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**DECLARATION OF EASEMENTS,
COVENANTS, CONDITIONS
AND RESTRICTIONS**

**DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS**

This Declaration of Easements, Covenants, Conditions and Restrictions (this "**Declaration**") is made and entered into as of January 14, 2015 (the "**Effective Date**") by SJ MARKETPLACE, LLC, a Delaware limited liability company ("**SJM**").

RECITALS

- A. SJM owns fee title to that certain real property located in the City of South Jordan, Salt Lake County, Utah and more particularly described on Exhibit A attached hereto (together with all Improvements now or hereafter located thereon, the "**Retail Center**").
- B. The Retail Center has been subdivided into separate legal parcels as depicted on the re-plat of the Retail Center attached to this Declaration as Exhibit B.
- C. SJM intends for the Retail Center to be developed, occupied, used and operated as an integrated retail development.
- D. Immediately following the recordation of this Declaration, SJM is conveying the CVS Parcel to a third party for separate ownership.
- E. SJM desires to enter into this Declaration for the purpose of (1) the grant of certain easements in, on, under and over the Retail Center; (2) the regulation of the development, alteration, maintenance, repair, replacement and operation of the Retail Center, including, without limitation, those common areas of the Retail Center designated for shared use or access; (3) the allocation between and among the Owners of certain shared common area costs and expenses; (4) the creation of certain rights and the imposition of certain restrictions and covenants on and with respect to the use and operation of the Retail Center or portions thereof; and (5) certain other matters set forth herein.

ARTICLE 1

DEFINITIONS/RULES OF CONSTRUCTION

1.1 **Certain Defined Terms**. The terms defined in this Article 1 shall, for all purposes of this Declaration, have the meanings herein specified.

"**Affiliate**" means with respect to a particular Person, another Person that controls, is controlled by, or is under common control with, such first Person. The term "control" means the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Declaration**" means this Declaration of Easements, Covenants, Conditions and Restrictions, including the exhibits attached hereto, which exhibits are hereby incorporated by reference, as such Declaration is hereafter amended, amended and restated, modified and/or supplemented from time to time.

“Building” means each of the buildings now or hereafter situated on the Retail Center.

“Claims” is defined in Section 5.6.

“Common Areas” mean all sidewalks, ramps, driveways, drive aisles, exterior plazas, parking areas, landscaped areas, fountains, exterior stairways or escalators, and other facilities or areas used in common by the Owners and Occupants of the Retail Center, including all Improvements located thereon and used for such purposes. Notwithstanding any contrary provision of this Declaration, (a) the Common Areas shall exclude the interior portions of any Building and any loading dock that serves a particular Building, and (b) the Common Areas shall include any drive-through lane for a Building that is located outside of the CVS Parcel, but shall exclude any drive-through fixtures, equipment, signage or utility systems.

“Common Areas Expenses” is defined in Section 8.3.1.

“Common Areas Expenses Estimate” is defined in Section 8.3.3.

“Common Areas Expenses Statement” is defined in Section 8.3.3.

“CVS Exclusive Parking” means the parking marked on Exhibit C as “CVS Exclusive Parking.”

“CVS Ground Lease” means that certain Ground Lease dated April 2, 2014 between SJM, as landlord, and Utah CVS Pharmacy, L.L.C., as tenant, as amended, pertaining to the CVS Parcel.

“CVS Parcel” means Lot 2A described on Exhibit A and depicted on Exhibit B attached to this Declaration.

“CVS Parcel Monument Sign” is defined in Section 3.7.

“Declarant” initially means SJM as fee title owner of the Retail Center. Except as expressly provided herein, SJM shall remain Declarant as long as SJM continues to own fee title to any Parcel of the Retail Center, subject to the following: (a) no conveyance by SJM of any Parcel or Parcels of the Retail Center shall confer upon the transferee the status of “Declarant” under this Declaration except as expressly provided herein; (b) in connection with the conveyance by SJM or the then-existing Declarant of fee title to a Parcel owned by SJM or such then-existing Declarant, SJM or such then-existing Declarant shall have the right to designate the transferee of such Parcel as the successor Declarant under this Agreement; (c) unless a successor Declarant is otherwise expressly designated by SJM or the then-existing Declarant, the transferee of fee title to the last Parcel of the Retail Center owned by SJM or the then-existing Declarant shall automatically become the successor Declarant under this Declaration; and (d) upon the designation by SJM or the then-existing Declarant of the Owner of a particular Parcel as Declarant, or upon the Owner of a Parcel becoming Declarant pursuant to clause (c) above, each successive owner of such Parcel shall thereafter be Declarant under this Declaration. Notwithstanding any contrary term or provision of this Declaration, a Declarant must be the owner of fee title to a Parcel of the Retail Center.

“Default Curing Owner” is defined in Section 11.3.

“Effective Date” is defined in the preamble to this Declaration.

“Governmental Body” means any local, state or federal governmental body, including any agency, division, department or board thereof.

“Governmental Requirements” means all local, state or federal governmental, special district or public utility approvals, laws, statutes, rules and regulations, building codes, ordinances (zoning or otherwise) and permits which are, or will be, adopted, amended, modified or supplemented, and which govern, affect or relate to the zoning, use, development, improvement, operation or ownership of the Retail Center, or any portion thereof.

“Ground Lease” means either the CVS Ground Lease or any future ground lease pursuant to which a portion of the Retail Center is ground leased.

“Ground Lessee” means the ground lessee under a Ground Lease.

“Gross Floor Area” means the total ground floor (and any additional floor or mezzanine if and to the extent used for the display or sale of retail goods) space within a Building, measured from the exterior faces of all exterior walls (excluding any decorative façade, fascia or architectural treatment or any overhang or other non-occupiable extensions of a Building), but excluding any exterior loading docks, loading zones or delivery areas, exterior trash enclosures or pallet areas. No deduction shall be made for columns or interior construction or equipment.

“Improvement Changes” means all alterations, additions, modifications, replacements, restorations, or other changes after the Effective Date to the exterior components of the Improvements in existence immediately prior to an Improvement Change.

“Improvements” means all structures and improvements of any kind now or hereafter located in, on or under the Retail Center, whether above or below the land surface, and whether permanent or temporary, including but not limited to, buildings, parking structures, energy plants, utility lines, driveways, drive aisles, paved parking areas, pathways, fences, exterior stairs connecting paved surfaces, screening walls, awnings, retaining walls, plantings, planted trees, landscaping, hardscaping, irrigation and drainage pipes and fixtures, lighting fixtures and signs.

“Indemnitee” means any Owner or Managing Agent and its respective officers, directors, agents, members, shareholders and partners who are entitled to indemnification under this Declaration.

“Indemnitor” means each Owner or Managing Agent required to indemnify an Indemnitee under this Declaration.

“Interest Rate” means the Reference Rate plus two percent (2%), but not greater than the interest rate allowed under applicable Governmental Requirements.

“Managing Agent” means Declarant or such other Owner that Declarant expressly designates as Managing Agent under this Declaration and that accepts such designation.

“Mortgage” means a deed of trust, mortgage or other consensual encumbrance recorded of Record against fee title, or leasehold title under a Ground Lease, to any portion of the Retail Center.

“Mortgagee” means a beneficiary or holder of a Mortgage.

“Occupant” means the Owner of, and any other Person or Persons entitled by leasehold interest or other legal relationship to the exclusive right to occupy, all or any portion of any Parcel or Building.

“Owner” means the Person or Persons holding record fee title to a Parcel (excluding any Mortgagee or Person holding such interest merely as security for the performance of an obligation), and their respective heirs, successors and assigns. In the event that the ownership of the Improvements on any Parcel is severed from the land of such Parcel, then only the Person holding title to the land of such Parcel shall have the rights of an Owner hereunder; provided, however, that (i) both the Person holding record fee title to the land of a Parcel and the Person holding record fee title to the Improvements on such Parcel shall be jointly and severally liable for the performance of all duties and obligations of an “Owner” hereunder, and (ii) at any time in which a Ground Lease is in effect with respect to a Parcel, the Ground Lessee under such Ground Lease shall be an “Owner” of such Parcel for purposes of this Declaration, and all references herein to the “Owner” of a Parcel that is subject to a Ground Lease shall include the Ground Lessee of such Parcel as well as the Person or Persons holding record fee title to such Parcel.

“Parcel” or **“Parcels”** mean individually or collectively each current or future separate legal parcel constituting a portion of the Retail Center, as re-platted, adjusted or modified by lot line adjustment or other Governmental Body action at the application of the Owner thereof with the written approval of Declarant (if Declarant is not the Owner thereof), which approval may be withheld by Declarant in its sole and absolute discretion. The Parcels as of the Effective Date are Lots 2A, 2B, 2C and 2D as shown on Exhibit B attached to this Declaration.

“Permittees” means all Occupants and all customers, patrons, employees, concessionaires and other business invitees of the Occupants having business to conduct at the Retail Center.

“Person” means any individual, partnership, corporation, limited liability company, trust, estate, Governmental Body or other legal entity.

“Record or Recordation” means, with respect to any document, the recordation thereof, and with respect to any map, the filing thereof, in the office of the County Recorder of Salt Lake County, Utah.

“Real Estate Taxes and Assessments” means all real property taxes, possessory-interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, transit and traffic charges, housing fund assessments, open space charges, childcare fees, school, sewer and parking fees or any other assessments, levies, fees, exactions or charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen (including fees “in-lieu” of any such tax or assessment) which are assessed, levied, charged, conferred or imposed by any Governmental Body upon any real property or its operations, together with all taxes, assessments or other fees imposed by any Governmental Body upon or measured by any rent or other charges payable under any lease, including any gross receipts tax or excise tax levied by any Governmental Body with respect to receipt of rental income, or upon, with respect to or by reason of the development, possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy of the Retail Center, together with any tax imposed in substitution, partially or totally, of any tax previously included within

the aforesaid definition or any additional tax the nature of which was previously included within the aforesaid definition, together with any and all costs and expenses (including, without limitation, attorneys, administrative and expert witness fees and costs) of challenging any of the foregoing or seeking the reduction in or abatement, redemption or return of any of the foregoing.

“**Reference Rate**” means the prime or reference rate announced from time to time by Citibank, N.A. (or if such bank ceases to exist or ceases to regularly announce a prime or reference rate, then the prime or reference rate announced from time to time by the largest bank in terms of assets headquartered in New York, New York which does then regularly announce a prime or reference rate).

“**Retail Center**” is defined in the recitals to this Declaration.

“**Site Plan**” is the site plan for the development of the Retail Center attached as Exhibit C to this Declaration, as such Site Plan is hereafter modified or adjusted in accordance with the terms and provisions of this Declaration.

1.2 **List of Exhibits.**

<u>Exhibit A</u>	Legal Description of Retail Center
<u>Exhibit B</u>	Platted Parcels of Retail Center
<u>Exhibit C</u>	Site Plan
<u>Exhibit D</u>	Approved Elevations for Building on CVS Parcel
<u>Exhibit E</u>	Depiction of CVS Parcel Monument Sign
<u>Exhibit F</u>	Prohibited Uses
<u>Exhibit G</u>	Existing Exclusive Use Restrictions

1.3 **Rules of Construction.** Unless the context otherwise requires, the following rules apply:

1.3.1 “or” is not exclusive, and the term “may” is permissive;

1.3.2 to the extent required by the context, words (a) in the singular include the plural, (b) in the plural include the singular, and (c) in the masculine include the feminine.

1.3.3 references to this Declaration, or the use of the words “herein” or similar references refer to this Declaration as a whole and not to a specific provision thereof by limitation;

1.3.4 the term “including” is by way of example and not by limitation; and

1.3.5 references to an “Article,” “Section” or “Exhibit” shall be to an Article, Section or Exhibit of this Declaration.

ARTICLE 2

PURPOSE/INTENT TO BIND FUTURE OWNERS

2.1 **Purpose.** Declarant intends for this Declaration to govern (a) the grant of certain easements in, on, under and over the Retail Center; (b) the regulation of the development, alteration, maintenance, repair, replacement and operation of the Retail Center, including, without limitation, the

Common Areas; (c) the allocation between and among the Owners of certain Common Areas Expenses; (d) the creation of certain rights and the imposition of certain restrictions and covenants on and with respect to the Retail Center or portions thereof; and (e) certain other matters set forth herein.

2.2 **Future Dispositions; Intent to Bind.** On and after the Effective Date, to ensure that the purposes set forth in Section 2.1 above are met, Declarant desires to impose upon the Retail Center, and the Parcels and Improvements constituting a portion thereof, the mutual and beneficial covenants, conditions and restrictions set forth in this Declaration. Upon the Recordation of this Declaration, the Retail Center, and the Parcels and Improvements constituting a portion thereof, shall be held, conveyed, hypothecated, encumbered, leased, used, occupied and improved subject to the easements, covenants, conditions and restrictions contained herein, all of which are declared and agreed to be equitable servitudes for the purpose of enhancing and protecting the value, desirability and attractiveness of the Retail Center. All of the covenants, conditions and restrictions set forth herein shall run with the Retail Center and all of the Parcels and Improvements constituting a portion thereof, and shall be binding upon and shall benefit each Owner and their respective heirs, successors and assigns. All of the covenants, conditions and restrictions described herein are made for the direct, mutual and reciprocal benefit of each Parcel, and the Improvements located thereon, and shall create reciprocal rights and obligations, and privity of contract and estate between and among, the Owners and their respective heirs, successors and assigns.

