amount or coverage below the requirements set forth above without at least thirty (30) days prior written notice to each insured. If any of the insurance policies are cancelled, expire or the amount or coverage thereof is reduced below the level required, then all work and use of the other Parcel for the benefit of the constructing Party shall immediately stop until either the required insurance is reinstated, or replacement insurance is obtained, and evidence thereof is given to the owner of such other Parcel.

5.4.3 Effective upon the commencement of construction of any Building on its Parcel a Party or its contractor shall carry "Builder's Risk" insurance in the amount of one hundred percent (100%) of the full replacement cost thereof. In addition, so long as a Building exists on a Party's Parcel, such Party shall carry property insurance with "Special Form" coverage, in the amount of one hundred percent (100%) of full replacement cost thereof (excluding footings, foundations and excavations).

Each Party (the "Releasing Party") hereby releases and waives for itself, and each Person claiming by, through or under it, each other Party (the "Released Party") from any liability for any loss or damage, to all property of such Releasing Party located upon any portion of the Shopping Center, which loss or damage is of the type covered by the insurance required to be maintained under this Section 5.4.3, irrespective of (i) any negligence on the part of the Released Party which may have contributed to or caused such loss, or (ii) the amount of such insurance required or actually carried, including any deductible or self insurance reserve. Each Releasing Party agrees to use its reasonable efforts to obtain, if needed, appropriate endorsements to its policies of insurance, and to the policies of insurance carried by its Occupants, with respect to the foregoing release and waiver; provided, however, that failure to obtain such endorsements shall not affect the release and waiver hereinabove given.

Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit asserted by or through any Occupant of the indemnifying Party's Parcel for any loss or damage to the property of such Occupant located upon the indemnifying Party's Parcel, which loss or damage would have been covered by the insurance required to be maintained under this Section 5.4.3. In addition, the Releasing Party's release and waiver shall include any claim for loss of rent and/or profits.



5.4.4 During the period, if any, Operator is maintaining the Common Area, Operator shall maintain in full force and effect at least the minimum insurance coverages in Constant Dollars set forth below:

- (A) Commercial General Liability Insurance with a combined single limit of liability of Five Million Dollars (\$5,000,000.00) for bodily injury, personal injury and property damage, arising out of any one occurrence. Each Party shall be an "additional insured" under such policy applied as to Operator's operation and maintenance obligations under this OEA. The insurance provided herein shall be considered "primary" insurance, and all limits of such policy shall be exhausted before insurance of another Party carried pursuant to this OEA is considered.
- (B) Workers' Compensation and Employer's Liability Insurance:
  - (i) Worker's compensation insurance as required by any applicable law or regulation.
  - (ii) Employer's liability insurance in the amount of \$1,000,000 for each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.
- (C) Automobile Liability Insurance for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

Operator agrees to defend, protect, indemnify and hold harmless each Party from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind, including reasonable attorneys' fees and cost of suit, asserted or incurred in connection with or arising out of the performance, or failure to perform, by Operator of its duties or obligations under this OEA with respect to the maintenance and operation of the Common Area; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or the willful act or omission of the Party to be indemnified. In the event it is determined that such Party was not at fault, then Operator shall reimburse such other Party for all reasonable expenses and/or costs incurred by such Party defending against such claim or demand.

5.4.5 All insurance required by a Person pursuant to Section 5.4 shall be written on an occurrence basis and procured from companies rated by Best's Rating Guide not less than A-/X, and which are authorized to do business in the state where the Shopping Center is located. All insurance may be provided under (i) a combination of primary and excess policies, (ii) an individual

policy covering the Shopping Center, (iii) a blanket policy or policies which includes other liabilities, properties and locations of such Party; provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than \$20,000,000 in Constant Dollars, then such insuring Party shall also maintain excess liability coverage necessary to establish a total liability insurance limit of \$20,000,000 in Constant Dollars, (iv) a plan of self-insurance, provided that any Party so self-insuring notifies the other Parties of its intent to self-insure and agrees that upon request it shall deliver to such other Parties each calendar year a copy of its annual report that is audited by an independent certified public accountant which discloses that such Party has \$250,000,000 in Constant Dollars of both net worth and net current assets, or (v) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by a Party pursuant to this Section 5.4, such Party shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed \$50,000.00 in Constant Dollars unless such Party complies with the requirements regarding self-insurance pursuant to (iv) above. Each Party and Operator, if any, agrees to furnish to any Party requesting the same, a certificate(s) or memorandum(s) of insurance, or statement of self-insurance, as the case may be, or the Web address where such insurance information is contained, evidencing that the insurance required to be carried by such Party or Operator, as the case may be, is in full force and effect.

5.4.6 Any insurance policy required under this OEA that requires another Person to be added as an "additional insured" shall include the following provisions:

- (A) Shall provide that the policy shall not be canceled or reduced in amount or coverage below the requirements of this OEA, nor shall such policy be allowed to expire without at least thirty (30) days prior written notice by the insurer to each insured and to each additional insured.
- (B) Shall provide for severability of interests.
- (C) Shall provide that an act or omission of one (1) of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other insureds.
- (D) Shall provide for contractual liability coverage with respect to any indemnity obligation set forth in this Section 5.4.

