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AMENDMENT #1 TO
CONSTRUCTION, OPERATION AND
RECIPROCAL EASEMENT AGREEMENT

(Fashion Place - Murray, Utah)

Recorded MAY 15 1973 at 8 m.
Request of WESTERN STATES
Fee Paid JERALDEAN MARTIN
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AMENDMENT #1

TO

CONSTRUCTION, OPERATION AND

RECIPROCAL EASEMENT AGREEMENT

(Fashion Place - Murray, Utah)

THIS AMENDMENT #1 to CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT, made and entered into as of this 19TH day of APRIL, 1973, by and between FASHION PLACE ASSOCIATES, a limited partnership in which ERNEST W. HAHN, INC., a California corporation, is the general partner, hereinafter referred to as "Developer;" SEARS, ROEBUCK AND CO., a New York corporation, hereinafter referred to as "Sears;" AUERBACH COMPANY, a Utah corporation, hereinafter referred to as "Auerbach;" and BROADWAY-HALE STORES, INC., a California corporation, hereinafter referred to as "Broadway." The designations Developer, Sears, Auerbach and Broadway are for convenience only, provided that such terms shall also refer to the respective successors and assigns of each of them under the circumstances and as more particularly set forth in Article XXIX-I herein.

W I T N E S S E T H :

RECITALS

WHEREAS, Developer is the owner and ground lessee of certain tracts of land located in the County of Salt Lake, State of Utah, being described in Part I of Exhibit A attached hereto, and by this reference made a part hereof, and shown upon the plot plan attached hereto as Exhibit B, and by this reference made a part hereof, said tracts of land being collectively hereinafter referred to as the "Developer Tract;" and

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WHEREAS, Auerbach is the lessee of a certain tract of land located in the County of Salt Lake, State of Utah, described in Part II of Exhibit A, and shown on Exhibit B, said tract of land being hereinafter referred to as the "Auerbach Tract;" and

WHEREAS, Sears is the owner of a certain tract of land located in the County of Salt Lake, State of Utah, described in Part III of Exhibit A, and shown on Exhibit B, said tract of land being hereinafter referred to as the "Sears Tract;" and

WHEREAS, Broadway is the owner of a certain tract of land located in the County of Salt Lake, State of Utah, described in Part IV of Exhibit A, and shown on Exhibit B, said tract of land being hereinafter referred to as the "Broadway Tract;" and

WHEREAS, in order to make integrated use of their respective tracts of land as a regional shopping center and to provide for other agreements contained therein, Developer, Auerbachs and Sears, prior to the acquisiton by Broadway of its tract of land, and while Developer owned same, entered into a Construction, Operation and Reciprocal Easement Agreement, dated June 14, 1971, which was duly recorded on June 14, 1971, as entry number 2391096, Book 2968, page 446, Official Records of the County of Salt Lake, State of Utah; and

WHEREAS, Developer, Auerbachs and Sears desire to amend said above-mentioned Construction, Operation and Reciprocal Easement Agreement, and herewith do so amend the same, effective as of the date hereof, and Developer, Auerbachs, Sears and Broadway desire to enter into this Amendment #1. The Agreement of June 14, 1971, is hereby amended in its entirety, and as so amended,

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remains in full force and effect. Developer, Auerbachs and Sears, hereby certify that there are no defaults under the agreement of June 14, 1971, and that there is no charge, lien or claim of offset thereunder, and

WHEREAS, the Parties hereto desire to make an integrated use of the tracts of land owned or leased by each and to develop and improve the premises designated as the Developer Tract, the Auerbach Tract, the Sears Tract and the Broadway Tract (said tracts being hereinafter collectively referred to as the "Shopping Center Site") as a regional shopping center, hereinafter referred to as the "Center" or "Shopping Center" of the so-called "Enclosed Mall" type; and

WHEREAS, Auerbach has heretofore caused to be constructed as a part of the Center, a retail facility, as the same shall exist from time to time, in a building hereinafter called "Auerbach Store," located on the Auerbach Tract, which is sometimes hereinafter called the "Auerbach Store Site" and is shown on Exhibit B; and

WHEREAS, Sears has heretofore constructed as a part of the Center, a retail facility, as the same shall exist from time to time, in one or more buildings or installations, hereinafter collectively called the "Sears Store", located on a portion or portions of the Sears Tract, sometimes hereinafter collectively called the "Sears Store Site" as shown on Exhibit B; and

WHEREAS, Broadway desires to cause to be constructed and thereafter to operate, or cause to be operated, as part of the Center, a retail facility, as the same shall exist from time to time, in one or more buildings or installations, hereinafter

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collectively called the "Broadway Store", located on a portion or portions of the Broadway Tract, sometimes hereinafter collectively called the "Broadway Store Site" as shown on Exhibit B; and

WHEREAS, Developer has heretofore constructed and will cause the completion of construction as a part of the Center, one or more buildings or installations, as the same shall exist from time to time, for retail and related occupancies, in both "Mall Stores," as hereinafter defined, and "Non-Mall Stores," as hereinafter defined, in accordance with this Amendment #1 to Construction, Operation and Reciprocal Easement Agreement (hereinafter called "REA"), and in addition has constructed the Enclosed Mall (as hereinafter defined); such buildings and improvements being hereinafter collectively called "Developer Improvements," and located on portions of the Developer Tract, as shown on Exhibit B; and

WHEREAS, Developer, Auerbach, Sears and Broadway each desire to grant to the other Parties to this REA certain easements in, to, over and across the Developer Tract, the Auerbach Tract, Sears Tract, and the Broadway Tract, respectively; and

WHEREAS, the Parties to this REA desire to make certain mutual provisions for the construction, maintenance and operation of the Common Area (as said term is hereafter defined) and other buildings and improvements upon the Shopping Center Site, and to make certain other covenants and agreements as hereinafter more specifically set forth.

NOW, THEREFORE, in consideration of the foregoing, and the covenants and agreements on the part of each Party to the others, as hereafter set forth, IT IS AGREED, as follows:

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ARTICLE I

DEFINITIONS

As used hereinafter in this REA, the following terms shall have the following respective meanings:

A. Accounting Period. The term "Accounting Period" refers to any period commencing January 1 and ending on the next following December 31, except that the first Accounting Period for Sears commenced on November 1, 1972, and for Auerbach on August 14, 1972, and for Broadway shall commence, as to its Tract, on the date Broadway opens for business in its main Store building (but in no event later than April 1, 1974), and as respects each Party hereto, shall end on and include the next following December 31, and as respects each Party hereto, its last Accounting Period shall end on and include Termination Date, or such earlier date as may be appropriate pursuant to Article X-F of this REA, as respects a Party or Parties invoking the provisions of said Article X-F. Any portion or portions of the Common Area Maintenance Cost relating to a period of time only part of which is included within the first Accounting Period or the Last Accounting Period of a Party hereto shall be prorated on a daily basis as respects such Party.

B. Allocable Share. The term "Allocable Share" refers to that part of Common Area Maintenance Cost allocable to each respective Party to this REA for each Accounting Period, to be computed by multiplying the Common Area Maintenance Cost by a fraction, the numerator of which shall be the maximum allowable Floor Area as set forth in Article VIII-A hereof located on each respective Tract, and the denominator of which shall be the maximum allowable total Floor Area as determined pursuant to Article VIII-A hereof on the Tracts of the Parties.

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C. Automobile Parking Area. All Common Area used for the parking of motor vehicles (including multiple decked parking), incidental and interior roadways, perimeter sidewalks, walkways, curbs and landscaping within or adjacent to areas used for parking of motor vehicles, together with all improvements which at any time are erected thereon, subject to the provisions of Article II shall be referred to as "Automobile Parking Area".

D. Common Area. The term "Common Area" refers to all areas within the exterior boundaries of the Shopping Center Site which are made available as hereinafter provided for the nonexclusive, general use, convenience and benefit of Developer and all Occupants (as hereinafter defined), and Permittees (as hereinafter defined) of Developer and such Occupants.

Such Common Area shall include, but not be limited to, utility lines and systems, Automobile Parking Area, access roads, driveways, sidewalks, malls, including, from and after completion of its construction, the Enclosed Mall, pedestrian walkways and stairways, emergency exit corridors between fire resistant walls required by building codes and not contained within any area exclusively appropriated for the use of any single Occupant, rest rooms, if any, not located within the premises of any Occupant, and in addition, a Common Area maintenance office and Common Area equipment sheds to which free access may not be allowed except to authorized persons, and all improvements thereon, hereinafter sometimes referred to as common improvements, or Common Area improvements, interchangeably. The Common Area shall include, but not be limited to, all items of Common Area shown on Exhibit B, and shall also include sidewalks and curbs and landscaping and related facilities adjacent to buildings

constructed by a Party from and after completion of construction thereof.

The Common Area shall not include truck parking, turn-around and dock areas, or the depressed portions of truck tunnels or ramps serving Floor Area (as hereinafter defined), as shown on Exhibit B.

E. Common Area Maintenance Cost. The term "Common Area Maintenance Cost" refers to and means the total of all moneys paid out during an Accounting Period for reasonable costs and expenses directly relating to the maintenance, repair and management of the Common Area (which term, for the purposes of this Article I-E only, shall include any employee parking areas located upon land outside the Shopping Center Site which may be from time to time provided, with the written approval of the Parties). Common Area Maintenance Cost shall exclude any Enclosed Mall Operation and Maintenance expense, but shall include maintenance, replacement and reconstruction work as shall be required to preserve the utility of the Common Area in accordance with the provisions of Article X.

Common Area Maintenance Cost shall further include, but not be limited to, all rental charges for equipment and cost of small tools and supplies; all costs of policing, security protection, traffic direction, control and regulation of Automobile Parking Area; all cost of cleaning and removal of ice, snow, rubbish, dirt and debris from the Common Area; the cost of landscape maintenance and supplies incident thereto; all charges for utilities services utilized in connection therewith, together with all cost of maintaining lighting fixtures in the Automobile Parking Area, and all premiums for public liability and property damage

insurance carried by Operator or Operator's Nominee (as hereinafter defined) covering the Common Area.

No capital expenditures for the Common Area which would be an item included in the Common Area Maintenance Costs, in any one calendar year shall be made without prior written approval of all Parties participating therein; provided, however, there may be expended for replacement of capital items in the Common Area in any one calendar year sums not to exceed an aggregate of $10,000.00 without prior approval. All work to be performed shall be in accordance with the provisions of Article X hereof.

In lieu of any other charge for indirect costs (including but not limited to the cost of the operation of any office, accounting services and other services not directly involved with maintenance and operation), Common Area Maintenance Cost shall include an allowance to Operator for Operator's supervision of the Common Area equal to three percent (3%) of the total of the aforementioned cost and expense of work performed by Operator, or under its direct supervision for each Accounting Period; provided that if all or any part of the activities or work involved in the operation, maintenance and repair of the Common Area or its equipment is provided or performed on behalf of Operator by any other Person and not by Operator, the amount paid by Operator to such other Person for such activities or work may be included in Common Area Maintenance Cost (notwithstanding that such amount may include reasonable overhead and/or profit to such other Person), but only to the extent that such amount so paid to such other Person shall be for items of cost and expense which would be permitted pursuant to this Article I-E with respect to such activities or work if performed by Operator with its own employees, plus a reasonable fee to such Person;

and Operator shall note on its statements of costs referred to in Article X-D hereof, that such activities and work were not performed by Operator with its own employees. If an Operator's Nominee is nominated by Operator, Operator shall not be entitled to said three percent (3%) allowance.

Any cost of capital items in the Common Area which mmay be incurred shall be excluded from computation of the supervision percentage to be paid to Operator or to Operator's Nominee, as the case may be. Nothing in this Article I-E contained shall be deemed to preclude any additional or different charges being made pursuant to any lease between Developer and any Occupant.

F. Developer Improvements. The term "Developer Improvements" refers to the Enclosed Mall, the Developer Mall Stores and the Developer Non-Mall Stores.

G. Developer Mall Stores. The term "Developer Mall Stores" refers to the buildings located on the Developer Tract and abutting on the Enclosed Mall.

H. Developer Non-Mall Stores. The term "Developer Non-Mall Stores" refers to the buildings located on the Developer Tract which do not abut on the Enclosed Mall.

I. Enclosed Mall. The term "Enclosed Mall" refers to the portions of the malls located in the Center which are constructed so that climatic control may be provided therein, which are designated on Exhibit B.

