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**UNIVERSITY PLACE**

**CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT**

by and among

**University Mall Shopping Center, L.C.**  
a Utah limited liability company

**Upstar LLC,**  
a Utah liability company

**University Place SPE L.L.C.,**  
a Utah limited liability company

**Woodtusk III L.L.C.,**  
a Utah limited liability company

**University Place Parking Phase I L.L.C.,**  
a Utah limited liability company

**UP Tower L.L.C.,**  
a Utah limited liability company

**Loloma L.L.C.,**  
a Utah limited liability company

and  
**U.S. Alpha, Inc.,**  
an Nevada corporation

Dated August 20, 2020



**TABLE OF CONTENTS**

**Exhibit A      Legal Descriptions of the Parcels**

**Exhibit B      Site Plan**

**Exhibit C      Parking Ratio Covenant Area**

**Exhibit D      Sign Criteria**



**CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT**

THIS CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT (this "Agreement") is made and entered into as of August 20, 2020, by and among University Mall Shopping Center, L.C., a Utah limited liability company ("Developer"), Upstar L.L.C., a Utah liability company ("Upstar"), University Place SPE L.L.C., a Utah limited liability company ("UPSPE"), Woodtusk III L.L.C., a Utah limited liability company ("Woodtusk"), University Place Parking Phase 1 L.L.C., a Utah limited liability company ("UPParking"), UP Tower L.L.C. ("UPTower"), a Utah limited liability company, Loloma L.L.C., a Utah limited liability company ("Loloma"), and U.S. Alpha, Inc., a Nevada corporation ("Dillard"). Developer, UPSPE, Upstar, Woodtusk, UPParking, UPTower, Loloma, and Dillard are hereinafter sometimes referred to individually as a "Party" and collectively as "Parties."

Recitals

A. Developer, UPSPE, Upstar, Woodtusk UPParking, UPTower, and Loloma are each an owner of a certain parcel or parcels of land located in the City of Orem, Utah County, Utah, as labeled with its name and described in Exhibit A attached hereto and by this reference incorporated herein, said parcels of land being collectively hereinafter referred to as the "Developer Parcel" and shown on the Site Plan (defined below) attached hereto as Exhibit B. The Developer Parcel is comprised of the UMSC Parcel, the UPSPE Parcel, the Upstar Parcel, the Woodtusk Parcel, the UPParking Parcel, the UPTower Parcel, and the Loloma Parcel; and

B. Dillard is the owner of a certain contiguous parcel of land located in the City of Orem, Utah County, Utah, described in Exhibit A and shown on the Site Plan (the "Site Plan") attached hereto as Exhibit B, said parcel of land being hereinafter referred to as the "Dillard Parcel"; and

C. The Parties desire to make an integrated use of the parcels of land owned by each, including the Developer Parcel and the Dillard Parcel, as part of the existing first-class mixed-use regional shopping center operated and commonly referred to as University Place (the "Shopping Center"); and

D. Dillard intends to construct and operate a two-level retail department store facility and associated buildings, machinery, and equipment located on the Dillard Parcel (specifically excluding any furniture and/or fixtures related thereto) (the "Dillard Building"). The Dillard Building will be located on the Dillard Parcel as shown on the Site Plan and in accordance with this Agreement.

E. Developer and UPTower intend to construct and operate, or cause to be constructed and operated a Parking Structure and certain buildings to be used for office use on the UPTower Parcel in the area designated as "Parking and Office Building Area" all as hereinafter provided and as shown on the Site Plan; and

F. The Parties each desire to grant to each other certain rights, privileges and easements and to impose certain restrictions and covenants upon their respective Parcels for the benefit of the respective Parcels of the other Parties and which are essential in the construction and operation of a mixed use shopping center; and

G. The Parties intend to set forth in this Agreement their rights, obligations, duties and responsibilities in connection with the development and use of, and the building and operations on, the Shopping Center, and to make other covenants and agreements with each other as hereinafter more specifically set forth.



NOW, THEREFORE, in consideration of the foregoing and mutual covenants contained herein and intending to be legally bound, the Parties agree as follows:

ARTICLE I -- DEFINITIONS

Section 1.01. Terms Defined. As used in this Agreement, the following terms will have the following meanings:

"Access Roads" means those roads shown and designated as such on the Site Plan.

"Affiliate" means, with respect to any Person, another Person controlled by, or controlling, or under common control with, the Person in question ("control" for this purpose means the legal or beneficial ownership, directly or indirectly, of in excess of 50% of the voting securities or of the legal and equitable interest of the Person controlled).

"Building" and "Buildings" mean the building(s), respectively, now or hereafter constructed within the Shopping Center in accordance with the provisions of this Agreement. All Buildings existing as of the date of this Agreement shall be deemed to satisfy this standard.

"Commence Construction" means with respect to the Dillard Building, pouring of the footings and foundations therefore; and with respect to any other work (including portions of the On-Site and Off Site Improvement Work referred to in Article II hereof) the initial performance under an executed contract that will provide for the prompt commencement and diligent performance to completion of the work in question.

"Common Area" means all of those portions of the Shopping Center that are intended to be and will be available from time to time for the general non-exclusive use of the Parties hereto, the Occupants and their Permittees, the locations of which are shown on the Site Plan. Common Area will include the Parking Area, the Common Utility Facilities, sidewalks, stairways, walkways and curbs, Perimeter Sidewalks, restrooms not located within portions of the Developer Buildings leased and operated by any Occupant, landscaped and planted areas, bus stops, those public service corridors that are required by fire codes or governmental regulations or required for public protection or safety, Common Area management and maintenance offices and rooms and equipment sheds, if any; excepting and excluding, however, from Common Area, any of the foregoing within the Dillard Building. The Common Area will not include Floor Area. This definition of Common Area is intended to include everything outside the Parties' Buildings except for the Truck Facilities (other than roadways leading thereto) and the Perimeter Landscaping.

"Common Utility Facilities" means storm drainage facilities, detention and/or retention lakes and ponds, wetlands preservation areas, sanitary sewer systems, including pump stations, gas lines, water lines and systems, fire protection installations (including any booster pumps required by fire insurance rating organizations of any Party), underground (except for junction boxes and transformers) electric power and telephone cables and lines and cable television systems for security purposes and cable television reception, if any, and other forms of energy, signals or services that are available for service to and used by the Parties, which facilities are located on or off the Shopping Center, for their respective improvements and/or the Common Area; excluding, however, (i) those facilities, if any, that are available only for the exclusive use of any Party or its improvements, and (ii) such facilities located within five feet from the building line of the Building of any Party, and the Building of that Party, which facilities will be deemed, for the purpose of maintenance, repair, Rebuilding and insurance, to be part of such Building.



"Condemnation" or "Condemn" means the taking of any portion of the Shopping Center pursuant to an exercise of the power of eminent domain or any conveyance in lieu of condemnation under a threat thereof to a purchaser having the power of condemnation with respect to the property in question. Condemnation also means a requisitioning by military or other public authority for any purpose arising out of a temporary emergency or other temporary circumstances.

"CPI" means the Consumer Price Index for All Items and Major Group Figures for All Areas, All Items, All Urban Consumers (U.S. City Average) using the base year then in use.

"CPI Adjustment" means that the amount in question shall be automatically adjusted on the fifth anniversary of this Agreement and on each succeeding fifth anniversary by increasing or decreasing such amount by a percentage thereof equal to the percentage increase or decrease in the CPI during the immediately preceding five-year period.

"Defaulting Party" is defined in Section 8.01 hereof.

"Developer Buildings" means the Buildings from time to time constructed within the Permissible Building Area on the Developer Parcel or those Buildings currently constructed on the Developer Parcel, including without limitation the Enclosed Mall.

"Developer Improvements" means the Developer Buildings and those portions of the Common Area improvements situated on the Developer Parcel.

"Developer Parcel" is defined in Recital A hereof.

"Developer Party" means each of Developer, UPSPE, Upstar, Woodtusk, UPParking, UPTower, and Loloma, as the context requires. Each Developer Party as of the date of this Agreement is an Affiliate of Developer.

"Developer Party Parcels" means those Parcels owned by one or more Developer Party, as the context requires.

"Dillard Building" is defined in Recital D hereof.

"Dillard Improvements" means the Dillard Building and those portions of the Common Area improvements situated on the Dillard Parcel.

"Dillard Parcel" is defined in Recital B hereof.

"Dillard Supplemental Agreement" means that certain Supplemental Agreement entered into by Developer and Dillard to supplement certain provisions of this Agreement as between themselves, as the same may be amended, modified or restated from time to time, with the understanding that such agreement will not be filed for record.

"Enclosed Mall" means the existing single level, enclosed, lighted, fire sprinklered, heated, ventilated and air conditioned mall Building currently located on the UPSPE Parcel as shown on Exhibit B and thereon designated "Enclosed Mall."

"Exchange Intermediary" means a Qualified Intermediary as defined in Section 1031 of the Internal Revenue Code of 1986, as amended by the regulations promulgated thereunder, and/or an Exchange Accommodation Titleholder as provided for in IRS Revenue Procedure 2000 37.



"Event of Release" means that event which if it occurs during the period of a Party's "Operating Covenant" serves to release that Party from its Operating Covenant.

"Facilities" is defined in Section 5.09(a) hereof.

"Floor Area" means the total number of square feet of floor space on all levels or floors at the time of the determination thereof contained within a Building (including Kiosks) and located on the Shopping Center, bounded by the exterior facade of the exterior walls of any such Building (except party walls as to which the centers thereof, instead of the exterior faces thereof, will be used). Floor Area shall include basement space (other than basement space within a Parking Structure and basement space devoted exclusively to offices, stock or storage), Kiosks, balcony and mezzanine space (other than balcony, mezzanine or other space devoted exclusively to offices, stock or storage), and space occupied by walls, columns, dumb-waiters, stairs, escalators, elevators, conveyors or other interior construction and equipment, except as excluded in the following sentence. The Floor Area of a Kiosk shall be calculated based upon the actual area within the exterior walls or partitions of such Kiosk and the area devoted to seating of customers of the Kiosk, but excluding any common seating areas. Floor Area occupied by a Kiosk, in the case of a Kiosk having open counters or other facilities for the purpose of serving customers outside of such Kiosk, shall be deemed to include an area four (4) feet in depth outside such open counters or other facilities. Elevator cores and fire stairs shall be excluded from Floor Area in all Buildings and/or portions thereof designed and/or utilized primarily for Office Use, except that the cores of any elevators in such Buildings or portions thereof which are designed and/or utilized for interior transportation solely between floors or portions thereof occupied by a single Occupant, shall be deemed to be Floor Area. Floor Area shall not include Common Area (other than areas occupied by Kiosks), Truck Facilities, merchandise receiving areas, electrical, mechanical or computer equipment penthouses and rooms for so long as such penthouses and rooms are used to contain primarily mechanical, electrical or computer equipment, or any combination of the three, space utilized for electrical, mechanical or computer equipment used to service the building, mechanical or electrical penthouses, transformer rooms or vaults (while used for such purpose), rubbish rooms while used for the storage, baling and/or compacting of trash and rubbish, service corridors, emergency exit corridors or stairs between fire resistant walls required by applicable building codes and not contained within any area exclusively appropriated for the use by any single Occupant, any buildings used exclusively for the purposes of Common Area management and/or maintenance offices, community or conference rooms and equipment sheds, which are to be measured as if they were Floor Area, and the upper levels of any multi-deck stock areas used exclusively for the stocking and storage of merchandise, including mezzanine areas whether structural or otherwise and used for the stocking or storage of merchandise and any area contained below any functional or decorative building treatment, canopy or any unoccupied area within or above a functional or decorative building treatment canopy. Upon the completion of its construction, each Party shall cause its architect to certify the number of square feet of initially or subsequently constructed Floor Area on its respective Parcel to the other Parties.

"Force Majeure" is defined in Article XIII hereof.

"Hazardous Materials" is defined in Section 21.21 hereof.

"Indemnify" is defined in Section 12.01 hereof.

"Institutional Lender" means a bank, insurance company, pension fund, pension trust, real estate investment trust or conduit, foundation, holder of real estate securities or certificated debt obligations and any other Person that is generally regarded in the real estate financing field, at the time in question, as an "institutional lender".



"Kiosk" is defined in Section 6.02 hereof.

"Lease" means any lease, occupancy agreement, license agreement, or other instrument or arrangement whereunder an Occupant has acquired legal status, rights or privileges with respect to the use and occupancy of any Floor Area.

"Loloma Parcel" means the parcel of land owned by Loloma and labeled as such on Exhibit A.

"Mortgage" means any first mortgage, first deed of trust, first deed to secure debt or other instrument securing a loan with first priority (which may be evidenced by notes or bonds) on a Parcel, and, to the extent applicable, a Sale and Leaseback transaction or a Lease and Subleaseback transaction.