#### 5.5 Taxes and Assessments.

Each Party shall pay, prior to delinquency, all taxes and assessments with respect to its Parcel, the Building, and other improvements located thereon, and any personal property owned or leased by such Party in the Shopping Center, provided that if such taxes or assessments or any part thereof may be paid in installments, each Party may pay each such installment as and when the same becomes due and payable. Nothing contained herein shall prevent any Party from contesting at its cost and expense any taxes and assessments with respect to its Parcel in any

manner such Party elects, so long as such contest is maintained with reasonable diligence and in good faith. At the time such contest is concluded (allowing for appeal to the highest appellate court), the contesting Party shall promptly pay all taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

## ARTICLE VI - MISCELLANEOUS

### 6.1 Default

6.1.1 The occurrence of any one or more of the following events shall constitute a material default and breach of this OEA by the non-performing Party (the "Defaulting Party"):

- (A) The failure to make any payment required to be made hereunder within ten (10) days after the due date.
- (B) The failure to observe or perform any of the covenants, conditions or obligations of this OEA, other than as described in (A) above, within thirty (30) days after the giving of a notice by another Party or Operator, as the case may be (the "Non-Defaulting Party") specifying the nature of the default claimed; provided however, if such default cannot reasonably be cured within said 30-day period, then, provided the Defaulting Party notifies the Non-Defaulting Party of such claimed inability to cure and the Defaulting Party begins to cure the default within said 30-day period and is diligently pursuing such cure, the Defaulting Party shall be entitled to additional time, not to exceed thirty (30) additional days, to cure such default.

6.1.2 With respect to any default under Section 6.1.1 (B), any Non-Defaulting Party shall have the right following the expiration of any applicable cure period, if any, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party; provided, however, that in the event such default shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Non-Defaulting Party shall have the right to enter upon the Parcel of the Defaulting Party (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. Each Party shall be responsible for the default of its Occupants. In the event any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses incurred in connection with such curative action, plus Interest, within ten (10) days after receipt of demand therefor, together with reasonable documentation supporting the expenditures made. In the event the Defaulting Party does not reimburse the Non-Defaulting Party as set forth above, in addition to any other remedy available, the Non-Defaulting Party shall have the right to offset such amount owed against any current or future sum of money due the Defaulting Party until the full amount owed is recovered.

The right to cure the default of another Party shall not be deemed to:

- (A) Impose any obligation on a Non-Defaulting Party to do so.
- (B) Render the Non-Defaulting Party liable to the Defaulting Party or any third party for an election not to do so.
- (C) Relieve the Defaulting Party from any performance obligation hereunder.
- (D) Relieve the Defaulting Party from any indemnity obligation as provided in this OEA.

6.1.3 The cost and expense incurred to cure a default, and/or any Interest accruing with respect to a default, shall constitute a lien against the Defaulting Party's Parcel. Such lien shall attach and take effect only upon recordation of a claim of lien in the office of the Recorder of the County of the State in which the Shopping Center is located by the Party making such claim. The claim of lien shall include the following:

- (A) The name of the lien claimant.
- (B) A statement concerning the basis for the claim of lien and identifying the lien claimant as a Non-Defaulting Party.
- (C) An identification of the owner or reputed owner of the Parcel or interest therein against which the lien is claimed.
- (D) A description of the Parcel against which the lien is claimed.
- (E) A description of the work performed which has given rise to the claim of lien and a statement itemizing the amount thereof.
- (F) A statement that the lien is claimed pursuant to the provisions of this OEA, reciting the date and recordation hereof. The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the Party against whom the lien is claimed, by personal service or by mailing pursuant to Section 6.4 below. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law, including without limitation, a suit in the nature of a suit to foreclose a mortgage/deed of trust or mechanic's lien under the applicable provisions of the law of the State in which the Shopping Center is located. The lien

shall be subject and subordinate to any mortgage or deed of trust which is of record before the claim of lien is placed of record.

6.1.4 Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other Person, violating or attempting to violate or defaulting upon any of the provisions contained in this OEA, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another Party or Person of any of the terms, covenants or conditions of this OEA, or to obtain a decree to compel performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to a Party under this OEA or at law or in equity shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy. If a Party brings an action of law or in equity to enforce the terms and provisions of this OEA, the prevailing Party as determined by the Court in such action shall be entitled to recover reasonable attorneys' fees and court costs for all stages of litigation, including but not limited to, appellate proceedings, in addition to any remedy granted.

#### 6.2 Interest

Any time a Party or Operator, if any, shall not pay any sum payable hereunder to another Party within five (5) days of the due date, such delinquent Party or Operator shall pay interest on such amount from the due date to and including the date such payment is received by the Party entitled thereto, at the lesser of:

- (A) The highest rate permitted by law to be either paid on such type of obligation by the Party obligated to make such payment or charged by the Party to whom such payment is due, whichever is less.
- (B) The prime rate, plus three percent (3%). As used herein, "prime rate" shall mean the rate of interest published from time to time as the "Prime Rate" in the Wall Street Journal under the heading "Money Rates"; provided, however, that (i) if more than one such rate is published therein the prime rate shall be the highest such rate and (ii) if such rate is no longer published in the Wall Street Journal or is otherwise unavailable, the prime rate shall be a substantially comparable index of short term loan interest rates charged by U.S. banks to corporate borrowers selected by the Approving Parties.

#### 6.3 Estoppel Certificate

Each Party and Operator, if any, agrees that upon written request (which shall not be more frequent than three (3) times during any calendar year) of any other Party or Operator, it will issue within thirty (30) days after receipt of such request to such Party, or its prospective

mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge as of such date:

- (A) Whether it knows of any default under this OEA by the requesting Party, and if there are known defaults, specifying the nature thereof in reasonable detail.
- (B) Whether this OEA has been assigned, modified or amended in any way by it and if so, then stating the nature thereof in reasonable detail.
- (C) Whether this OEA is in full force and effect.