J. Enclosed Mall Operation and Maintenance Expense. The term "Enclosed Mall Operation and Maintenance Expense" refers to an amount equal to the actual annual cost paid out in connection with the Enclosed Mall for utility expenses for lighting; operation of air conditioning and heating equipment; premiums on fire,

extended coverage, public liability, property damage, vandalism and plate glass insurance for the Enclosed Mall improvements and equipment; all costs of policing, security protection, control and regulation of the Enclosed Mall; maintenance, repair and replacement of mechanical equipment, including automatic door openers (except automatic doors opening to the Stores or Mall Stores), lighting fixtures (including replacement of tubes and bulbs), air conditioning and heating equipment, fire sprinkler system; repair, maintenance and cleaning of the floor and any floor covering of the Enclosed Mall; repair, maintenance and cleaning of the Enclosed Mall structure, including ceiling, roof, skylights, windows, and all other items of expense which would not be incurred if the Mall were not enclosed. The term "Enclosed Mall Operation and Maintenance Expense" shall not include any item of expense not heretofore enumerated. Developer may, however, cause any or all services to be provided by an independent contractor or contractors. Nothing herein contained shall be deemed to limit Developer as to adding additional cost factors in any Lease, or other side written agreements, which it may have with any Occupant.

K. Floor Area. The term "Floor Area" refers to the aggregate of:

1. The actual number of square feet of floor space in any building located on the Shopping Center Site exclusively appropriated for use by an Occupant or Developer, whether or not actually occupied, including basement space and subterranean areas, and balcony and mezzanine space within the exterior facade (or Enclosed Mall facade) or line of the exterior walls (including basement walls), except party and interior common walls as

to which the center thereof instead of the exterior faces thereof shall be used, of all floors; plus

2. The actual number of square feet of any outdoor area appropriated for use by an Occupant to display and/or sell merchandise; provided, however, that the term "Floor Area" shall not include the following:

(a) The second level of any multi-deck stock areas;

(b) Physically separated areas used exclusively to house mechanical, electrical and telephone equipment, which equipment is a part of building systems;

(c) Any Center management office;

(d) Merchants Association office;

(e) A Community Hall; provided that the sum of (c), (d) and (e) shall not exceed an aggregate of 3,000 square feet;

(f) Any employee cafeteria;

(g) A United States Post Office not exceeding 2,000 square feet;

(h) Emergency exit corridors between fire resistant walls required by building codes and not contained within any area exclusively appropriated for the use of any single Occupant;

(i) All truck loading areas, truck tunnels and truck parking, turn-around and dock areas and ramps and approaches to such truck loading areas, truck tunnels and truck parking, turn-around and dock areas;

(j) Gas island areas under canopies;

(k) Common Area.

Except as expressly provided above, no deduction shall be made from Floor Area computed under the foregoing definition by reason of columns, stairs, escalators, elevators, dumbwaiters, conveyors or other interior construction or equipment within the building involved.

An initial determination shall be made by the Project Architect (as hereinafter defined) as to the number of square feet of Floor Area of each such Party, within a reasonable period of time after the completion of the respective Stores of each Party. Any dispute arising from such determination shall be resolved by arbitration as provided for in Section XXIII. Notwithstanding anything to the contrary contained in this REA, during the period of any damage, destruction, razing, rebuilding, repairing, replacement or reconstruction to, on, or of any building in the Center, the Floor Area of such building shall be deemed to be the same as the Floor Area of such building immediately prior to such period, and upon the completion of the rebuilding, repairing, replacement or reconstruction of such building, the Project Architect shall make a new determination of Floor Area for such building as provided in the foregoing provisions of this Article I-K. The cost of such determination shall be borne by the Parties so rebuilding, repairing, replacing or reconstructing. If at the time for making such determination there is no longer any appointed Project Architect a new Project Architect shall be appointed by the Parties for this purpose.

L. Lease. The term "Lease" refers to the lease, deed or other instrument or arrangement whereunder Occupant has acquired rights with respect to the use and occupancy of any Floor Area.

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M. Majors. The term "Major" or "Majors" refers to Auerbach, Sears, and/or Broadway, severally or collectively, as may be appropriate and as those terms are defined in Article XXIX-I.

N. Occupant. The term "Occupant" refers to Auerbach, Sears and Broadway and to any Person from time to time entitled to the use and occupancy of Floor Area in the Center under a lease whereunder each Occupant acquires his or its status as such.

O. Operator. The term "Operator" as used herein shall mean the Party or Parties responsible for the maintenance of the Common Area, or any part thereof, under the provisions of Article X.

P. Parking Index. The term "Parking Index" refers to the relationship of the number of marked parking spaces in the Automobile Parking Area to each 1,000 square feet of Floor Area.

Q. Party. The term "Party" shall mean each of the Persons between whom this REA has been entered into or any successor Person acquiring any interest in or to any portion of the Shopping Center, except as is otherwise provided in subparagraphs 1, 2, 3 and 4 of this paragraph Q of Article I.

The exceptions to a successor becoming a Party by reason of any transfer or conveyance of the whole or any part of the interest of any Party in and to such Party's Tract are as follows:

1. The transferring Party retains the entire possessory interest in the Tract or portions thereof so conveyed by way of a deed of trust or mortgage.

2. The transfer or conveyance is followed immediately by a leaseback of the same Tract or portion thereof by such party or an affiliate thereof (a sale and leaseback), in which

event only the lessee thereof shall have the status of Party so long as the lease in question has not expired or been terminated.

3. The transfer or conveyance is by way of lease, other than as provided in 2 above.

4. The successor acquires by such transfer or conveyance:

(a) Less than all of a Party's Tract or Tracts; or

(b) An undivided interest, such as that of joint tenant, or tenant in common, in such Party's Tract or Tracts.

In the circumstances described in this subparagraph 4, the Persons holding all of the interests in such Tract or Tracts are to be jointly considered a single Party. In order that other Parties shall not be required with respect to said Tract or Tracts to obtain the action or agreement of, or to proceed against, more than one Person in carrying out or enforcing the terms, covenants, provisions and conditions of this REA, then in the circumstances described in subparagraphs 4(a) and 4(b) above, the Persons holding the interest of the Party in and to not less than seventy percent (70%) of said Tract or Tracts in question shall designate one of their number as such Party's Agent to act on behalf of all such Persons. If any Tract or Tracts is owned by Persons owning an undivided interest therein under any form of joint or common ownership, then in the determination of such seventy percent (70%) in interest, each such owner of such undivided interest shall be deemed to represent a percentage in interest of the whole of such ownership equal to his fractional interest in such Tract or Tracts. Any interest owned by any Person who is a minor or is otherwise

suffering under any legal disability shall be disregarded in the making of such designation unless there is at such time a duly appointed guardian or other legal representative fully empowered to act on behalf of such Person.

In the absence of such written designation, the acts of the Party whose interest is so divided or held in undivided interests (whether or not he retains any interest in the Tract or Tracts in question) shall be binding upon all Persons having an interest in said Tract or Tracts in question, until such time as written notice of such designation is given and recorded in the office of the County Recorder of the County and State in which said Tract or Tracts are located, and a copy thereof is served upon each of the other Parties by registered or certified mail; provided, however, in the following instances all of the other Parties, acting jointly, or in the failure of such joint action, any other Party at any time may make such designation of the Party's Agent:

(i) If at any time after any designation of a Party's Agent, in accordance with the provisions of this subparagraph 4, there shall for any reason be no duly designated Party's Agent of whose appointment all other Parties have been notified as herein provided; or

(ii) If a Party's Agent has not been so designated and such notice has not been given thirty (30) days after any other Party shall become aware of any change in the ownership of any portion of the Shopping Center; or

(iii) If the designation of such Party's Agent earlier than the expiration of such thirty (30) day period shall be reasonably necessary to enable any other Party to comply with any of its obligations under this REA or to take any other

action which may be necessary to carry out the purposes of this REA.

The exercise of any powers and rights of a Party under this REA by such Party's Agent shall be binding upon all Persons having an interest in any such Tract or Tracts owned by such Party. Such Party's Agent shall, so long as such designation remains in effect, be a Party hereunder and the remaining Persons owning such Tract or Tracts shall be deemed not to be Parties. The other Parties shall have the right to deal with and rely upon the acts or omissions of such Party's Agent in the performance of this REA; but such designation shall not, however, relieve any Person from the obligations created by this REA.

Any Person designated a Party's Agent pursuant to the provisions of this subparagraph 4, shall be the agent of his principals, upon whom service of any process, writ, summons, order or other mandate of any nature, of any court in any action, suit or proceeding arising out of this REA, or any demand for arbitration may be made, and service upon such Party's Agent shall constitute due and proper service of any such matter upon his principal. Until a successor Party's Agent has been appointed and notice of such appointment has been given pursuant to the provisions of this subparagraph 4, the designation of a Party's Agent shall remain irrevocable.

Upon any transfer or conveyance, which transfer or conveyance would create a new Party, pursuant to the terms hereof, then the powers, rights and interest herein conferred upon such new Party with respect to the Tract so conveyed, shall be deemed assigned, transferred or conveyed to such transferee or grantee, and the obligations herein conferred upon such

new Party shall be deemed assumed by such transferee or grantee with respect to the Tract so acquired as respects all such obligations to be performed from and after the date of such assignment, transfer or conveyance and any matters disclosed by the estoppel certificates referred to in Article XXIX hereof.

R. Permittees. The term "Permittees" as used in this REA shall mean and refer to Developer and all Occupants and their respective officers, directors, employees, agents, contractors, customers, visitors, invitees, licensees, subtenants and concessionaires.

S. Person/Persons. The words "Person" or "Persons" shall both include individuals, partnerships, firms, associations and corporations or any other form of business entity.

T. Project Architect. The term "Project Architect" refers to LEACH, CLEVELAND & ASSOCIATES, or such other architect or architects as may be from time to time designated by any three of the four parties hereto, one of which must in all events be the Developer, for the planning of the Common Area improvement work.

U. Store/Stores. The term "Store" or "Stores" refers to the Auerbach Store, and/or the Sears Store, and/or the Broadway Store, as the context may require.

V. TBA. The term "TBA" shall refer to the buildings located on the Sears Tract and Broadway Tract, designated on Exhibit B as the "TBA," and intended initially to be used as a department for the sale of automobile tires, batteries and accessories, motor vehicle fuel products, servicing and mechanical repair of motor vehicles (exclusive of body and fender repairs) and merchandise and services related thereto. The TBAs on the

Sears Tract and Broadway Tract shall be operated for such purposes, if at all, under the respective name of such Majors for five (5) years after the date of opening for business of the respective Stores.

W. Termination Date. The term "Termination Date" refers to the date on which this REA shall terminate pursuant to the terms and provisions of Article XXVII hereof.

X. Tract/Tracts. The term "Tract" or "Tracts" refers to the Developer Tract and/or the Auerbach Tract and/or the Sears Tract and/or the Broadway Tract, as the context may require.

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ARTICLE II

EASEMENTS

A. Non-Exclusive Easements for Automobile Parking and Incidental Uses. Each Party hereby reserves to itself (i) the right to grant easements to Permittees over the Common Area of its respective Tract (a) for ingress to and egress from the respective Tract, (b) for the passage and parking of vehicles and passage and accommodation of pedestrians on such respective portions of the Common Area of each such Tract as are set aside, maintained and authorized for such uses pursuant to this REA, and (c) for the doing of such other things as are authorized or required to be done on the Common Area pursuant to this REA; and (ii) the right to grant to other Parties the right to grant such easements over the Common Area of its said Tract.

Each Party does hereby grant to the other Parties hereto the right to grant such easements to Permittees over the Common Area of its said Tract.

Each Party does hereby grant to the other Parties hereto for their respective uses and for the use of their respective Permittees in common with all others entitled to use the same, easements in, to, and over the Common Area of its said Tract for the purposes set forth in (a), (b), and (c) above. Each Party hereby reserves the right to eject or cause the ejection from the Common Area of its Tract of any Person or Persons not authorized, empowered or privileged to use the Common Area of such Tract. Notwithstanding the foregoing, each Party reserves the right to close off the Common Area of its Tract for such reasonable period or periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing off any portion of the Common Area as herein provided, such Party shall give

notice to each other Party of its intention so to do and shall coordinate such closing with all other Parties so that no unreasonable interference with the operation of the Shopping Center shall occur. Notwithstanding the reservation herein provided for, and the right to grant easements, it is expressly understood and agreed that such reservation and the right to grant easements is limited to nonexclusive use of the surface, and exclusive or nonexclusive uses under the surface for passage of utilities. No Floor Area shall be erected and constructed within any part of the Common Area of any such Tract except as shall have been approved by the Parties, or as shown on Exhibit B.

B. Utilities. Each Party hereby grants to the other, respectively, nonexclusive easements in, to, over, under and across its respective Tract for the installation, operation, flow and passage, use, maintenance, repair, relocation and removal of sewers (including underground storm sewers), water and gas mains, electrical power lines, telephone lines and other utility lines, all of such sewers, mains and lines ("utility facilities") to be underground, serving the respective Tracts of the Parties.

Each easement of the character described in this Article II B shall, as to the location thereof, be subject to the approval of the Party whose Tract such easement traverses.