"Mortgagee" refers to and shall include a mortgagee, trustee and beneficiary under any Mortgage on a Parcel and to the extent applicable, and as hereinafter provided, will include a fee owner of any Parcel that is the subject of a Lease under which any Party becomes a lessee in a Sale and Leaseback transaction or a sublessee in a Lease and Subleaseback transaction, and will not refer to any of the foregoing Persons when in possession of any Parcel of any Party.

"Occupant" means any Party, including Developer, to the extent that it occupies Floor Area within the Shopping Center, and any other Person, that from time to time is entitled to the use and occupancy of Floor Area within the Shopping Center.

"On-Site and Off-Site Improvements" is defined in Section 2.01 hereof.

"Operating Covenant" means the obligation of Developer and Dillard to operate, or cause to be operated, the Buildings located on the Dillard Parcel and the Developer Parcel described and in the manner and for the duration provided for in the Dillard Supplemental Agreement.

"Parcel" means the Developer Parcel (and/or its components: the UMSC Parcel, UPSPE Parcel, the Upstar Parcel, the UPParking Parcel the Woodtusk Parcel, the UPTower Parcel, and the Loloma Parcel as the context requires) and the Dillard Parcel as each may hereinafter sometimes be called.

"Parking Area" means all portions of the Shopping Center which are set apart or used from time to time for automobile and other vehicle traffic and parking, whether at ground level or in a Parking Structure, and pedestrian traffic incidental thereto. Parking Area shall also include, without limitation, the Access Roads and all other roadways, walkways, sidewalks, traffic lanes, curbs, traffic signals, lighting, vehicular parking spaces, landscaped and planted areas and all improvements located thereon and any portion or portions of the Common Area within the Shopping Center that will be improved in order that motor vehicles can be driven and/or parked thereon including Parking Structures, but in each case only to the inside face of the outer curb of the Perimeter Sidewalk around and adjacent to the Buildings excepting and excluding, however: (i) areas occupied or intended to be occupied by improvements containing Floor Area as provided in this Agreement (but as to areas intended so to be occupied, this exception will be applicable only after such area ceases to be usable for parking in anticipation of such occupancy); (ii) Perimeter Sidewalks; and (iii) all Truck Facilities.

"Parking Deck" is defined in Section 2.01(b).

"Parking Structure" means a Building containing Parking Area, including the Parking Deck. In the case of a Building containing uses other than Parking Area, only that portion utilized as Parking Area shall be deemed to be a Parking Structure.



"Party" means any of Developer, UPSPE, Upstar, Woodtusk, UPParking, UPTower, Loloma and/or Dillard or any successor Person acquiring all of such Party's interest in its Parcel by transfer, conveyance, merger or otherwise, except as otherwise provided in subparagraphs A, B, C and D below. A successor Person by reason of any transfer, conveyance, merger, or otherwise, of the whole or any part of the interest of either Party in and to such Party's Parcel, shall not become a Party under the following circumstances:

A. While and so long as the transferring Party retains the entire possessory interests in the Parcel or in any portion thereof so conveyed by the terms of a Mortgage, in which event the Person owning such possessory interest, and not the Mortgagee, shall have the status of Party.

B. The transfer or conveyance is a Sale and Leaseback, in which event only the lessee entitled to possession of the Parcel shall have the status of Party, so long as the Sale and Leaseback has not expired or been terminated.

C. The transfer or conveyance is by way of lease or sublease, other than as provided in B above, license or servitude, in which event only the transferor or conveyor shall have the status of a Party.

D. The successor acquires by such transfer or conveyance:

(1) Less than all of a Party's Parcel; or

(2) Less than the entire interest of a Party in a Parcel, such as that of joint tenancy, tenancy in common, or a life estate; or

(3) An undivided interest, legal or equitable, in the assets of a Party, which interest is not also an interest in the Party's Parcel.

In the circumstances described in this Subparagraph D, the Persons holding each of such interests in such Parcel are to be jointly considered a single Party. In order that the other Parties shall not be required to give notice to or to obtain the action or agreement of, or to proceed against, more than one individual or entity for each Parcel in carrying out or enforcing the terms, covenants, provisions and conditions of this Agreement, then, (i) in the circumstances described in Subparagraph D(1) above, the Persons holding the interest of the Party in and to not less than seventy percent (70%) of said Parcel (ii) in the circumstances described in Subparagraph D(2) above, the holders of the interests totaling not less than seventy percent (70%) of the entire estate in and to said Parcel, and (iii) in the circumstances described in Subparagraph D(3) above, the holders of the interests totaling not less than seventy percent (70%) of the assets of the Party with respect to such Parcel shall designate one of their number as such Party's agent (hereinafter called "Party's Agent") to act on behalf of all Persons holding any interest in such Parcel. If any Parcel or Party 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%) 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 its fractional interest in such Parcel or Party. In the case of life tenancies established for one or more life tenants and one or more remainder men, only the interests of the life tenants shall, for purposes of this Section 1.19, be deemed to represent an interest in the Parcel or Party and their determination hereunder shall be final and binding on the remaindermen (and, if created by way of trust, on such trust, trustor, trustee and trust beneficiaries). The foregoing requirement to designate a Party's Agent in the circumstances described in Subparagraph D(3) above shall not apply to stockholders and bondholders of a corporate Party. In any of the circumstances described in this Subparagraph D, any interest owned by any Person who is a minor or is otherwise suffering under any legal disability related to mental competence 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 the written designation of a Party's Agent where required hereunder, the acts of the Person who was the Party (or the Party's Agent if a Party's Agent was designated) immediately prior to the transfer or conveyance (whether or not such Person retains any interest in the Parcel in question) shall remain binding and irrevocable upon all Persons having an interest or right in said Parcel in question until such time as written notice of designation of a Party's Agent is given and recorded in the office of the Real Property Records of the County and State in which said Parcel is located, and a copy thereof is served (as provided for notices under Section 23.1) upon the other Party. In the following instances Dillard, with respect to any Developer Party, and Developer, with respect to Dillard, at any time may make such designation of another Party's Agent:

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

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

(c) If the designation of such Party's Agent earlier than the expiration of such thirty (30) day period shall be reasonably necessary to enable another Party to comply with any of its obligations under this Agreement or to take any other action which may be necessary to carry out the purposes of this Agreement.

The exercise of any powers and rights of a Party under this Agreement by a Party's Agent shall be binding upon all Persons having an interest or right in the Party's Parcel and upon all Persons having an interest in the Party in question, to the same extent as if such exercise had been performed by each of such Persons jointly on behalf of the Party. The other Parties shall have the right to deal with and rely solely upon the acts and omissions of a Party's Agent to the same extent as if it were the Party in question and such designation shall not relieve any Person from the obligations created by this Agreement.

Any Person designated a Party's Agent pursuant to the provisions of this Subparagraph D 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 Agreement may be made, and service upon a Party's Agent shall constitute due and proper service of any such matter upon his principals.

Upon the occurrence of any transfer, conveyance or reversion of title or interest which would create a new Party pursuant to the terms hereof, then all of the powers, rights, interest and obligations herein conferred upon the Party with respect to the Parcel so transferred, conveyed, or reverted shall be deemed assigned, transferred, conveyed, or reverted to such transferee, grantee, or the holder of the reversionary title or interest, from and after the date of the transfer, conveyance or reversion of title or interest. For purposes of this Subparagraph D, a partnership (whether general or limited), which acquires either an interest in a Parcel under subparagraphs D(1) or D(2) above or an interest in the assets of a Party under subparagraph D(3) above, shall be considered a single entity or Person without regard to any tenancy in partnership or other similar undivided interest created in the Parcel or Party by virtue of the partnership relationship. In addition, the other Parties shall have the right to rely on the acts of any general partner of any such partnership as binding on the partnership. If any such partnership has more than one general partner, the partnership shall designate one general partner to act on behalf of all partners of the partnership.

"Perimeter Landscaping" means the landscaped area between a Building and the inner edge of the Perimeter Sidewalk adjacent to such building.



"Perimeter Sidewalks" means the sidewalk and stairways, excluding curbs, along any exterior perimeter of a Party's Building.

"Permissible Building Area" means the area(s) designated as such on the Site Plan within which a Building, including Perimeter Sidewalks and Truck Facilities, is either obligated or permitted to be constructed, as hereinafter more fully provided.

"Permittee" means the officers, directors, employees, agents, contractors, subcontractors, patrons, customers, visitors, invitees, licensees and concessionaires of an Occupant.

"Permitted Transferee" means a Transferee in a Transfer made in compliance with the applicable provisions of Article XVIII hereof.

"Person" means an individual, partnership, firm, association and corporation, or any other form of entity.

"Plans" is defined in Section 2.02 hereof.

"Prime Rate" means, at any time, the rate of interest most recently published in the Money Rates section of The Wall Street Journal as the "prime rate".

"Rebuild," "Rebuilding" or "Rebuilt" mean, for any of the improvements constructed on a Party's Parcel, to restore, replace or repair such improvement or improvements so that after such restoration, such improvements will be in substantially the same location of such improvements as shown on the Site Plan and, in all cases, within the Permissible Building Area therefor, will be complete architectural units, and at least during the term of such Party's Operating Covenant, and of the same general appearance and design and in at least as good a condition as existed immediately prior to their damage or destruction, and in accordance with this Agreement.

"Sale and Leaseback" or "Lease and Subleaseback" means a Transfer in which the Transferor, or an Affiliate thereof, acquires as part of the same transaction, a leasehold or subleasehold interest in all or substantially all of the property transferred.

"Shopping Center" is defined in Recital C hereof. For the avoidance of doubt, "Shopping Center" includes the Dillard Parcel and the Developer Parcel. "Site Plan" is defined in Recital B hereof.

"Site Plan Improvement Area" means the "Site Improvement Area" substantially depicted on the site plan attached Exhibit B-1.

"Term" and "Termination Date" are defined in Section 4.01 hereof.

"Transfer" means a sale, assignment, grant, release, Lease or other conveyance (other than in a Condemnation) of the fee of a particular Parcel including the sale portion of a Sale and Leaseback, but excluding the making of a Mortgage.

"Transferee" means the purchaser, assignee, grantee or transferee in a particular Transfer.

"Transferor" means the seller, assignor, grantor or transferor in a particular Transfer.

"Truck Facilities" means truck court and docks and ramps contiguous thereto, areas for truck loading, unloading, turn around and/or truck parking, all designated as "Truck Docks" on the Site Plan.



"UMSC Parcel" means the parcels of land owned by Developer and labeled as such on Exhibit A.

"UPParking Parcel" means the parcel of land owned by UPParking and labeled as such on Exhibit A.

"UPSPE Parcel" means the parcels of land owned by UPSPE and labeled as such on Exhibit A.

"Upstar Parcel" means the parcels of land owned by Upstar and labeled as such on Exhibit A.

"UPTower Parcel" means the parcel of land owned by UPTower and labeled as such on Exhibit A.

"Vesting Date" is defined in Section 21.18 hereof.

"Western United States" means the region west of the eastern border of Colorado north to the Canadian border and south to the Mexican border.

"Woodtusk Parcel" means the parcel of land owned by Woodtusk and labeled as such on Exhibit A.

Section 1.02. Additions or Replacements. Any reference in any defined term in Section 1.01 hereof to any construction or improvement whatsoever will be deemed to also refer to any expansion, alterations, reconstruction or replacement thereof pursuant to this Agreement, unless the express language of such reference indicates otherwise.

Section 1.03. Recitals. The Recitals are incorporated herein by reference.

ARTICLE II  
ON SITE AND OFF SITE IMPROVEMENT WORK PLANS - CONSTRUCTION

Section 2.01 Description of On-Site and Off-Site Improvement Work. For purposes hereof, the phrase "On-Site and Off-Site Improvement Work" shall include, without limitation, the following improvements to be designed and installed in accordance with the Final Developer Improvement Plans approved in accordance with Section 2.04 hereof and the Dillard Parcel Development Criteria attached to the Dillard Supplemental Agreement:

(a) Developer agrees to complete or cause to be completed such On-Site and Off-Site Improvement Work as may be required by: (i) the City of Orem or any other municipal or governmental authority having control over the Shopping Center in connection with the construction of the Dillard Building; (ii) any public or private utility company as a precondition to obtaining utility service, or for providing utility lines and facilities to the Dillard Building; or (iii) as set forth on Exhibit B.