Such estoppel certificate shall act to estop the issuer from asserting a claim or defense against a bona fide encumbrancer or purchaser for value to the extent that such claim or defense is based upon facts known to the issuer as of the date of the estoppel certificate which are contrary to the facts contained therein, and such bona fide purchaser or encumbrancer has acted in reasonable reliance upon such estoppel certificate without knowledge of facts to the contrary. The issuance of an estoppel certificate shall in no event subject the issuer to any liability for the negligent or inadvertent failure of the issuer to disclose correct and/or relevant information, nor shall such issuance be construed to waive any rights of the issuer to perform an audit or obtain an adjustment with respect to Common Area Maintenance Costs for any year it is entitled to do so, or to challenge acts committed by other Parties for which approval by the Approving Parties was required but not sought or obtained.

#### 6.4 Notices

All notices, demands and requests (collectively, the "notice") required or permitted to be given under this OEA must be in writing and shall be deemed to have been given as of the date such notice is (i) delivered to the Party intended, (ii) delivered to the then designated address of the Party intended, (iii) rejected at the then designated address of the Party intended, provided such notice was sent prepaid, or (iv) sent by nationally recognized overnight courier with delivery instructions for "next business day" service, or by United States certified mail, return receipt requested, postage prepaid and addressed to the then designated address of the Party intended. The initial addresses of the Parties shall be:

Target: Target Corporation  
Property Development – TPN-12<sup>th</sup> Floor  
Attn: Real Estate - Existing Stores  
1000 Nicollet Mall  
Minneapolis, MN 55403

Developer: Weingarten Miller EquiWest Salt Lake LLC  
c/o Miller Weingarten Realty, Inc.  
850 Englewood Parkway, Suite 250  
Englewood, CO 80110-2304  
Attention: Steven A. Shoflick, President

With a copy to:  
Weingarten Realty Management Company  
P.O. Box 944133  
Houston, Texas 77292-4133  
Attention: President and General Counsel (one copy each)

or if by overnight delivery company, to:  
Weingarten Realty Management Company  
2600 Citadel Drive, Suite 300  
Houston, Texas 77008  
Attention: President and General Counsel (one copy each).

With respect to any "notice" to Operator: As from time to time designated.

Upon at least ten (10) days prior written notice, each Party shall have the right to change its address to any other address within the United States of America.

## 6.5 Approval Rights

6.5.1 Except as otherwise specifically provided in this OEA, with respect to any matter as to which a Party has specifically been granted an approval right under this OEA, nothing contained in this OEA shall limit the right of a Party to exercise its business judgment in its sole discretion, whether or not "objectively" reasonable under the circumstances, and any such decision shall not be deemed inconsistent with any covenant of good faith and fair dealing which may be implied by law to be part of this OEA. The Parties intend by this OEA to set forth their entire understanding with respect to the terms, covenants, conditions and standards pursuant to which their obligations are to be judged and their performance measured.

6.5.2 Unless provision is made for a specific time period, each response to a request for an approval or consent required to be considered pursuant to this OEA shall be given by the Party to whom directed within thirty (30) days after receipt thereof. Each disapproval shall be in writing and, subject to Section 6.5.1, the reasons therefor shall be clearly stated. If a response is not given within the required time period, the requested Party shall be deemed to have given its approval if the original notice stated in capitalized letters that failure to respond within the applicable time period will be deemed an approval. Notwithstanding anything contained herein to the contrary, the provisions of this Section 6.5 do not apply in any manner or fashion to any request which requires an amendment to this OEA, such requests being governed solely by the provisions of Section 6.8.5.

6.5.3 If the Approving Parties' approval is required for any matter under this OEA, such approval shall only be effective if unanimous approval is given.

#### 6.6 Condemnation

In the event any portion of the Shopping Center shall be condemned, or conveyed under threat of condemnation, the award shall be paid to the Party owning the Parcel or the improvements taken, and the other Parties hereby waive and release any right to recover any value attributable to the property interest so taken, except that (i) if the taking includes improvements belonging to more than one (1) Party, such as Utility Lines or Signs, the portion of the award allocable thereto shall be used to relocate, replace or restore such jointly owned improvements to a useful condition, and (ii) if the taking includes easement rights which are intended to extend beyond the term of this OEA, the portion of the award allocable to each such easement right shall be paid to the respective grantees thereof. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this OEA which does not reduce or diminish the amount paid to the Party owning the Parcel or the improvement taken, then the owner of such other property interest shall have the right to seek an award for the taking thereof. Except to the extent they burden the land taken, no easement or license set forth in this OEA shall expire or terminate based solely upon such taking.

#### 6.7 Binding Effect

The terms of this OEA and all easements granted hereunder shall constitute covenants running with the land and shall bind the Parcels described herein and inure to the benefit of and be binding upon each Party. This OEA is not intended to supersede, modify, amend or otherwise change the provisions of any prior instrument affecting the land burdened hereby.

#### 6.8 Construction and Interpretation

6.8.1 This OEA and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof, and any prior negotiations, correspondence, memoranda or agreements are superseded in total hereby. This OEA has been fully negotiated at arms length between the signatories hereto, and after advice by counsel and other representatives chosen by such Parties, and such Parties are fully informed with respect thereto; no such Party shall be deemed the scrivener of this OEA; and, based on the foregoing, the provisions of this OEA and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party.

6.8.2 Whenever required by the context of this OEA, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa, and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter. Whenever this OEA imposes an obligation upon a Party to perform an action (e.g. obtain a



policy of insurance) such obligation shall be deemed satisfied if such Party has caused such obligation to be performed regardless of whether such Party has itself performed such action; provided however, that nothing shall relieve such Party from responsibility for complying or causing compliance with the terms and provisions of this OEA.