C. Construction Easements. Each Party with respect to its Tract hereby grants to all other Parties nonexclusive easements in, to, over, under and across the Common Area of each such Tract for the purpose of the development and construction thereof, pursuant to the provisions of Articles V, VI and VII of this REA, and for the construction, reconstruction, erection,

removal and maintenance on, to, over, under and across each Tract, to a maximum distance of 14 feet, of footings, supports, canopies, flag poles, roof and building overhangs, awnings, alarm bells, signs, lights and lighting devices and other similar appurtenances ("construction elements") to the building of any Party, as the case may be appropriate, as are shown in the working drawings for such building, approved by the Parties pursuant to the provisions of Article III of this REA, or pursuant to any other written agreement hereafter executed between such Parties. Each Party covenants and agrees, respectively, that its exercise of such easements shall not result in damage or injury to the buildings or other improvements of any other Party, and shall not interfere with the business operation conducted by any other Party in the Center. The exercise of the rights referred to in this Article II-C shall be in conformity with Article III of this REA.

D. Indemnity. The Parties hereto each severally covenant and agree to indemnify and hold harmless each other and the Tract of any other Party against liability; loss, damage, costs or expenses, including attorneys' fees, on account of claims of lien of laborers or materialmen, or others, for work performed or supplies furnished in connection with the Developer Improvements, or for the respective Stores of the Majors, or Common Area work performed by any Party on its Tract, and in the event any Tract shall become subject to any such lien on account of work performed or supplies furnished in connection with any other Tract or Tracts, then the Owner or Owners of such Tract or Tracts, as may be appropriate, shall at the request of the Party owning the Tract which is subject to such lien, promptly cause such lien to be released and discharged of

record either by paying the indebtedness which gave rise to such lien, or posting such bond or other security as shall be required by law to obtain such release and discharge.

E. Dominant and Servient Estates. Each easement granted pursuant to the provisions hereof is expressly for the benefit of the Tract of the grantee, and the Tract so benefited shall be the dominant estate and the Tract upon which such easement is located shall be the servient estate. Any easement granted pursuant to the provisions of this Article II may be abandoned or terminated by execution of an agreement so terminating or abandoning the same, by the owners of the dominant and servient estates.

ARTICLE III

EXERCISE OF EASEMENTS

A. The exercise of the easements granted pursuant to Article II hereof shall be subject to the following provisions:

1. The grantee of any of the utility easements referred to in Article II-B shall be responsible as between the grantor and the grantee thereof for the installation, maintenance and repair of all sewers, pipes and conduits, mains and lines and related equipment installed pursuant to such grant. Any such maintenance and repair shall be peformed only after two week's notice to the grantor of the grantee's intention to do such work, except in the case of emergency, and any such work shall be done at grantee's sole cost and expense and in such manner as to cause as little disturbance in the use of the Common Area as may be practicable under the circumstances.

2. At any time the grantor of any of the utility easements granted pursuant to the said Article II-B shall have the right to relocate on the land of the grantor any such sewers, pipes and conduits and related equipment then located on the land of the grantor, provided that such relocation shall be performed only after thirty (30) days' notice of the grantor's intention to so relocate shall be given to the grantee and such relocation (i) shall not interfere or diminish the utility services to the grantee, (ii) shall not reduce or unreasonably impair the usefulness or function of such utility, and (iii) shall be performed at the sole cost and expense of grantor.

3. The easements granted by Article II-A hereof shall terminate and expire on Termination Date.

4. The easements granted by Article II-B shall be perpetual.

5. The easements granted by Article II-C shall remain in existence so long as the Stores (or Developer Mall Stores or Developer Non-Mall Stores) of the grantee shall be in existence in the Center, except to the extent that the same physically relate to the buildings and improvements of the grantor of any such easements, in which event such easements shall remain in existence only so long as the Stores (or Developer Mall Stores or Developer Non-Mall Stores) of both the grantor and the grantee of such easements shall be in existence in the Center. Interruption in service of any such easements shall be permitted as a result of any cause or event referred to in Article XV-A hereof.

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ARTICLE IV

PLANS

A. Developer, Auerbach and Sears have heretofore approved and Broadway does hereby approve the final improvement plans for the initial development of the Common Area of the Shopping Center. The Parties agree that the initial development of the Common Area has been completed in conformity with those approved improvement plans. The Common Area as initially completed is to be further improved and expanded by common area improvements on the Broadway Tract, and an addition of approximately 5.234 acres to the Developer Tract. The addition to the Developer Tract is designated as Part "E" of Parcel 1 on Exhibit B. To coordinate the construction of the common area improvements on the Broadway Tract, and the additional common area improvements on the Developer Tract, the Project Architect shall prepare additional improvement plans. Developer, Sears, Broadway and Auerbach shall be consulted frequently during the course of the preparation of such improvement plans, and if either of such Parties has a preference as to a particular type of installation, it shall furnish to the Project Architect detailed drawings of such installation or portion thereof for incorporation in the improvement plans. From time to time during the course of the preparation of such plans, the Project Architect shall cause progressive working drawings of such plans to be submitted to such Parties for review and recommendation.

Such improvement plans shall include:

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1. Schematic improvement plans which shall be submitted by the Project Architect to Developer, Sears, Broadway and Auerbach for their review and approval. Such schematic improvement plans shall include elevations, perspective renderings reflecting design concepts, layout of parking and other Common Area improvements.

2. Preliminary improvement plans which shall within sixty (60) days following the approval of the schematic improvement plans by Developer, Sears, Broadway and Auerbach, be submitted to such Parties by the Project Architect for their review and approval. Such preliminary improvements plans shall be developed from Exhibit B and the approved schematic improvement plans and shall conform to said schematic improvement plans and to the requirements of this REA and shall include, without limitation:

(a) All access roadways, exterior boundary walls or fences, project signs, malls (walkways along the perimeter of buildings shall be designed by the building architect of each Party, subject to the approval of the Project Architect), curbs, curb cuts, entrance driveways, interior roadways, Automobile Parking Area and utility loop systems and lines to serve the additional common improvements and such commercial improvements as the Parties may designate, sewer, storm and other drainage lines or systems, including extensions thereof, situated outside the Shopping Center to connect to established public systems, and fire hydrants, lighting facilities and other similar facilities for common use.

(b) The location of all facilities for common use where the fixing of such location is reasonably possible,

and if precise location cannot be shown, specifications for such locations shall be set forth.

(c) A comprehensive rough grading plan for the Common Area of the Broadway Tract and the additional Common Area on the Developer Tract, including the size and dimensions of all facilities for common use; storm sewers, including area drains, surface drainage installations and taps for building connections, and sanitary sewers for common use, including taps for building connections.

(d) A composite parking layout for the Common Area of the Broadway Tract and the additional Common Area of the Developer Tract, including paving, striping, bumpers, curbs, location of electroliers and lighting systems, designating areas which may be separately illuminated from time to time at the request of any Party.

(e) A composite landscaping plan as prepared by a landscape architect, specifying overall plant materials and planting.

(f) The conditions, standards and architectural treatment under which such improvements shall be located, constructed or installed. Such conditions, standards or architectural treatment shall not be less than the minimum requirements of the County of Salt Lake, or other governmental agency having jurisdiction of the performance of the work in the Shopping Center, and shall provide that sewers, drainage, utility lines and conduits shall not be constructed or maintained above the ground level of the Common Area.

(g) The improvement plans shall not include any Floor Area but shall designate the general location of all

Floor Area and other areas not included within the definition of "Floor Area" or "Common Area".

(h) Improvement of adjacent streets as required by governmental agencies and other off-site improvements.

(i) Design and working drawings for storm sewers and area drains, including extensions thereof off the Shopping Center Site, sanitary sewers, water, telephone, gas, electric power and other utility lines, conduits and systems, including taps for commercial connections within five feet (5') of the building face, may be prepared by the utility companies responsible for such installations or the Project Architect or other architects or engineers, and shall be subject to the approval in writing by Developer, Broadway, Sears and Auerbach.

(j) The location and extent of perimeter sidewalks.

If either Developer, Sears, Broadway or Auerbach does not specify any objection or make a proposal that would add to or change the schematic or preliminary improvement plans to the Project Architect, with a copy to the other, within thirty (30) days from such date of submission, such plans shall be deemed to be satisfactory for further development. If there is such objection or proposal from either of such Parties, the Project Architect shall call a meeting of such Parties to be held within forty-five (45) days from such date of submission to resolve and adjust any objection or proposal with reference to such improvement plans. All objections or proposals shall be considered at such meeting with a view of developing such improvement plans in their final form at such meeting. If at such meeting such Parties are unable to agree unanimously,

all matters of disagreement shall be resolved by the arbitration procedures of Article XXIII.

Within sixty (60) days from the date of approval of the preliminary improvement plans, the Project Architect shall submit final improvement plans to Developer, Sears, Broadway and Auerbach for review and approval; such final improvement plans shall be developed from the approved preliminary improvement plans.

If Developer, Sears, Broadway or Auerbach does not specify any objection or make a proposal that would add to or change the final improvement plans to the Project Architect, with a copy to the others, within thirty (30) days from such date of submission, such plans shall be deemed to be satisfactory for final development. If there is such objection or proposal from either of such Parties, the Project Architect shall call a meeting of such Parties to be held within forty-five (45) days from such date of submission, to resolve and adjust any objections or proposal with reference to such final improvement plans. All objections or proposals shall be considered at such meeting with a view to developing the final improvement plans in their final form at such meeting. If at such meeting such Parties are unable to agree unanimously, all matters of disagreement shall be resolved by the arbitration procedures of Article XXIII. To the extent possible, all work shall continue during any period of arbitration.

B. Additional improvement plans may be developed by the Project Architect for the future development of the Common Area or may be developed by others and submitted to the Project Architect for approval. Upon such preparation or approval by

the Project Architect, as the case may be, such plans shall be submitted to Developer, Sears and Broadway for their approval in writing.

To provide continuity and harmonious architectural treatment in the development or approval of such plans, prior approved improvement plans shall be followed as a guide in any such additional plans and in the establishment of conditions, standards and architectural treatment under which unimproved areas shall be improved or additional improvements shall be made.

Changes may be made in approved improvement plans only by the agreement in writing of Developer, Sears, Broadway and Auerbach.

All improvement plans shall be stamped "approved", dated and certified by the Project Architect and maintained by it in a safe and convenient place. In the event of designation of another Project Architect, all improvement plans and other records relating thereto shall be delivered to the new Project Architect at the time of such designation.

C. In the preparation of the improvement plans provided for in Article IV-A, and any additional plans for future development of the Common Area under Article IV-B, the following general design data, without limitation, shall be followed, as minimums, unless governmental specifications for such work establish higher standards:

1. Sewer and other utility lines, conduits or systems shall not be constructed or maintained above the ground level of the Shopping Center Site unless such installations are within enclosed structures approved by the Parties, and

shall conform with requirements of the County of Salt Lake, City of Murray, or other applicable governmental or private agency having jurisdiction of the work.

2. Street improvements shown on Exhibit B respecting future and existing streets and roads adjacent to the Shopping Center shall be made in accordance with the requirements of the County of Salt Lake, or the City of Murray, or other governmental agency having jurisdiction of the same.

3. Lighting for Automobile Parking Area shall be provided by fixtures of such type as the Parties shall approve, with area controls with electric time switches on a 7-day program, sufficient to produce a minimum of 3/4 of one foot candle of lighting and an average of 1-1/2 foot candle of lighting, all measured thirty (30) inches above the adjacent ground or such other minimum foot candle of lighting as may be mutually approved by Developer, Sears and Broadway.

4. The maximum slope in parking areas (which shall not be interrupted with retaining walls or embankments forming a break in grade, except as shown on Exhibit B hereof) shall not exceed three percent (3%) unless otherwise shown on the approved improvement plans.

5. All sidewalks and unenclosed malls shall be of concrete or other approved materials, and the surface of the parking areas and access roads shall be paved with concrete or by installing a suitable base, surfaced with a bituminous asphaltic wearing surface.

6. The surface of that portion of the Enclosed Mall devoted to pedestrian traffic shall be installed in a continuous plane without steps. The maximum slope in such surface shall

not exceed one-half (1/2) of one percent (1%), unless otherwise shown on the approved improvement plans.

7. All fire protective systems shall be installed in accordance with the requirements of the National or Pacific Boards of Fire Underwriters, and any more stringent requirements of inspection firms used by the respective Parties, and any additional requirements of local authorities having jurisdiction over such installation.

8. The heating, ventilating and cooling system of the Enclosed Mall shall be constructed so as to operate and be capable of maintaining an inside dry bulb temperature of 72° Fahrenheit for heating with outside temperatures at 5° Fahrenheit dry bulb, and the cooling system shall be capable of maintaining 72° Fahrenheit dry bulb and 50% humidity inside conditions with outside conditions of 97° Fahrenheit dry bulb and 67° Fahrenheit wet bulb. The entire system shall be automatically controlled.