ARTICLE 3

REGULATION OF IMPROVEMENTS

3.1 **Construction of Improvements and Improvement Changes.** All Improvements and Improvement Changes must comply with the terms and provisions of this Declaration. No Improvement Changes shall cause any Improvements to violate the terms and provisions of this Declaration, including the requirements and restrictions set forth in this Article 3 with respect to the Improvements located on each Parcel.

3.2 **General Development of Parcels.** Except with the prior written approval of Declarant, which approval may be withheld by Declarant in its sole and absolute discretion, (a) the Improvements constructed on each of the Parcels shall be in compliance with the Site Plan, including without limitation, the location and configuration of the Building(s) to be constructed on such Parcel, the location, size, configuration and number of parking spaces on such Parcel, and the location and configuration of the drive aisles, drive-thru facilities (if applicable) and other Improvements to be located on such Parcel as shown on the Site Plan; (b) all Buildings shall be one structural story (including mezzanine); (c) no Building, other than the Building on the CVS Parcel, shall be of a height in excess of twenty two (22) feet measured from the elevation of the finished graded pad to the parapet of the Building and twenty four (24) feet to the highest point of the roof or other architectural feature of the Building (excluding the height of HVAC and other mechanical equipment on the roof, all of which shall be screened from view in a manner acceptable to Declarant); (d) the Building located on the CVS Parcel shall not be of a height in excess of thirty-five (35) feet (including architectural features, but excluding the height of HVAC and other mechanical equipment on the roof, all of which shall be screened from view in a manner acceptable to Declarant); and (e) the Gross Floor Area of each Building on a particular Parcel may be less than, but shall not be greater than, the square footage shown for each such Building on the Site Plan; provided, however, that for purposes of this clause (e), an Owner that

owns contiguous Parcels shall have the right to calculate the Gross Floor Area of Buildings on contiguous Parcels on an aggregate basis, in which case the aggregate Gross Floor Area of such Buildings shall not exceed the aggregate square footage shown for such Buildings on the Site Plan; and provided, further, that the Gross Floor Area of the Building on the CVS Parcel may be expanded to up to 15,000 square feet to include additional mezzanine space as long as the ground floor footprint of the Building on the CVS Parcel does not exceed 13,100 square feet.

3.3 **Other Improvement Requirements.** In addition to the requirements set forth in Section 3.2 above, all Improvements or Improvement Changes shall comply with the following requirements: (i) all Improvements and Improvement Changes shall comply with all applicable Governmental Requirements in effect at the time of the construction of such Improvement or Improvement Change; (ii) all Improvements and Improvement Changes shall be consistent and compatible with a first-class retail and commercial center; (iii) all Improvements and Improvement Changes shall be architecturally compatible with the other Buildings on the Retail Center; (iv) there shall be no Buildings, kiosks, permanent barriers, free-standing signs (other than parking related or directional signage approved by Declarant), other structures or outdoor sales areas except as shown on the Site Plan; and (v) all construction work or staging with respect to the construction of an Improvement or Improvement Change shall be confined to the Parcel on which the Improvement or Improvement Change is to be located, or other Parcel(s) owned by the same Owner, except as approved by the Owner of a Parcel on which another Owner desires to stage construction; provided, however, that no construction or staging shall interfere with the free flow of traffic over the main drive aisles of the Retail Center, and all construction or staging areas outside of the building envelopes shown on the Site Plan shall be subject to Declarant's prior written approval.

Notwithstanding any contrary term or provision of this Section 3.3, but otherwise subject to compliance with the other terms and provisions of this Declaration, during the period in which the CVS Ground Lease is in effect, the Ground Lessee under the CVS Ground Lease shall have the right to make Improvement Changes to the CVS Parcel and the Building located thereon provided that such Improvement Changes comply with the following terms and provisions:

- (a) the Building on the CVS Parcel must comply with the requirements set forth in Section 3.2 above and must remain within the building envelope shown on the Site Plan attached to this Declaration as Exhibit C;
- (b) all Improvement Changes shall be performed in a good and workmanlike manner, shall be at least substantially equal in quality and usefulness to the original Improvements on the CVS Parcel and of a first-class modern character, and shall not diminish the overall value of the CVS Parcel and the Improvements located thereon;
- (c) there shall be no decrease in the parking ratio of the number of parking spaces located on the CVS Parcel (and no decrease in the parking ratio of the full-size parking spaces located on the CVS Parcel) as compared to the Gross Floor Area of the Building on the CVS Parcel;
- (d) Declarant shall have the right to approve any changes to the common access points and curb cuts between the CVS Parcel and the remainder of the Retail Center and from the CVS Parcel to 4000 West Street, and the major drive aisles located on the CVS Parcel, from that set forth on the Site Plan attached to this Declaration as Exhibit C;

(e) notwithstanding the foregoing, any changes to the exterior appearance which materially deviates from the then-standards for CVS/pharmacy drugstores, shall be subject to Declarant's reasonable approval, which will not be unreasonably withheld, delayed or conditioned; and

(f) except as otherwise provided in Article 10 below, the Building on the CVS Parcel shall not be demolished unless the Building on the CVS Parcel is replaced with a Building of similar utility and value, in the same footprint as required under this Declaration and that otherwise complies with the requirements of this Declaration.

3.4 **Modification of Site Plan.** Declarant shall have the right to modify the Site Plan or modify or waive the requirements of Section 3.2 above or clauses (iii) through (v) of the first paragraph of Section 3.3 above, in each case with respect to (a) any Parcel that is owned by Declarant as of the date of such modification or waiver, or (b) any other Parcel with respect to which such modification or waiver is requested or approved by the Owner of such particular Parcel; provided, however, that no modification or waiver pursuant to this paragraph shall (w) reduce the number of parking spaces in the Shopping Center to below that required by applicable Governmental Requirements; (x) materially interfere with traffic flow over the main drive aisles of the Retail Center, including adversely affecting the accessibility of the CVS Parcel from the parking areas of the Retail Center or from the public streets and roadways bordering the Retail Center; (y) unreasonably interfere with the visibility of the storefront signs on the Building on the CVS Parcel or the CVS Monument Sign, provided that this clause (y) shall not restrict the construction of Buildings in the Permitted Building Areas; or (z) cause any other Parcel of the Shopping Center to be in violation of Governmental Requirements applicable to such Parcel.

Notwithstanding any contrary term or provision of this Section 3.4, during the period in which the CVS Ground Lease is in effect, without the prior written consent of the Ground Lessee of the CVS Parcel, which consent shall not be unreasonably withheld or delayed, no modification to the Site Plan shall be made (i) that permits the construction of buildings on the remaining Parcels of the Retail Center outside of the "Permitted Building Areas" depicted on Exhibit C attached to this Declaration, (ii) that changes the layout of the remaining Parcels of the Retail Center in a manner that adversely affects the accessibility to the CVS Parcel from the parking areas or from the public streets and roadways bordering the Retail Center, or the visibility of the signs or storefront(s) of the Occupant of the Building on the CVS Parcel (except that construction of Buildings in the Permitted Building Areas shall not be considered to adversely affect such visibility), and (iii) such that kiosks, planters, trees, shrubs, stairs, or other obstructions are placed on the CVS Parcel in front of the Premises, except as shown on the Site Plan attached to this Declaration as Exhibit C.

3.5 **Maintenance and Repair.** Subject to the terms and provisions of (a) Article 8 below regarding the maintenance and repair of the Common Areas, and (b) Article 10 regarding damage or destruction, each Owner of a Parcel shall maintain, repair, replace and restore such Owner's Parcel and the Improvements located thereon in a clean, orderly and first-class condition similar to that for comparable first-class retail properties in Salt Lake County, Utah and in compliance with applicable Governmental Requirements; provided, however, that the provisions of this Section 3.5 shall not be applicable to the interior portions of a Building that are not visible from the exterior of such Building.

3.6 **Construction Regulations.** All construction activities on the Retail Center shall be performed in accordance with the following requirements:

3.6.1 All Improvements or Improvement Changes shall be constructed pursuant to plans and specifications submitted to and approved by Declarant, which approval shall not be unreasonably withheld; provided, that for purposes of clarification, interior components of Buildings that are not visible from the exterior of a Building shall not be subject to Declarant approval; provided, further, that Declarant hereby approves the Improvements on the CVS Parcel shown on the Site Plan attached to this Declaration as Exhibit C and consistent with the elevations for the Building on the CVS Parcel attached to this Declaration as Exhibit D.

3.6.2 no Owner shall unreasonably interfere with any construction work being performed on the remainder of the Retail Center, or any portion thereof;

3.6.3 no construction work shall unreasonably interfere with the use, occupancy or enjoyment of the remainder of the Retail Center, or any portion thereof, by any other Owner or Occupant, or by any of their respective Permittees, subject to normal noise, dust and debris associated with construction in accordance with general industry standards; and

3.6.4 no construction activities shall cause any other Owner to be in violation of any Governmental Requirement.

3.7 **Signage.**

3.7.1 Except as provided in Section 3.7.2 below, there shall be no pylon, monument or other free-standing signs, or any flags or banners, constructed or exhibited in or on the Retail Center, except as approved by Declarant and the Owner of the Parcel on which such item will be located.

3.7.2 Notwithstanding Section 3.7.1 above, the Owner of the CVS Parcel shall have the right to install, use and maintain a monument sign at the location on the CVS Parcel shown on the Site Plan and as depicted on Exhibit E attached to this Declaration (the "**CVS Parcel Monument Sign**"). The Owner of the CVS Parcel shall be responsible to maintain, repair, light and replace, as necessary, the CVS Parcel Monument Sign, at its sole cost and expense, in a first class condition similar to that for comparable first-class retail properties in Salt Lake County, Utah and in compliance with applicable Governmental Requirements. No material modifications shall be made to the CVS Parcel Monument Sign without the prior consent of Declarant, which consent shall not be unreasonably withheld, conditioned or denied. Except as approved by Declarant, the Owner of the CVS Parcel shall use the CVS Parcel Monument Sign only to display the trade name of the Occupant of the Building on the CVS Parcel and shall not use the CVS Parcel Monument Sign to display or advertise the names of businesses not located in the Retail Center.

3.7.3 Except as otherwise approved by Declarant, all signage located on a Building shall (a) be subject to and comply with the requirements of Article 3 of this Declaration, (b) comply with the sign criteria for the Retail Center approved by the applicable Governmental Body and otherwise comply with all Governmental Requirements, and (c) advertise only an Occupant of the Retail Center and not the name of any other business not located in the Retail Center.

3.8 **Additional Provisions Affecting Certain Parcels.** Declarant shall have the right to amend this Declaration to (i) impose upon one or more Parcels additional covenants, conditions or restrictions that are specific to such Parcel(s), as long as at the time of such amendment Declarant is the owner of the Parcel(s) burdened by such additional covenants, conditions or restrictions, or Declarant obtains the written agreement of the Owner of such burdened Parcel(s) to same; and/or (ii) grant to one or more Parcels additional rights, easements or other terms for the benefit of such Parcel that encumber another Parcel or Parcel as long as at the time of such amendment Declarant is the owner of the Parcel(s) burdened by such additional rights, easements or other terms, or Declarant obtains the written agreement of the Owner of such burdened Parcel(s) to same.

ARTICLE 4

REGULATION OF OPERATIONS AND USES

4.1 **Permitted Use In General.** The Retail Center shall be used only for retail, restaurant and other commercial uses and purposes consistent and compatible with the operation of a retail shopping center. All uses of the Retail Center shall comply with Governmental Requirements, and no portion of the Retail Center shall be used or developed in any manner that would cause another Owner or another Owner's Parcel and/or the Improvements located thereon to be in violation or noncompliance with any Governmental Requirements. Except as permitted under Section 3.6 with respect to construction work, no use of the Retail Center shall be permitted that causes or produces a nuisance or unreasonable disturbance to Occupants and activities on other Parcels, including, but not limited to, vibration, sound, odor, electro-magnetic disturbance, radiation, air or water pollution, dust and emission of odorous, toxic or non-toxic matter.

4.2 Other Use Restrictions and Prohibited Conduct.

4.2.1 No condition shall be permitted to exist upon any Parcel or in or on any Improvement that induces, breeds or harbors infectious plant diseases, rodents, or noxious insects.

4.2.2 Subject to Section 4.2.1 above, no Owner or Occupant shall in any way interfere with the established drainage of water over its Parcel from adjoining or other Parcels, nor shall any Owner or Occupant in any way interfere with established drainage of water from its Parcel so as to cause or permit water to drain onto, over or under any adjoining or other Parcel except through established drainage Improvements. If an Owner desires to change the established drainage flow over any other Owner's Parcel to accommodate an Improvement Change on the requesting Owner's Parcel, then the requesting Owner shall be permitted to do so provided such requesting Owner provides for adequate and proper drainage at the requesting Owner's sole cost and expense. For the purposes hereof, "established" drainage is defined as the drainage that exists upon the completion of the development of the Retail Center as contemplated on the Site Plan, given the overall grade of each Parcel and the Improvements to be constructed thereon, as such drainage may hereafter be changed in accordance with the terms and provisions of this Section 4.2.2.

4.2.3 No Owner or Occupant shall in any way unreasonably interfere with the use of the easements granted or reserved hereunder, or do any act or thing inconsistent with such use.