6.8.3 The captions preceding the text of each article and section of this OEA are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this OEA. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this OEA.

6.8.4 Invalidation of any of the provisions contained in this OEA, or of the application thereof to any Person by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other Person and the same shall remain in full force and effect.

6.8.5 This OEA may be amended by, and only by, a written agreement signed by all of the then current Approving Parties and shall be effective only when recorded in the county and state where the Shopping Center is located; provided, however, that no such amendment shall impose any materially greater obligation on, or materially impair any right of, a Party or its Parcel under this OEA unless such Party has joined in the execution of such amendment. No agreement to any amendment of this OEA shall ever be required of any Occupant or Person other than the Parties, nor shall any Occupant or Person other than the Parties have any right to enforce any of the provisions hereof. Since the submission of a proposed amendment to the Parties is not an item of "consent" or "approval", each Party may consider any proposed amendment to this OEA in its sole and absolute discretion without regard to reasonableness or timeliness.

6.8.6 This OEA, and any amendments thereto, may be executed in several counterparts, each of which shall be deemed an original. The signatures may be executed and notarized on separate pages, and when attached to each other shall constitute one (1) complete document.

#### 6.9 Negation of Partnership

None of the terms or provisions of this OEA shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Party shall be considered a separate owner, and no Party shall have the right to act as an agent for another Party, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

#### 6.10 Not a Public Dedication

Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any Parcel or portion thereof to the general public, or for any public use or

purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Party hereto shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

#### 6.11 Excusable Delays

Whenever performance is required of any Party hereunder, such Party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such Party, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this Section 6.11 shall not operate to excuse any Party from the prompt payment of any monies required by this OEA.

#### 6.12 Mitigation of Damages

In all situations arising out of this OEA, each Party and Operator, if any, shall attempt to avoid and mitigate the damages resulting from the conduct of any other Party. Each Party shall take all reasonable measures to effectuate the provisions of this OEA.

#### 6.13 OEA Shall Continue Notwithstanding Breach

It is expressly agreed that no breach of this OEA shall (i) entitle any Party to cancel, rescind, or otherwise terminate this OEA, or (ii) defeat or render invalid the lien of any mortgage or trust deed made in good faith and for value as to any part of the Shopping Center. However, such limitation shall not affect in any manner any other rights or remedies which a Party may have hereunder by reason of any such breach.

#### 6.14 Time

Time is of the essence of this OEA.

#### 6.15 No Waiver

The failure of any Party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that Party may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. No waiver by any Party of any default under this OEA shall be effective or binding on such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One (1) or more written waivers of any default under any provision of this OEA shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this OEA. The failure of a Party to provide a

Reconciliation or statement for amounts owed within a specified time shall not act as a waiver of such Party's right to collect such amount upon the later issuance of the required Reconciliation or statement.

#### 6.16 Authority

Each Party represents and warrants to the other Parties that the Person executing this OEA on behalf of said Party has been fully empowered to execute and deliver this document and that no further action is required on behalf of such Party to bind it to the terms and provisions herein contained.

#### 6.17 Attorney's Fees.

If any Party brings an action of law or in equity to interpret or enforce this OEA, the prevailing Party as determined by the Court in such action shall be entitled to recover reasonable attorney's fees and court costs for all stages of litigation, including but not limited to, appellate proceedings, in addition to any other remedy granted.

### ARTICLE VII - TERM

#### 7.1 Term of this OEA

This OEA shall be effective as of the date first above written and shall continue in full force and effect until 11:59 p.m. on April 30, 2069; provided, however, that (i) the easements referred to in Article II hereof which are specified as being perpetual or as continuing beyond the term of this OEA shall continue in full force and effect as provided herein, (ii) the building covenants and restrictions set forth in Section 3.3.4 hereof shall continue in full force and effect so long as an "unlimited area building" exists within the Unlimited Area Building Grouping or is being reconstructed and (iii) except as otherwise specifically provided in this OEA. Except as provided in the preceding sentence, upon the termination of this OEA, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this OEA shall terminate and have no further force or effect; provided, however, that the termination of this OEA shall not limit or affect any remedy at law or in equity that a Party may have against any other Party with respect to any liability or obligation arising or to be performed under this OEA prior to the date of such termination.

### ARTICLE VIII - EXCULPATION

#### 8.1 Certain Limitations on Remedies

None of the Persons comprising a Party (whether partners, shareholders, officers, directors, members, trustees, employees, beneficiaries or otherwise) shall ever be personally liable for any judgment obtained against a Party. Each Party agrees to look solely to the interest in the Shopping Center of a Defaulting Party for recovery of damages for any breach of this

OEA; provided, however, the foregoing shall not in any way impair, limit or prejudice the right of a Party:

- (A) Casualty Insurance and Condemnation Proceeds. To recover from a Party all damages and costs on account of, or in connection with, such Party's failure to apply or use casualty insurance or condemnation proceeds in accordance with the terms of this OEA.
- (B) Hazardous Substances. To recover from a Party all damages and costs arising out of or in connection with, or on account of, a breach by such Party of its obligations under Section 5.1.3.
- (C) Liability Insurance and Indemnity. To recover from a Party all damages and costs arising out of or in connection with, or on account of, either a breach by such Party of its obligations under Section 5.4, or a failure by such Party to satisfy any indemnity obligation required of it under this OEA.
- (D) Taxes, Assessments and Liens. To recover from a Party all damages and costs arising out of or in connection with, or on account of, the failure by such Party to pay when due any tax, assessment or lien as specified in Section 5.5 and Section 6.1.
- (E) Fraud or Misrepresentation. To recover from a Party all damages and costs as a result of any fraud or misrepresentation by such Party in connection with any term, covenant or condition in this OEA.
- (F) Equitable Relief; Costs. To pursue equitable relief in connection with any term, covenant or condition of this OEA, including a proceeding for temporary restraining order, preliminary injunction, permanent injunction or specific performance, and recover all costs, including Interest thereon, relating to such enforcement action.