9. The quality of (i) the construction, (ii) the construction components, (iii) the decorative elements (including landscaping and irrigation systems for the landscaping) and (iv) the furnishings, and the general architectural character and general design (including, but not by way of limitation, landscaping and decorative elements), the materials selection, the decor and the treatment values, approaches and standards of the Mall shall be comparable, at minimum, to the qualities, values, approaches and standards (as of the date hereof) of the Enclosed Mall at Los Cerritos Shopping Center located in Cerritos, California, with appropriate modifications because of differing weather conditions expected in Murray, Utah.

10. The finished surface of the Mall shall be established at the same elevation as the first floor of the

adjoining retail store building at all points adjoining such buildings.

D. In order that the Shopping Center shall be designed and controlled so as to present an architectural conformity as to each Tract as to the whole, Broadway shall within sixty (60) days after the execution of this REA cause to be delivered to the Project Architect, and to each other Party hereto, one copy of their proposed plans as respects the exterior design of its Store, and agrees to cause its architect thereafter to work with the Project Architect so that the exterior of the Store and the exterior of the Developer Mall Stores will present an harmonious architectural appearance.

E. Broadway shall pay the costs of any additional work or changes to originally constructed common area improvements required to accommodate the Broadway Store in the Shopping Center, including but not limited to architectural fees, relocation of the utility loop and the extension of utility lines to a point within five (5) feet of the Broadway Store.

ARTICLE V

CONSTRUCTION OF IMPROVEMENTS BY DEVELOPER

A. Developer has heretofore completed construction of the Enclosed Mall, together with all related cross-malls and the Enclosed Mall is completely functional and operating, including being air-conditioned, heated, ventilated, lighted, decorated and landscaped. Developer has heretofore completed construction of all exterior walls and roofs of all Mall Stores, except the Mall Stores designated as Buildings K1 and K2 on Exhibit B.

B. All completed work of construction of the Developer Improvements has been made in accordance with the final Developer improvement plans. All other work of construction of the Developer Improvements shall be made in accordance with the final Developer improvement plans.

C. Subject to Article XV-A, on or before the date Broadway shall open for business, Developer shall have completed all exterior walls and roofs of the Mall Stores designated as Buildings K1 and K2 on Exhibit B.

D. The Enclosed Mall has been constructed by Developer at its cost and expense in accordance with plans and specifications approved by the Parties, including any plans for attachment thereof to the building or improvements of any such Party. There shall be no seismic loading or structural stress placed upon any Store by the Enclosed Mall structure, and the same shall be self-supporting. The Enclosed Mall shall provide for sprinkler protection within the ceiling plane, and at all windows and doors of the Stores.

E. The Parties further recognize that the air conditioning and heating specifications of their respective buildings and the Enclosed Mall are critical and that the same shall be so designed, constructed, operated and maintained as not to drain conditioned air from, nor discharge or return air into the Enclosed Mall or Stores, as the case may be, and Developer agrees that Occupants of the Mall Stores shall be similarly required not to drain conditioned air from, nor discharge residue or return air into the Enclosed Mall.

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ARTICLE VI

CONSTRUCTION OF COMMON AREA

A. Developer and Sears have heretofore caused the construction of on-site and off-site "common improvement work" (as defined in Article VI-B of the Construction, Operation and Reciprocal Easement Agreement dated June 14, 1971) for the Shopping Center. The common improvement work as defined in Article VI-B hereof includes that heretofore completed by Developer and Sears and includes further common improvement work by Developer and Broadway pursuant to the provisions of Article IV.

Upon approval of the improvement plans provided for in Article IV-A, and subject to the provisions of Article XV, Developer, Sears and Broadway shall jointly enter into written contracts for all on-site and off-site work required to construct the common improvement work provided for in said additional improvement plans. Prior to the letting of any such contracts, not less than three (3) competitive bids for each common improvement work shall be obtained from a list of qualified contractors, prepared by the Project Architect and approved by the Parties. Each such contract shall expressly provide for severable liability of Developer, Sears and Broadway as to its proportionate share of the cost of such contract, as hereinafter provided.

The bid documents and contract or contracts under which such common improvement work is to be performed shall be subject to the approval of Developer, Sears and Broadway. Such contract or contracts shall include provisions requiring a bond of a contractor (subject to waiver thereof by Developer, Sears and Broadway) covering performance, completion and labor and material payment with respect to that portion of the common

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improvement work to be performed by each contractor, naming the contractor as principal and Developer, Sears and Broadway, jointly and severally, as obligees, in the form, and with the corporate surety or sureties approved by Developer, Sears and Broadway, which bond will cover the full amount of the contract price and all of which bonds shall aggregate 100% of the amount of the construction contract price for the common improvement work. Prior to the commencement of any work on the common improvement work or any other work jointly under the contract for such improvement, Developer shall file the contract for such work and record the bond covering the same pursuant to Section 14-2-1 and 14-2-2 of the Utah Code Annotated.

In the event during the course of construction there shall be any change in the plans and specifications for such construction, which shall entail so-called "extra work" by the contractor, such changes and the amount to be paid to such contractor for such extra work shall first be approved in writing by Developer, Sears and Broadway.

In the event Developer, Sears or Broadway shall fail to reject such change in writing, within twenty (20) days from the date of submission of such change, such change shall be deemed to have been approved by such Party. In the event there shall be any deletion from the plans and specifications or changes which shall result in a decrease in cost, such decrease shall be reflected in the amount to be paid to the contractor under such contract.

During the course of construction, statements of expenditure shall be submitted by the contractor for approval to the Project Architect. The Project Architect shall certify its approval of such statements, including the percentage of work performed

under the contract to Developer, Sears and Broadway, unless Developer, Sears or Broadway hereto shall have selected some other method of approval. Upon approval of such statements of expenditure, Developer, Sears and Broadway shall immediately pay its "Proportionate Share" thereof to the contractor. Except for the work referred to in Article IV-E which is to be completed at the sole cost and expense of Broadway, in the event either Developer, Sears or Broadway enter into a separate written contract for any work provided for in the additional improvement plans, then such Party shall pay the cost thereof directly to such contractor and the remaining of such Parties shall reimburse to said Party their respective Proportionate Share of the cost of such work within fifteen (15) days after receipt of a statement thereof. Developer, Sears or Broadway may withhold payment of any item contained in such statement of expenditure which is disapproved or questioned as to the amount, but shall pay for the balance of such statement of expenditure. Any disapproval shall be made in writing by the Party so disapproving, and a copy of such disapproval shall be furnished to the Project Architect, the contractor, and the other Party within twenty (20) days following the receipt of the certified statement of the Project Architect.

B. As used hereinafter in this REA, the term "Proportionate Share" refers to that part of the cost and expense to Developer, Sears and Broadway of the work hereinbefore in Article IV and hereinafter in this Article VI described, and to the work heretofore constructed by Developer and Sears under Article VI of the Construction, Operation and Reciprocal Easement Agreement dated June 14, 1971, relative to the Shopping Center and the Common Area portion thereof allocable to Developer, Sears and Broadway, to be computed on the basis that the maximum allowable Floor Area of each of said Parties, respectively bears to the total

maximum allowable Floor Area of Developer, Sears, Auerbach and Broadway (for purposes of this computation, the maximum allowable Floor Area of the Auerbach Store shall be combined with and added to the Floor Area of the Developer). The maximum allowable Floor Area for the purpose of this Article VI of Developer, Sears and Broadway shall be as follows:

	Maximum Floor Area Allowable	Proportionate Share
Developer (which figure includes the maximum allowable floor area of the Auerbach Store)	489,608	51.3870
Sears	281,175	29.5108
Broadway	182,003	19.1022

Developer and Sears have heretofore paid for common improvement work in the initial development of the Common Area under Article VI of the Construction, Operation and Reciprocal Easement Agreement dated June 14, 1971. Broadway shall, within fifteen (15) days after receipt of notice of the amount due, reimburse to Developer and Sears those expenses previously incurred by such Parties in excess of their respective Proportionate Share.

The aforementioned "common improvement work" shall consist of the following items of work previously completed and such items remaining to be performed and reasonably necessary to complete the Shopping Center, except for the work referred to in Article IV-E which is to be completed at the sole cost and expense of Broadway:

1. Preliminary development of the Shopping Center Site, including, but not limited to the following:

(a) Preliminary and master planning.

(b) Preparation of flood control reports and analysis of the Shopping Center Site and related areas.

(c) Design and construction of off-site and/or on-site storm drains, and planning of appropriate off-site and on-site improvements for development by Developer or public bodies and contributions toward design and construction thereof.

(d) Design and construction of off-site and on-site improvements for the general benefit of the Shopping Center site.

(e) Underground or off-site relocation of overhead utility facilities.

(f) Rough grading of the Developer, Sears, Auerbach and Broadway Tracts, which shall include the building pads and excavations for all buildings.

2. The design, construction and improvement of the Common Area, including, but not limited to, the following:

(a) Fill requirements for the Common Area, including excavations, if any, to develop the same.

(b) Finish grading of the Common Area.

(c) All paying, striping and lighting of the Common Area, including electric time clock controls.

(d) Facilities for surface and subsurface drainage.

(e) Malls, other than the Enclosed Mall (the Enclosed Mall being heretofore separately provided for in Article V, above), sidewalks, curbs and curb faces exclusive of perimeter sidewalks, curbs and landscaped areas which are a part of each Party's store plans and building contract.

(f) Landscaping of the Common Area, including related water systems and related electric time clocks (except landscaping and related facilities adjacent to the buildings which are a part of the Store Plans and the building contracts

of each Party, and except those related to construction connected with the Enclosed Mall).

(g) Common sewer, gas, electrical, water and telephone facilities to the curb line of the respective buildings, but in no event closer than five feet (5') to said building, notwithstanding the fact that such common facilities may serve the Developer Improvements and Stores, in addition to the Common Area.

(h) All Common Area amenities such as benches, trash baskets, public telephones, drinking fountains, bicycle racks, decorative features and similar facilities for the comfort or benefit of the Permittees, together with institutional signs, symbols, directories and similar notices for and to the Center, including signs during construction, which signs shall be of such size, form and content as the Parties shall approve.

(i) All architectural and engineering costs and construction bonds and insurance shall be considered a part of the work for the purposes of cost.

C. The Project Architect shall keep accurate records and books of account, in such form as Developer, Sears and Broadway reasonably and compatibly shall direct, of the cost of such work, and shall keep such records for a period of at least two years from and after the completion of the common improvement work, and Developer, Sears and Broadway, or the duly authorized agent of either of them shall at their own cost and expense have the right during said two-year period to audit such records and books of account. In the event any such audit shall disclose any error in the determination of the cost of the common improvement work and/or Proportionate Share of Developer, Sears or Broadway, then the adjustment necessary to correct such error or errors

shall promptly be made.

D. The performance of the common improvement work under any such contract shall be scheduled by the Project Architect in consultation with Developer, Sears and Broadway to coordinate such common improvement work with the commercial work of Developer, Sears and Broadway.

E. There shall be available within the Common Area at all times from and after the completion of the construction thereof a parking index of not less than 5.5 automobile parking spaces for each 1,000 square feet of Floor Area within the Center. Each parking space, regardless of angles of parking, shall have a width of nine feet (9') on center, where possible, and a minimum width of eight feet six inches (8'6") on center, measured at right angles to the side line of the parking space. Parking lanes or bays (which include two rows of parking spaces and incidental driveway) shall have the following minimum and preferred widths at the angle of the parking designated below:

DEGREES	MINIMUM	PREFERRED
45°	48'	52'
52-1/2°	50'	52'
60°	52'	54'
90°	60'	62'

Each Party severally agrees with the others to take no action which would reduce the parking index below that specified herein.

F. The construction of the Common Area, Enclosed Mall, and the construction of the Store on the Auerbach Tract, the Store and TBA on the Sears Tract, and the Store and TBA on the Broadway Tract, as the case may be, which may be integrated, shall nevertheless be deemed to be a separate and distinct work and improvement.

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ARTICLE VII

CONSTRUCTION OF STORES; OPENING DATE

Auerbach and Sears have heretofore completed construction of their respective Stores and have opened their Stores to the general public for business.

Broadway has heretofore commenced construction of its Store. Subject to the provisions of this Article VII, and to any delays applicable under the provisions of Article XV hereof, Broadway agrees to cause construction of the Broadway Store to be hereafter diligently prosecuted to completion, so said Store shall be open to the general public for business on or before April 1, 1974.

All work to be performed pursuant to the provisions of this Section VII shall be in accordance with the final store plans and in accordance with the requirements of this REA.

ARTICLE VIII

FLOOR AREA, USE, OPENING DATES,

OPERATION, SIZE AND HEIGHT LIMITATIONS

A. Notwithstanding anything to the contrary contained in this REA, it is agreed that at all times following the opening date of the respective Stores, or improvements, as the case may be, and subject to the provisions of Articles XII, XV and XVII hereof, during the term of this REA:

1. The Auerback Store shall contain not less than 82,236 square feet of Floor Area or more than 102,795 square feet of Floor Area.

2. The Sears Store, excluding its TBA facility, shall contain not less than 207,000 square feet of Floor Area or more than 281,175 square feet of Floor Area, including its TBA.