4.2.4 No Owner or Occupant shall solicit business or distribute handbills in the Common Areas of the Retail Center.

4.2.5 No portion of the Common Areas may be used for outdoor promotions, sidewalk sales, cart storage, merchandise displays, seasonal sales, commercial truck parking, inventory storage, do-it-yourself or demonstration displays, or park and ride or carpooling arrangements, except with the consent of Declarant, which consent may be withheld by Declarant in its sole and absolute discretion.

4.2.6 Except with the consent of Declarant, which consent may be withheld in Declarant's sole and absolute discretion, there shall be no satellite or other communication antennae or other equipment installed on the exterior of the Improvements, except any satellite antennae designed to serve the Occupant of a Building and that is affixed to the roof of such Building and screened from view in a manner reasonably satisfactory to Declarant.

4.3 **Prohibited Uses.** No Owner or Occupant shall use any Parcel in violation of the use restrictions set forth on Exhibit F attached to this Declaration. Declarant shall have the right to modify or waive any of the use restrictions set forth on Exhibit F, except that the consent of the Owner of the CVS Parcel shall be required with respect to the modification of the use restrictions set forth in Paragraph 1 of Exhibit F, which consent may be withheld in the sole and absolute discretion of such Owner of the CVS Parcel.

4.4 **Exclusive Use Restrictions.**

4.4.1 **Existing Exclusive Use Restrictions.** No Parcel of the Retail Center shall be used for any purpose that violates the existing exclusive use restrictions that are set forth on Exhibit G (the "**Existing Exclusive Use Restrictions**"); provided, however, that during any period during which the CVS Ground Lease is in effect, the CVS Parcel shall not be bound by Paragraphs 2.3, 2.4 and 2.5 of Exhibit G. Compliance with each Existing Exclusive Use Restriction in favor of an Occupant of a Parcel of the Retail Center shall be binding upon the Occupants of all other Parcels of the Retail Center as long as such Existing Exclusive Use Restriction remains in effect, regardless of whether the lease or occupancy agreement that contains the Existing Exclusive Use Restriction is assigned, subleased, extended, renewed or modified (except to the extent of modifications that purport to expand the Existing Exclusive Use Restriction), and continuing if and so long as the lease or occupancy agreement that contains such Existing Exclusive Use Restriction is replaced with a new lease or occupancy agreement with a then-existing Occupant or a new replacement Occupant, in each case if such new lease or occupancy agreement is executed within six (6) months after the date of the termination or expiration of the lease or occupancy agreement in which the Existing Exclusive Use Restriction was contained. Each Existing Exclusive Use Restriction is enforceable only by the Owner and/or Occupant of the Parcel benefitted by the Existing Exclusive Use Restriction or, in the case of Existing Exclusive Use Restrictions that benefit the East Development, by the Declarant, and is not enforceable by the Owner or Occupant of any other Parcel.

4.4.2 **Future Exclusive Use Restrictions.** No Parcel of the Retail Center, excluding the CVS Parcel during the period in which the CVS Ground Lease is in effect, shall be used for any purpose that violates any future exclusive use restriction granted after the Effective Date by Declarant to an Occupant of another Parcel of the Retail Center ("**Future Exclusive Use Restrictions**"), except

to the extent that at the time of the grant of such Future Exclusive Use Restriction the subject Parcel is then being used, or a lease or occupancy agreement has been executed for the use of such subject Parcel, for a purpose that conflicts with the Future Exclusive Use Restriction. For purposes hereof, a Future Exclusive Use Restriction shall be considered to be "granted" as of the date that a written letter of intent, term sheet, lease or occupancy agreement has been executed after the Effective Date that includes such Future Exclusive Use Restriction and the Owner of the Parcel to be bound by such Future Exclusive Use Restriction has been given written notice of such grant; provided, however, that if the transaction that is the subject of any letter of intent or term sheet is terminated prior to the execution of a binding lease or occupancy agreement for such Future Exclusive Use Restriction, then for purposes of this paragraph the grant of such Future Exclusive Use Restriction shall be considered terminated (until subsequently granted, if applicable). Compliance with each Future Exclusive Use Restriction hereafter granted in favor of an Occupant of a Parcel as provided above shall be binding upon the Occupants of each other Parcel of the Retail Center as long as such Future Exclusive Use Restriction remains in effect, regardless of whether the lease or occupancy agreement which contains the Future Exclusive Use Restriction is assigned, subleased, extended, renewed or modified, and if and so long as the lease or occupancy agreement that contains such Future Exclusive Use Restriction is replaced with a new lease or occupancy agreement with a then-existing Occupant or a new replacement Occupant, as long as any such new lease or occupancy agreement is executed within six (6) months after the date of the termination or expiration of the lease or occupancy agreement in which the Future Exclusive Use Restriction was contained. Each Future Exclusive Use Restriction is enforceable only by the Owner and/or Occupant of the Parcel benefitted by the Future Exclusive Use Restriction as set forth in the notice of the grant of such Future Exclusive Use Restriction, and such Future Exclusive Use Restriction shall not be enforceable by the Owner or Occupant of any other Parcel. Although no amendment of this Declaration shall be required to document a Future Exclusive Use Restriction, Declarant shall have the right to amend this Declaration to document a Future Exclusive Use Restriction in accordance with the terms and provisions of this Section 4.4.2.

ARTICLE 5

INSURANCE/INDEMNIFICATION

5.1 **Duty to Carry Casualty Insurance.** Each Owner shall carry (or cause to be carried), at its own sole cost and expense, Cause of Loss Special Form (also known as All-Risk) property insurance, and during periods of construction, Cause of Loss Special Form builder's risk insurance, on all of the Improvements located on its Parcel, including the Common Areas located on its Parcel. Such insurance shall be written on an "all risks" of physical loss or damage basis, and shall include a sprinkler leakage, vandalism and malicious mischief endorsement.

5.2 **Duty to Carry Liability Insurance.** Each Owner shall carry (or cause to be carried), at its sole cost and expense, commercial general liability insurance covering the insured against claims of bodily injury, personal injury and property damage covering its Parcel and all Improvements located thereon, including the Common Areas located on its Parcel. Such insurance shall be primary, non-contributory, and include a broad form commercial general liability endorsement covering the indemnity provisions of this Declaration. Each policy under this Section 5.2 shall name as additional insureds the other Owners and Managing Agent (and any designee to whom Managing Agent has subcontracted Managing Agent's duties under this Declaration).

5.3 **Duty to Carry Workers' Compensation Insurance.** Each Owner shall, at its sole cost and expense, keep and maintain, or cause to be kept and maintained, during any period of construction, alteration or repair, or in performing the general operations of the Improvements located on such Owner's Parcel, workers' compensation insurance covering all Persons employed in connection with such work and/or operations and with respect to whom death or bodily injury claims could be asserted against any Owner of the Retail Center.

5.4 **General Requirements for Retail Center Insurance Policies.** All insurance required under Section 5.1 above shall:

5.4.1 be maintained under a valid and enforceable policy or policies issued by insurers qualified to do business in the state in which the Retail Center is located and which have a credit rating of "A-" or better by A.M. Best or A- or better by Standard & Poor's Ratings Services, Inc., a division of The McGraw Hill Companies, Inc. (or if such ratings are no longer in effect, having a comparable rating by a similarly nationally recognized rating agency); provided, however, that during any period in which the CVS Ground Lease is in effect, (a) the Ground Lessee under the CVS Ground Lease shall have the right to carry the insurance required hereunder with respect to the CVS Parcel with companies which are affiliated with the Ground Lessee under the CVS Ground Lease (and do not meet the requirements herein) provided such insurance provided by such companies shall not exceed the deductible or self-insurance limitations set forth in the CVS Ground Lease in its form in effect as of the Effective Date; and (b) the Ground Lessee under the CVS Ground Lease shall have the right to self-insure the coverage required hereunder in accordance with and subject to the conditions and requirements set forth in Sections 16(e) of the CVS Ground Lease in its form in effect as of the Effective Date and, upon request by Declarant, delivery to Declarant of a certificate describing the extent of such self-insurance coverage maintained by the Ground Lessee under the CVS Ground Lease;

5.4.2 be in an amount not less than the then-current full replacement cost new, without deduction for depreciation (exclusive of foundations, footings and excavations) for the Improvements being insured, subject only to commercially reasonable deductibles customarily carried by other prudent owners of comparable properties;

5.4.3 provide for Managing Agent to be a joint loss payee with respect to the Cause of Loss Special Form property insurance coverage pertaining to the Common Areas; and

5.4.4 provide, or be to the legal effect, that losses payable to a Mortgagee or any other loss payee shall be payable notwithstanding any act or negligence of any Owner, Occupant or Managing Agent.

5.5 **General Requirements for Liability Policies.** All insurance required under Section 5.2 above shall:

5.5.1 be maintained under a valid and enforceable policy or policies issued by insurers qualified to do business in the state in which the Retail Center is located and which have a credit rating of "A-" or better by A.M. Best or A- or better by Standard & Poor's Ratings Services, Inc., a division of The McGraw Hill Companies, Inc. (or if such ratings are no longer in effect, having a comparable rating by a similarly nationally recognized rating agency); provided, however,

that during any period in which the CVS Ground Lease is in effect, (a) the Ground Lessee under the CVS Ground Lease shall have the right to carry the insurance required hereunder with respect to the CVS Parcel with companies which are affiliated with the Ground Lessee under the CVS Ground Lease (and do not meet the requirements herein) provided such insurance provided by such companies shall not exceed the deductible or self-insurance limitations set forth in the CVS Ground Lease in its form in effect as of the Effective Date; and (b) the Ground Lessee under the CVS Ground Lease shall have the right to self-insure the coverage required hereunder in accordance with and subject to the conditions and requirements set forth in Sections 16(e) of the CVS Ground Lease in its form in effect as of the Effective Date and, upon request by Declarant, delivery to Declarant of a certificate describing the extent of such self-insurance coverage maintained by the Ground Lessee under the CVS Ground Lease;

5.5.2 insure, on a primary basis, against claims for personal injury or death or Retail Center damages occurring upon, in or about each Parcel, or any Improvements on each Parcel or upon, in or about the adjoining land, streets and passageways thereof, such insurance to afford protection in an amount not less than \$4,500,000.00 each occurrence, annual aggregate, subject only to such commercially reasonable deductible as is customarily carried by other prudent owners of comparable properties; provided, however, that no more often than every five (5) years Declarant shall have the right to require that the \$4,500,000 required minimum coverage limit set forth above be increased to the commercially reasonable limit of liability coverage which owners (or their tenants) typically carry in similar shopping centers in Salt Lake County, Utah; in all cases, the required limits of coverage may be achieved through the use of a combination of primary and excess/umbrella coverage; and

5.5.3 provide, or be to the legal effect, that losses payable to a Mortgagee shall be payable notwithstanding any act or negligence of any Owner, Occupant or Managing Agent.

5.6 **Indemnification by Parties.** Each Owner shall indemnify, defend and hold harmless all other Owners and Managing Agent, and each of their respective officers, directors, agents, members, shareholders and partners from and against all claims, liabilities, damages, causes of action, obligations, costs and expenses (including reasonable attorneys' fees) (collectively, "**Claims**") arising from the death of or bodily injury to any Person, or for damage to the Retail Center of any Persons, as shall occur on such Owner's Parcel or the Improvements located thereon, except in each case to the extent the Claim both (i) is caused by or results from the negligence or willful misconduct of the Indemnitee or its employees, agents or contractors, and (ii) except in the case of the gross negligence or willful misconduct of the Indemnitee, is not covered by insurance and would not have been covered by insurance if such indemnifying Owner had carried the insurance required to be carried by such indemnifying Owner under this Declaration. Each Indemnitee shall provide Indemnitor with prompt written notice of any Claim entitling Indemnitee to indemnification pursuant to this Section 5.6, and Indemnitor shall defend Indemnitee with respect to such Claim with counsel reasonably satisfactory to Indemnitee; provided, however, the failure of an Indemnitee to provide written notice of any Claim entitling Indemnitee to indemnification shall not relieve Indemnitor of the indemnification obligations set forth in this Section 5.6, except to the extent that such failure materially increases the liability of Indemnitor or materially adversely affects Indemnitor's defense against the Claim.

5.7 **Blanket Policies.** Each party may satisfy its obligations under Sections 5.1 through 5.5, in whole or in part, by means of a so-called blanket policy which is in conformity with the requirements

of such Sections, provided that the aggregate limits in any blanket liability policy are applicable on a per location basis.

5.8 **Certificate of Insurance.** Each Owner shall, on the request of Managing Agent or another Owner, promptly furnish such requesting Managing Agent or Owner with a certificate evidencing its compliance with the insurance coverage requirements of this Article 5.

5.9 **Release and Waiver of Subrogation - Parties.** Each Owner hereby waives all rights of recovery and causes of action, and releases Managing Agent and all other Owners from any liability, due to losses and damages occasioned to its Parcel and the Improvements located thereon, which losses and damages are of the type covered under the property insurance coverage required under Section 5.1, to the extent that said loss is reimbursed by insurance, or would have been reimbursed if the required coverage had been carried as provided in Section 5.1. The coverage required under Section 5.1 shall provide for waivers of any right of subrogation that the insurer of one Owner may acquire against Managing Agent and each other Owner hereto with respect to any such releases.

5.10 **Release and Waiver of Subrogation - Occupants.** Each Person who becomes an Occupant shall be deemed to have waived and released all of its rights to recover from each Owner or Managing Agent for losses and damages that the Occupant sustains by reasons of a risk covered under the types of policies required by this Article 5, to the extent of any reimbursement to such Occupant by an insurer. Each Owner hereby releases all of its rights to recover from each Occupant (who makes the above-described waiver and release) all losses and damages that the Owner sustains by reason of risks covered under the types of policies required under Section 5.1 to the extent of any reimbursement to the Owner by an insurer (or to the extent that such reimbursement would have occurred if the coverage required under Section 5.1 had been carried).