AGREED AND ACCEPTED

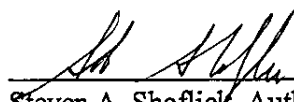
The undersigned hereby agrees to the designation as "Operator" in that certain Operation and Easement Agreement (the "OEA") dated October 15, 2009, by and between Target Corporation ("Target") and Weingarten Miller Equiwest Salt Lake LLC ("Developer") with respect to a shopping center located in Salt Lake City, UT, to which this document is attached, and further agrees to accept and perform all of the duties, obligations and responsibilities of the "Operator" as specified in said OEA.

"Operator"

WEINGARTEN MILLER EQUIWEST SALT LAKE LLC,  
a Colorado limited liability company

By: WEINGARTEN MILLER SALT LAKE LLC,  
a Colorado limited liability company,  
Its Manager

By:

  
\_\_\_\_\_  
Steven A. Shoflick, Authorized Representative

Address:

c/o Miller Weingarten Realty, Inc.  
850 Englewood Parkway, Suite 250  
Englewood, CO 80110-2304

**EXHIBIT A**  
**LEGAL DESCRIPTION OF TARGET TRACT**

Lots 1 and 4, 300 West Town Center Subdivision, Salt Lake County, Utah, according to the official plat thereof, recorded October 14, 2009, as Entry No. 10816796, in Book 2009 of Plats at Page 140.

16-12-330-004, 16-12-330-005, 16-12-330-006,  
15-12-331-005, 15-12-331-007, 15-12-331-008,  
15-12-376-001, 15-12-376-002, 15-12-376-003,  
15-12-376-004, 15-12-380-004, 15-12-380-010,  
15-12-380-009, 15-12-331-002, 15-12-331-003,  
15-12-331-005, 15-12-331-004, 15-12-404-004,  
15-12-404-005, 15-12-380-004, 15-12-380-005,  
15-12-380-006, 15-12-380-007, 15-12-491-001.



**EXHIBIT B**  
**LEGAL DESCRIPTION OF DEVELOPER TRACT**

Lots 2, 3, 5, 6, 7 and 8, 300 West Town Center Subdivision, Salt Lake County, Utah, according to the official plat thereof, recorded October 14, 2009, as Entry No. 10916716, in Book 2009P of Plats at Page 148.

15-12-371-002, 15-12-371-003, 15-12-404-003, 15-12-404-004,  
15-12-371-004, 15-376-001, 15-12-376-002, 15-12-381-004,  
15-12-381-016, 15-12-380-009, 15-12-380-004,  
15-12-381-023, 15-12-381-025, 15-12-330-005, 15-12-380-007,  
15-12-376-003, 15-12-376-004, 15-12-451-001,  
15-12-371-005, 15-12-380-007, 15-12-380-009,  
15-12-380-008, 15-12-380-001, 15-12-330-006,  
15-12-380-010, 15-12-371-004

**EXHIBIT C  
DESIGN OF SIGNS**



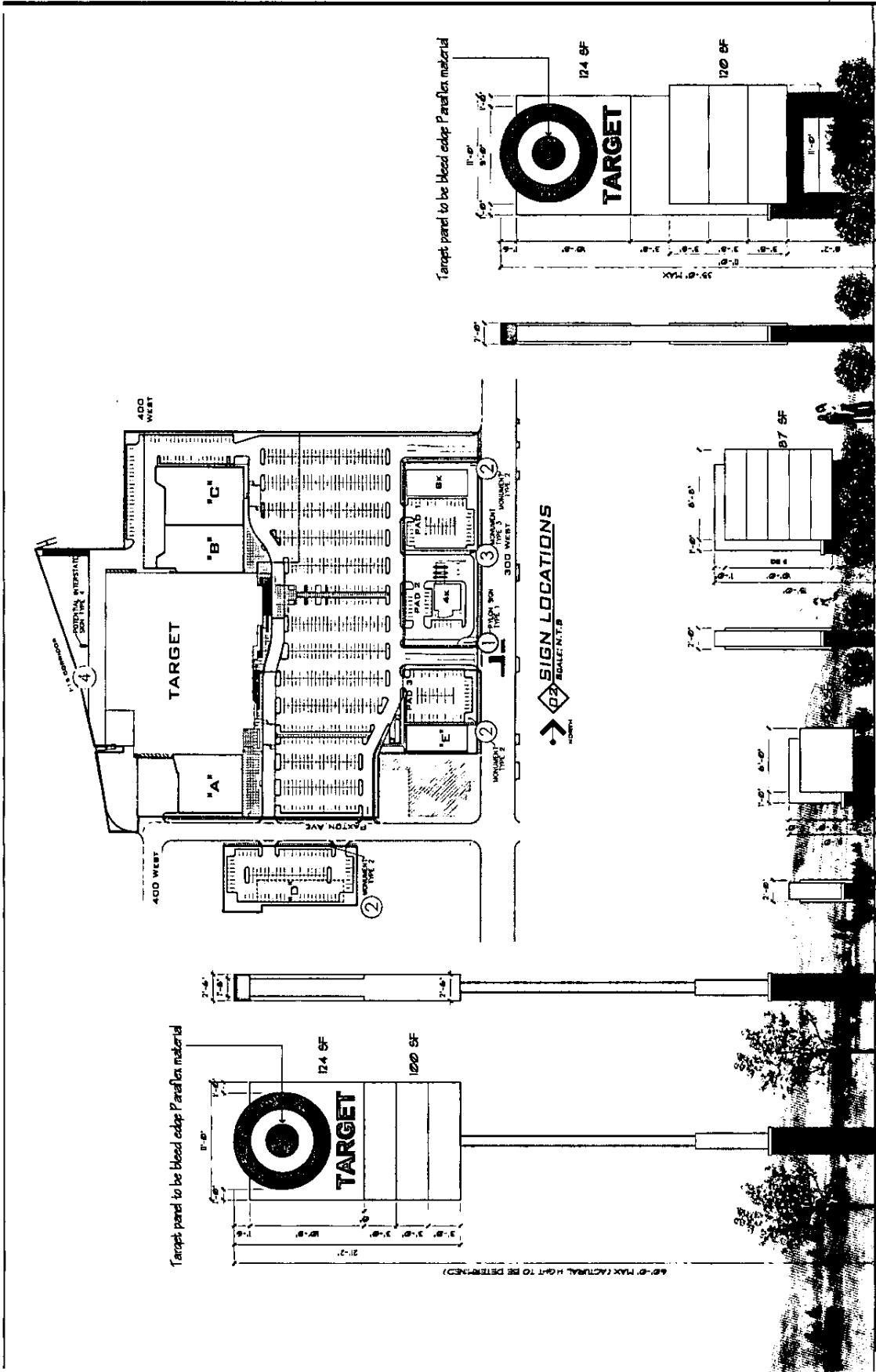
ELC ASSOCIATES  
 1120 SOUTH 300 WEST  
 SALT LAKE CITY, UTAH 84119  
 TEL: 313.441.1111  
 FAX: 313.441.1112  
 WWW.ELCASSOCIATES.COM