(b) Developer shall complete certain On-Site and Off-Site Improvement Work which is required in connection with or as a part of the construction of the Dillard Building, including, but not limited to, the demolition of the former Macy's building currently located on the Dillard Parcel, preparation of the pad for the Dillard Building, and, together with UPTower, construction of a Parking Structure adjacent to the Dillard Building (the "Parking Deck") and certain office building improvements within the area designated "Parking and Office Building Area", and, together with UPTower, the construction of a pedestrian bridge connection from the Parking Deck to the second floor of the Dillard Building, the relocation of portions of the Common Utility System, if required, and any such changes to the Parking Area lighting system as may



be required in connection with the foregoing, all in accordance with the Dillard Parcel Development Criteria attached to the Dillard Supplemental Agreement. The design of the pedestrian bridge connections shall be subject to Dillard's reasonable approval. The location of such bridge connections shall be as shown on Exhibit B.

(c) To the extent such improvements are made in connection with the construction of the Dillard Building, Developer shall install such improvements at its sole cost and expense, including without limitation all capital charges, assessments, impact, connection and development fees, contributions-in-aid-of-construction and all other charges, howsoever designated, no matter upon which of the parties any of the same are imposed, except as may be specifically provided in the Dillard Supplemental Agreement.

(d) Developer shall complete construction of all On-Site and Off-Site Improvement Work required by this Section and have such improvements available for their intended use at least sixty (60) days prior to the opening of the Dillard Building.

Section 2.02. General Responsibility of Developer. Subject to the terms, conditions and provisions hereinafter provided, the Developer, with the technical assistance of qualified outside consultants as reasonably necessary, has the following general responsibilities for the planning, design, development, construction and installation of On-Site and Off-Site Improvement Work:

(a) Providing all plans and specifications (in this Article 2 collectively hereinafter referred to as "Plans") which may be necessary for each and every phase of the On-Site and Off-Site Improvement Work (including distribution of Plans for such On-Site and Off-Site Improvement Work for which plans and specifications will be provided or prepared by utility companies or municipal or governmental authorities, if any), distributing the Plans as required herein and procuring the approvals thereof in each instance in which such approval is required pursuant to the terms of this Agreement.

(b) Providing qualified field personnel for inspecting and reviewing the work progress and construction of the On-Site and Off-Site Improvement Work, including final inspection thereof.

(c) Preparing and updating a master activity schedule (hereinafter, "Construction Schedule") with respect to the design and construction of all On-Site and Off-Site Improvement Work, which Construction Schedule is to be submitted to Dillard and is to include a program to update said schedule.

(d) Holding periodic project coordination and progress meetings with Dillard concerning the On-Site and Off-Site Improvement Work and maintaining and distributing to Dillard by Developer memorandum notes concerning all meetings, including confirmation of decisions, reports and correspondence, together with the performance of appropriate administrative duties to accomplish appropriate follow up.

(e) Providing the appropriate coordination of all design, planning and construction of On-Site and Off-Site Improvement Work, including, but not limited to, the directing and scheduling of construction, all field inspections, tests, surveys and other activities related to the construction of the On-Site and Off-Site Improvement Work.

(f) Securing all authorizations, permits and licenses, including environmental approvals and those of a temporary nature, as may be necessary to effectuate the construction of the On-Site and Off-Site Improvement Work and, where appropriate, the Developer will assist Dillard in obtaining such authorizations, permits or licenses for the Dillard Building and other improvements so as to enable Dillard to comply with all applicable federal, state and local laws and requirements.



(g) Causing all On-Site and Off-Site Improvement Work to be timely completed in accordance with this Agreement and in accordance with the Dillard Supplemental Agreement.

Section 2.03. Development and Establishment of On-Site and Off-Site Improvement Plans - Approval Thereof

(a) Technical Reports. Prior to or simultaneously with the development of the Final Developer Improvement Plans for the various portions of the On-Site and Off-Site Improvement Work as may be required by the nature of the improvement being planned and designed, the Developer shall prepare complete reports, including the preparation of technical specifications and drawings (herein collectively referred to as "Report(s)"), as needed, regarding the preliminary studies, data and other necessary information upon which Developer will prepare the required Final Developer Improvement Plans and the necessary specifications and drawings which are a part thereof. Developer shall cause sufficient copies of all Reports to be prepared so as to provide Dillard with two (2) complete copies of such Report. The Developer shall mail the copies of each Report (including field test data) to Dillard, or its designated representative, as soon as such Report is available to the Developer.

(b) Plans for the On-Site and Off-Site Improvement Work. The Developer shall prepare or cause to be prepared the Plans for the integrated development of all Common Areas developed or constructed in connection with or as part of the construction of the Dillard Building (except for the Perimeter Sidewalks on the Dillard Parcel, which shall be constructed by or on behalf of Dillard), attachment of the Dillard Building to the existing Enclosed Mall and attachment of the pedestrian bridge connections referenced in Section 2.01 hereof in accordance with at least the minimum requirements of the Dillard Parcel Development Criteria attached to the Dillard Supplemental Agreement. Dillard shall be consulted frequently during the course of the preparation of such Plans. From time to time during the course of the preparation of such Plans, Developer shall cause progressive working drawings of such Plans to be submitted to Dillard for review and approval.

Such Plans shall include:

(i) Preliminary Developer Improvement Plans (the "Preliminary Developer Improvement Plans"), which shall be submitted by Developer (in sufficient time so as to allow all Plans to be approved as provided in this Article 2 and to timely allow for the completion of the On-Site and Off-Site Improvement Work by Developer) to Dillard for review and approval, which approval or disapproval, in whole or in part, shall be made within thirty (30) days from the date of submission and as more fully provided below. Such Preliminary Developer Improvement Plans shall be consistent with (a) Exhibit B and (b) at least to the specifications set forth in the Dillard Parcel Development Criteria attached to the Dillard Supplemental Agreement and (c) the requirements of the Dillard Supplemental Agreement, as the case may be.

(ii) Final Improvement Plans (the "Final Developer Improvement Plans") shall be submitted by Developer to Dillard for review and approval, which approval or disapproval shall be made within thirty (30) days from the date of submission and which Final Developer Improvement Plans shall be submitted in sufficient time to allow the Parties to comply with their obligations hereunder. Such Final Developer Improvement Plans shall be developed from the approved Preliminary Developer Improvement Plans and shall conform to said Preliminary Developer Improvement Plans and to all requirements of this Agreement. Such Final Developer Improvement Plans must conform to (a) Exhibit B, (b) at least to the specifications set forth in the Dillard Parcel Development Criteria attached to the Dillard Supplemental Agreement, and/or (c) the requirements of the Dillard Supplemental Agreement, as the case may be, notwithstanding the approval of any previously submitted Plans which did not so conform.



(c) Approval of Plans. If Dillard, after receiving the Preliminary Developer Improvement Plans or the Final Developer Improvement Plans, does not specify any objection or make a proposal that would add to or change said Plans within thirty (30) days after submission of said Plans by Developer, Developer shall give notice of such failure to Dillard; and if Dillard does not specify an objection or make a written proposal that would add to or change such Plans within ten (10) days after Developer provides such notice, such Plans will be deemed approved, such respective Plans shall be deemed to be satisfactory for their respective purposes, which, in the case of Final Developer Improvement Plans, means final development. Any modifications, alterations or additions to any Plans submitted to Dillard shall be prominently noted on the Plans. Each drawing or specification comprising all or a part of a Plan may be disapproved in whole or in part and any proposed modifications, alterations or additions thereto, or deletions therefrom shall be prominently noted on the Plan so affected. If there is such objection or proposal from Dillard which is not readily resolved, Developer shall call a meeting to be held within fifteen (15) days from such date of submission of such objection or proposal at a mutually acceptable location to resolve and adjust any such objections or proposals with reference to the respective Plans. All objections or proposals shall be considered at such meeting with a view toward developing the Plans in their final form at such meeting.

Changes may be made in approved Final Developer Improvement Plans only by the agreement in writing by Developer and Dillard.

After approval, all Final Developer Improvement Plans shall be maintained by Developer in a safe and convenient place. Developer shall provide a copy of the Final Developer Improvement Plans to Dillard.

(d) Scope of Plans. In preparing the Plans, the Developer shall consider, without limitation, the façade of the building to which the attachment is to be made; the sheathing of any columns in the Enclosed Mall adjacent to any such building façade; the sign requirements of Dillard at the Common Area entrances of the Dillard Building, including the sight line visibility of such signs; the insurance requirements of Dillard so as to maintain the quality of its usual property insurance without increased premium; building code requirements; increased or decreased cost of construction of the structure to which the attachment is to be made; and the fact there shall be no loading or structural stress imposed upon the Dillard Building. In the event plans and specifications for such attachment are submitted and approved by Dillard in sufficient time to enable it to design the Dillard Building so as to receive such attachment, Dillard shall so design the Dillard Building and shall coordinate its improvement plans with Developer so that the walls of the Dillard Building may be constructed to permit attachment of the Enclosed Mall thereto in accordance with such improvement plans and specifications. Dillard and Developer shall construct a "Zero Lot Line" foundation system on their respective Tracts and shall exercise reasonable efforts to stay one-half inch (1/2") from the other Party's lot line. Both the Dillard Building and the Enclosed Mall adjacent to the Dillard Building shall maintain a one inch (1") structural separation from below grade to the top of the roof parapet of its Building, except for wall flashing between such Buildings.

Developer shall so attach the Enclosed Mall to the Dillard Building without any obligation by Dillard to contribute to the payment of the cost of constructing, attaching and equipping the Enclosed Mall to the Dillard Building. Developer shall furnish, install and maintain the flashing and seal at said attachment and shall repair, at its sole cost and expense, any damage to the Dillard Building caused by Developer making or maintaining said attachment. Developer shall provide a reglet, receiver or other flashing detail on the exterior wall of the adjoining the Enclosed Mall, and Developer shall counterflash the Dillard Building at Developer sole cost and expense. Developer shall at its sole cost and expense provide an expansion joint enclosure detail for the gap between the Dillard Building and the Enclosed Mall. Dillard shall provide Developer with wall sections, foundation details and roof details for the Dillard Building for Developer use in providing proper flashing and enclosure details at all tie-in locations. In the event Developer does not submit plans and specifications for connecting the Dillard Building to the Enclosed



Mall prior to completion of the plans for the Dillard Building, but Developer's plans and specifications are thereafter approved, then the expense of any change in revising the Dillard Building plans and any additional cost in constructing the Dillard Building shall be borne by Developer. Dillard shall have the right to approve, in its sole discretion, such plans and specifications for attachment with respect to the Dillard Building.

Section 2.04. Construction of On-Site and Off-Site Improvement Work. Upon approval of the Final Developer Improvement Plans provided for in Section 2.03, Developer shall cause the On-Site and Off-Site Improvement Work to be performed in accordance with the Final Developer Improvement Plans. Developer agrees with Dillard to use its best efforts to cause all of the On-Site and Off-Site Improvement Work called for herein to be timely completed in accordance with the Construction Schedule as provided in Section 2.02(c) hereof.

Section 2.05. Addresses to Which Plans Are to be Sent. Each Party shall designate a person to whose attention all Plans and specifications required to be submitted in accordance with this Article 2. Unless otherwise modified in writing by the Party making such designation, all such plans are to be submitted to the following persons on behalf of the Parties:

DEVELOPER PARTIES:	University Mall Shopping Center, L.C. c/o Woodbury Corporation 2733 East Parleys Way, Suite 300 Salt Lake City, UT 84109 Attention: Lease Administration
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DILLARD	U.S. Alpha, Inc. c/o: Dillard's, Inc. 1600 Cantrell Road P. O. Box 486 Little Rock, AR 72203-0486 Attention: Vice President - Construction
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Section 2.06. Request for Electronic Submission of Plans. Any Party receiving plans under this Article shall have the right to request and receive, from any other Party providing any drawings or plans hereunder, a copy of the drawings or plans to be submitted in an electronic format generally accepted in the architectural and construction industries instead of the drawings or plans as in this Article provided.

Section 2.07 Dillard Parcel Development Criteria. In the preparation of the Plans contemplated under this Article 2, the Dillard Parcel Development Criteria attached to the Dillard Supplemental Agreement or applicable governmental specifications, if higher, shall be followed. All plans shall conform to Exhibit B and/or the other requirements of this Agreement and/or the Dillard Supplemental Agreement as applicable.

Section 2.08. Plans of Dillard. Dillard shall submit to Developer at least three (3) months prior to the start of construction of the Dillard Building, for informational purposes only, a set of drawings consistent with Exhibit B and the Dillard Parcel Development Criteria attached to the Dillard Supplemental Agreement and the other provisions of this Agreement showing the exterior architectural elevations,



location, dimension, number of levels, size, shape and height, of the Dillard Building to be constructed by Dillard pursuant to this Agreement and the Dillard Supplemental Agreement.