ARTICLE 6

USE AND OPERATON OF PARKING FACILITIES

6.1 **Reciprocal Use of Parking Facilities; Parking Easement.** The parking facilities located on the Retail Center shall be used in common by all Owners and their respective Permittees as non-reserved parking on a first-come, first-served basis; provided, however, that during any period during which the CVS Ground Lease remains in effect, those parking spaces located on the CVS Parcel that are marked on Exhibit C as "**CVS Exclusive Parking**" shall be for the sole and exclusive use of the Ground Lessee under the CVS Ground Lease and its employees, invitees and customers. Each Owner shall insert in future leases or occupancy agreements with respect to space in the Retail Center a restriction prohibiting other Occupants of the Retail Center, and their employees, invitees and customers, from using the CVS Exclusive Parking, and each Owner shall use commercially reasonable efforts to enforce such restrictions against the Occupants of its Parcel, and their employees and invitees; provided, however, that an Owner shall not be obligated to take affirmative action to enforce such restrictions against customers. Instead, the Ground Lessee of the CVS Parcel shall have the right to install signs on the CVS Parcel giving notice that the CVS Exclusive Parking is for the exclusive use of the Ground Lessee of the CVS Parcel and its employees, invitees, and customers, and shall have the right to enforce its exclusive parking rights under this Declaration against any non-permitted users.

Except for the CVS Exclusive Parking during the period in which the CVS Ground Lease remains in effect, Declarant hereby establishes and reserves for, and grants to, each Owner of a Parcel, the retained right to use, and an easement for access to and use of, the parking facilities located on the Retail Center, on a non-exclusive shared basis. The easement described in this Section 6.1 shall include an easement for vehicular ingress and egress to, from and over the entrances, exits, driveways, drive aisles and other vehicular circulation paths on the Retail Center for the purpose of the enjoyment of the parking easement described in this Section 6.1. Notwithstanding the foregoing, each Owner shall have the right to designate up to two (2) (or such greater number as approved by Declarant) of the parking spaces located on its Parcel as delivery, carryout or other short term parking for specific Occupants that require such parking due to the particular nature of their business. There shall be no charges for the shared use of the parking facilities on the Retail Center.

6.2 **Additional Parking Requirements.** Without limitation of the other parking requirements set forth in this Declaration, (a) the number of parking spaces located on the CVS Parcel shall not be reduced to less than seventy-seven (77) spaces without the approval of Declarant, and (b) without the approval of Declarant and the Owner of the CVS Parcel, there shall be no reduction in the number of parking spaces located on a Parcel that causes the parking ratio for the Retail Center to be less than five (5) parking spaces per each 1,000 square feet of Gross Floor Area of the Buildings in the Retail Center.

6.3 **Governmental Parking Tax.** If any Governmental Body imposes a parking tax upon the use of the parking facilities, then each Owner shall be responsible for the payment of the parking tax imposed on the parking spaces located on such Owner's Parcel.

6.4 **Parking Facilities During Construction.** It is acknowledged and agreed that during the period of construction of a Building on a Parcel, the Owner of such Parcel shall have the right to stage or perform construction on the parking facilities located on its Parcel and that such parking facilities may not be available for parking during such period, subject to compliance with the terms and provisions of Section 3.3 of this Declaration with respect to construction staging.

6.5 **Miscellaneous Parking Provisions.**

6.5.1 The parking facilities shall be used for the parking of only motor vehicles or motorcycles, but shall not be used for the parking or storage of recreational or other oversized vehicles.

6.5.2 No parking facilities located on the Retail Center shall be used for off-site purposes or licensed for use by any off-site licensee.

6.5.3 No Owner shall have the right to install gates or other entry control equipment with respect to the parking facilities located on its Parcel.

6.5.4 The parking easements granted and reserved in this Article 6 are non-exclusive easements appurtenant to and for the benefit of the Retail Center.

ARTICLE 7

OTHER EASEMENTS

7.1 **In General.** In addition to any other easements otherwise granted or reserved in this Declaration, Declarant grants and reserves the easements described in this Article 7.

7.2 **Vehicular and Pedestrian Access.**

7.2.1 Declarant hereby grants and reserves easements burdening each of the Parcels of the Retail Center for the benefit of each of the other Parcels of the Retail Center, for vehicular ingress and egress across and over the designated vehicular traffic circulation patterns now existing or hereafter created on and over the Common Areas of the Retail Center, as modified from time to time as permitted under this Declaration.

7.2.2 Declarant hereby grants and reserves easements burdening each of the Parcels of the Retail Center for the benefit of each of the other Parcels of the Retail Center, for pedestrian ingress and egress across and over the designated pedestrian traffic circulation patterns now existing or hereafter created on and over the Common Areas of the Retail Center, as modified from time to time as permitted under this Declaration.

7.3 **Utilities.** Declarant hereby grants and reserves easements burdening each Parcel of the Retail Center for the benefit of the other Parcels of the Retail Center for the installation, use, operation, maintenance, inspection, repair, restoration and replacement of pipes, mains, lines, ducts, wires, conduits and related equipment and facilities for the generation, transmission, delivery or use of utility services (including, without limitation, electricity, gas, water, sprinkler, sewer, heating, ventilation, air conditioning, cable television, communication, emergency power, security and life safety services) through and between the Parcels of the Retail Center. Such easements shall be located in, on and over the Common Areas at such locations as reasonably approved by Declarant and that do not unreasonably interfere with the use and enjoyment of such Common Areas. Any Owner of a Parcel that is the servient estate for a utility easement set forth in this Section 7.3 shall have the right, at its sole cost and expense, upon prior written notice to the other Owners, to relocate such easement (and the Improvements used in connection therewith) to another location on such Owner's Parcel.

7.4 **Support.** Declarant hereby grants and reserves easements burdening each Parcel of the Retail Center for the benefit of the other Parcels of the Retail Center for vertical, lateral and structural load-bearing support, and accommodation of the natural settlement of structures; provided that such easements shall not permit any material interference with the use and enjoyment of the servient tenement.

7.5 **Construction.** Declarant hereby grants and reserves non-exclusive easements burdening each of the Parcels of the Retail Center for the benefit of the other Parcels of the Retail Center for the installation, use, maintenance, repair, replacement and removal of any Improvement, or portion thereof, such as a footing, column, support or foundation, which is located either wholly on one Parcel or partly on the Parcel of one Owner and partly on the Parcel of another Owner, and which has been designed to be used and shared in common for the benefit of two or more Parcels.

The easements granted and reserved in Section 7.3 above and this Section 7.5 shall be subject to the following requirements and limitations:

7.5.1 Reimbursement for Costs. The Owner of the Parcel exercising its rights under Section 7.3 above or this Section 7.5 shall reimburse the Owner of the Parcel burdened by the easement for all reasonable costs incurred by the latter and its Occupants as a direct result of its construction, maintenance, inspection, repair, restoration or alteration activities; provided that nothing herein shall require reimbursement for loss of business resulting from the temporary closure of vehicular or pedestrian access as permitted under this Declaration.

7.5.2 Reasonableness; Notice. The exercise of the rights set forth in Section 7.3 above or this Section 7.5 shall be undertaken in such a manner so that the interference with the use of then-existing Improvements located on other Parcels will not be unreasonable under the circumstances; and in any event no entry onto the Parcel of another Owner shall be made for the purposes of Section 7.3 above or this Section 7.5 without reasonable prior written notice to the Owner of the affected Parcel.

7.5.3 Quality of Work. The work shall be carried out in a good and workmanlike manner in accordance with reasonable and prudent industry standards. The Owner performing the work shall be responsible for and shall promptly remedy any defects in the work, and shall also indemnify, defend and hold all other Owners harmless from and against any mechanics' liens arising from the work. In the event that a mechanic's lien is filed on another Owner's Parcel, the Owner performing the work giving rise to the lien shall promptly post a bond (or take such other action) adequate to relieve such other Parcel from the effect of such lien.

7.5.4 No Damage. All construction, maintenance, inspection, repair, restoration and alteration of any Improvements shall be performed in a manner that will not damage any Improvements within any other Parcel, other than minor damage in connection with construction, which shall be diligently repaired by the Owner that caused the damage.

7.5.5 Tie Back Declaration. Each Owner hereby agrees to consent to a reasonable request from another Owner for an easement for the purpose of lateral and subjacent support in connection with the construction of future Improvements.

7.5.6 Indemnification. The Owner performing any work under Section 7.3 above or this Section 7.5 shall indemnify, defend (with counsel reasonably acceptable to the Indemnitee) and hold harmless the Owner of the Parcel on which the work is performed, and its officers, directors, agents, shareholders, members and partners, from and against all Claims for the death of or bodily injury to any Person, or for damage to the property of any Person, to the extent arising out of the performance of the work performed by such Owner on the Indemnitee Owner's Parcel, except to the extent caused by the negligence or willful misconduct of any of the foregoing Indemnitees.

7.6 Common Areas. Declarant hereby grants and reserves easements burdening each of the Parcels for the benefit of the other Parcels for the purpose of the use and enjoyment of the Common Areas.

7.7 Encroachments. Declarant hereby grants and reserves easements burdening each of the Parcels for the benefit of each of the other Parcels for any encroachments which may exist as of the Effective Date, or minor encroachments hereafter necessitated by reason of vertical or lateral displacement, movement or settling of Improvements, provided that no encroachment not in existence as

of the Effective Date shall be permitted which materially interferes with the use and enjoyment of the servient tenement.

7.8 **Easement To Perform Obligations.** Declarant hereby grants and reserves an easement burdening each of the Parcels of the Retail Center for the benefit of the other Parcels of the Retail Center for the purpose of the performance by each Owner of the Retail Center of such Owner's obligations under this Declaration.

7.9 **Nature Of Easements.** Unless specifically described as "exclusive," any easement granted or reserved hereunder shall be non-exclusive. All easements under this Article 7 shall be easements appurtenant to the benefited Parcel.

7.10 **No Merger.** Notwithstanding the union of (a) the fee simple title to any of the Parcels, or any portion thereof, with (b) any right, title or interest in the easements granted by or reserved pursuant to this Declaration, it is the intention of Owners that the separation of such fee simple estate and such right, title or interest in such easements shall be maintained, and that a merger shall not take place without the express written consent of the Owner of the affected Parcel.

ARTICLE 8

COMMON AREAS

8.1 **Use of Common Areas.** Except for the CVS Exclusive Parking, the use of the Common Areas by each Owner and Occupant, and their respective Permittees, shall be in common with all other Owners and Occupants, and their respective Permittees. Each Owner shall keep the Common Areas on its Parcel free and clear of any obstructions created or permitted by such Owner, or resulting from such Owner's or its Occupants' or their Permittees' activities, so as not to unreasonably interfere with the use and enjoyment by the other Owners and Occupants, and their respective Permittees, of the Common Areas.

8.2 **Maintenance and Repair of Common Areas.** Except as provided herein with respect to the CVS Parcel, the Managing Agent shall be responsible for the maintenance, repair and replacement of all Common Areas located in the Retail Center, in a clean, orderly and first-class condition and appearance, and in compliance with all Governmental Requirements. Except for the landscaping located on the CVS Parcel, the Owner of the CVS Parcel shall be responsible, at its sole cost and expense, for the maintenance, repair and replacement of all Common Areas located on the CVS Parcel in a clean, orderly and first-class condition and appearance, and in compliance with all Governmental Requirements. The Managing Agent shall be responsible for the maintenance and replacement of the landscaping located on the CVS Parcel. The foregoing obligations of maintenance, repair and replacement shall include, without limitation, gardening, landscaping, repaving, resurfacing, sealing, repairing, painting, lighting, cleaning, sweeping, Common Area trash removal, replacing necessary appropriate directional signs, markers and lines, maintaining and replacing shrubs, trees, vegetation, the maintenance, repair and replacement of irrigation and lighting systems, and the maintenance, repair and replacement of all systems and equipment serving the Common Areas. Each Owner's easements for the use and enjoyment of the Common Areas are subject to the performance by Managing Agent of its obligations under this Section 8.2. Managing Agent shall perform its obligations under this Section 8.2 in a manner so as reasonably minimize, to the extent commercially practicable, interference with each

Owner's rights of use and enjoyment of the Common Areas. Notwithstanding the foregoing, Declarant shall have the right, in its sole and absolute discretion, to permit the Owner of a Parcel to self-maintain the Common Areas on such Parcel with respect to all or portion of the duties under this Section 8.2. In such case, the designated Owner shall have obligation to perform the obligations of Managing Agent under this Section 8.2 as agreed upon between such Owner and Declarant, and such Owner shall not be required to share in Common Areas Expenses pursuant to Section 8.3 below with respect to any portion of the Common Areas maintenance obligations assumed by such Owner; provided, however, that in the administration of the self-maintenance of any Parcel, Declarant shall have the right to require that any self-maintained Parcel contain at least a proportionate share of the Common Areas (based on relative Gross Floor Area) and if such self-maintained Parcel does not contain at least a proportionate share of the Common Areas, then Declarant shall have the right to require that the self-maintaining Owner retain responsibility for a portion of the Common Areas Expenses necessary for such Owner to pay its equitable share of the cost of the operation, management, maintenance, repair and replacement of the total Common Areas.