PROPOSED RETAIL DEVELOPMENT  
 1120 SOUTH 300 WEST  
 SALT LAKE CITY, UTAH



PRELIMINARY PLAN  
 PRELIMINARY PLAN  
 PRELIMINARY PLAN

DATE: 11/14/11  
 DRAWN BY: J. B. BROWN  
 CHECKED BY: J. B. BROWN  
 DESIGNED BY: J. B. BROWN  
 ABLO



MAIN PYLON SIGN ①  
 SIGN AREA 285 SF.

MULTI-TENANTS  
 MONUMENT SIGN ②  
 SIGN AREA 80 SF.

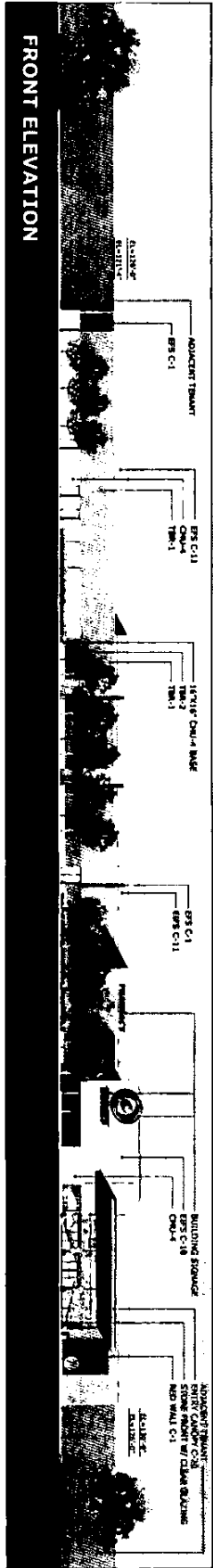
SINGLE PAD ③  
 SIGN  
 SIGN AREA 30 SF.

POTENTIAL  
 HIGHWAY PYLON SIGN ④  
 SIGN AREA 224 SF.

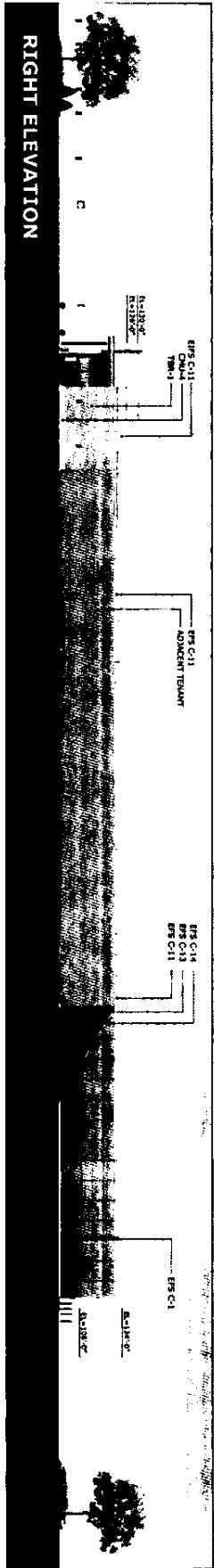
SIGN LOCATIONS  
 SCALE: N.T.S.  
 NORTH