Within thirty (30) days after receipt of such drawings, the Developer shall notify Dillard of any questions or comments it may have with regard thereto (specifying in detail the nature thereof); provided, however, in any dispute, the decision of the Party submitting said drawings with regard thereto shall be deemed final so long as same have been prepared consistent with the requirements of this Agreement and the Dillard Supplemental Agreement.

Subsequently, copies of drawings showing any substantial changes to the location, exterior, dimension, shape, size or height shall similarly be submitted to Developer for informational purposes.

After preparation and submittal of the aforementioned drawings, Dillard shall cause to be prepared its final plans and specifications for the relevant improvements which shall be a natural progression from and consistent with the drawings submitted in accordance with this Section 3.03 or, if not, new informational drawings shall be submitted as above provided.

Section 2.09. Shopping Center to be Architecturally Harmonious. Within the limitations imposed by this Article, Dillard shall cause its architect to work with the Developer, and Developer shall work with Dillard, to the end that the design and the exterior of all Buildings or other structures contemplated by the Plans as constructed will blend harmoniously and attractively so as to provide the appearance of a unified, integrated first-class shopping center, it being understood that the Buildings existing as of the date of this Agreement satisfy this standard. To this end, Dillard shall consult with Developer concerning the color treatment and exterior materials to be used in the construction of all Buildings and other structures on the Dillard Parcel and shall consider the views of Developer with respect thereto prior to selecting the specific materials and colors for its Parcel, it being understood that in the event of any dispute hereunder, the decision of any Party preparing any relevant plans shall be final.

ARTICLE III  
GENERAL CONSTRUCTION REQUIREMENTS

Section 3.01. "Construction" and "Commencement of Construction" Defined. Construction shall be deemed to commence in respect of the Dillard Building with the commencement of the pouring of footings and foundations. The word "construction" includes initial construction under this Agreement and, except where otherwise specified, subsequent construction, alterations, replacement and rebuilding permitted or required under this Agreement. "Construction" does not include tenant improvements or other space fit-out work or repairs and maintenance in the ordinary course.

Section 3.02. Performance of Construction. Each Party agrees to perform its respective construction for the Shopping Center in accordance with the plans therefor prepared and approved, where applicable (including, without limitation, the construction by Developer of the On-Site and Off-Site Improvement Work), in accordance with the terms hereof: (a) with due diligence and in a good and workmanlike manner, using new, first-class materials; (b) in full cooperation with the other Parties to the extent necessary to effect a unified, integrated retail center development; (c) in accordance with all applicable laws, including specifically the applicable zoning ordinance, ordinances, rules, and regulations of all governmental and quasi-governmental agencies and authorities having jurisdiction over such construction and all orders; and (d) in compliance with the terms and provisions of this Agreement. Each Party in the performance of its construction shall not (e) cause any unnecessary or unreasonable increase in the cost of construction, operation or maintenance of the other Parties; (f) unreasonably interfere with any other construction being performed on the Shopping Center; or (g) impair in any more than an incidental





manner the use, occupancy, or enjoyment by the Parties of the Shopping Center or any part thereof as permitted or contemplated by this Agreement.

Section 3.03. Safety Measures. A Party performing construction on the Shopping Center shall at all times take any and all safety measures reasonably required to protect the other Parties hereto and all Permittees from injury and/or damage caused by or resulting from the performance of its construction and shall indemnify, hold harmless and defend the other Parties from and against all claims, demands, suits, costs, expenses and liabilities arising from or in respect to the death, accidental injury, loss or damage caused to any natural person or to the property of any Person as will occur by virtue of its construction to the extent provided under Article XII hereof. If any construction is undertaken or takes place when the Shopping Center or the Dillard Building shall be opened to the public, the Party carrying on such construction shall erect or cause to be erected an adequate and attractive construction barricade at least six feet (6') in height substantially enclosing the area of its construction, and shall maintain such barricades until such construction shall have been substantially completed.

Section 3.04. Construction: Storage and Time Schedule. Before any Party commences any construction (as defined in Section 3.01), whether in connection with its initial construction activities or otherwise, it shall submit to the other Parties, except as otherwise specifically provided:

(a) a site plan for the Shopping Center showing, as respects the construction in question, material and equipment storage sites, construction staging areas, construction shacks, accessways for construction vehicles, and/or trailers and temporary improvements incidental to its construction, and the assigned parking areas for its architects, contractors, subcontractors and their agents, employees and representatives, all of which shall be located on such Party's Parcel unless another Party in the exercise of its sole and absolute discretion approves the location on the Parcel of the consenting Party; and

(b) a time schedule containing approximations of the period of time the areas referred to in subparagraph (a) hereof shall be so used.

The Party shall have the right to suggest reasonable adjustments to the designated locations and/or time periods contained in the aforesaid site plan and/or time schedule in order to prevent unnecessary conflicts with the performance of construction by another Party or the continued use and enjoyment by another Party hereto.

Section 3.05. Liens. Each Party ordering or contracting for any services, labor or materials hereby agrees to indemnify, defend and save harmless the other Parties hereto from any and all loss, damage, liability, expense and claims whatsoever (including reasonable attorneys' fees and other reasonable costs of defending against the foregoing), by reason of any lien for such work, services or materials performed or supplied which shall be filed against any portion of the Shopping Center during the term of this Agreement. In the event any such lien is filed, the Party so obligated shall pay and discharge the same of record as promptly as possible but in no event later than forty five (45) days after the filing thereof, subject to the provisions of the following sentence. Each such Party shall have the right to contest the validity, amount or applicability of any such respective liens by appropriate legal proceedings and so long as it shall furnish bond, if bonding is necessary to secure a stay of execution or, if bonding is not so required, indemnify as in this Section hereinafter provided, and be prosecuting such contest in good faith, the requirement that it pay and discharge such liens promptly but in no event later than the aforesaid forty five (45) day period shall not be applicable; PROVIDED, HOWEVER, that in the event such lien has not been discharged of record, such Party shall promptly, but in any event, within forty five (45) days after the filing thereof, bond or indemnify against such liens in amount and form satisfactory to induce the title insurance company which insured title to insure over such liens or to reissue or update its existing policy, binder or commitment without showing any title exception by reason of such liens, except that no Party



qualified to maintain self-insurance need furnish bond unless such is required to effect a stay of execution but shall, if necessary, in connection with the closing of any sale, transfer or financing permitted under the terms of this Agreement, provide such form and amount of security as may be reasonably necessary to induce a title insurance company to insure over such liens as aforesaid. In the event such legal proceedings shall be finally concluded (so that no further appeal may be taken) adversely to the Party contesting such liens, such Party shall promptly cause the lien(s) to be discharged of record within five (5) days thereafter.

Section 3.06. Location and Height of Buildings; Permissible Building Areas; Permissible Deck Areas. The location of all Buildings and facilities on the Developer Parcel and the Dillard Parcel shall be controlled by the Site Plan. Any expansion of the existing Buildings or construction of new buildings or other structures in the Shopping Center must be within the Permissible Building Area(s) shown on the Site Plans. No building or other structure may be built on the Shopping Center that, when completed, will cause the parking ratio within the Parking Ratio Covenant Area to be below the number of parking spaces required by the parking ratio set forth in Section 14.01 hereof.

Section 3.07. No Site Plan Changes. Dillard's Site Plan approval rights are set forth in the Dillard Supplemental Agreement.

Section 3.08. Correction of Site Descriptions and Descriptions of Easements. By reason of construction errors, the Developer Improvements and the Dillard Improvements may not be precisely constructed within the respective Parcel of each Party, but may encroach on another Parcel. As soon as reasonably possible after the completion of the construction of the Developer Improvements and the Dillard Improvements, the Developer will cause an "as-built" survey to be made of the Shopping Center showing all property lines, easements, utilities and buildings. The cost of this survey will be paid by Developer and a certified copy of such survey shall be delivered to Dillard. Nothing herein contained will be deemed to relieve or excuse a Party from exercising all due diligence to construct its Improvements within its respective Parcel. Upon request, any Party upon whose Parcel an encroachment resulting from a construction error has occurred (the "Burdened Party") agrees to either grant such an easement over that portion of its Parcel as is required to permit such encroachment to remain thereon, or to convey to the encroaching Party satisfactory title to the encroached upon portion, provided the encroaching Party will deed to the Burdened Party satisfactory title to an equivalent amount of acreage of real estate reasonably acceptable to the Burdened Party. If the "as built" survey discloses any amenities within the Common Area that are not accurately reflected on the Site Plan, Dillard may request Developer to prepare, at Developer's sole expense, a revised site plan (the "Revised Site Plan"), which shall be submitted to Dillard for approval. When so approved the Developer and Dillard shall confirm the substitution of the Revised Site Plan for the Site Plan in a written instrument to be recorded by Developer.

#### ARTICLE IV -- TERMINATION

Section 4.01. Termination. The term (the "Term") of this Agreement will commence on the Effective Date and will terminate thirty (30) years from the Effective Date (the "Termination Date"), unless sooner terminated under Article 16.

Section 4.02. Interest after Termination. Anything contained in this Article IV to the contrary notwithstanding, any interest (i.e., easement, license, right or other interest) of one Party in the Parcel of another, which by an express provision of this Agreement is to remain in effect following the Termination Date, either for a limited period thereafter or in perpetuity, will remain in full force and effect in accordance with and for the period so provided in such express provision in this Agreement.



Section 4.03. Consequences of Termination. Upon termination, all rights, benefits, burdens and obligations created or imposed by this Agreement shall cease, except as provided in Section 4.02 hereof, and such termination shall not limit or affect any remedy at law, in equity or under this Agreement, of any Party against any other Party with respect to any liability or obligation (including the obligation to pay costs or attorneys' fees) arising or to be performed under this Agreement prior to the termination.

Section 4.04. Default Not Causing Termination. No default under this Agreement or the Dillard Supplemental Agreement shall entitle a Party to terminate, cancel or otherwise rescind this Agreement or the Dillard Supplemental Agreement; provided, however, this limitation shall not affect any rights or remedies a Party may have by reason of any default under this Agreement or the Dillard Supplemental Agreement.

ARTICLE V -- GRANT OF EASEMENTS

Section 5.01. Definitions and Documentation. As used in this Article V:

(a) A Party granting an easement is referred to as the "Grantor" thereof, it being intended that the grant will thereby bind and include not only such Party but its successors and assigns as well;

(b) A Party to which an easement is granted is referred to as the "Grantee" thereof, it being intended that the grant will benefit and include not only such Party but its successors and assigns as well; and

(c) The word "in", in respect of an easement grant "in" a particular Parcel means, as the context may require, "in", "to", "on", "over", "through", "upon", "across" and/or "under".

As to the easements herein granted,

(d) The grant of a particular easement by a Grantor shall bind and burden its Parcel which will, for the purpose of this Article V, be deemed to be a servient tenement, but where only a portion thereof is bound and burdened by the particular easement, only that portion thereof so bound and burdened will be deemed to be the servient tenement;

(e) The grant of a particular easement to a Grantee shall benefit its respective Parcel which shall, for the purpose of this Article V, be deemed to be the dominant tenement, but where only a portion thereof is so benefited, only that portion will be deemed to be the dominant tenement;

(f) All easements granted in this Article V shall exist by virtue of this Agreement, without the necessity of confirmation by or recordation of any other document; and likewise, when any easement terminates, expires or is extinguished or released, in whole or in part, the easement will be extinguished or released or be deemed to have expired or terminated without the necessity of confirmation by or recordation of any other document; provided, however, each Party will, as to any easement, at the request of any other Party, upon the submission by the requesting Party of an appropriate document in form and substance reasonably acceptable to both Parties, execute and acknowledge such a document memorializing the existence, or the extinguishment (in whole or in part), or the release in respect of all or any portion of any Parcel, as the case may be, of any easement;

(g) All easements hereby granted will terminate upon the Termination Date unless otherwise provided herein;



(h) All provisions applicable to "easements" will be similarly applicable to "licenses" granted pursuant to Sections 5.02 and 5.03 hereof;

(i) Each easement granted herein shall be deemed to be non-exclusive unless and to the extent that it is specifically designated as being exclusive;

(j) Nothing contained in this Article V will be deemed to require Developer, by implication, to operate its Buildings or any portion of the Common Area when or at such times as Developer is not specifically required to operate its Buildings or the Common Area under this Agreement or the Dillard Supplemental Agreement;

(k) Nothing contained in this Article V will be deemed to require Dillard, by implication, to operate its Building or any portion of the Common Area on its Parcel when or at such times as Dillard is not required to operate the Dillard Building or Common Area under this Agreement or the Dillard Supplemental Agreement; and

(l) All easements granted herein shall be easements appurtenant and not easements in gross.