8.3 Common Areas Expenses.

8.3.1 Definition. For purposes of this Declaration, the term "**Common Areas Expenses**" means all expenses and costs incurred in connection with the operation, management, maintenance, repair and replacement of the Common Areas. Common Areas Expenses include, without limitation, any costs and expenses for (i) wages, salaries and other compensation and benefits attributable to actual time spent by persons in the operation, maintenance, repair or security of the applicable Common Areas, employer's social security taxes, unemployment taxes or insurance, and any taxes which may be levied on such wages, salaries, compensation and benefits; (ii) the cost of supplying all utilities, Common Area refuse removal, cleaning and sweeping services; (iii) the cost of maintaining, repairing and replacing the applicable Common Areas and all electrical, plumbing, irrigation, mechanical, sanitary, storm drainage and other utility systems serving such Common Areas; (iv) the cost of materials and supplies used in connection with the operation, maintenance and repair of such Common Areas; (v) the cost of sweeping, resurfacing, sealing, repaving, re-striping or painting such Common Areas; (vi) the cost of keeping the Common Areas reasonably drained and free of standing water, ice, snow (including removal of ice and snow from loading dock areas), mud, sand, rubbish and other obstructions; (vii) the cost of any capital or non-capital improvements or expenditures which are required to comply with Governmental Requirements or necessary to keep the applicable Common Areas in the same or better condition in which they exist as of the Effective Date, or as otherwise required hereunder; (viii) the cost of maintaining and replacing landscaping in such Common Areas; (ix) the cost of security services for such Common Areas; (x) the cost of the installation, repair, maintenance, replacement and operation of directional and operational signage; (xi) any costs incurred for the benefit of the Shopping Center for the matters described in the foregoing provisions of this Section 8.3.1 with respect to areas between the Shopping Center and perimeter streets or highways; and (xii) management and/or administrative fees or charges in an amount not exceeding the prevailing market rate management and administrative fees and charges paid in connection with the operation, management, maintenance and repair of comparable common areas in other similar retail and commercial projects in the geographic area in which the Retail Center is located; provided, however, that in no event shall the management and administrative fees exceed ten percent (10%) of the total of all other Common Areas Expenses. In the event that a cost or expense is incurred for the applicable Common Areas and other Common Areas or non-Common Areas portions of the Retail Center, such cost or expense shall be allocated in an equitable manner.

Notwithstanding any contrary provision hereof, Common Areas Expenses shall not include the following:

- (a) depreciation, amortization, interest, principal and other payments on any form of financing relating to the Common Areas, and any other costs or expenses related in any way to such financing;
- (b) any payments to the Affiliates of Managing Agent for goods or services, to the extent the same exceed the cost that would have been incurred for such goods or services if the same had been supplied or rendered by qualified, first-class unaffiliated third parties on a competitive basis; and
- (c) any costs arising from the gross negligence or willful misconduct of Managing Agent, its employees or agents, including, without limitation, late fees or penalties.

8.3.2 Allocation of Common Areas Expenses. Each Owner shall be responsible for a pro rata share of the total Common Areas Expenses as provided in this Section 8.3.2. With respect to landscaping related expenses (and the management or administrative charge applicable to such landscaping related expenses), such pro rata share shall be the Gross Floor Area of all Buildings located on such Owner's Parcel divided by the total Gross Floor Area of all Buildings located on all Parcels (excluding any Parcel that is self-maintained pursuant to Section 8.2 above). With respect to all other Common Areas Expenses, such pro rata shall be (a) zero, with respect to the Owner of the CVS Parcel, and (b) with respect to all other Parcels, the Gross Floor Area of all Buildings located on such Owner's Parcel divided by the total Gross Floor Area of all Buildings located on all Parcels excluding the CVS Parcel (and excluding any Parcel that is self-maintained pursuant to Section 8.2 above). Notwithstanding the foregoing, if a Parcel other than the CVS Parcel has not been developed with a Building, then Managing Agent shall equitably allocate to such Owner the cost to maintain and repair the surface and/or Common Areas of such Parcel and such Owner shall not be required to pay its pro rata share of the remaining Common Areas until an occupancy permit is received for the Building developed on such Parcel. Notwithstanding any contrary term or provision hereof, Managing Agent shall have the right to equitably allocate to an individual Owner (and to exclude from the pro rata allocation of the remaining Common Areas Expenses), costs and expenses for the operation, maintenance, repair and replacement of (a) landscaping immediately adjacent to a Building and on the inside of any sidewalk on the immediate exterior of a Building located on such Owner's Parcel, (b) any drive-through lane and associated curbing or related Improvements for a Building located on such Owner's Parcel, (c) any outdoor seating area located on such Owner's Parcel; and (d) lighting or operation of the Common Areas beyond 11:00 p.m. Managing Agent shall exercise its rights under the immediately preceding sentence in an equitable, consistent manner. Any expenses allocated to a particular Owner pursuant to clauses (a) through (d) above shall be added to and paid by such Owner as a part of such Owner's Common Areas Expenses payment obligation pursuant to this Section 8.3.

8.3.3 Payment. Prior to the commencement of each calendar year, Managing Agent shall submit to the Owners an estimate of the Common Areas Expenses for the following calendar year (the "**Common Areas Expenses Estimate**"). On or before the first day of each month during such year, each Owner shall pay to Managing Agent one-twelfth (1/12th) of its share of the projected Common Areas Expenses as set forth in the Common Areas Expenses Estimate. Within ninety (90) days after the end of each calendar year, Managing Agent shall submit to the Owners a statement setting

forth the actual Common Areas Expenses for the preceding year (the “**Common Areas Expenses Statement**”). Within thirty (30) days following receipt of such Common Areas Expenses Statement, each Owner shall pay to Managing Agent the amount, if any, by which such Owner’s share of the actual Common Areas Expenses exceeds the total estimated payments made by such Owner, or if the total estimated payments made by such Owner exceed such Owner’s share of the actual Common Areas Expenses, then such Owner shall be entitled to a refund from Managing Agent of any such overpayment. If the Common Areas Expenses Estimate is not submitted by Managing Agent prior to the commencement of a calendar year, Managing Agent shall not be in breach of this Declaration, but each Owner shall continue to make estimated monthly payments based on the most recently delivered Common Areas Expenses Estimate until such time as a new Common Areas Expenses Estimate is delivered. On not more than two (2) occasions during any calendar year, Managing Agent shall have the right to adjust the Common Areas Expenses Estimate, in which case the monthly estimated payments to be made by each Owner shall thereafter be adjusted to reflect any change in such estimate.

8.3.4 Audit Rights. In the event that any Owner disputes the amount of Common Areas Expenses owed by it set forth in any Common Areas Expense Statement, such Owner shall have the right to conduct a review of such Common Areas Expense Statement. In connection with the foregoing review, Managing Agent shall make available to the reviewing Owner for its review the books and records of Managing Agent pertaining to the Common Areas Expenses, including without limitation, reasonable supporting documentation for the Common Areas Expenses, and any previous review or audit of Common Areas Expenses for the year in question. Managing Agent shall provide such reviewing Owner with access to the above information within fifteen (15) days after written request for such information. In no event shall an Owner have the right to engage any person or entity to review or audit Common Areas Expenses on a contingency fee basis, nor engage any person for such review or audit that is a former employee or Affiliate of Managing Agent. If following the review described above an Owner continues to dispute the amounts set forth in such Common Areas Expenses Statement, such Owner shall have the right to cause an independent certified public accountant mutually selected in good faith by the Owners of the Retail Center to complete an audit of the subject Common Areas Expenses Statement. If the audit conducted reveals an error in the calculation of the Common Areas Expenses for the year in question, then within thirty (30) days following the completion of such audit, the parties shall make any appropriate payments or reimbursements, as the case may be, to each other as are determined to be owing. If any audit conducted hereunder discloses an overstatement by Managing Agent of the Common Areas Expenses for any year in excess of five percent (5%), then Managing Agent shall be responsible for the reasonable, actual out-of-pocket costs incurred by the Owner who caused the review and audit to be conducted under this Section 8.3.4. Otherwise, any audit conducted hereunder shall be at the sole cost and expense of the requesting Owner. During any period during which the CVS Ground Lease remain in effect, the Managing Agent shall cooperate with the Ground Lessee under the CVS Ground Lease to allow it to exercise any audit rights with respect to landscaping related expenses granted to it under the CVS Ground Lease regardless of whether the same is consistent herewith.

ARTICLE 9

REAL ESTATE TAXES AND ASSESSMENTS

Each Owner shall be required to pay all Real Estate Taxes and Assessments assessed or imposed upon or with respect to its Parcel and Improvements located on such Parcel prior to the delinquency date for the payment of such Real Estate Taxes and Assessments.

ARTICLE 10

DAMAGE OR DESTRUCTION OF IMPROVEMENTS

10.1 **Damage or Destruction of Improvements Other Than Common Areas.** If any Improvements located on an Owner's Parcel other than Common Areas are damaged or destroyed by any casualty, or taken by condemnation or the exercise of the power of eminent domain, the Owner of such Parcel shall, at such Owner's sole cost and expense, either (a) promptly restore such Improvements (or such Improvements as have not been taken by condemnation or the exercise of the power of eminent domain) to their condition existing immediately prior to the damage or taking, subject to such alterations as may be permitted pursuant to Section 3.2 of this Declaration, or (b) to the extent the Owner of such Parcel elects not to restore its Improvements, such Owner shall raze such damaged or destroyed Improvements, and shall forthwith grade, pave and/or landscape the area on which such Improvements were located to an attractive and safe condition that is consistent and compatible with the use and appearance of the remainder of the Retail Center as a first-class retail center. The repair, restoration or other work described in this Section 10.1 shall be commenced and completed in a diligent manner.

10.2 **Damage or Destruction of Common Areas.** If any of the Common Areas are damaged or destroyed by any casualty, the Owner of the Parcel on which the affected Common Areas are located shall, at such Owner's sole cost and expense, promptly restore the damaged Common Areas to their condition existing immediately prior to the damage or taking, subject to such alterations as may be permitted pursuant to Section 3.2 of this Declaration. The repair, restoration or other work described in this Section 10.2 shall be commenced and completed in a diligent manner. No Owner shall have the affirmative obligation to perform alterations or restoration work with respect to the Common Areas located on such Owner's Parcel that are impacted by a condemnation or taking by eminent domain; provided, however, that if such condemnation or taking impairs access over drive aisles or ingress/egress reasonably necessary for the free flow of traffic to and from another Parcel, and the Owner of the Parcel as to which the taking occurred does not perform the necessary alteration or restoration work to restore such access and/or ingress/egress, then the Owner of such other Parcel shall have the right to restore such access or ingress/egress, provided that any alteration or restoration work to restore such affected access and/or ingress/egress does not materially adversely affect or interfere with access to, or the use of parking on, such other Owner's Parcel. In such case, any Owner of a Parcel that receives an award for such taking that includes a portion attributable to the impairment of the particular access or ingress/egress that is the subject of the restoration work shall make available such portion of the award to fund the cost of the alteration or restoration work.

ARTICLE 11

DEFAULTS / ENFORCEMENT

11.1 **Defaults.** Any Person that commits a breach of any material covenant, restriction, term or provision of this Declaration shall be considered to be in default under this Declaration if such Person fails to cure such breach within thirty (30) days following written notice from an aggrieved Owner specifying such breach; provided, however, that if the nature of the particular breach reasonably requires more than thirty (30) days to cure, then such Person shall not be considered to be in default of this Declaration if such Person commences the cure of the breach within the foregoing thirty (30) day period and thereafter diligently prosecutes such cure to completion.

11.2 **General Remedies.** Subject to the provisions of Sections 11.1 and 13.2, and Article 14 below, in the event of any default of this Declaration, an aggrieved Owner shall have the right to prosecute a proceeding at law or in equity against any Owner or Occupant or any other Person or Persons who have violated any of the provisions, covenants, conditions and restrictions set forth in this Declaration, to enjoin or prevent such violation, to cause said violation or breach to be remedied, or to recover damages for said violation; provided, however, that nothing herein contained shall be deemed to impose upon any aggrieved Owner any liability for the failure to prosecute a violation or breach of this Declaration. If a Parcel shall be owned by more than one Owner, each tenant in common or joint tenant Owner shall be jointly and severally liable for the violation or breach of any covenant, condition, restriction or provision contained in this Declaration pertaining to such Parcel. Notwithstanding the foregoing, no Owner shall be permitted to prosecute a proceeding against any Occupant of another Owner's Parcel (as opposed to the Owner itself) for a breach of this Declaration unless such breach has a material adverse effect on the use and enjoyment by the aggrieved Owner of its Parcel and/or Improvements and/or its rights under this Declaration.

11.3 **Action by Default Curing Owner.** Without limitation of any other rights or remedies of an aggrieved Owner under this Article 11, if an Owner defaults in the performance of its obligations under this Declaration as provided in Section 11.1 above, then the Owner that sent the notice of the breach under Section 11.1 above (the "**Default Curing Owner**") may proceed to take the action required to cure the default upon delivery of an additional five (5) days' written notice to the defaulting Owner and the other Owners of the Retail Center specifying that the Default Curing Owner intends to cure the default. If the action taken by the Default Curing Owner was in fact required to have been performed by the defaulting Owner, then the Default Curing Owner shall be entitled to prompt reimbursement from the defaulting Owner for the reasonable costs and expenses incurred by Default Curing Owner in curing the default.