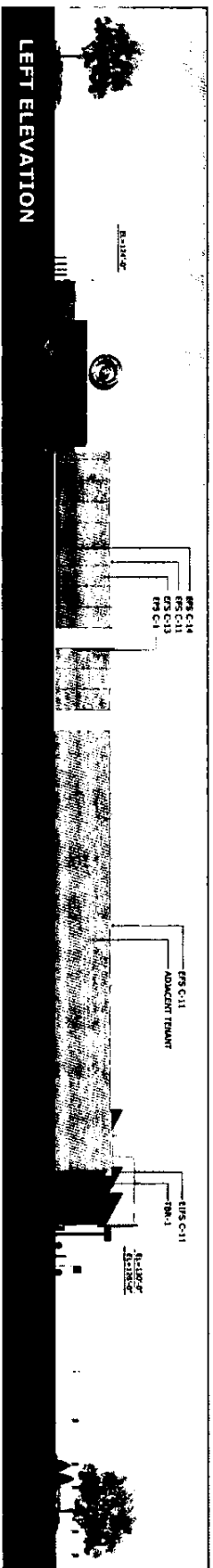
**EXHIBIT D**  
**ARCHITECTURAL THEME**



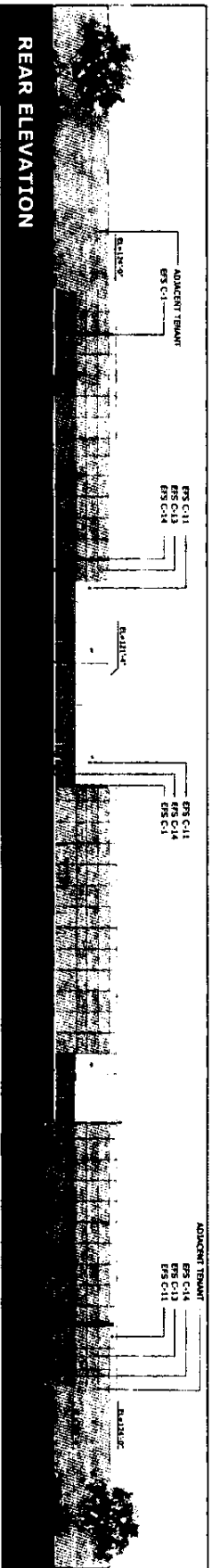
**FRONT ELEVATION**



**RIGHT ELEVATION**



**LEFT ELEVATION**



**REAR ELEVATION**

**SALT LAKE CITY, UT**

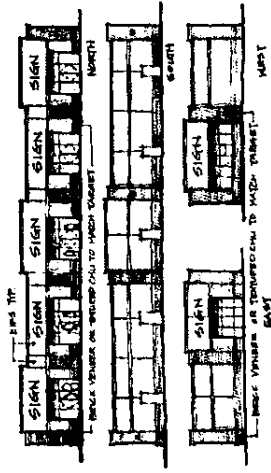
P00 400(RL)

ELEVATIONS TARGET STORE DESIGN  
 11/11/18, P. 10/19





**CLC ASSOCIATES**  
 420 E. 400 S. SUITE 201  
 SALT LAKE CITY, UTAH 84119  
 P. 801.582.8800  
 WWW.CLCSALTBUILD.COM



**TARGET STORE**  
 1200 SOUTH 300 WEST  
 SALT LAKE CITY, UTAH



**CLC ASSOCIATES**  
 420 E. 400 S. SUITE 201  
 SALT LAKE CITY, UTAH 84119  
 P. 801.582.8800  
 WWW.CLCSALTBUILD.COM

**EXHIBIT E**  
**SUBMISSION GUIDELINES**

1. During the conceptual design phase, the constructing party shall submit to the other parties the following:
  - A. Site Design Documents to Indicate the Following:
    - o Parking configurations and car parking count
    - o Typical bay width and stall dimensions
    - o Drive widths
    - o Setbacks
    - o Curb cuts
    - o Spot elevations or rough contours
    - o Rough landscape scope
    - o Lighting pole locations
    - o Preliminary utility strategies
  - B. Building Design Single Line Plans to Indicate the Following:
    - o Exterior wall configuration
    - o Doors and store front extent
    - o Canopies and overhangs
    - o Probable column locations at exterior and abutting another building on interior
  - C. Exterior Elevation Drawings to Indicate the Following:
    - o Opaque wall areas with doors and store fronts
2. After approval has been granted of conceptual design phase submitted in accordance with the guidelines specified in 1 above, the constructing party shall submit final design phase plans to the other parties as follows:
  - A. Site Design Documents Delineating Information Outlined in the Concept Phase with the Following Added Detail:
    - o Refined grading plans
    - o Selected lighting fixtures and resultant lighting levels in foot candles
    - o Landscaping showing generic planting materials and locations
    - o Proposed paving section designs and location
    - o Utility layouts including hydrants and sizes proposed
    - o Proposed details for curbs, site structures, manholes, etc.
    - o Proposed site signage designs and locations
  - B. Building Design Plans Delineating Information Outlined in the Concept Phase with the Following Added Detail:
    - o Exterior wall thicknesses
    - o Structural columns or bearing walls at building exterior and proposed foundation design at adjoining wall between abutting buildings

- o Where common footings are to be shared provide wall or column load information for design of that footing
  - o Proposed roof plan showing slopes and location of penthouses or other major mechanical equipment
  - o References of key flashing details of roof to adjoining building
- C. Exterior Elevation Drawings Delineating Information Outlined in the Concept Phase with the Following Added Detail:
- o Proposed building sign standards
  - o Paint color chips and samples of other materials such as brick or concrete aggregates (glass or aluminum finishes may be annotated on the elevations)
  - o Proposed large scale details of key section conditions to show exterior design intent
  - o Major penthouses or rooftop equipment profiles
  - o Features such as special masonry patterns, bands or special materials and textures
  - o Rain leaders or scuppers
  - o Wall sections at various exterior locations including at the demising wall to the adjoining building with key vertical dimensioning
3. If a building is to have a through-the-wall pedestrian access connection to an adjoining building, then the final design phase submission shall also include (to the owner of such adjoining building) the following:
- o Plans of the pedestrian mall circulation showing any variations in floor elevations
  - o Elevations/sections of the proposed mall space showing store front sign bulkheads and key dimensions
  - o Proposed ceiling design including special features such as variations in height or skylights
  - o Floor material patterns
  - o Landscaping and mall seating areas
  - o Proposed interior sign guidelines
  - o Paint color chips and samples of other materials such as brick or concrete aggregates (glass or aluminum finishes may be annotated on the plans or elevations)
  - o Proposed large scale details of key section conditions to show interior design intent
4. The constructing party shall provide the other parties with a complete set of bid documents for the building and/or improvements to be located upon its Parcel.