3. The Broadway Store, excluding its TBA facility, shall contain not less than 140,000 square feet of Floor Area or more than 182,003 square feet of Floor Area, including its TBA.

4. The Developer Improvements shall contain not less than 309,000 square feet of Floor Area or more than 386,813 square feet of Floor Area.

B. The number of stories and the heights of buildings in the Center shall not exceed those specified in Exhibit C attached hereto and by this reference made a part hereof.

C. Neither the Center nor any part thereof shall be thereon constructed, maintained or used for any purpose other than the following:

Retail, office and service establishments common to first-class regional shopping centers containing enclosed air

conditioned malls in which Sears and Broadway have a store, including, without limitation, financial institutions, brokerage offices, restaurants, automotive service stations (in non-mall buildings only), travel and other agencies; but excluding automobile body and/or fender repair work, automobile sales or display area (except for auto displays in connection with approved Merchants Association promotions), bowling alley, skating rink, car washing establishment, veterinary hospital, mortuary, commercial laundry plant and similar service establishments, unless specifically approved in writing by the Parties. Office use shall not include a building used primarily for general office purposes.

D. The Majors understand that Developer intends that Buildings 7 and 8 on Exhibit B are intended to be used as a convenience type shopping center, including the operation of a foods supermarket and a super drug store. The Parties agree that the aforementioned foods supermarket and super drug store use are approved for said Buildings 7 and 8 and shall not be in violation of the foregoing paragraph of this Article VIII-C.

E. No use or operation will be made, conducted or permitted on or with respect to all or any part of the Center, which use or operation is obnoxious to or out of harmony with the development or operation of a first-class regional shopping center containing an enclosed air conditioned mall, including, but not limited to, the following:

1. Any public or private nuisance.

2. Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness.

3. Any obnoxious odor.

4. Any noxious, toxic, caustic or corrosive fuel or gas.

5. Any dust, dirt or fly ash in excessive quantities.

6. Any unusual fire, explosion or other damaging or dangerous hazard.

7. Any warehouse (but any area for the storage of goods intended to be sold at any retail establishment in the Center shall not be deemed to be a warehouse), assembly, manufacture, distillation, refining, smelting, agriculture or mining operations.

8. Any "second hand" store, Army, Navy or Government "surplus" store (except for sales of antiques).

9. Any trailer court, labor camp, junk yard, stock yard, or animal raising (other than pet shop).

10. Any drilling for and/or removal of subsurface minerals.

11. Any dumping, disposal, incineration or reduction of garbage or refuse.

12. Any auction house operation.

F. No kiosk shall be permitted and no merchandise shall be displayed, sold or offered for sale outside of the physical limits of Floor Area, without the written approval of all Parties; provided, however, that such prohibition shall not have application to the selling, offering for sale, display, or advertising of products and prices for gasoline or other petroleum products in gasoline sales and service island areas, as shown on Exhibit B.

ARTICLE IX

GENERAL CONSTRUCTION REQUIREMENTS

A. Each Party performing work severally agrees to perform its respective work so as not to cause any increase in the cost of constructing the remainder of the Shopping Center Site or any part thereof which is not reasonably necessary, and so as not to unreasonably interfere with any construction work being performed on the remainder of the Shopping Center Site or any part thereof, or with the use, occupancy or enjoyment of the remainder of the Shopping Center Site or any part thereof by any other Party to this REA, and any other Occupant of the Shopping Center Site, and the Permittees of any other Party to this REA and such other Occupants.

B. From and after the opening of the buildings of any Party abutting on the Enclosed Mall, each other Party thereafter erecting or constructing any building shall erect and construct a barricade at least eight feet (8') in height surrounding the building or buildings so being constructed. Such construction barricade shall be kept in place, in good condition and repair, until the building so being constructed is secure from unauthorized intrusion. All barricades shall be painted in colors approved by the Project Architect.

C. Prior to the commencement of the work to be performed by any Party to this REA, each Party shall submit to the Project Architect for approval (which approval shall not be unreasonably withheld): (i) a plot plan of the Center showing, as respects the buildings and improvements to be constructed by it, material and equipment storage sites, construction shacks and other temporary improvements, and workmen's parking area; and (ii) a time schedule

indicating the approximate date or dates upon which each portion of the Center used for the purposes referred to in the preceding subdivision (i) shall cease to be so used by such Party. Within ten (10) days after the submission of such plot plan and such time schedule the Project Architect shall notify the Party submitting the same, whether the same are approved or disapproved, provided that a failure to give such notice shall constitute approval thereof by the Project Architect. If the Project Architect shall disapprove the plot plan and/or the time schedule (specifying the reasons for such disapproval), the Party submitting the same shall promptly revise the same in only those respects that the Project Architect shall reasonably request as requisite to its approval.

D. Each Party performing work agrees that all construction to be performed hereunder shall be done in a good and workmanlike manner, with first class materials and in accordance with all applicable laws, rules, ordinances and regulations. Each Party shall pay all costs, expenses, liabilities and liens arising out of or in any way connected with the construction performed by it. Developer shall, upon demand, deliver to the other Party or Parties demanding the same, evidence of completion of such work in compliance with all applicable laws, ordinances, regulations and rules in compliance with the final Developer plans, approved pursuant to Section IV-C hereof, and that all such costs, expenses, liabilities and liens arising out of or in any way connected with such construction have been fully paid and discharged of record, or contested and bonded, in which event any judgment or other process issued in such contest shall be paid and discharged before execution thereof. Nothing herein

shall be deemed to prohibit the continued existence of a leasehold mortgage or a construction mortgage if the same are inferior in order of priority to this REA except insofar as the same may be given priority in specific cases by the terms hereof.

E. Each Party performing work, as respects its respective construction, shall use reasonable efforts to cause its architects and contractors to cooperate and coordinate its construction with the architects, contractors and construction work of the other Parties hereto to the extent reasonably practicable, to achieve the objectives set forth in Section IX-C.

F. Wherever under the terms of this REA any Party is permitted to perform any work upon the Shopping Center Site, it is expressly understood and agreed that such Party will not permit any mechanics' or materialmen's, or other similar liens to stand against the Shopping Center Site upon which such labor or material has been furnished in connection with any such work performed by any such Party. Such Party may bond and contest the validity of any such lien, but upon final determination of the validity and the amount thereof, such Party shall immediately pay any judgment rendered, with all proper costs and charges, and shall have the lien released at such Party's expense.

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ARTICLE X

MAINTENANCE OF COMMON AREA

A. Developer is hereby designated as the initial Operator of the Common Area. Except as hereinafter expressly provided, from and after the completion of construction of the Common Area, Operator shall maintain, or cause to be maintained the same in good order, condition and repair, subject to payment by the Parties of their respective Allocable Share of Common Area Maintenance Cost as hereinbefore provided; and Operator shall have the right to select from time to time a Person or Persons (herein called "Operator's Nominee") to operate and maintain the Common Area; provided that such nomination shall not diminish Operator's responsibility for maintaining the Common Area.

Without limiting the generality of the foregoing, Operator, in the maintenance of the Common Area, shall observe the following standards:

1. Maintain the surface of the parking area, Malls and sidewalks level, smooth and evenly covered with the type of surfacing material originally installed thereon, or such substitute thereof as shall be in all respects equal thereto in quality, appearance and durability.

2. Remove all papers, debris, filth and refuse from the Center and wash or thoroughly sweep paved areas as required.

3. Maintain such appropriate parking area entrance, exit and directional signs, markers and lights in the Center as shall be reasonably required and in accordance with the practices

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prevailing in the operation at Los Cerritos Shopping Center, located in Cerritos, California, with appropriate modification because of differing weather conditions expected in Murray, Utah.

4. Clean lighting fixtures of the Center (as contrasted with those appurtenant to premises of Occupants) and relamp as needed.

5. Repaint striping, markers, directional signs, etc., as necessary to maintain in first-class condition.

6. Maintain landscaping as necessary to keep in a first-class and thriving condition.

7. Clean signs of the Center (as contrasted with those of Occupants), including relamping and repairs being made as required.

8. Employ and/or contract for employment of courteous personnel for Common Area patrol; such personnel also includes security guards during store hours and such other hours as are deemed necessary. The provisions of this paragraph 8 may be waived by the Parties from time to time.

9. Maintain and keep in a sanitary condition public rest rooms, if any, and other common use facilities.

10. Clean, repair and maintain all utility systems that are part of the Common Area to the extent that the same are not cleaned, repaired and maintained by public utilities.

11. Take such action as may be reasonable and necessary to deal with snow, ice and other adverse weather conditions affecting the Common Area.

B. Operator agrees to indemnify and hold harmless all Parties and their respective Tracts from and against any

mechanics', materialmen's and/or laborers' liens, and all costs, expenses and liabilities in connection therewith arising out of the maintenance performed by Operator in respect to the Common Area pursuant to the provisions of this Article X hereof (whether performed prior to or after the execution of this REA), and that in the event any Tract shall become subject to any such lien, Operator shall, at the request of the Party in interest of such Tract, promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien, or posting such bond or other securities as shall be required by law to obtain such release and discharge.

C. Except as provided in Article I-B, unless all Parties otherwise consent and agree in writing, no charge of any type shall be made to or collected from any Occupant or the Permittees of Developer or any Occupant, for parking or the right to park vehicles in the parking area, except such Common Area Maintenance charges as may be provided for in any lease agreement with any Occupant. The Permittees of any Major shall not be prohibited or prevented from so parking so long as space is available in the parking area, and so long as they do not violate the reasonable rules and regulations covering the use of the parking areas promulgated from time to time by Developer and approved by the Majors. The Parties shall, by mutual agreement, prescribe certain sections within the Common Area or on other land outside the Common Area within a reasonable distance from the nearest boundary of the Center for use as parking space by the Occupants of the Center, and the employees, tenants, agents, contractors, licensees and concessionaires of such Occupants. Each Party shall use reasonable efforts to require its employees (and the employees of its agents,

contractors, licensees and concessionaires) and its Occupants (and the employees, agents, contractors, licensees and concessionaires of such Occupants) to use only such sections as are so prescribed for parking. No such employee parking areas shall be provided within 200 feet of any building fronting on the Enclosed Mall, without the consent of the Party on whose Tract such parking is provided.

D. Each Party shall, commencing on the first day of its first Accounting Period, pay to Operator on account of its Allocable Share, the amount of one cent (1¢) per square foot of Floor Area, and shall pay a like amount on the first day of each calendar month thereafter. At the end of each three (3) month period Operator shall render to each Party a full and complete statement of the cost of maintenance and operation of the Common Area, and in the event any Party shall have paid more than its Allocable Share, Operator shall promptly refund to the Party so paying in excess of its Allocable Share the amount thereof. Should any Party have paid less than its Allocable Share during said preceding three (3) month period, then and in that event, the Party so paying less than its Allocable Share shall pay to Operator, within ten (10) days following the rendition of said statement, the deficiency in its Allocable Share. Operator shall maintain separate and complete books and records accurately covering and reflecting all items affecting or entering into determination of the respective Allocable Share of each Party for each Accounting Period, and shall keep the same for a period of three (3) years after the end of each such Accounting Period. Any such accounting shall reflect the daily changes which may exist from time to time in the Floor Area in the Center.

The Operator shall be required to deliver an audit each Accounting Period, by a certified public accountant reasonably acceptable to the Parties, to each of the Parties hereto, the reasonable cost of which shall be included in the Common Area Maintenance Cost.

Each Party shall have the right, exercisable upon five (5) days notice to Operator to make one audit as to each Accounting Period of such books and records as are relevant to any such statement or statements. In the event that any such audit shall disclose any error in the determination of the Allocable Share of any Party or Parties, appropriate adjustment shall promptly be made between the Parties hereto to correct such error. Operator shall deliver to each Party for each Accounting Period an audit, certified by a certified public accountant, of Common Area Maintenance Cost.

At the close of the first full year of operation of the Common Areas, a determination shall be made as to the costs of such operation during said period, and in the event such determination shall show that the one cent (1¢) estimated payment shall be more or less than that reasonably required for such maintenance, then and in that event such one cent (1¢) estimated payment shall be adjusted to meet the requirements of such cost; thereafter, such determination shall be made each two (2) years during the term of this REA and adjustments made accordingly.