11.4 **Deemed to Constitute a Nuisance.** The result of every action or omission whereby any covenant, condition, restriction or provision herein contained is violated, in whole or in part, is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against any person causing a nuisance shall be applicable against the Owner, Occupant or any other Person responsible for such action or omission, and may be exercised by any aggrieved Owner.

11.5 **Failure To Enforce Not A Waiver Of Rights.** The failure of any aggrieved Owner to enforce any covenant, condition, restriction or provision herein contained shall in no event be deemed to be a waiver of the right thereafter to do so, nor of the right to enforce any other covenant, condition, restriction or provision set forth in this Declaration.

11.6 **Termination.** Notwithstanding anything contained or implied in this Declaration to the contrary, in no event shall the remedies available hereunder for a breach or default under this Declaration include termination of this Declaration. Each Owner hereby waives any right under law, equity or otherwise, to terminate this Declaration under any circumstance other than as set forth in Article 12 below.

11.7 **Force Majeure.** Except as otherwise expressly provided in this Article 11 or elsewhere in this Declaration, each Owner shall be excused from performing any obligation or undertaking set forth in this Declaration, except any obligation to pay any money (unless such payment is conditioned upon performance of an obligation or undertaking excused by this Article 11), in the event, but only to

the extent and for so long as, the performance of such obligation is prevented, delayed or hindered by (a) an act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the ordinary course on the open market; (b) failure of normal transportation, strike, lockout, action of labor unions; (c) condemnation, requisition, law, order of governmental or civil or military authorities; (d) the inability to obtain governmental approvals or permits despite the exercise of due diligence and good faith efforts; or (e) any other cause similar to the foregoing not within the reasonable control of such Owner (financial ability or negligence excepted). Each Owner shall give notice of any such delay to the other Owner(s) within thirty (30) days of such Owner's actual knowledge of the occurrence of the event with respect to which such Owner intends to claim a permitted delay hereunder.

ARTICLE 12

TERM

This Declaration shall be effective as of the date of Recordation and shall continue in full force and effect for ninety-nine (99) years thereafter. Thereafter, this Declaration shall be automatically extended for all of the Parcels for successive periods of ten (10) years each, unless at least one (1) year prior to the end of the initial term of this Declaration or any such extension period an Owner executes (and causes its Mortgagee to consent to) an instrument pursuant to which such Owner elects to have this Declaration terminate with respect to such Owner's Parcel, in which case this Declaration shall terminate as to such Parcel at the end of the initial term or then-existing extension period. Notwithstanding any contrary provision hereof, no termination shall terminate the easements granted herein. No consent of any other Person, other than each Owner and such Owner's Mortgagee(s), shall be required to effectuate a termination or amendment of this Declaration. Upon termination of this Declaration, all rights and privileges derived from, and all duties and obligations created and imposed by, the provisions of this Declaration, shall terminate and have no further force or effect; provided, however, that the termination of this Declaration shall not terminate the easements granted herein, or limit or affect any remedy at law or in equity of any Owner against any other Owner with respect to any liability or obligation arising or to be performed under this Declaration prior to the date of such termination.

ARTICLE 13

RIGHTS OF LENDERS

13.1 Priority of Lien of Mortgage. This Declaration shall be and remain senior in priority to all Mortgages hereafter executed upon the Retail Center, any Parcel or any portion thereof; provided, however, that no breach of the covenants, conditions or restrictions set forth in this Declaration, or foreclosure of any lien herein created for the payment of money, shall affect, impair, defeat or render invalid the lien, charge or priority of any Mortgage made in good faith and for value and encumbering any Parcel. Any lien created herein for the payment of money shall be subordinate to the lien of any Mortgage made in good faith and for value and encumbering any Parcel, and such liens shall be extinguished by the foreclosure of any Mortgage as to payments which became due prior to such foreclosure. In no event shall any sale or transfer (whether by foreclosure or otherwise) relieve any Parcel from any lien rights which may be created hereunder for the payment of any money thereafter

becoming due. Any Mortgagee or other Owner whose title to a Parcel is derived through foreclosure, trustee's sale or deed in lieu of foreclosure, shall take title to such Parcel subject to, and shall be bound by, all the covenants, conditions and restrictions set forth in this Declaration. Nothing in this Declaration shall be construed to release any Owner from its obligation to pay costs levied pursuant to this Declaration during the period of its ownership of the Parcel.

13.2 **Notice of Default.** Each Mortgagee, upon filing a written request for such notification with the then Owners of the Retail Center, is entitled to written notification of any notice of breach by the Owner of the Mortgagee's Parcel in the performance of such Owner's obligations under this Declaration. Such Mortgagee shall thereafter have the right to cure such breach on behalf of its Owner within the thirty (30) day cure period following the expiration of the applicable cure period allowed to such Owner.

13.3 **Request for Notice.** No Mortgagee shall be entitled to receive any notice which this Declaration requires to be given, unless and until such Mortgagee has delivered a written request for such notice with the Owners of the Retail Center at the time such written request is made. Such request for notice shall state which Parcel or Improvement is encumbered by its Mortgage. A Mortgagee's rights pursuant to this Declaration shall not be affected by the failure to request such notice. Any request for notice delivered to an Owner shall remain effective without any further action by the requesting Person for so long as the requesting Person continues to be the Mortgagee with respect to the Parcel or Improvement for which the request for notice was given, regardless of whether the Owner to which the request for notice was made continues to be the Owner of any Parcel.

13.4 **Curing Defaults.** Except as otherwise provided herein, a Mortgagee or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, a deed in lieu of foreclosure or trustee sale, or otherwise, shall not be obligated to cure any breach of the provisions of this Declaration which occurred before such Mortgagee or transferee acquired the title to a Parcel if (a) such breach is noncurable or is of a type which is not practical or feasible to cure, or (b) such Mortgagee did not have notice of such a breach at the time it acquired title to the Parcel.

13.5 **Additional Provisions.** No action to amend or terminate this Declaration by an Owner shall be effective to bind the Mortgagee of a then-current Mortgage of record encumbering the Parcel of such Owner, without the written consent of such Mortgagee.

13.6 **Conflicts.** In the event of any conflict between any of the provisions of this Article 13 and any of the other provisions of this Declaration, the provisions of this Article 13 shall control.

ARTICLE 14

ASSOCIATION

During the term of this Declaration, the Owners of the majority of the Gross Floor Area of the Buildings located on the Parcels of the Retail Center shall have the right elect to have the Owners form a nonprofit corporation (the "**Association**") to maintain and manage the Common Areas. The Association members shall be each of the Parcel Owners. Each Owner shall have the right to approve the Articles of Incorporation and Bylaws of the Association, which approval shall not be unreasonably withheld. The Association shall have the power to enforce delinquent Common Areas Expenses payments by suing a delinquent Owner directly on the debt or by recording a lien against the delinquent Owner's Parcel and

foreclosing the applicable lien through either judicial or nonjudicial proceedings under and subject to applicable law. Common Areas Expenses payments shall become delinquent thirty (30) days after written notice to the defaulting Owner that the subject payment was not paid when due. Notwithstanding any contrary provision hereof, the formation of the Association and the exercise of any duties, rights, or powers of such Association under this Declaration, the Association's Articles of Incorporation or Bylaws, or applicable law, shall not materially adversely affect or impair the rights, nor materially increase the duties, obligations or liabilities, of any Owner under this Declaration.

If the Association fails to perform its obligations with respect to landscaping, maintenance and snow removal within the Common Areas to keep the Common Areas in compliance with applicable Governmental Requirements laws relative to the maintenance and operation of the Common Areas, then the City of South Jordan (the "City") shall have the right, but not the duty, to deliver to the Association a notice specifying such failure (a "**Common Areas Deficiency Notice**"). If the Association fails to cure the Common Areas Deficiency Notice within thirty (30) days after the issuance of such Common Areas Deficiency Notice (or such longer period as reasonably required to cure the matter if more than thirty (30) days are reasonably required to cure the matter), then the City shall have the right, but not the duty, to cure the deficiency at the Association's expense and to charge to the Association the actual, reasonable third party costs incurred by the City to cure the deficiency, including reasonable third party attorneys' fees incurred by the City to enforce its rights under this paragraph. Each Owner of a Parcel in the Retail Center, by virtue of its purchase and ownership of such Parcel, agrees that, if and to the extent provided under applicable Governmental Requirements for a commercial project for the uses set forth in this Declaration, the City shall have the right to form a Special Service District (SSD) or Special Improvement District (SID) for the purpose of performing the Common Areas deficiencies that the City has the right to perform under this paragraph. The City may take the action described in the immediately preceding sentence when requested by the Association, or, if based on an historical pattern of a lack of care or maintenance as required hereunder, at its own initiative or as requested by an Owner. The governing body of any such district formed under this paragraph shall consist of the South Jordan City Mayor, City Council and the Association president. This paragraph shall not be amended or deleted from this Declaration without the approval of the City.

ARTICLE 15

MISCELLANEOUS PROVISIONS

15.1 **Constructive Notice and Acceptance.** Every Person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Retail Center or any Parcel is and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction and provision contained in this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such Person acquired an interest in the Retail Center or such Parcel.

15.2 **Notices.**

15.2.1 Except as otherwise expressly provided in this Declaration or required by law, all notices, consents, requests, demands, approvals, authorizations and other communications provided for herein shall be in writing and shall be sent by personal delivery, certified mail, return receipt requested, or by recognized overnight courier service, to the intended party at its last known address. For purposes of this Section 15.2.1, "last known address" with respect to any Owner shall mean such Owner's address

last supplied to the other than Owners of the Retail Center. If no address is supplied, then such Owner's address shall be deemed to be the address of any Parcel owned by such Owner.

15.2.2 With respect to (a) any notice, consent, request, demand, approval, authorization or communication, and (b) any document or instrument given or made available to any Owner hereunder and which might concern an Occupant of such Owner's Parcel, it shall be the sole responsibility of such Owner to make a copy thereof available in a timely manner to such Occupant.

15.3 **Liberal Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose. The failure to enforce any provision of this Declaration shall not constitute a waiver of the right to thereafter enforce such provision or the right to enforce any other provision hereof.

15.4 **Headings.** Section and Article headings, where used in this Declaration, are inserted for convenience only and are not intended to be a part hereof or in any way to define, limit or describe the scope and intent of the particular provisions to which they refer.

15.5 **Effect of Invalidation.** Each covenant, condition and restriction of this Declaration is intended to be, and shall be construed as, independent and severable from each other covenant, condition and restriction. If any covenant, condition or restriction of this Declaration is held to be invalid by any court, the invalidity of such covenant, condition or restriction shall not affect the validity of the remaining covenants, conditions and restrictions hereof.

15.6 **Estoppels.** Within twenty (20) days following a request in writing by an Owner, the other Owners of the Retail Center shall execute and deliver to any prospective purchaser or any current or prospective Mortgagee of the requesting Owner's Parcel an estoppel certificate confirming that (i) this Declaration is in full force and effect, and has not been modified or amended (or stating any such modifications or amendments), (ii) to the best knowledge of the certifying Owner, there are no existing uncured defaults by any Owner under this Declaration, and (iii) specifying the amount of, and the date through which any charges to be paid by the requesting Owner have been paid.

15.7 **Cumulative Remedies.** Each remedy provided for in this Declaration shall be cumulative and not exclusive. The failure to exercise any remedy provided for in this Declaration shall not constitute a waiver of such remedy or of any other remedy provided herein or therein.

15.8 **Attorneys' Fees and Costs.** If any party brings an action or proceeding (including, without limitation, any cross-complaint, counter-claim, third-party claim or arbitration proceeding) against an Owner by reason of the alleged breach or violation of any provision hereof, or for the enforcement of any provision hereof, or to interpret any provision hereof, or otherwise arising out of this Declaration, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of such action or proceeding, including but not limited to its actual attorneys' fees reasonably incurred, which shall be payable by the non-prevailing party whether or not such action or proceeding is prosecuted to judgment or award. For the purposes of this Declaration, the term "attorneys' fees" shall mean the actual fees and expenses of counsel to the parties hereto reasonably incurred, which shall include fees and expenses reasonably incurred with respect to post-judgment motions, contempt proceedings, garnishment, levy, debtor and third-party examinations, discovery, bankruptcy, and proceedings to enforce, perfect or collect a judgment.

15.9 **Approvals.** In the event that an Owner is requested in writing to provide its approval or consent to a matter described in this Declaration, and such Owner does not respond to such request in writing within thirty (30) days following any such request which makes reference to the provisions of this Section 15.9, and if such Owner continues to fail to respond to the request with five (5) business days after a second notice that makes reference to the provisions of this Section 15.9, then such Owner shall be deemed to have approved, or consented to, the matter as to which its approval or consent was requested.


15.10 **Leases.** Any agreement for the leasing of a Parcel, Improvement, or any portion thereof, (hereinafter in this Section 15.10 referred to as a “**lease**”) shall provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration; provided, however, that no failure of a lease to specifically provide the foregoing shall affect the fact that the lease is subject to this Declaration and all provisions set forth herein. Any Owner who leases its Parcel, Improvements, or any portion thereof, shall be responsible for assuring compliance with this Declaration by the Occupants of such Owner’s Parcel. Notwithstanding any contrary term or provision of this Declaration, no Occupant or Permittee shall have any rights or remedies under this Declaration, including any rights to enforce this Declaration; provided, however, that the Owner of the Parcel on which an Occupant is located shall have the right to enforce this Declaration for the benefit of such Occupant.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the Effective Date.