Section 5.02. Temporary License to Perform the On-Site and Off-Site Improvement Work. Each Party grants to the other Parties a temporary non-exclusive license to enter upon the Grantor's Parcel (except for areas used as staging or storage areas) for the purpose of engaging in necessary activities connected with the performing of the work referenced in the Final Developer Improvement Plans. Such license shall terminate when the On-Site and Off-Site Improvement Work is completed. Such license shall not permit the use of any portion of any Parcel upon which a building or other improvement is to be located if construction of such building would thereby be interfered with or delayed or upon any portion of the Shopping Center upon which a Building is located. The provisions of Article XII hereof to the contrary notwithstanding, each Party entering upon the Parcel of another Party pursuant to this Section 5.02 shall indemnify, defend and hold such other Party harmless from and against any and all claims, liabilities and demands of any nature whatsoever caused by the action or negligence of the Party making such entry to the extent provided in Article XII hereof. Any such license to enter upon the Dillard Parcel shall terminate as to Developer when the Dillard Building opens for business.

Section 5.03. Temporary License for Construction. During the period of the construction of the Dillard Building and the Perimeter Sidewalks adjacent thereto (which period shall not extend beyond the date in which the Dillard Building opens for business unless an extension of such temporary license period is agreed to in writing by the Grantor), each Party grants to the other Parties a temporary non-exclusive license:

(a) to use the Access Roads and any interior roads constituting part of the Common Area to provide access for all personnel, equipment, supplies and like matters to and from the site of the particular construction, to the extent so reasonably necessary; and

(b) to use such parts of the Parking Area on the Parcel where the work is being done (exclusive of any Parking Structure then under construction) as may reasonably be needed for access to the work site and/or storage and shack sites and location of such other materials as are needed in doing such construction.

Any Grantee enjoying such licenses will be deemed to be bound by Article 3 hereof with respect to that portion of the Parcel of the other Party so used. Any Grantor will have the right to redesignate an area if it is reasonably required in order for the Grantor to complete its required construction or for Grantor's operation and use of its Parcel. Upon completion of any work as to which a temporary non-exclusive license was enjoyed, the Grantee will promptly, at its own cost, repair and/or restore any damage done and



leave such area affected free and clear of all loose dirt, debris and construction materials and at the original grade. The license granted in this Section 5.03 will not permit the use of any portion of the Parcel of any Party upon which portion a Building is to be located without the prior written approval of such Party, which approval may be withheld by such a Party in its sole and absolute discretion. In no event shall the Grantee be permitted to use any of Grantor's Parcel for the staging or storage of materials or for employee or construction parking, without the prior written approval of the Grantor, which approval may be withheld by the Grantor in its sole and absolute discretion.

Section 5.04. Easements for Use of Common Area.

(a) Commencing upon completion of construction of each portion of the Common Area on its Parcel and ending as provided by Section 5.04(c) hereof, each Party grants to each of the other Parties, for the benefit of each other Party and its Parcel, the nonexclusive right, privilege and easement, in common with the Grantor and the Occupants and Permittees of the Grantor, to use each portion of the Common Area so constructed on its Parcel (other than the Access Roads, as to which Section 5.10 hereof shall be controlling, and Common Utility Facilities, as to which Section 5.11 hereof shall be controlling) for its intended purposes. Included with the easements granted by this Section 5.04 are:

- (i) easements to use the respective Parking Area (except the landscaped or planted portions) for the parking and passage of passenger motor vehicles; notwithstanding the foregoing, such easements will be deemed to include the use of the Parking Area (except the landscaped or planted portions) for the passage of trucks for delivery purposes only;
- (ii) easements to use the respective Parking Area for the passage by pedestrians;
- (iii) easements to use roadways to provide passage by motor vehicles (passenger and truck) and pedestrians between each Parcel in the Shopping Center and to the public roads and highways abutting the Shopping Center; and
- (iv) easements to use the various walkways and all other portions of the Common Area as the same may exist from time to time for the general use, comfort and convenience of the Grantee, the Grantor and the Occupants and Permittees of either.

(b) The easements granted by this Section 5.04 are subject to the rights to use the Common Area for other purposes specifically provided in this Agreement, and the rights, if any, of each Grantor to change and relocate portions of the Common Area to the extent provided in this Agreement.

(c) The easements granted in clauses (a)(i) and (ii) of this Section 5.04 will terminate and expire on the Termination Date (both as a burdened and benefited Parcel).

(d) Each Party may permit its Occupants and Permittees (and no other Person) to utilize the rights and privileges granted to such Party under this Section 5.04; provided, however, that (i) such Occupants and Permittees shall not be entitled to any greater rights than have been granted to such Party under this Section 5.04, and (ii) no easement rights shall be deemed to have been granted by the granting of such rights and privileges.

Section 5.05. Easements to Perform Right of Self-Help.

(a) Subject to Article VIII hereof and for the sole purpose of curing defaults in the manner provided in Article XI hereof, each Party grants to each other Party easements to enter upon the Parcel of the Grantor, and into all improvements thereon (except as hereinafter provided), for the purpose of



performing an obligation that the Grantor is required to perform under this Agreement, but fails or refuses to perform, and that the Grantee has the right then so to perform under Section 8.01 hereof; but Grantee shall not have the right to enter into any building containing Floor Area without first having received the consent of the Grantor (which consent may be given or withheld in Grantor's sole discretion), and in exercising these easements Grantee will minimize, to the extent possible, any interference or interruption of any business being conducted on the Parcel in question.

(b) The easement provided in this Section 5.05 will terminate as to any obligation that the Grantee has the right to perform pursuant to Section 8.01 hereof on the date that Grantee's right to perform terminates pursuant to Section 8.01 hereof.

Section 5.06. Easements for Lights. Developer, UPSPE, and UPTower also grant to Dillard until the Termination Date, easements to install, maintain, replace, relocate, repair, use and operate electric lights on the their respective Parcels, within the area immediately adjacent to the building wall of the Dillard Building, and such installations, electrical conduits, wiring and connections as are necessary to permit such lights to be erected and operated, and for the purpose of illuminating the adjacent facade and entrance of the Dillard Building, together with the right of access to such lights by employees, agents and contractors of Dillard in respect of said lights for any of the purposes aforesaid. The number, type, design and location of such lights will be subject to the approval of Developer (such approval not to be unreasonably withheld or delayed) prior to the installation thereof. All expenses incident to the exercise of the easements in this Section 5.06 (with respect to said lights), including the cost of electric current for their operation and the cost of maintenance will be borne solely by Dillard, and, to the extent that Dillard exercises such easements, it will indemnify, defend and hold Developer, UPSPE, and UPTower harmless from and against any and all claims, liabilities and demands of any nature whatsoever caused by the acts or negligence of Dillard in the installation, use or operation of such lights, as and to the extent provided in Article XII. Any work concerning said lights done after initial installation by Dillard will be done in such manner as to minimize interference with normal use of the Shopping Center, to the extent possible in accordance with good construction practice.

Section 5.07. Easement for Operation of Common Area. Dillard grants to Developer and UPSPE an easement in the Common Area on the Dillard Parcel for the management, operation, maintenance, reconstruction and repair of the Common Area pursuant to this Agreement and the Dillard Supplemental Agreement. The easements provided in this Section 5.07 will terminate as to the Common Area (excluding the Common Utility Facilities) on the Dillard Parcel on the day when Developer is no longer obligated, pursuant to either this Agreement or the Dillard Supplemental Agreement, to maintain the Common Area (excluding the Common Utility Facilities) on the Dillard Parcel.

Section 5.08. Easement for Abutments.

(a) The Parties hereto each grant to the other Party easements to have Developer Buildings abut and connect to (but not to bear structurally upon) the Dillard Building, and to have the Dillard Building abut and connect to (but not bear structurally upon) the Developer Buildings, but only to the extent indicated on the Plan that shall have been approved by the affected Party.

(b) The easements provided in this Section 5.08 will terminate (as to the applicable Building that is demolished or destroyed) if and when:

(i) the Developer Buildings are demolished or destroyed and Developer is not obligated to replace them and does not replace them or cause them to be replaced within 24 months after the date of such demolition or destruction; or



(ii) the Dillard Building is demolished or destroyed and Dillard is not obligated hereunder to replace it and does not replace it within 24 months after the date of such demolition or destruction.

Section 5.09. Easements for Repair to Structure on Grantee's Parcel.

(a) Each Party grants to the other Party easements for the purpose of maintaining, repairing or reconstructing any of the Developer Improvements or Dillard Improvements belonging to the Grantee (hereinafter referred to as "Facilities") located in such proximity to the Parcel of the Grantor that such Facilities can, as a practical matter, be so maintained, repaired or reconstructed most advantageously from the Parcel of the Grantor; such easements will permit the Grantee and its employees, agents and contractors to enter upon and use the adjacent parts of the Grantor's Parcel (but not the Floor Area thereon) to such extent, in such manner (including the erection of scaffolding) and for so long as is reasonably necessary for the expeditious accomplishment of the purpose therefor; provided, however, and on the condition that, each such Grantee gives the Grantor a plan or written description of the work to be performed before entering upon Grantor's Parcel (except in the case of an emergency), promptly restores the portion of the Grantor's Parcel and any Facilities thereon so used to the same or as good condition as existed immediately before such work was begun and provided, further, that no such use by such Grantee and no such scaffolding as may be erected by it will interrupt the business being conducted on the Parcel so used or unreasonably interfere therewith. Grantee shall also notify the Grantor's on-premises personnel before beginning such work (except in the case of an emergency). Such Grantee covenants that it will defend, indemnify and save the Grantor harmless from and against any and all claims, liabilities and demands of any nature whatsoever arising from injury or death to persons and/or damage to property on the Parcel of Grantee and/or Grantor arising out of or resulting from maintenance, repair or reconstruction done pursuant hereto, as and to the extent provided in Article XII hereof. Grantee further agrees that it will not use such easements to make such repairs from the period of November 1 to the next succeeding January 15, during the period from July 10 to August 10 or during the 45-day period preceding Easter Sunday unless the repairs are of an emergency nature.

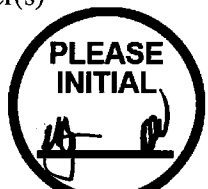
(b) The easements provided in this Section 5.09 with respect to any servient tenement will continue after the Termination Date for so long as any facilities that were constructed upon Grantee's Parcel during the Term shall remain on Grantee's Parcel.

Section 5.10. Easement for Access Roads.

(a) Each Developer Party grants to Dillard and each other Developer Party a non-exclusive easement in common with all Parties for the use of the portion of the Access Roads located on the Developer Parcel (each Grantor as to the Parcel owned by it) for the purposes of two-way vehicular traffic (passenger vehicles and trucks) and pedestrian access, to the Dillard Parcel, the Developer Parcel and to the public or private roads or highways abutting or adjacent to the Shopping Center. The Parties may permit their Occupants and Permittees (and no other Person) to utilize the rights and privileges granted to the Parties under this Section 5.10; provided, however, that (i) such Occupants and Permittees shall not be entitled to any greater rights than have been granted to the Parties under this Section 5.10, and (ii) no easement rights shall be deemed to have been granted by the granting of such rights and privileges.

(b) All of the easements referred to in this Section 5.10 are perpetual.

(c) From and after the date when Developer is no longer obligated to maintain the Common Area on any Parcel, the owner of such Parcel shall, at its own cost, keep the portions of the Access Roads located on its Parcel in good repair and condition, properly lighted and available for their intended purposes. Upon any failure by such owner to so maintain the portions of the Access Roads on its Parcel the owner(s)



of the other Parcel(s) shall have the right of self-help under the provisions of Article VIII hereof, which right shall survive the Termination Date.

(d) Upon Condemnation of any portion of the Access Roads, to the extent desirable, practical and feasible from a traffic and engineering standpoint, the Parties hereto will agree on a substitute for the portion thereof condemned.

(e) Anything contained in this Agreement to the contrary notwithstanding, and other than in accordance with the Traffic Improvement Agreement between University Mall Shopping Center, L.C. a Utah limited liability company and the City of Orem dated June 26, 2019, for so long as the easements referred to in this Section 5.10 continue to exist, no Person or owner of any Parcel on which is located an Access Road, shall without the consent of the Grantee of the easement applicable to such Access Road, make any change in the location, design or number, or reduce the size of any Access Roads shown on the Site Plan, or change the grade of the Access Road located on its Parcel or make any change that would impede the flow of traffic.