**EXHIBIT X  
SITE PLAN**

**[Copy attached hereto]**

Tract Boundary (Also Parcel Boundary Where Tract Boundary And Parcel Boundary Are One And The Same)

Parcel Boundary

Unlimited Area Building Grouping

Building Area

Outside Sales Area

Outdoor Seating Area

Service Drive

Front Drive

Traffic Signal

400 WEST

THE DEVELOPER TRACT INCLUDES THE ENTIRE SHOPPING CENTER EXCEPT THE TARGET TRACT

STORMWATER PUMP

PARCEL 6

UNDERGROUND STORMWATER DETENTION FACILITY

1-15 CORRIDOR  
DETECTION POND

SIGN AREA 4

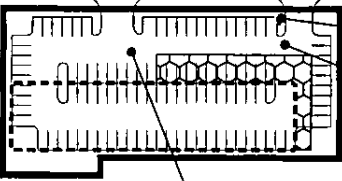
SHARED FOOTING ENDPOINTS

TARGET TRACT

SHARED FOOTING ENDPOINTS

PAD A

DEVELOPER TRACT PARCEL 5

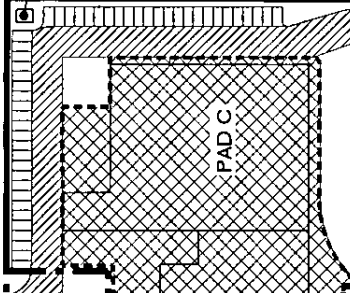


OUTPARCEL 4

DEVELOPER TRACT

SIGN AREA 2A

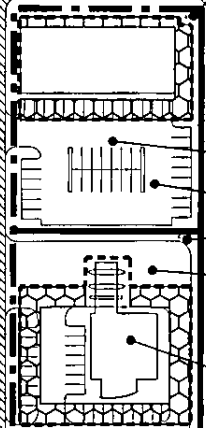
PAXTON AVENUE



DEVELOPER TRACT

DEVELOPER TRACT

UNDERGROUND STORMWATER DETENTION FACILITY



SIGN AREA 2B

OUTPARCEL 1

DEVELOPER TRACT

SIGN AREA 1

OUTPARCEL 2

DEVELOPER TRACT

SIGN AREA 3

OUTPARCEL 3

DEVELOPER TRACT

SIGN AREA 2C

300 WEST

DEVELOPER TRACT

SIGN AREA 3

Salt Lake City, Utah

T:\20069000.27\2641\dwg\2641siteX.dwg 10/6/2009 2:00:46 PM CDT



Exhibit X  
Site Plan  
Sheet 1 of 1

CONSENT AND SUBORDINATION  
TO  
OPERATION AND EASEMENT AGREEMENT  
BY  
WEINGARTEN REALTY INVESTORS

The undersigned is the beneficiary under that certain Deed of Trust and Security Agreement (Assemblage Parcels) dated March 24, 2008, and recorded March 27, 2008 in the Records of the Clerk and Recorder of Salt Lake County, Utah (the "Records") under Reception No. 10383956 in Book 9586 at Pages 9033-9076, as amended by First Amendment to Deed of Trust and Security Agreement (Assemblage Parcels), Absolute Assignment of Leases and Rents, and other Security Documents dated as of November 19, 2008, and recorded November 19, 2008 in the Records under Reception No. 10564910 in Book 9659 at Pages 9655-9668 ("First Amendment"), and as further amended by Second Amendment to Deed of Trust and Security Agreement (Assemblage Parcels), Absolute Assignment of Leases and Rents, and other Security Documents dated as of September 1, 2009, and recorded September 1, 2009 in the Records under Reception No. 10789655 in Book 9760 at Pages 52-65 ("Second Amendment"), and as further amended by Third Amendment to Deed of Trust and Security Agreement (Assemblage Parcels), Absolute Assignment of Leases and Rents, and other Security Documents dated as of September 29, 2009, and recorded September 29, 2009 in the Records under Reception No. 10806776 in Book 9766 at Pages 7316-7328 ("Third Amendment"), and as further amended by Fourth Amendment to Deed of Trust and Security Agreement, Absolute Assignment of Leases and Rents and Other Security Documents (Assemblage Parcels) dated as of October 13, 2009, and recorded on October 14, 2009, in the Records under Reception No. 10816709, and as further amended by Fifth Amendment to Deed of Trust and Security Agreement, Absolute Assignment of Leases and Rents and Other Security Documents (Assemblage Parcels) dated as of October 13, 2009, and recorded on October 14, 2009, in the Records, under Reception No. 10816780 (the "Deed of Trust"). By executing this instrument, the undersigned hereby (i) consents to the execution, delivery and recordation of the foregoing Operation and Easement Agreement (the "OEA") and (ii) subordinates the lien of the Deed of Trust to the OEA.

Dated: October 15, 2009.

WEINGARTEN REALTY INVESTORS,  
a Texas real estate investment trust



By: M. Candace DuFour  
Name: M. Candace DuFour  
Title: Sr. Vice President