SJ MARKETPLACE, LLC,
a Delaware limited liability company

By: CCA Acquisition Company, LLC, a California
limited liability company, its managing
member

By: 
Name: Steven Usdan
Title: Managing Member

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

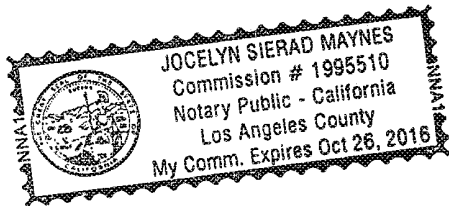
On January 12, 2015 before me, Jocelyn Maynes
Date Here Insert Name and Title of the Officer

personally appeared Steven H. Usdan
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

EXHIBIT A

LEGAL DESCRIPTION OF RETAIL CENTER

The following described real property situated in Salt Lake County, Utah:

LOTS 2A, 2B, 2C AND 2D OF THAT CERTAIN PLAT ENTITLED "OQUIRRH MOUNTAIN MARKETPLACE AMENDED", WHICH PLAT WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SALT LAKE, STATE OF UTAH ON JANUARY 8, 2015 AS RECORD NO. 11972995 IN BOOK 2015P OF PLATS AT PAGE 1.

Part of Tax ID No. 27-19-430-004

EXHIBIT B

PLATTED PARCELS OF RETAIL CENTER

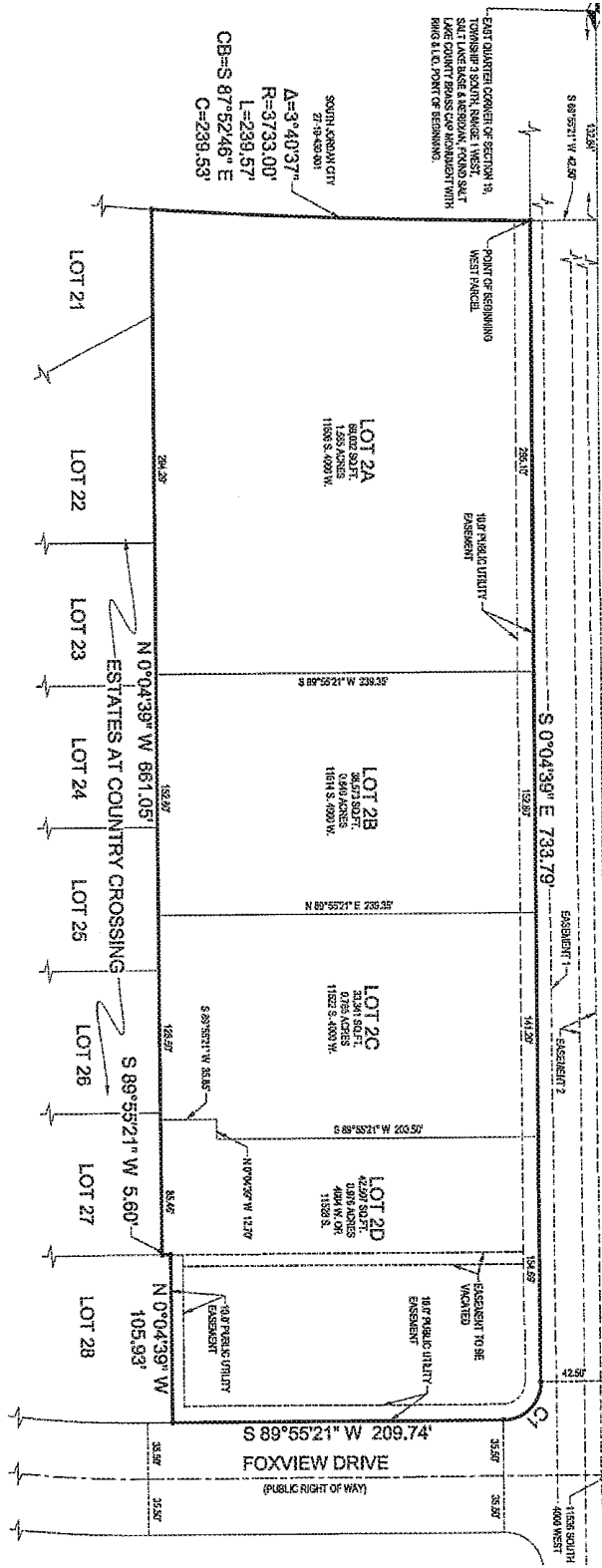


EXHIBIT C

SITE PLAN FOR RETAIL CENTER

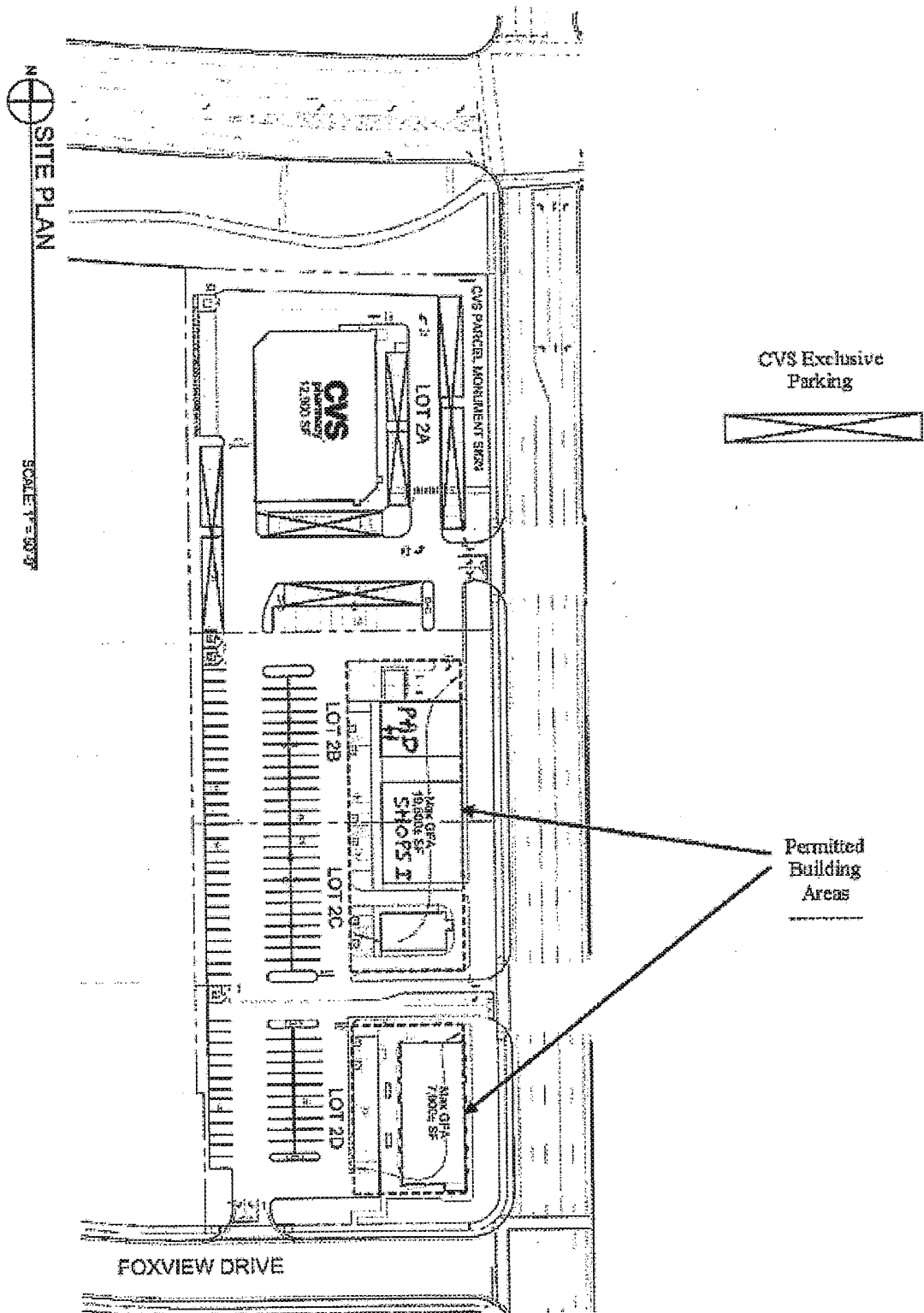


EXHIBIT D

APPROVED ELEVATIONS FOR BUILDING ON CVS PARCEL

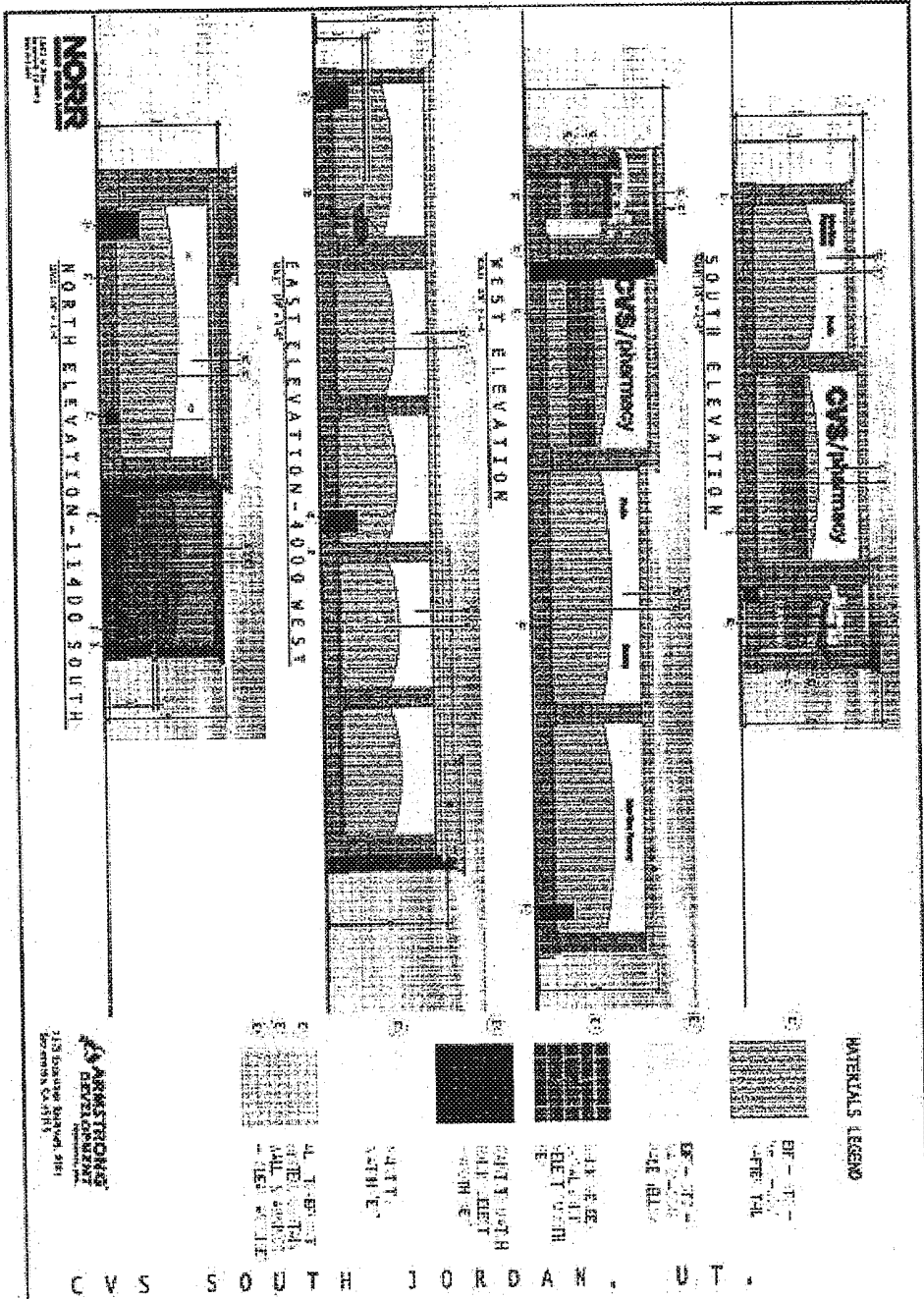
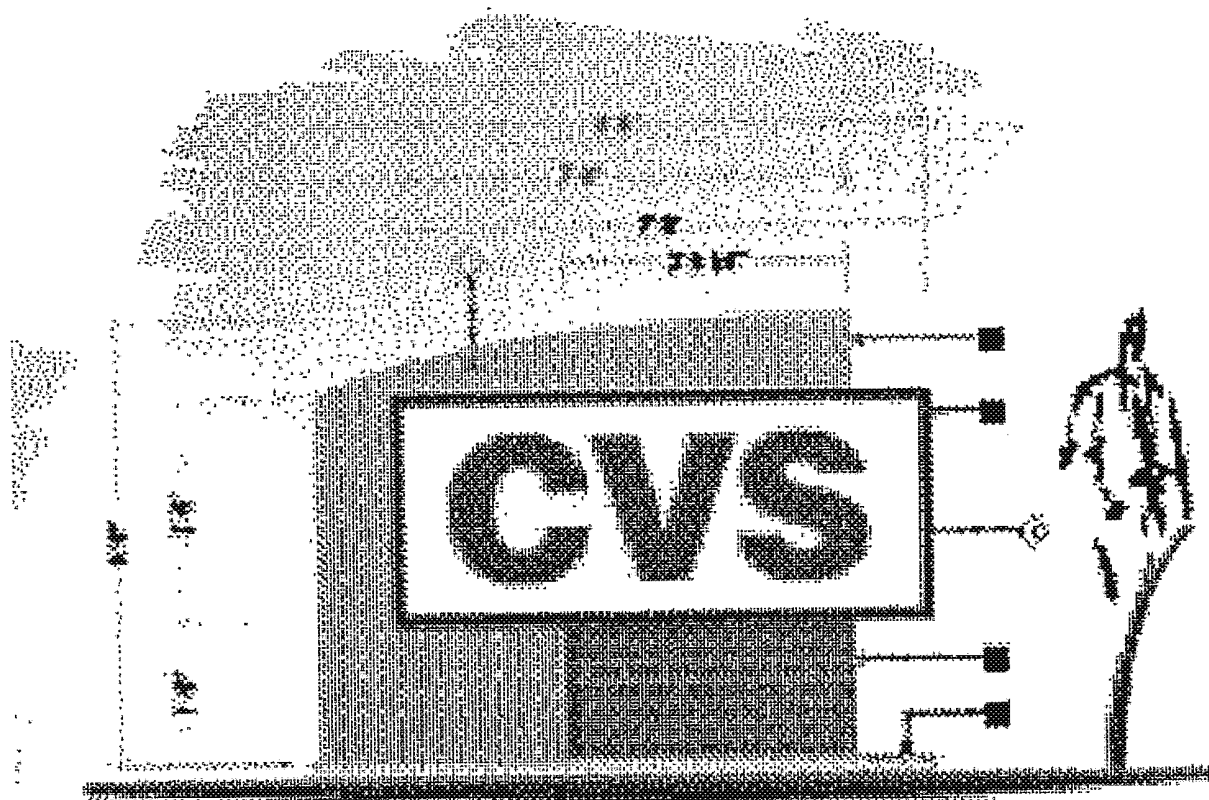