Section 5.11. Easement for Common Utility Facilities. Each Party grants to the other Party the following perpetual easements in its Parcel for Common Utility Facilities and other utility facilities (the term "pipes", as used in this Section 5.11 will mean "pipes", and/or "lines", and/or "conduits", and/or "wires", and/or "cables", and/or "other means of providing utility facilities", as the context may require):

(a) Easements in the Parcel of the Grantor for the purpose of installing, using, connecting, operating, maintaining, repairing, relocating, replacing or enlarging any of the Common Utility Facilities subject to Section 5.11(d) hereof. The location, relocation and/or enlargement of any such easement shall be subject to the prior approval of the Grantor, which approval will not be unreasonably withheld or delayed.

(b) Easements in the Parcel of the Grantor for the purpose of installing therein in the future, other pipes, not part of the Common Utility Facilities as originally constructed or to enlarge or relocate such pipes as originally constructed, to provide gas, water, fire loops and hydrants therefore, electric power, other forms of energy, signal, telephone and other electronic means of communications, sanitary sewer and storm sewer services, or any of them, to or from any present or future facilities on the Parcel of the Grantee, subject to Section 5.11(d) hereof. The location of any such easement will be limited to the area of easements for Common Utility Facilities granted pursuant to Section 5.11(a) hereof.

(c) Easements in the Parcel of the Grantor for the purposes of connecting any and all of the pipes of the Common Utility Facilities, referred to in Section 5.11(a) or 5.11(b) hereof, with any facilities on the Parcel of the Grantee to the extent that the location of such connections thereon is limited to the area of easements for Common Utility Facilities granted pursuant to Section 5.11(a) hereof, provided, however, that (except in the case of an emergency) the Grantee shall notify the Grantor in writing of the location of such connection within the area of the easements for Common Utility Facilities; and after any such connections, for the purpose of using, operating, maintaining, repairing, relocating, replacing and enlarging any or all of such pipes. The provisions of this Section 5.11(c) shall be subject to Section 5.11(d) hereof, and shall be limited to the area of the easements for Common Utility Facilities granted pursuant to Section 5.11(a) hereof.

(d) For exercising the rights granted in this Section 5.11, each Grantee will have the right to enter upon and use the Parcel of each Grantor to such extent and so long as reasonably necessary to accomplish such purposes, subject to the following conditions:





(i) no fewer than 30 days' prior written notice will be given to the Grantor that Grantee anticipates doing such work, together with notification of the proposed nature, extent and location of such work; and the anticipated date of start and completion of such work which date or dates shall, to the extent reasonably possible, be scheduled with Grantor to avoid unnecessary interference with the business of Grantor; but if the work involved is emergency repair work, only such advance notice, written or oral, as is reasonably practicable need be given;

(ii) after such work, the pipes and other utilities in question will be underground and not beneath or within five feet of any Building on the Grantor's Parcel as shown on the Site Plan; provided, however, that this subparagraph (ii) will not require the moving of any pipes already installed in compliance with this Agreement, nor permit any such work if as a result thereof any Party utilizing the Common Utility Facilities to provide utilities to improvements on its Parcel would be required to relocate any connection between any Common Utility Facilities and such improvements in order for such Party to continue to be able so to utilize the Common Utility Facilities therefor, or if its ability so to utilize the same is otherwise materially adversely affected. A Grantee may move a pipe and materially adversely affect a Party's use of a pipe only if such Party will consent to such work and the Grantee proposing to do such will agree to pay all costs of such Party (direct or indirect) consequent upon the performance of such work by such Grantee, and will place the money therefore in escrow if reasonably required to do so by such Party;

(iii) such work will be done in compliance with Section 3.01 hereof and at the sole cost of the Grantee undertaking the same and will be performed in such a manner as not to cause any interruption of or undue interference with the business conducted on the Parcel of the Grantor; or any unreasonable interruption or diminution in the services provided to the Parties;

(iv) after the completion of such work, the Grantee will restore, at its own cost, the portion of the Parcel and improvements of the respective Grantor so used to the same condition as existed immediately before the commencement of such work;

(v) to the extent that the Grantee will exercise such easements, it will defend, indemnify and save the Grantor harmless from and against any and all claims, liabilities and demands of any nature whatsoever arising from injury or death to persons and/or damage to property on the Parcel of the Grantee and/or the Grantor growing out of or resulting from the Grantee's exercise of such easements as and to the extent provided in Article XII hereof. The foregoing indemnity will not apply, however, to any claims or liabilities arising from the willful act or the active negligence of the Grantor, or its agents, servants or employees; and

(vi) except in the case of emergency repair work, none of such work may be performed between July 1 and August 1, between November 1 to the next succeeding January 15 or during the 45-day period preceding Easter Sunday.

(e) The easements granted in Sections 5.11(a), 5.11(b) and 5.11(c) hereof will be exclusive insofar as they relate to pipes that are not a Common Utility Facility, and non-exclusive insofar as they relate to Common Utility Facilities. To the extent that any such easement is exclusive, the Grantee in question shall at all times do all work necessary to maintain the same and will assume and pay all costs incurred in the maintenance, repair, replacement and/or enlargement thereof.

(f) A Grantor will have the right to relocate any pipes located on its own Parcel if reasonably deemed by the Grantor to be necessary to the enjoyment of its Parcel, so long as (i) the Grantor complies with the conditions imposed upon the Grantee by Section 5.11(d) hereof, (ii) there is no increase in utility



expense of any Party, (iii) there is no interruption in utility service to any Party and (iv) such utility service is not interrupted or diminished after such relocation.

(g) From and after the date when Developer is no longer obligated to maintain the Common Utility Facilities on any Parcel, the owner of such Parcel shall at its own cost, clean, repair and maintain that portion of the Common Utility Facilities located on its Parcel to the extent that the same are not cleaned, repaired and maintained by public utilities. Upon a failure by such owner to so clean, repair and maintain that portion of the Common Utility Facilities on its Parcel the owner(s) of the other Parcel(s) shall have the right of self-help under the provisions of Article VIII hereof, which right shall survive the Termination Date.

Section 5.12. Permanent Easements. With respect to the easements in this Article V that are declared to be "perpetual", each such easement will, notwithstanding such characterization, expire, terminate and be extinguished in relation to any Grantee and such Grantee's Parcel (i) when such easement is not used for a continuous period of five years by such Grantee, or those holding under or through such Grantee (non-use resulting from any cause or event set forth in Articles XIII or XVI hereof, or any reasonable interruptions incidental to the conduct of a business, or made reasonably necessary because of construction, alterations, improvements or repairs, will not be deemed to be non-use for these purposes), and (ii) when all Parties hereto agree that such easement will no longer be useful, or that the right to exercise the same in the future will no longer be valuable to such Grantee, or those holding under such Grantee. An assertion by a Grantor that the easement in question has ceased, terminated or been extinguished will be deemed to have been made when written notice to that effect, citing this Section 5.12, is given by the Grantor to and received by the Grantee in question; and such assertion will be deemed to have been agreed to by such Grantee if such notice states, in capitalized letters, that if no response is made within sixty (60) days after receipt, such termination will automatically be deemed agreed to, unless such Grantee, within sixty (60) days after receipt of such notice, by notice to the Grantor, denies such assertion and give its reasons therefore. Pending the resolution of such dispute, the easement in question will be deemed to continue, and the dispute will be resolved by judicial determination in litigation wherein the Grantor will have the burden of proving the existence of conditions (i) and (ii) above.

Section 5.13. Installation Responsibility. Except as otherwise specifically provided in this Agreement, Developer will be responsible for the installation, maintenance and repair of all facilities that are the subject of such easements and in so doing will comply with Section 3.01 hereof.

Section 5.14. Easements to Public Authorities. Each Party covenants with the other Party that it will grant to governmental or public authorities or any public utility company having jurisdiction, easements in its Parcel, in accordance with Section 5.11 hereof and in form acceptable to the Grantor for the installation and/or maintenance and operation of utility facilities reasonably required for any or all Parcels. Such easements will be continuous so long as such authorities or company use the same to provide utility services to any part of the Shopping Center.

Section 5.15. Easement for Building Encroachments.

(a) Each Party, as Grantor, hereby grants to the other Parties, as Grantee, the right, privilege and easement to use such portions of the Grantor's Parcel (but only at such locations, if any, as may be approved in writing by the Grantor and shown on the working drawings and specifications for the Grantee's Improvements, which shall have been approved in advance by the Grantor) to construct, reconstruct, erect and maintain any such foundations, footings, supports, building walls, canopies, roofs, building and other overhangs, awnings, alarm bells, signs, lights and lighting devices and other similar appurtenances to the Grantee's Improvements as are shown on such working drawings and specifications. The easement shall be limited to a distance of three feet from the Grantor's property line. Each Party covenants and agrees that



its exercise of such easements will not result in damage or injury to the improvements of any other Party and will not interfere with the business operations conducted by any other Party in the Shopping Center. No such easement for construction by any Grantee will permit the use of the Grantor's Building for load-bearing purposes. Upon completion of any of the construction elements referred to above, the Grantor and Grantee will, upon the request of either of them, execute a recordable document, appropriately identifying the nature and location of each such construction element, and documenting such easements.

(b) The easements provided for in this Section 5.15, shall continue after the Termination Date for so long as the particular appurtenance for which the easement is granted continues to exist and is not razed, destroyed or demolished and not Rebuilt within three years after such appurtenance ceased to exist.

Section 5.16. Permanent Access and Parking Easements.

(a) Developer Parties, each as to the Parcel owned by it, hereby grant to Dillard, its successors and assigns, for the benefit of the Dillard Parcel, a perpetual, nonexclusive right, privilege and easement for pedestrian and vehicular access only, along, over and across a strip of land located on its Parcel and identified on the Site Plan as the "Permanent Access Easement", for the purpose of providing access to and from the Dillard Parcel to the Developer Parcel and to adjoining public streets and highways and to the entrances shown on the Site Plan, but only to the extent that the area identified on the Site Plan as the Permanent Access Easement is not dedicated to public use.

(b) Developer Parties, each as to the Parcel owned by it, and subject to development within the Permissible Building Areas, hereby grant to Dillard, its successors and assigns, for the benefit of the Dillard Parcel, a perpetual, nonexclusive right, privilege and easement for parking only, along, over and across certain portions of the Developer Parcel identified on the Site Plan as "Permanent Parking Easement Area" collectively containing approximately 4,360 surface parking spaces, and approximately 1,414 spaces in the Parking Deck and/or other parking structures, for the purpose of providing parking for Dillard, its officers, employees, agents, customers, business visitors, business guests, licensees and invitees and those of its tenants.

(c) The Permanent Access Easement and the Permanent Parking Easement Area may be used by Dillard, its successors and assigns and their respective tenants, officers, employees, agents, customers, business visitors, business guests, licensees and invitees and those of its tenants, such use to be in common with the Developer Parties, their successors and assigns and their respective tenants, officers, employees, agents, customers, business visitors, business guests, licensees and invitees and those of its tenants. Dillard shall have the right to use any roadways and Parking Areas which may be constructed thereon by Developer. Developer agrees not to obstruct or interfere in any way with the free flow of pedestrian and vehicular traffic over the roadways located within the Permanent Access Easement or with the parking of vehicles within the Permanent Parking Easement Area, except to the extent legally necessary to prevent a dedication thereof or the accrual of any rights to the public therein, and/or temporary closure for the repair or maintenance thereof, and/or excepting stalls reserved pursuant to section 14.01 and the modifications of stalls in the Permissible Building Areas for the construction of new improvements. Nothing contained in this paragraph shall be deemed to release Developer from its obligations contained in this Agreement.

(d) The Permanent Access Easement shall be applicable only to the extent that the area identified on the Site Plan as the Permanent Access Easement is not dedicated to public use.

(e) Following the expiration or earlier termination of this Agreement, if the access improvements within the Permanent Access Easement or the parking improvements within those areas designated on the Site Plan as the Permanent Parking Easement Area are not maintained by the owner thereof to the lighting and maintenance standards applicable to such improvements during the term of this



Agreement pursuant to Section 7.02 hereof and in accordance with the standards set forth for the maintenance of the Common Area in the Dillard Supplemental Agreement, Dillard may provide written notice to the owner of any such improvements Dillard intends to maintain, describing in detail the maintenance of such improvements which Dillard intends to undertake, and if such maintenance is not commenced by the owner within thirty (30) days following receipt of Dillard's notice, and thereafter completed with reasonable diligence, such owner having no obligation to perform such maintenance, Dillard may enter upon the Permanent Access Easement and/or Permanent Parking Easement Area, as the case may be, and undertake such maintenance at Dillard's sole cost and expense except as provided below, provided that (i) Dillard shall defend, indemnify and save the owner of the Permanent Access Easement and/or Permanent Parking Easement Area, as the case may be, harmless from and against any and all claims, actions, damages, liabilities and expense including, but not limited to, reasonable attorney fees and costs of tribunals at all levels, arising out of or incurred in connection with loss of life, personal injury or damage to property, or any of them, arising from any incident on or about the Permanent Access Easement and/or Permanent Parking Easement Area occasioned in whole or in part by any act or omission of Dillard, its employees, agents or contractors; (ii) Dillard shall maintain liability insurance with minimum limits of not less than those required in Section 11.02 of this Agreement, naming the owner(s) of the Permanent Access Easement and Permanent Parking Easement Area as additional insureds, with a contractual liability endorsement covering the indemnification obligation of Dillard pursuant to clause (i) of this Section 5.16(e); (iii) Section 3.05 shall apply to any liens against any Parcel or any part thereof arising out of such work; and (iv) to the extent that any of the Permanent Parking Easement Area is situated in a Parking Structure, Developer shall reimburse Dillard for the cost of such maintenance.