E. In the event that two (2) or more of the Majors shall at any time or from time to time be dissatisfied with Operator's performance of its obligations under Article X-A hereof (including the expenses of the maintenance and operation), or in the event that Developer is not the Operator,

then if two (2) or more of the Parties, excluding the Operator are so dissatisfied, such Parties shall have the right (provided that none of such Parties is in default hereunder) to give Operator notice of such dissatisfaction, specifying the particulars in respect of which Operator's said performance is deemed by such Parties to be unsatisfactory. If during the thirty (30) day period from the date of such notice Operator's said performance shall continue to be unsatisfactory, such Parties shall have the right (provided that none of such Parties is in default hereunder) to give Operator a second notice of such dissatisfaction, specifying the particulars in respect of which Operator's said performance is deemed by such Parties to be unsatisfactory, and if during the fifteen (15) day period from the date of such second notice Operator's said performance shall continue to be unsatisfactory, such Parties shall have the right to cause to be taken over from Operator by another Operator ("Substitute Operator"), effective on the first day of the next succeeding calendar month, the maintenance, management and operation of the Common Area and of any and all improvements located thereon, and if such right shall be so exercised, then effective upon said first day of such next succeeding calendar month the provisions of Articles X-A and X-B shall be construed, to the extent that they relate to such next succeeding and all subsequent Accounting Periods, as though each reference therein to Operator were a reference to the Substitute Operator so taking over the maintenance, management and operation of the Common Area and as though each reference therein to the Parties included a reference to Operator (unless the context shall obviously otherwise require); provided, however, that anything herein to the contrary notwithstanding, such take-over of the maintenance, management and operation

of the Common Area shall not (i) obligate any of the Majors to pay any cost or expense in respect of the maintenance, management and operation of the Common Area except the Allocable Share of each such respective Major (which shall continue at all times to be governed by the provisions of Article I-B hereof), or (ii) relieve Developer of its obligation to pay all costs and expenses of maintenance, management and operation of the Common Area except the respective Allocable Share of a Major, and provided further that such take-over by such Substitute Operator shall not relieve the Developer of the obligation to keep, perform and observe any of the other terms, provisions and conditions of this REA contained to be kept, performed and observed by the Developer other than those relating to the maintenance, management and operation by Developer as Operator of the Common Area. Developer covenants and agrees promptly to pay to such Substitute Operator, upon demand, any sum which Developer shall be obligated to pay to such entity pursuant to this Article X-E. In the event that the maintenance, management and operation of the Common Area shall be taken over from the Developer as provided in this Article X-E, and the Developer shall have failed to make the payments herein required to be made to the Substitute Operator, then any and all sums payable to the Developer by any and all Occupants of the Mall Stores and Non-Mall Stores in respect of its or their prorata shares of Common Area Maintenance Cost, as specifically defined herein, exclusive of any taxes in respect of the Mall Stores, Non-Mall Stores and Enclosed Mall, collected by the Developer, together with the right to enforce payment of and to collect the same shall be deemed assigned to the Substitute Operator without the necessity of the execution

of any further instrument of assignment thereof by Developer, other than this REA; and such Substitute Operator shall thereafter remain responsible for such maintenance, management and operation of the Common Area throughout the remainder of the term of this REA unless Developer shall at any time or times thereafter resume the maintenance, management and operation of the Common Area, or a further Substitute Operator is appointed by at least two (2) of the Parties, excluding the former Operator. Notwithstanding the fact that this paragraph E refers to the collective action of two (2) of the Majors, it is understood and agreed that such joint action is required only so long as at least two (2) of such Majors are operating their respective Stores in the Center and are not in default under the terms of this REA. In the event that only one of such Majors is operating its Store in the Center, or is not in default under the terms of this REA, then in either of said events the rights hereinabove prescribed, which may be exercised by at least two (2) of the Majors jointly, may be exercised individually by the Major then so operating its Store, or which is not then in default, as the case may be.

Notwithstanding the foregoing, any notice of default given pursuant to this Article X-E may by its terms be inclusive or exclusive of that portion of the Common Area within the Enclosed Mall as is covered by Enclosed Mall Operation and Maintenance Expense. In the event that such notice is exclusive of such items, then and in that regard Developer shall continue to perform the services of Operator with respect to such items. In the event that such notice shall be inclusive of such items, then and in that event the Substitute Operator shall perform the functions required for the operation and maintenance of

such items; provided, however, that such take-over of the maintenance, management and operation of the Enclosed Mall shall not (i) obligate any Major to pay any cost or expense in respect of the maintenance, management and operation of the Enclosed Mall (except as they may have agreed by separate agreement with Developer with respect thereto) or (ii) relieve Developer of its obligation to pay all costs and expenses of the maintenance, management and operation of the Enclosed Mall, or otherwise relieve Developer of the obligation to keep, perform and observe any of the other terms, provisions and conditions of this REA contained to be kept and performed by Developer, other than those relating to the maintenance, management and operation by Developer of the Enclosed Mall.

F. Any Party shall have the right upon not less than ninety (90) days written notice given to the Operator, to withdraw its Tract from the maintenance and operation provisions hereinafter prescribed for the Operator, effective as of the end of the then Annual Accounting Period. Any such withdrawal shall not affect the agreements hereinabove provided with respect to the other Parties not so terminating the arrangements with Operator; provided, however, that the Allocable Share of the Parties remaining under such agreements shall be determined on a direct prorata basis that the Floor Area of each of such remaining Parties bears to the aggregate Floor Area of all of such remaining Parties. The Party so withdrawing its Tract from the provisions of such agreements agrees that effective upon its withdrawal of its Tract, it will perform all of the functions of the Operator with respect to its Tract, and pay all costs and expenses in connection with the operation and maintenance of the Common

Area on its Tract. In the event that the Party so withdrawing its Tract from the provisions of such agreements respecting joint maintenance and operation shall be the Party which at the time of such withdrawal is acting as the Operator, it shall give notice of its withdrawal to each other Party at the time hereinabove prescribed for the giving of notices of withdrawal of its Tract, and the remaining Parties shall designate another Operator and if no such designation shall have been made prior to the commencement of the next annual Accounting Period, then each Party shall act as Operator as respects its Tract, as though each had given notice as prescribed above. In the event that Auerbach shall elect to withdraw its Tract from the provisions of such agreements, in addition to performing all of the functions of the Operator with respect to the portion of the Shopping Center Site comprising the Auerbach leasehold estate (the Auerbach Tract), Auerbach shall also perform such functions and pay all costs and expenses in connection with the operation and maintenance of the Common Area on the portion of the Shopping Center Site described in Part IV of Exhibit A and designated on Exhibit B as the "Auerbach Common Area Tract".

G. It is agreed that Operator shall have a lien upon each Tract to secure the payment of a Party of its respective Allocable Share; provided, however, that any such lien shall, in the case of any Major be subordinate as to its Tract, in the same manner and to the same extent as the respective covenants of each contained in Article XXII hereof, and in the case of Developer be subordinate to the lien of any first mortgage or first deed of trust encumbering the right, title and interest of Developer in and to the Developer Tract and/or the Developer Improvements.

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ARTICLE XI

INDEMNIFICATION AND PUBLIC LIABILITY INSURANCE

A. Each Party covenants to, and does hereby (and Operator shall) indemnify and hold harmless each other Party, respectively, from and against all claims and all costs, expenses and liabilities incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of the death of, or any accident, injury, loss or damage whatsoever caused to, any natural person, or to the property of any person as shall occur in or about the Common Area for which each such Party is the Operator, excluding the negligent act or omission of each indemnified Party, or any licensee or concessionaire of such Party, or the agents, servants or employees of such Party, or of any licensee or concessionaire of the agents, servants or employees of such Party wherever the same may occur.

B. Each Party, severally, covenants to, and does hereby indemnify and hold harmless each of the other Parties from and against all claims and all costs, expenses and liabilities incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of the death of, or any accident, injury, loss or damage whatsoever caused to, any natural person, or to the property of any person as shall occur in or about the Store or Mall Stores or Non-Mall Stores of the indemnifying Party, excluding the negligent act or omission of each indemnified Party, or any licensee or concessionaire of such Party, or the agents, servants or employees of such Party or of any licensee or concessionaire of the agents, servants or employees of such Party wherever the same may occur.

C. The Operator shall at all times during the term of this REA maintain, or cause to be maintained, in full force and effect, the following insurance covering the Common Area within the Center with a financially responsible insurance company or companies (Best's Triple A): comprehensive public liability insurance, including coverage for any accident resulting in personal injury to or death of any person and consequential damages arising therefrom for not less than Two Million Dollars ($2,000,000) per occurrence and comprehensive property damage insurance for not less than Two Hundred Fifty Thousand Dollars ($250,000) per occurrence. Operator shall furnish to all other Parties on or before the effective date of any such policy, evidence that the insurance referred to in this Article XI-C is in force and effect and that the premiums therefor have been paid. Such insurance shall name all other Parties as additional insureds thereunder, and shall provide that the same may not be cancelled without at least ten (10) days prior written notice being given by the insurer to all other Parties. Such insurance shall expressly insure the indemnity of Operator contained in Article XI-A. In the event that there shall be at any time more than one Operator, then and in that event the indemnity provided in Article XI-A, and insurance required to be carried in this Article XI-C shall be required of the Operator of the Developer Tract and shall cover the entire Common Area.

D. Each Party shall, severally, at all times during the term of this REA, maintain in full force and effect the following insurance covering the Floor Area of each Party on its Tract, with a financially responsible insurance company or companies (Best's Triple A): comprehensive public liability insurance

for any accident resulting in bodily injury to or death of any person and consequential damages arising therefrom, with limits of One Million Dollars ($1,000,000) per person and Two Million Dollars ($2,000,000) per occurrence, and comprehensive property damage insurance for not less than Two Hundred Fifty Thousand Dollars ($250,000).

Such insurance may be carried under a policy or policies covering other liabilities and locations of the Parties, or a subsidiary, successor, affiliate or controlling corporation of such Parties; provided, however, that the insurance hereinbefore in this Article XI-D referred to may be carried under any plan of self-insurance from time to time maintained by any Party, on condition that the Party so self-insuring has and maintains adequate reserves or assets for the risks so self-insured against, and that any Party so self-insuring shall furnish to any other Party hereto requesting the same, an affidavit of the adequacy of said reserves or assets (net current assets of Forty Million Dollars [$40,000,000], or more, as disclosed on the latest published report to stockholders, shall in all instances conclusively be deemed to be adequate for the purposes of this Section). Each Party shall severally furnish to any other Party hereto requesting the same, evidence that the insurance referred to in this Article XI-D is in full force and effect and that the premiums therefor have been paid. All policies of insurance carried by any Party pursuant to this Article XI-D (i) shall name each of the other Parties hereto as additional insureds, and (ii) shall provide that the same may not be cancelled without at least ten (10) days prior written notice being given by the insurer to each of the other Parties hereto.

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ARTICLE XII

FIRE AND EXTENDED COVERAGE INSURANCE

A. Developer, as respects the Developer Improvements, including the Enclosed Mall, will carry or cause to be carried fire and extended coverage insurance in an amount at least equal to eighty percent (80%) of the replacement cost (exclusive of the cost of excavation, foundations and footings), without deduction for depreciation of the building and improvements insured from causes or events which from time to time are included as covered risks under standard insurance industry practices within the classification of fire and extended coverage, and specifically against at least the following perils: loss or damage by fire, windstorm, cyclone, tornado, hail, explosion, riot, riot attending a strike, civil commotion, malicious mischief, vandalism, aircraft, vehicle, smoke damage and sprinkler leakage. Such insurance shall be carried with financially responsible insurance companies and may be carried under a policy or policies covering other property owned or controlled by Developer or by a general partner of Developer, or by any subsidiary, successor or controlling corporation of a general partner of Developer; provided, that such policy or policies allocate to the properties required to be insured by this Article XII-A an amount not less than the amount of insurance required to be carried by Developer with respect thereto pursuant to the first sentence of this Article XII-A. Developer shall furnish to all Parties prior to the effective date of any such policy evidence that the insurance required by this Article XII-A is in force and effect and that the premiums therefor have been paid. Developer agrees that such policies shall contain a provision that the same may not

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be cancelled without at least ten (10) days prior written notice being given by the insurer to the other Parties hereto.

B. Each Major as respects its respective Store severally covenants with each other Major and with Developer that during the period of its covenant referred to in Article XXII-A hereof, it will carry insurance for the risks enumerated in Article XII-A equal to eighty percent (80%) of the replacement cost (exclusive of the cost of excavation, foundations and footings), without deduction for depreciation. Such insurance shall be carried with financially responsible fire insurance companies and may be carried under a policy or policies covering other property owned or controlled by such Party, or a subsidiary, successor or controlling corporation of such Party; provided that such policy or policies is in a face amount of not less than eighty percent (80%) of the replacement cost of all properties covered by such policy or policies. Such Parties shall each respectively furnish to any other Party requesting the same, evidence that the insurance required to be carried by it pursuant to this Article XII-B is in full force and effect and that the premiums therefor have been paid. Each Major agrees that any such policy or policies shall contain a provision that the same shall not be cancelled without at least ten (10) days written notice being given by the insurer to each of the other Parties hereto.

C. Any insurance required to be carried pursuant to this Section XII may be carried under a policy or policies covering other liabilities and locations of the Parties, or a subsidiary, successor, affiliate or controlling corporation of such Parties; provided, however, that the insurance hereinbefore in this Section

XII referred to may be carried under any plan of self-insurance from time to time maintained by any Party, on condition that the Party so self-insuring has and maintains adequate reserves or assets for the risks so self-insured against, and that any Party, or its subsidiary, successor, affiliate or controlling corporation so self-insuring, shall furnish to any other Party hereto requesting the same, evidence of the adequacy of said reserves or assets (net current assets of $40,000,000, or more, as disclosed on the latest published report to stockholders, shall in all instances conclusively be deemed to be adequate for the purposes of this Section).