EXHIBIT E

DEPICTION OF CVS PARCEL MONUMENT SIGN



MONUMENT SIGN LOCATED ON NEC OF CVS PARCEL

EXHIBIT F

PROHIBITED USES

1. The following uses shall be prohibited in the Retail Center: (i) a pinball, video game, or any form of entertainment arcade, provided that this clause shall not prohibit or restrict the use of game or entertainment machines as an ancillary part of a different primary use; (ii) a gambling or betting office, other than for the sale of lottery tickets; (iii) a massage parlor, other than a legitimate massage business; (iv) a cinema, theater, video store or bookstore that in each case under this clause (iv) sells, rents, or exhibits primarily material of a pornographic or adult entertainment nature; (v) an adult entertainment bar or club; (vi) a bowling alley; (vii) a roller skating or ice skating rink; (viii) a billiards parlor or pool hall; (ix) a firearms shooting range or any other similar use, if it creates or causes excessive noise that is a nuisance to the Occupant of the Building on the CVS Parcel; (x) a cinema or theater; (xi) a health club or exercise salon, except for an exercise facility that does not exceed 2,500 square feet; (xii) any type of educational or vocational institution; (xiii) a flea market; (xiv) a warehouse; (xv) a facility which performs on-site dry cleaning, except for (I) a dry cleaner which does not use perchloroethylene or any other Hazardous Materials, or (II) a facility for drop-off and pick-up of clothing cleaned at another location; (xvi) a gas station; or (xvii) a facility which performs on-site auto repair. In addition to the foregoing, (x) there shall be no restaurants located in the Pad H building or the northernmost 2,500 square feet of the Shops I building depicted on Exhibit C, but up to 1,000 square feet may be used for a yogurt, ice cream, juice, beverage (other than a coffee shop such as a Starbucks), dessert, confectionary or other similar shop shall be permitted in such restaurant prohibited area; and (y) no more than 3,000 square feet of the Pad H building and Shops I building may be used for retail office or medical office type uses such as insurance, tax preparation, brokerage, medical, dental or optometry.

2. The following additional uses shall also be prohibited in the Retail Center:

- a. any so-called single price point discount or discount dollar stores (such as Dollar Tree, 99 Cents and More, Family Dollar, Dollar General, or any stores with a similar business plan or similar operation) to be located in or operate in the Retail Center;
- b. any use causing unreasonably loud noises (including any business using exterior loud speakers);
- c. manufacturing facility;
- d. dry cleaner (excluding [i] 1 dry cleaner which does not use perchloroethylene or any other hazardous materials or [ii] 1 facility for drop off and pick up of clothing cleaned at another location, provided neither of the foregoing uses shall be located within a 300 foot radius of the Sprouts premises located in the shopping center across from the Retail Center on the east side of 4000 West Street (the "**East Development**"));
- e. any facility for the sale, lease or rental of automobiles, trucks, motorcycles, recreational vehicles, boats or other vehicles;
- f. used clothing or thrift store, a "Salvation Army" or "Goodwill" type store or similar business, or a "second hand" store where principle business is selling used merchandise;
- g. a donation drop-off facility;

- h. a "surplus" store selling under stock or overstock merchandise or liquidation outlet;
- i. amusement center, carnival, virtual reality, laser tag, jump/trampoline facility, game arcade, or a children's recreational facility or play center of any kind, including, but not limited to, concepts such as "Boomerang's," "Funtastic," "Chuck E. Cheese," "Jump Zone" and "Peter Piper Pizza," or other stores operating under similar business plans and operations, provided that Declarant shall have the right to permit one such use in the aggregate in the Retail Center and the East Development that is not within a 400 foot radius of the Sprouts premises in the East Development;
- j. spa or massage parlor (excluding (i) 1 "Massage Envy" or similar therapeutic massage retailer operating in a first-class manner);
- k. sale of adult products, and adult book or audio/video products store (which shall be defined as stores with at least 10% of the inventory or which is not available for sale or rental to children under the age of majority in the state in which the premises is located because such inventory explicitly deals with or depicts human sexuality);
- l. mortuary or funeral parlor;
- m. coin operated laundry;
- n. cocktail lounge, bar or tavern or sale of alcoholic beverages, whether or not packaged (excluding the sale of alcoholic beverages in conjunction with the operation of a restaurant and excluding the sale of alcohol for off-premises consumption by a convenience store);
- o. night club and dance hall;
- p. bowling alley, pool hall, or skating rink;
- q. animal raising or storage facility (except incidental to a full-line retail pet supply store), veterinary services and vaccination clinics and overnight stay pet facilities (except that a national/regional pet store such as PetSmart or Petco and a veterinary clinic occupying less than 3,000 square feet of Gross Floor Area shall be permitted);
- r. pawn shop, auction house, swap meet, or junk yard;
- s. the drilling for and/or removal of subsurface substances, dumping, disposal, incineration or reduction of garbage or refuse, other than in enclosed receptacles intended for such purposes;
- t. hotels or lodging facilities intended for human use;
- u. church;
- v. gun range or shooting club;
- w. day-care facility, educational facility or School (defined below) (excluding 1 "Sylvan," "Kumon" or similar tenant operating in a first-class manner, provided such use may not be located within a 300 foot radius of the Sprouts premises in the East Development, and further provided such use may not occupy more than 2,500 square feet of Gross Floor Area, "School" means a beauty

school, barber college, reading room, place of instruction or any other operation serving primarily students or trainees rather than retail customers; and

x. any facility related to the occult sciences, such as palm readers, astrologers, fortune tellers, tea leaf readers or prophets, frozen food locker or sales facility, milk distribution center.

To determine whether a use which is otherwise prohibited within a specified radius of the Premises is in fact in violation of such radius restriction, the measurement taken shall be the distance from the building (from the point nearest the Sprouts Premises) from which such alleged prohibited use is occurring to the point of the Sprouts premises closest to such building.

EXHIBIT G

EXISTING EXCLUSIVE USE RESTRICTIONS

1. CVS Exclusive Use Restriction Benefitting the CVS Parcel.

During the period in which the CVS Ground Lease remains in effect, no portion of the Retail Center (excluding the CVS Parcel) shall be used for:

(1) a drug store, a pharmacy prescription department; or a business selling items requiring dispensing by or through a registered or licensed pharmacist, including without limitation a pharmacy mail order facility (collectively, a "**Pharmacy**"); (2) a cigarette or smoke shop; (3) a health and beauty aids store; (4) a "Dollar Store" (as hereinafter defined); (5) a greeting card, party goods or gift store; (6) a vitamin store or supplements store; (7) a convenience store; (8) a store selling alcoholic beverages, including, without limitation, beer, wine and distilled spirits, for off-premises consumption; or (9) a store offering on-site photo processing including, without limitation, one hour or less photo processing. The term "**Pharmacy**" shall include the dispensing, distribution or furnishing of prescription drugs by physicians, dentists, other health care practitioners, or a facility which accepts prescriptions from customers which are filled elsewhere and delivered to the customer, or entities such as health maintenance organizations, in each such case under this sentence, where such dispensing is for a fee or a profit. A Pharmacy shall not include the distribution or furnishing of free samples of prescription drugs by physicians, dentists, other health care practitioners or entities such as clinics or health maintenance organizations. A "**health and beauty aids store**" shall mean a store which devotes more than the lesser of 150 square feet or five percent (5%) of its retail selling space to the display and sale of health and beauty aids. A "**Dollar Store**" means a discount, 99 cents store or "dollar" store which sells general merchandise. Examples of a Dollar Store (without limiting such Dollar Stores only to those listed) are stores such as Fred's, Dollar Store, Dollar General, or Family Dollar. Neither Landlord, nor any of Landlord's Affiliates shall sell or transfer any interest in such real estate, if the intended use after such sale would violate this Section. A "**convenience store**" shall include, but not be limited to such notable stores such as "7-Eleven", "Circle-K", "Quik Check" and "ABC Stores".

The exclusive uses described in (2) through (9) above shall not apply to incidental sales which do not exceed the lesser of 150 square feet or 5% of the retail floor area of another premises, nor shall such exclusives in (2) through (9) apply to a domestic retail store that sells goods primarily for the bedroom and bathroom, as well as the kitchen and dining room, such as a Bed, Bath & Beyond store.

2. Other Exclusive Use Restrictions

2.1 Smashburger Tenant. Conduct business involving the sale of hamburgers. For purposes hereof, "conduct business involving the sale of hamburgers" means sales of any party or entity which amount to 10% or more of the subject party or entity's gross sales; provided, however, that the Prohibited Tenants (as defined below) shall be deemed to conduct business involving the sale of hamburgers regardless of the level of hamburger gross sales. "Prohibited Tenants" means Habit Burger, 5 Guys Burgers & Fries, Training Table, Mooyahs, Steak n Shake, Johnny Rockets or Salt City Burgers.

2.2 Sprouts. The operation and sale, either singly or in any combination, of any of the following activities and/or merchandise: (i) the operation of a grocery store, meat or seafood market or produce market, and the sale of any such items; (ii) the sale of vitamins and supplements, packaged ethnic foods, natural or health foods, or packaged ice cream; (iii) the sale of natural cosmetics, natural

health or beauty products; (iv) the sale of packaged beer and wine for off-premises consumption; and (v) the operation of a full service bakery and/or over-the-counter delicatessen offering sliced or butchered meats and cheeses for off-premises consumption (all of which are included in and referred to as "Sprouts Exclusive"), and all other tenants or occupants are prohibited from engaging in the Sprouts Exclusive, provided that the Sprouts Exclusive shall not prohibit sales on an Incidental Basis (defined below), other than fresh meat, seafood and produce for which there is no exception. In addition, the Sprouts Exclusive shall not apply to the following: (i) retail stores that primarily sell beauty products such as Sally's, ULTA and Beauty Planet; (ii) pharmacies such as CVS or Walgreens; (iii) fast food, quick serve and sit down restaurants that serve food primarily for on-site consumption so long as such fast food, quick serve or sit down restaurant does not contain and/or is a deli or bakery; and (iv) a gas station such as Maverik with a convenience store that may sell soda, candy and other typical convenience store items but may not sell milk and eggs. "Incidental Basis" means the area dedicated to the sale of such items occupies the lesser of: (a) 250 square feet of Gross Floor Area; or (b) 3% of the sales area of the subject premises; provided not more than 2 linear feet of retail selling space shall be dedicated to the display and sale of any one category of ancillary products.

2.3 Little Caesars Tenant. The primary purpose of the operation of a pizza restaurant. Such exclusive use restriction shall not be applicable to Notwithstanding anything to the contrary contained herein, the Exclusive Use shall not be applicable to (a) the incidental sale of pizza, with incidental defined as not more than ten percent (10%) of an occupant's gross sales being derived from the sale of pizza; or (b) any occupant that occupies more than 5,500 square feet of Floor Area.

2.4 Planet Fitness Tenant. A health club, fitness center or exercise center (including without limitation a climbing gym); provided, however, that such restriction shall not pertain to physical therapy in connection with medical or chiropractic uses occupying less than 5,000 square feet with respect to any particular occupant. For purposes hereof, health club, fitness center or exercise center shall mean a facility whose primary use involves exercise machines and weights for training, and shall not include karate, dance, yoga, pilates or other similar type businesses.

2.5 Tide Cleaners. The primary purpose of a dry cleaners, laundromat or drop off facility for either of the foregoing. Such exclusive use restriction shall not be applicable to any dry cleaning or other laundry operations conducted by a tenant or occupant in connection with such tenant's or occupant's own primary business that is not the operation of a dry cleaners, laundromat or drop off facility for either of the foregoing.