(f) Nothing contained in this Section 5.16 shall lessen in any way the rights granted to Developer and Dillard as set forth in Section 5.01 hereof.

Section 5.17 Easement for Pedestrian Bridge. Dillard hereby grants to Developer and its successors and assigns, and Developer grants to Dillard and its successors and assigns, a perpetual right and easement (a) in, on, over and across the Dillard Parcel and Developer Parcel, respectively, for the construction, maintenance, repair and replacement of an overhead pedestrian bridge, together with footings, foundations, and supports therefor, from the Parking Deck on the Developer Parcel (shown on the Site Plan) to the second level of the Dillard Building at the location for said pedestrian bridge shown on the Site Plan, and (b) to attach and connect said pedestrian bridge to, and received support from, the Dillard Building for said pedestrian bridge, and to otherwise integrate said pedestrian bridge into the Dillard Building, all in accordance with detailed plans and specifications approved by Dillard in accordance with the provisions of this Agreement and the Dillard Supplemental Agreement. If the Parking Deck is damaged or destroyed and the damage or destruction is not repaired or restored, then if Dillard shall so require, Developer shall cause the pedestrian bridge to be removed and the opening to the Dillard Building to be closed off in a manner acceptable to Dillard, at which time the easements granted in this Section 5.17 shall terminate and be of no further force or effect. If the Parking Deck is no longer operation, then Dillard may close-off the entrance to the Dillard Building from the Parking Deck, but Developer shall not be obligated to cause the pedestrian bridge to be removed.

Section 5.18. Extinguishment of Easements. Any of the easements granted herein may be (a) released or extinguished, or (b) amended, waived or modified by instrument, in recordable form, executed by the owners of all the Parcels benefited and burdened by the respective easements affected thereby.

Section 5.19. Prohibition on Granting Easements and Other Provisions. Each Party hereby reserves the right to eject or cause the ejection from the Common Area of its Parcel of any Person or Persons not authorized, empowered or privileged to use the Common Area of such Parcel pursuant to this Agreement. No Party shall grant an easement or easements in any of the Shopping Center for the benefit



of any property not within the Shopping Center, except as permitted elsewhere in this Agreement or pursuant to governmental order or regulation.

ARTICLE VI -- USE AND OPERATION OF SHOPPING CENTER

Section 6.01. Use and Operation of Shopping Center. Each of the Parties covenants and agrees with each other for the benefit of the Shopping Center and with respect to use and operation of their respective Parcels, no part of its Parcel located within the Site Plan Improvement Area may be used for any purpose other than a commercial or business purpose compatible with the operation of a first-class mixed-use regional shopping center nor will any use or operation that is obnoxious to or inconsistent with the development or operation of first-class mixed-use regional shopping center be made, conducted or permitted on or with respect to all or any part of its respective Parcel including but not limited to, the following:

- (a) any public or private nuisance;
- (b) any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness;
- (c) any obnoxious odor;
- (d) any noxious, toxic, caustic or corrosive fuel or gas;
- (e) any dust, dirt or fly ash in excessive quantities;
- (f) any fire, explosion or other damaging or dangerous hazard (including the storage, display or sale of explosives or fireworks);
- (g) assembling, manufacturing, distilling, refining, smelting, agriculture or mining operation or drilling for oil, gas or other minerals;
- (h) any manufacture, use, storage or release of any Hazardous Material except to the extent expressly permitted by Section 24.24 hereof;
- (i) any emission of any substance, gas, particulate matter, audio, radio or infrared electromagnetic wave frequency or other form of radiation that materially interferes with the business of any Occupant;
- (j) trailer courts, mobile home parks, recreation vehicle campgrounds, and facilities for the sales or service of mobile homes or trailers;
- (k) junkyards, scrap metal yards, motor vehicle sales operation or dealerships, except that auto specialty stores or boutiques (with any one store or boutique not to exceed 10,000 square feet of Floor Area) which display only a limited number of automobiles on-site at any particular time may be permitted, subject to Developer's prior written consent, motor vehicle dismantling operations, and sanitary landfills;
- (l) dumping, storage, disposal, incineration, treatment, processing, or reduction of garbage, or refuse of any nature, other than handling or reducing waste produced on the premises from authorized uses in a clean and sanitary manner;



(m) consignment shops, pawn shops, thrift stores, flea markets, salvage businesses, or discount stores whose merchandise consists primarily of used goods or merchandise, excess inventory, discontinued items, and/or goods acquired through liquidation of other businesses or fire or bankruptcy sales; provided, periodic events or activities in the Common Area sponsored or sanctioned by Developer or the entity charged with maintenance and operation of Common Areas (such as, without limitation, craft fairs, arts festivals, or farmers markets) shall be permitted;

(n) truck terminals and truck stop-type facilities, including truck parking lots (except as may be incidental to a use which is not prohibited);

(o) tanning parlors or massage parlors which offer entertainment or service by nude or partially dressed male or female persons, except that this provision shall not preclude tanning and massage services offered by fully clothed, trained personnel as part of a hotel, a legitimate fitness or health facility, or a day spa operation that also offers beauty, body care, skin care, or similar services;

(p) "adult entertainment uses," which shall include any theatre or other establishment which shows, previews, or prominently displays, advertises, or conspicuously promotes for sale or rental: (A) movies, films, videos, magazines, books, or other medium (whether now or hereafter developed) that are rated "X" by the movie production industry (or any successor rating established by the movie production industry) or are otherwise of a pornographic or obscene nature (but not including the sale or rental of movies, films, or videos for in-room viewing within a hotel); or (B) sexually explicit games, toys, devices, or similar merchandise (sexually graphic channels as part of a hotel television package is acceptable);

(q) So-called "head shops" (i.e., shops offering or promoting illegal drug paraphernalia or items intended for or commonly associated with the use of illegal drugs);

(r) motor and freight terminals mini-warehouses, and warehouse/distribution centers;

(s) any facility for the dyeing and finishing of textiles, the production of fabricated metal products, or the storage and refining of petroleum;

(t) dry cleaning plants; provided, facilities for drop-off or pick-up of items dry cleaned outside of the Shopping Center are permitted and dry cleaning within a hotel facility is permitted so long as the dry cleaning service is for its customers only and the dry cleaner uses either (i) a wet cleaner using aqueous non-solvent systems, and/or (ii) a dry cleaner using Exxon DF 2000 Solvent or other solvents which are not Hazardous Materials);

(u) heavy machinery sales and storage facilities; and

(v) any other use which would cause or threaten the cancellation of any insurance maintained by owners or Occupants of Parcels within the Shopping Center, or which would measurably increase insurance rates for any such insurance that would apply in the absence of such use.

Notwithstanding the foregoing, the uses of any existing tenants of the Shopping Center shall not be deemed to violate the foregoing restrictions.

Section 6.02. Kiosks. Developer and UPSPE will have the right to place kiosks, retail merchandising units and push carts (collectively "Kiosks") on the Developer Parcel within the Site Plan Improvement Area; provided, however, that any such Kiosks shall only be within the areas designated "Kiosk Area" on the Site Plan. The Kiosks will have a maximum counter height of 42 inches with light standards, fixtures, signs, goods and other attachments not extending more than 10 feet above floor level



and a maximum area of 200 square feet. All Kiosks shall be maintained in a clean and orderly condition and shall not present any unsightly displays. No Kiosks shall contain coin-operated games. The limitation in Section 6.02 on Kiosks will not apply to automatic teller machines, automated box offices or to other electronic devices enabling a Person to transact banking or to engage in other transactions provided that such electronic devices are placed next to or affixed to a wall of a Building on a Developer Parcel or, if not placed next to the wall or affixed to a wall, are shown on the Site Plan. The electronic devices meeting such criteria are not Kiosks within the meaning of that term as applied in this Section 6.02; and a Developer Party may, from time to time, place or cause to be placed such electronic devices throughout the Site Plan Improvement Area at the locations permitted as set forth in the preceding sentence, without first having to obtain the consent of the other Parties, but subject to the Dillard Supplemental Agreement.

ARTICLE VII -- MAINTENANCE AND MANAGEMENT OF COMMON AREA

Section 7.01. Developer's Duty to Operate Common Area.

(a) Developer, together with each Developer Party with respect to its respective Parcel, covenants that all Common Area that is located on the Developer Parcel and within the Site Plan Improvement Area shall be open and operated on each day that the Dillard Building is open for business, such opening and operation of the Common Area to begin at least 30 minutes prior to the opening of the Dillard Building and shall extend until at least 30 minutes after the close of the Dillard Building. Upon advance request from Dillard, Developer, together with each Developer Party with respect to its respective Parcel, will open and operate the Common Area at other times, and in such event Dillard shall reimburse Developer or the applicable Developer Party for the actual cost to Developer or the applicable Developer Party of operating the Common Area during such requested periods.

(b) Developer, together with each Developer Party with respect to its respective Parcel, agrees to keep all Common Areas in the Shopping Center which Developer or the applicable Developer Party is so obligated to maintain within the Site Plan Improvement Area, including the Enclosed Mall, open and well lighted during all periods that the Dillard Building is open for business and for a reasonable period before and after such business hours, and to keep the Enclosed Mall adequately heated and air-conditioned during such period in accordance with the below listed standards.

(i) Heating Season. A prevailing minimum indoor temperature of 68° Fahrenheit with outside temperatures ranging to as low as 20° Fahrenheit; and

(ii) Cooling Season. A prevailing maximum indoor temperature of 78° Fahrenheit and a relative humidity of 50% when the outside dry bulb temperature ranging to as high as 90° Fahrenheit coincident with a wet bulb temperature of 80° Fahrenheit.

Section 7.02. Developer's Duty to Maintain the Common Area.

(a) Developer, together with each Developer Party with respect to its respective Parcel, covenants with Dillard, at their sole cost and expense, subject to any rights of reimbursement provided in the Dillard Supplemental Agreement, to keep, maintain, repair, replace and reconstruct, as may be appropriate, manage and operate (hereinafter collectively called "maintain", "maintained" or "maintenance", as appropriate) or cause such maintenance to be performed on the Common Area on the Parcel of each Party within the Site Plan Improvement Area, from and after the date the Dillard Building opens for business to the general public in a safe and good and clean order, operation, condition and state of repair, in conformity with first-class mixed-use regional shopping center standards, and in such manner



as to establish, maintain and present at all times the appearance of a safe, clean, well-managed, attractive, coordinated and unified operation of all of the Common Area.