D. The Parties agree to cause the Operator to carry, as respects the Common Area it is responsible to maintain, insurance of the character described in Article XII-A. The cost of carrying such insurance shall be borne as an item of Common Area Maintenance Cost.

E. Anything contained in this REA to the contrary notwithstanding, no Party to this REA shall be liable to any other Party to this REA for any loss or damage to buildings or other improvements on the Shopping Center Site, or contents thereof, caused by fire or by other risks generally covered by standard extended coverage insurance, irrespective of any negligence on the part of such Party which may have contributed to such loss or damage.

F. Each Party for itself, and to the extent it is legally possible for it to do so, on behalf of its insurer, hereby releases each of the other Parties from any liability for any loss or damage to all property of each located upon the Shopping Center Site occasioned to such property, which loss or damage

is covered and/or required to be covered by fire insurance with extended coverage. Each Party covenants that it will, to the extent such insurance endorsement is available, obtain for the benefit of each other Party a waiver of any right of subrogation which the insurer of such Party may acquire against any other Party or Parties by virtue of the payment of any such loss covered by such insurance. The foregoing waiver and release shall be operative only so long as the same shall not preclude any Party from obtaining insurance.

G. Developer covenants to and with each Major that it will require all Occupants occupying any building on the Developer Tract upon which the Developer does not carry fire and extended coverage insurance, to carry fire and extended coverage insurance, including the perils specified in Article XII-A hereof, on the building on the Developer Tract occupied by such Occupant with financially responsible fire insurance companies in an amount at least equal to the insurance required to be carried by Developer under Article XII-A.

H. Developer covenants, in connection with fire and extended coverage insurance, to and with each Major, that it will obtain in their favor a waiver of the right of subrogation from all Occupants occupying any building on the Developer Tract. All Occupants of Developer Tract by becoming such Occupants shall be deemed to have specifically waived all rights of subrogation as herein provided.

I. Any mortgage, deed of trust, indenture or sale-leaseback of or with respect to any Tract shall specifically permit the application of all proceeds of the insurance referred to in this Section by the Party in interest of such Tract to

the full extent and for the purposes provided in the succeeding Article XIII, and pursuant to the trust procedures set forth in Article XXX hereof.

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ARTICLE XIII

COVENANTS AS TO REPAIR, MAINTENANCE,

ALTERATIONS AND RESTORATION

A. Developer shall at all times during the term of this REA, from and after the opening for business of the Developer Improvements, keep and maintain (or cause to be kept and maintained) in good order, condition and repair all completed portions of the Developer Tract. Such maintenance shall be made in accordance with the rules and regulations from time to time adopted by the Parties hereto, and such maintenance and operation, and the rules and regulations, until amended by the Parties hereto, shall be as provided in Exhibit E attached hereto and made a part hereof.

B. The Parties agree that in the event of any damage or destruction to the Common Area (except the Enclosed Mall) during the term of this REA by any cause whatsoever, whether insured or uninsured, they shall cause the Operator (unless Operator shall be relieved from the obligation so to do as hereinafter provided) to restore, repair or rebuild the Common Area with all due diligence, subject to the provisions of Article XV-A hereof. Such restoration and repair shall be performed in accordance with the applicable requirements of paragraph H of this Article XIII. Prior to the commencement of any such restoration or repair hereunder, Operator shall obtain the approval of the Parties of a budget estimate of the cost and expense of such restoration or repair (which approvals shall not be unreasonably withheld). In the event that Operator shall so restore or repair the Common Area, and in the further event that the proceeds of insurance, if any, paid to any of the Parties hereto by virtue

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of such damage or destruction shall be insufficient to defray the entire cost and expense of such restoration or repair (including related architectural and engineering fees) the excess over and above such insurance proceeds shall be allocated between the Parties on the basis that the Floor Area of each of said Parties, respectively, bears to the total Floor Area of said Parties. Payment shall be made in the same manner as payment is to be made pursuant to the provisions of Article VI.

C. Developer covenants to and with the Majors, each severally, that in the event of any damage or destruction to all or any portion of the Enclosed Mall or the Developer Mall Stores, it shall:

1. In the event such damage or destruction occurs during the period in which operation is required pursuant to Article XXII (or in any case where the cost of restoration, repair or rebuilding is less than Fifty Thousand Dollars [$50,000]), at its own expense, restore, repair or rebuild said Enclosed Mall and/or Developer Mall Stores with all due diligence.

The provisions of this subparagraph 1 shall apply regardless of the cause of such damage or destruction and regardless of whether it was insured or uninsured.

2. In the event such damage or destruction occurs after the period referred to in 1 above, at its own expense, restore, repair or rebuild said Enclosed Mall and/or Developer Mall Stores with all due diligence; provided, however, that Developer shall be released from its obligations to restore, repair or rebuild under the provisions of this subparagraph 2 if:

(a) Such damage or destruction was caused

by a peril other than those risks required to be insured against under Article XII-A; or

(b) Such damage or destruction occurs on a date which is more than sixty (60) years after the date of this REA; or

(c) Such damage or destruction occurs at a time when Developer is not assured, under the terms and provisions of this REA, of at least ten (10) years (the commencement of said ten-year period to be the date of completion of such restoration, repair or rebuilding) of operation under this REA in the Store of each Major; provided, however, if there is not such assurance, Developer must request in writing such assurance or this subparagraph is inapplicable, and if such assurance is requested then the provisions of this subparagraph (c) shall not apply if, within sixty (60) days after the occurrence of such damage or destruction, each of the Majors jointly or severally give Developer written assurance (in recordable form if requested) that they will have such a ten-year period of operation, and provided further that anything herein contained in this subparagraph (c) to the contrary notwithstanding, in the event that following the destruction Developer does not obtain the assurance referred to herein from the Majors, but at least two (2) of the Majors give Developer such written assurance (in recordable form if requested) that they will have such a ten-year period of operation, the obligation of Developer for restoration shall be limited to the Floor Area in Developer Mall Stores and the portions of the Enclosed Mall as lies between the Stores of the Majors giving such written assurance, as the case may be. In the event that following the destruction Developer does not obtain the

assurance referred to herein from the Majors, but at least one (1) of the Majors give Developer such written assurance (in recordable form if requested) that they will have such a ten (10) year period of operation, the obligation of Developer for restoration shall be limited to the Floor Area in the Developer Mall Stores and the portions of the Enclosed Mall which are located immediately adjacent to the Major giving written assurance. The approval for any such restoration shall include leveling, paving, creation of proper exterior walls for what previously constituted common party walls, and the creation of a reasonably useful entrance and exit, with proper ingress and egress from the Enclosed Mall. All areas not restored to original use shall be leveled, cleared and maintained by the Party upon whose Tract such areas are located as Common Area unless the Parties otherwise agree.

All restoration, repair or rebuilding under either subparagraphs 1 or 2 of Article XIII-C, and all conditions of the requirements of such restoration, repair or rebuilding, shall be subject to the provisions of Article XV hereof and shall be performed in accordance with the applicable requirements of subparagraph G of this Article XIII. The Enclosed Mall shall be restored, repaired or rebuilt to operate within the standards prescribed in Article IV-C-8.

D. The Majors, each severally, covenant to and with each other and to and with Developer that in the event of any damage or destruction of its respective Store or any portion thereof (exclusive of any TBA) that each, as the case may be appropriate, shall:

1. In the event such damage or destruction to the Sears or Broadway main Store occurs within twenty (20) years of the opening of their respective Stores, Sears and/or Broadway,

as the case may be, shall, at their own expense and with all due diligence, repair, restore and rebuild its respective facility to at least the minimum size it is obligated to build as required by Article XXII-A. In the event such damage or destruction occurs within the next seven (7) years subsequent to such twenty (20) year period, Sears or Broadway shall only be required to rebuild the mall level of its Store facility to the same size as it was initially constructed.

2. In the event such damage or destruction to the Auerbach Store occurs within thirty (30) years of the opening of the Auerbach Store facility, Auerbach shall, at its own expense and with all due diligence, repair, restore and rebuild such facility to at least the minimum size it is obligated to build as required by Article XXII-A.

3. The provisions of subparagraphs 1 and 2 shall apply regardless of the cause of such damage or destruction and regardless of whether it was insured or uninsured. All such restoration, repair or rebuilding shall be subject to the pro-visions of Article XV hereof and shall be performed in accordance with the applicable requirements of subparagraph H of this Article XIII.

4. In the event such damage or destruction occurs after the expiration of the respective periods referred to in the preceding paragraphs 1 and 2, Sears and Broadway, as to the respective period referred to in paragraph 1, and Auerbach, as to the period referred to in paragraph 2, shall be under no obligation to restore, repair or rebuild; provided, however, that should the Party whose building is so damaged or destroyed not restore, re-pair or rebuild, then, if the Enclosed Mall is still in existence and operating, such Party shall, at its own

expense, enclose that portion of the Enclosed Mall adjoining the building not restored, repaired or rebuilt.

5. Nothing herein contained shall require a Major to reconstruct its Store at any time when Developer is not required to restore the Mall Stores.

E. Subject to the other provisions of this REA, any Party, on its Tract, may make repairs, alterations, additions or improvements to the Common Area, Developer Mall Stores, Developer Non-Mall Stores, the Auerbach Store, the Sears Store, and the Broadway Store, respectively (and to the exterior signs thereon, subject to the provisions of Exhibit D). The Majors, or any of them, may raze the whole or any part thereof after the expiration of its respective operating covenant set forth in Article XXII. In the event of the razing of its main Store building, the Party razing the same shall, if the Enclosed Mall is still existing and operating, cause the Enclosed Mall to be secured where such building has been removed so that the same shall remain enclosed and not permit the escaping of air. Any such repair, alteration, addition or improvement shall be performed in accordance with the applicable requirements of paragraph G of this Article XIII.

F. Sears and/or Broadway may at any time raze its TBA, in which event (unless and until it elects to replace the TBA in the same location), it shall, at its expense, clear such location of all debris and cause such location to be paved as a portion of the Common Area. In the event such Parties, or either of them, shall elect to replace the TBA in such location, the provisions of the second sentence of Article I-V and the provisions of the succeeding paragraph H of this Article shall

be applicable thereto. In the event that such Parties, or either of them, shall elect not to replace its TBA, then the amount of Floor Area formerly contained therein may be replaced by such Parties, or either of them, (either within the location shown on Exhibit B, or if not so shown, in a location or locations approved by all of the Parties in the exercise of their sole and absolute judgments) for any purpose or purposes whatsoever not restricted by this REA and in accordance with paragraph H of this Article; provided, however, that in no event shall the Floor Area of a Party exceed the minimum allowable Floor Area of such Party specified in Article VIII-A hereof.

G. Whenever any Party is not obligated hereunder to restore, repair or rebuild any building that has been damaged or destroyed and elects not to do so, or in the event that the TBA shall not be operated (subject to the provisions of Article XV hereof) for a continuous period of one (1) year, then, and in either such event, such Party shall raze such building or such part thereof that has been so damaged or destroyed, as the case may be, and clear the premises of all debris and shall cause said area to be paved at its expense; and thereafter said area shall become a portion of the Common Area until such time as said Party may elect to rebuild thereon, subject, however, to the provisions of the preceding paragraph F.

H. All restoration, repair, rebuilding, maintenance, alterations, additions or improvements (hereinafter collectively called "work"), performed by any Party pursuant to the provisions of this REA shall be performed in strict compliance with such of the following requirements as are applicable thereto, to wit:

1. No such work shall be commenced unless the Party desiring to perform the same has in each instance secured the prior approval of each of the other Parties hereto who are then operating, to the plans and specifications therefor, as they relate to: (a) the general compatibility of the exterior thereof with the balance of the improvements in the Center, and (b) the physical integration thereof with the Enclosed Mall prior to the expiration of the operating covenants set forth in Article XXII, and so long thereafter as two (2) of the three (3) Majors are open for business.

2. All work shall be performed in a good and workmanlike manner and shall strictly conform to and comply with: (a) the plans and specifications therefor approved as aforesaid, (b) all applicable requirements of laws, codes, regulations, rules and underwriters, and (c) to the extent applicable, the requirements of Articles VIII and IX.

3. All such work shall be completed with due diligence, subject to the provisions of Article XV hereof, and at the sole cost and expense (except as herein provided to the contrary) of the Party performing the same.

I. It is recognized that from time to time during the term of this REA, each Party may require a temporary license to use portions of the Common Area for the purposes of:

1. Performing maintenance upon, and making repairs to, and/or

2. Making construction alterations, additions and improvements, or razing and replacing the whole or any part of the Developer Improvements and the Stores, respectively, pursuant to this REA (the activities referred to in this subdivision 2 being hereinafter collectively referred to as "Construction"), and

3. Obtaining access, ingress and egress to and from the Developer Improvements, and to and from each of the Stores, as the case may be, to carry on such maintenance, repair and construction.

Within a reasonable time prior to the commencement of any such maintenance, repair or construction, the Party desiring to undertake the same shall submit to the Party owning the Tract in question, for its approval (which approval shall not be unreasonably withheld), a plot plan of the Center on which such Party shall delineate those portions of the Common Area with respect to which such Party reasonably requires a temporary license in connection with such maintenance, repair or construction, and such access, ingress and egress, and the Party upon whose Tract such work is to be performed shall within ten (10) days thereafter notify such Party whether it approves or disapproves of the use. At all times during any Party's use of the portion of the Common Area as aforesaid, such Party shall comply with the applicable requirements of Article IX hereof, and upon cessation of such use shall promptly restore the portions of the Common Area so used to the condition in which the same were prior to the time of commencement of such use, including the clearing of such area of all loose dirt, debris, equipment and construction materials. Such Party shall also restore any portions of the Center which may have been damaged by such maintenance, repair or construction work promptly upon the occurrence of such damage, and shall at all times during the period of any such maintenance, repair or construction, keep all portions of the Center, except the Developer Improvements and the Stores, as the case may be, and except the portions of the Common Area being utilized by such Party pursuant to

this Article XIII-H, free from and unobstructed by any loose dirt, debris, equipment or construction materials related to such maintenance, repair or construction.

J. Anything in this Article XIII to the contrary notwithstanding, it is expressly understood and agreed that the provisions of paragraphs B, C and D hereof shall not be applicable to any "lender" (which term shall include the lessor under sale-leaseback financing who is not a "Party" as defined in this REA) on any Tract while such lender is not in possession of and does not have title to the particular Tract. Any such lender who becomes a mortgagee in possession or who acquires title by reason of foreclosure, or the purchaser at foreclosure, may defer performance of its obligations under paragraphs B, C and D of this Article XIII for a period ending on the earlier of one (1) year from the date of any such damage or destruction or one (1) year from the date the lender became a mortgagee in possession or acquires title by reason of foreclosure or the date of purchase at foreclosure, as the case may be; provided, however, that the obligation to restore, repair or rebuild the Enclosed Mall (in case of damage to or destruction thereof caused by a casualty required to be insured against by Article XII-A or by any other casualty which is in fact insured against) shall not be deferred but said Enclosed Mall shall be promptly restored, repaired or rebuilt, to the extent permitted by the insurance proceeds, in accordance with plans and specifications therefor approved by the Parties.

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ARTICLE XIV.

MERCHANTS ASSOCIATION

Developer agrees to organize, form and sponsor a Merchants Association for the promotion of the Center. The Parties agree to join and maintain membership in such Association; provided that each shall have first approved, in its sole and absolute discretion, the Articles and Bylaws. The Articles and Bylaws shall contain provisions relating to each of said Parties' several approval of promotions and monetary contributions.

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ARTICLE XV

EXCUSE FOR NON-PERFORMANCE

A. Each Party shall be excused from performing any obligation or undertaking provided in this REA, except any obligation to pay any sums of money under the applicable provisions hereof, in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by Act of God, fire, earthquake, floods, explosion, actions 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 open market, failure of transportation, strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of governmental or civil or military or naval authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the respective control of such Party.

B. Each Major shall be excused from the performance of their respective obligations pursuant to the provisions of Article XIII-D for and during any period of time in which the Developer shall be in default of its covenants, as provided for in Article XIII or Article XXI hereof. Developer shall be excused from performance of its respective obligations pursuant to the provisions of Article XIII-C during any period of time in which all the Majors are in default of their respective covenants as provided for in Article XIII or Article XXII hereof.

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ARTICLE XVI

TAXES AND ASSESSMENTS

A. Each Party covenants to agree to pay before delinquency all real estate and improvement and all personal property taxes and assessments levied or assessed with respect to its Tract and the improvements and personal property thereon, subject to its right to contest the amount and/or the validity thereof in the manner provided by law.

B. In the event any Party shall fail to comply with its covenants as set forth in Article XVI-A, any other Party may pay such taxes and penalties and interest thereon and shall be entitled to prompt reimbursement from the defaulting Party for the sums so expended, with interest thereon at the rate of one percent (1%) over the prime rate then being charged by First Security Bank of Utah.

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ARTICLE XVII

CONDEMNATION

A. Any award for damages, whether the same shall be obtained by agreement prior to or during the time of any court action resulting from a taking by exercise of right of eminent domain of the Shopping Center Site or any portion thereof, or resulting in a requisitioning thereby by military or other public authority for any purpose arising out of a temporary emergency or other temporary circumstance, shall be the property of and paid to the Party owning the real property and/or improvements so taken, and such Party shall reconstruct its Tract as nearly as possible to the condition thereof immediately prior to such taking in accordance with the requirements and subject to the conditions of this Article and in accordance with the provisions of Article IX hereof.

B. Anything herein to the contrary notwithstanding, if all or any substantial portion of the Automobile Parking Area shall be taken by condemnation so that after such taking the parking index in the Center shall be reduced to less than sixty percent (60%) of the parking index provided for in Article X, then this REA shall terminate. In the event that by virtue of such taking the Automobile Parking Area on a particular Tract shall be reduced to less than sixty percent (60%) of the parking index provided for in Article X, or in the event twenty-five percent (25%) or more of the then total Floor Area of a Store (exclusive of TBA) or Mall Stores, as the case may be, is so taken, then in either such event the Party affected shall have the right to terminate its respective obligations to restore, operate, repair and maintain, as provided for in this REA, by

notice given to each of the other Parties within ninety (90) days after such taking. The termination of the respective obligations as herein provided shall take effect automatically sixty (60) days following the giving of such notice.

C. Nothing herein contained shall be deemed to prohibit the trustee under any deed of trust, or the beneficiary thereunder, or any mortgagee, from participating in any eminent domain proceedings on behalf of any Party, or in conjunction with any such Party.

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ARTICLE XVIII

CORRECTION OF SITE DESCRIPTIONS,

DESCRIPTIONS OF EASEMENTS

A. It is recognized that by reason of construction errors, the Non-Mall Stores, the Mall Stores or Enclosed Mall, and the Stores of the Majors may not be precisely constructed within their respective Sites as shown on Exhibit B. As soon as reasonably possible after completion of the construction of the Non-Mall Stores, the Mall Stores or Enclosed Mall, or any Store, as the case may be, Developer, Sears and Broadway shall cause an "as-built" survey to be made of its Tract showing all improvements and Tract boundaries. The cost of such survey shall be paid by each such Party unless more than one shall have joined in obtaining a single survey, in which event, the cost thereof shall be divided between such Parties in such manner as they shall have agreed upon. In the event such survey shall disclose that the Store of the Party making such survey, or the Mall Stores or Enclosed Mall, as the case may be appropriate, has not been precisely constructed within its respective Site, then promptly upon request of any Party hereto, all of the Parties hereto will join in the execution of an agreement, in recordable form, amending Exhibits A and B to this REA, so as to revise the description of such Site to coincide with the as-built perimeter of the buildings and improvements constructed by the owner of such Site. Nothing herein contained shall be deemed to relieve or excuse any Party to this REA from exercising all due diligence to construct its buildings and improvements within its respective Site as shown on Exhibit B.

B. Upon completion of construction of the utility

facilities referred to in Article II-B, and the construction elements referred to in each of Articles II-B-2 and II-C, the Parties hereto shall join in the execution of an as-built survey, in recordable form, appropriately identifying the type and location of each respective utility facility and construction element.

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ARTICLE XIX

SIGNS

A. Attached hereto and marked Exhibit D are criteria for all signs to be erected within the Shopping Center Site, and no signs shall be erected in the Shopping Center Site which do not conform in all respects to said criteria. It is understood said criteria expressly excludes, except for specific provisions thereof, the building identification signs on the Stores and the Occupant of Building B on the Developer Tract. The signs on and immediately adjacent to the existing Valley Bank building, Building 4 on Exhibit B, are hereby approved by each of the Parties.

B. If any Occupant shall request a sign not completely in accordance with the criteria, such sign shall not be erected without the written consent of the Parties. Any change made to any initially completed sign which causes the same to not fall within the scope of the sign criteria is hereby prohibited, and any such changed sign shall be considered as a new installation and deviation from the criteria shall similarly require the approval of the Parties.

C. The Parties understand that the criteria set forth in Exhibit D are intended primarily for signs to be erected on the Mall Stores. With respect to any signs to be erected on the Non-Mall Stores which do not comply with such criteria, and any theatre reader board sign to be erected on the Developer Tract in the Shopping Center, such signs shall be subject to approval by each of the Parties hereto.

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ARTICLE XX

RULES AND REGULATIONS

A. The Parties severally agree to observe and comply with, and shall cause their respective Permittees to observe and comply with such rules and regulations related to the Center as may be adopted by the mutual agreement of the Parties hereto from time to time. The Parties hereto do hereby adopt the rules and regulations attached hereto and marked Exhibit E until such time as new and different rules and regulations shall be adopted as aforesaid.

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ARTICLE XXI

COVENANTS OF DEVELOPER

A. Developer covenants and agrees that subject to the provisions of Articles XIII and XV of this REA, and subject to the other provisions of this Article, it will continuously manage and operate, or cause to be managed and operated, the Enclosed Mall and the Developer Stores, in the following manner:

1. As a complex of retail stores and commercial enterprises which is a part of a first-class shopping center development with Enclosed Mall and other related Common Area facilities.

2. Use its best efforts to:

(a) Have the Floor Area occupied in its entirety;

(b) Have at all times a proper mixture and balance of occupants; provided, however, the service facilities (facilities not primarily devoted to the sale of merchandise) shall not occupy more than five percent (5%) of the total Floor Area of the Developer Mall Stores; and

(c) Maintain a quality of management and operation not less than that generally adhered to in other similar regional shopping centers where at least two of the Occupants of the Tracts of the Majors are from time to time located.

3. Under the name of "FASHION PLACE" and under no other name without the prior approval of each Major, in its sole and absolute discretion, so long as each, respectively, is an Occupant.

4. So as to have Floor Area of not less than 264,491 square feet within the Developer Mall Stores; provided,

however, that Developer need not have more Floor Area at any time than would be required under the provisions of Article XIII of this REA.

5. In accordance with rules and regulations prescribed in Exhibit E.

6. So as not to substantially change, modify or alter in any manner or to any extent whatever the exterior of the Developer Mall Stores without the prior approval of each Major.

7. So as to operate within the confines of the Shopping Center Site as depicted on Exhibit B, and not to withdraw any real property from the Developer Tract without the prior approval of each Major, which approval may be granted or withheld in the sole and absolute judgment of each such Major.

B. Each of the Majors has a substantial interest in the nature of the Occupants of the Mall Stores within the immediate vicinity of each such respective Store. Developer covenants and agrees it will not permit any Person to be an Occupant within the number of feet (measured from the Enclosed Mall facade of the Store of any such Party) hereinafter specified without the specific approval of such Party, both as to the type of Occupant and the location, to wit:

Auerbach - 100 feet (measured both to the east and to the north)

Sears - 100 feet (measured only to the north)

Broadway - 100 feet (measured only to the south)

Each lease shall contain provisions (a) prohibiting any Person from becoming an Occupant (including, but not by way of limitation, assignees, transferees, lessees, sublessees, licensees, in excess of 25% of the Floor Area occupied by the

respective Occupant) or mortgagees (except bona fide institutional mortgagees) of or through any Occupant (except by involuntary act or operation of law), unless the occupancy of such Person has been previously approved in accordance with the provisions hereof; provided, however, the foregoing provisions of this clause (a) shall have no application to (i) bona fide mergers, consolidations or reorganizations of or through any Occupant, or (ii) any transfers or assignments to or between any affiliated corporations of any Occupant (the term "affiliated corporation" referring to any corporation of which any other corporation owns or controls more than fifty percent [50%] of the issued and outstanding voting stock of another corporation). Developer covenants to use reasonable efforts in good faith to require by lease covenant each Occupant to agree to limit and restrict its right to transfer or assign its respective lease or sublet the premises thereunder, or portions thereof, so that the prohibitions contained in this clause (a) shall be applicable to mergers, consolidations or reorganizations of or through the respective Occupant, and to transfers to or between any affiliated corporation; (b) requiring the Occupant to comply with the standards of maintenance, management, operation and control set forth in Exhibit E hereof; (c) requiring the Occupant to comply with the provisions of Article XIX hereof; and (d) providing that the provisions of this paragraph B shall be enforceable by the Parties hereto, jointly and severally.

C. Each and all of the provisions of this REA on Developer's part to be performed (whether affirmative or negative in nature) are intended to and shall bind each and every person, firm, association or corporation comprised within the term Developer