(b) Without limiting the generality of the foregoing, Developer, together with each Developer Party with respect to its respective Parcel, in the maintenance of the Common Area pursuant to Section 7.02(a) hereof, and during any time that Developer is in fact maintaining the Common Area, or causing the Common Area to be maintained whether Developer is so obligated by this Agreement or not, shall observe at least the following standards:

(i) maintain, repair and replace the surface of the Parking Area (including the removal of snow and ice) and the sidewalks (including the Perimeter Sidewalks) smooth and evenly covered with the type of surfacing material originally installed thereon, or such substitute as will be in all respects equal in quality, appearance and durability, all in accordance with generally accepted standards of first-class mixed-use regional shopping center maintenance;

(ii) remove all papers, debris, filth, broken glass and refuse from the Common Areas and wash or thoroughly sweep paved areas as reasonably required by generally accepted standards of first-class mixed-use regional shopping center maintenance;

(iii) maintain such appropriate Parking Area entrance, exit and directional signs, markers and lights in the Common Area as will be reasonably required and in accordance with the practices prevailing in the operation of similar first-class mixed-use regional shopping centers;

(iv) clean and repair lighting fixtures of the Common Area and relamp and reballast upon their failure to function in accordance with generally accepted standards of first-class mixed-use regional shopping center maintenance;

(v) repair and repaint striping, markers, and directional signs, as necessary to maintain in a first-class condition;

(vi) maintain, water and replace the landscaping as necessary to keep it in a first-class and healthy condition and mow and edge all grass areas;

(vii) clean signs of the Shopping Center (as contrasted with those of Occupants), including relamping and required repairs in accordance with generally accepted standards of first-class mixed-use regional shopping center maintenance;

(viii) employ and/or contract for courteous trained personnel for Common Area security functions reasonably necessary during store hours and such other hours as are reasonably deemed necessary by Developer for the safe and orderly operation of the Common Area;

(ix) clean, repair and maintain all Common Utility Facilities to the extent that the same are not cleaned, repaired and maintained by public utilities;

(x) keep the Parking Area properly illuminated at the minimum maintained levels prescribed in the Dillard Supplemental Agreement during all hours of darkness that the Shopping Center Buildings are open or required to be open to the public (at times when the Shopping Center is not open or required to be open to the public, Developer, together with each Developer Party with respect to the Parking Area on its respective Parcel, will cause the Parking Area to be properly illuminated for security purposes only, at a minimum of 25% of full intensity, uniformly distributed throughout the Parking Area; and if Dillard desires additional illumination at such times when the





Shopping Center Buildings are not open or required to be open Developer, together with each Developer Party with respect to the Parking Area on its respective Parcel, will cause additional illumination, not to exceed the requirement when the Shopping Center Buildings are open or required to be open, on the Dillard Parcel, at Dillard's expense, upon receiving at least 24 hours' advance notice);

(xi) make and use good faith efforts to enforce at all times, such reasonable rules and policies of general application for the supervision, control and use of the Common Area as it shall in its judgment deem best, provided that they will be uniform in application, and will conform to good standards of first-class mixed-use regional shopping center operation and provided further, that a Dillard will not be bound by any rule or policy to which such Dillard did not specifically consent;

(xii) provide an on-site manager and secretary for the Shopping Center;

(xiii) maintain and keep in a sanitary condition, public restrooms within the Developer Buildings; and

(xiv) promptly remove any graffiti after its appearance within the Common Area and restore the surface from which it was removed.

Section 7.03. Common Area Cleaning. Developer, together with each Developer Party with respect to its respective Parcel within the Site Plan Improvement Area, shall keep or cause to be kept all Common Area located within the Site Plan Improvement Area in a clean, neat and sanitary condition at all times. Without limiting the generality of the foregoing Developer, together with each Developer Party with respect its respective Parcel within the Site Plan Improvement Area, must:

- (i) Empty all trash containers in the Enclosed Mall and other Common Area as reasonably required by generally accepted standards of first-class, mixed-use shopping center maintenance;
- (ii) Sweep or vacuum the Enclosed Mall as reasonably required by generally accepted standards of first-class shopping center maintenance;
- (iii) Remove all paper, debris and trash in all Common Area each day prior to opening and sweep all sidewalks, the roadway adjacent to all Buildings and the Parking Areas (including the Parking Deck) adjacent to the Dillard Building as reasonably required by generally accepted standards of first-class shopping center maintenance;
- (iv) Remove ice and snow from the exposed areas as soon as possible after the fall; and
- (v) Cause all garbage and refuse to be kept in an adequate container, so as not to be visible to the public for collection at reasonable times specified by Developer.

Section 7.04. Parking Areas. The Parking Areas, sidewalks, aisles, streets and driveways on the Common Area within the Site Plan Improvement Area shall not be fenced or otherwise obstructed and shall be kept open at all times for the free use thereof, other than for temporary closure for repair/maintenance. No portion of the Common Area located on the Dillard Parcel or the Developer Parcel within the Site Plan Improvement Area shall be used for the display or sale of merchandise or for any purpose not contemplated by this Agreement except as part of a promotional service program of the Shopping Center other than



permitted signage as depicted on the Site Plan or described in the Sign Criteria. All parking areas shall be used primarily for the parking and passage of vehicles and the movement of pedestrian traffic, landscaping, directional and traffic control signs and signs identifying the Shopping Center by its name.

Section 7.05. Developer's Indemnification. Developer agrees to indemnify, defend and hold harmless Dillard and the Dillard Parcel from and against any mechanic's, materialmen's and/or laborer's lien and all claims, costs, expenses and liabilities in connection therewith, including reasonable attorneys' fees, arising out of the maintenance performed by Developer with respect to the Common Area pursuant to this Article VII (whether performed before or after the execution of this Agreement), and if the Dillard Parcel becomes subject to any such lien, Developer shall, at the request of Dillard, promptly cause such lien to be released and discharged of record, either by paying the indebtedness that gave rise to such lien, or posting such bond or other security as may be required by law to obtain such release and discharge, or if there be no such law, then to obtain a surety bond in favor of the Dillard Parcel in an amount not less than 125% of the amount claimed in such lien.

Section 7.06. Employee Parking Areas. Dillard shall have the right if they so elect to locate dedicated parking for its employees within the areas identified as such on the Site Plan. If Dillard elects to have an established area for parking for its employees only, Dillard shall require its employees to use such area and no other portion of any Parking Area and agrees to use diligent efforts to require its employees and any employees of its agents, contractors, licensees or concessionaires to use only such sections as are so prescribed for employee parking.

Section 7.07. Payment of Common Area and Maintenance Costs. Developer shall pay all costs of operating and maintaining the Common Area, subject to rights of reimbursement in separate agreements, including, but not limited to, the Dillard Supplemental Agreement.

Section 7.08. Developer Party Limitation of Liability. Notwithstanding any other provision of this Article VII, no Developer Party, other than Developer, shall be liable for maintaining, nor shall any Developer Party, other than Developer, have a duty to maintain, any property that it does not own.

#### ARTICLE VIII -- SELF-HELP AND OTHER REMEDIES

Section 8.01. Rights of Self-Help. Except as to taxes or assessments being contested as provided in Section 15.02 hereof, and the covenants of Developer set forth in Article II and contained in the Developer's Operating Covenant set forth in the Dillard Supplemental Agreement and the covenants of Dillard set forth in Article II and contained in Dillard's Operating Covenant set forth in the Dillard Supplemental Agreement, if any Party (the "Defaulting Party") fails to perform any of the provisions of this Agreement on its part to be performed at the time and in the manner herein provided (including the making of payments to others that the Defaulting Party has agreed herein to make) then the other Parties hereto shall have the right, but not the obligation, upon 30 days' written notice to the Defaulting Party (unless within such thirty-day period the Defaulting Party cures such default, or in the case of a default that by its nature cannot be cured within such thirty-day period, the Defaulting Party commences the curing thereof within such thirty-day period, and thereafter diligently prosecutes the curing thereof to completion) to proceed to make such payment or take such action as shall be necessary to cure such default, all in the name of and for the account of the Defaulting Party. In such case, the Defaulting Party shall on written demand reimburse the Party paying such sum or taking such action for the money actually expended by it, and its reasonable out-of-pocket expenses (including reasonable attorney's fees), in so doing, together with all penalties, if any, arising from such default, if paid by the other Party, with interest computed in accordance with Section 21.02 from the date of demand to date of payment. If any Party other than the Defaulting Party shall in good faith deem that an emergency is occurring or has occurred (including situations that



prevent or hinder Permittees from using the Common Areas for their intended purposes, situations that pose a danger to Occupants or Permittees, and failures to properly maintain the Common Areas that result in conditions that are offensive to Permittees), so that the default requires immediate curing, then no written notice will be required and such non-Defaulting Party shall give such notice as is practical under the circumstances without giving written notice and promptly take such action as is necessary to cure the alleged failure. A Party performing any action pursuant to the preceding sentence will interfere to the minimum extent possible with the Defaulting Party's business, and with reasonable promptness will give notice to the Defaulting Party of the doing of such work and the claimed default; such notice, notwithstanding any other provisions of this Agreement, need not be in writing if the giving of a written notice would not be reasonably possible under the circumstances, so long as verbal notice is given to an officer or responsible agent of the Defaulting Party. Written confirmation of the action will be given as soon as reasonably possible. The Party so acting will prosecute any work performed by it under this Section 8.01 in a good and workmanlike manner diligently to completion. If and to the extent a Party has obligations to another Party with respect to an easement granted by this Agreement that survives the Termination Date, the rights granted by this Article VIII will survive with respect to such easement for the duration of such easement. The foregoing to the contrary notwithstanding, no provisions of this Section 8.01 shall be deemed to permit any Party to enter the Building of a Defaulting Party for the purpose of curing a default of any Defaulting Party.

Section 8.02. Set-off. If a Party ("Payor") is required to make a payment to another Party ("Payee") under this Article VIII or under the Dillard Supplemental Agreement and fails to make such payment, the Payee will have the right to set-off the amount of such payment against any payment due from the Payee to the Payor under this Agreement or under the Dillard Supplemental Agreement.

Section 8.03. Lien. Any amount due under this Article VIII from the Defaulting Party to another Party shall, without further act of the Parties, be deemed to constitute a lien against the Parcel of the Defaulting Party obligated to pay the same, subordinate to all then existing liens and encumbrances thereon and to the interest in Parcels that may be owned by a Transferee in a Sale and Leaseback or a Lease and Subleaseback transaction or its successors at such time, provided that the holder of such liens or encumbrances, or such Transferee of its successor, as the case may be, was not in possession or control of the Parcels liened pursuant to this Section 8.03 at the time of the action taken giving rise to such amount due. The Parties agree, however, that in no event will such lien created by this Article VIII be foreclosed by means of a non-judicial foreclosure.

Section 8.04. Notice to Defaulting Party's Mortgagee. Notwithstanding anything to the contrary herein provided, and provided such Party has been notified in the manner specified in Article XIX hereof of the identity and address of or any change in the identity or address of a Defaulting Party's Mortgagee, no Party shall have any rights against that Defaulting Party's Parcel, because of a Default on the part of that Defaulting Party, unless (a) that Defaulting Party's Mortgagee shall have been first given written notice of such default and afforded an opportunity to cure the same or to cause the same to be cured and (b) after receiving such written notice, that Defaulting Party's Mortgagee has failed to cure such default or to have caused the same to be cured within an additional 15 days after the period of time allowed for that Defaulting Party to cure such default (or, in the case of a default that, by its nature, cannot be cured within such specific period, the Defaulting Party's Mortgagee shall have failed to commence the curing thereof within such additional 15 days or shall have failed to diligently proceed with the curing thereof). Notwithstanding the foregoing, in the case of an emergency, there shall be no additional 15-day cure period, provided, however, before a non-Defaulting Party can declare a Party in default, the non-Defaulting Party shall first give the Defaulting Party's Mortgagee written notice of the cost, if any, incurred in connection with the curing of such emergency default, and a period of 30 days after such notice to repay such amount.



ARTICLE IX -- OBSTRUCTION OF COMMON AREA

Section 9.01. Covenants Respecting Common Area. Each Party covenants and agrees with the other Parties with respect to the Common Area on its Parcel so long as this Agreement is in full force and effect, and thereafter, in the case of the easements set forth in Article V hereof that expressly survive the Termination Date for so long as they survive, as follows:

(a) It will not obstruct the free flow of pedestrian or vehicular traffic. No Party will change, modify, diminish or alter the Common Area or the layout and configuration thereof as shown on the Site Plan, except as specifically permitted herein.

(b) It will not use or permit the use of the Parking Areas within the Site Plan Improvement Area for any purpose other than the parking and passage of vehicles and the movement of pedestrian traffic, landscaping, directional and traffic control signs and signs (at locations specified in the Plans and shown on the Site Plan) identifying the Shopping Center by its name.

(c) It will not construct or locate, or suffer to be constructed or located, any fence or barricade (except as expressly permitted herein), structure, building, merchandise, commercial facility, amenity, landscaping, lights, sign (including floor signs) or other obstruction or installation of any kind whatsoever on its Parcel outside its Building that would interfere with the uses provided for in this Agreement for its Parcel, or prevent the free flow of traffic to, across or from its Parcel as and where shown on the Site Plan. Notwithstanding the above, each Party will have the right one day each calendar year, but more often if legally required in the reasonable opinion of its counsel, upon no fewer than seven days' advance notice to the other Parties, to erect barriers or chains to block off access to the Common Area located on its Parcel to avoid the possibility of dedicating the same for public use; if possible, such barriers or chains shall be erected for such purposes at a time, or upon a day, when the Shopping Center is not open for business and upon 20 days' prior notice to the other Parties.

Section 9.02. Exceptions to Covenants. Notwithstanding Section 9.01 hereof, the Parties each may use the Common Area on its Parcel to the extent reasonably required in connection with:

(a) The proper exercise of the easements and licenses granted pursuant to Article V hereof or any other rights specifically granted to the respective Parties under this Agreement;

(b) The performance of any construction (as such term is used in Article II hereof) that the respective Party is permitted or required to make under this Agreement and subject to the provisions of Sections 5.02 and 5.03 hereof;

(c) The placement of Kiosks by a Developer Party, or their tenants or licensees, subject to the limitations set forth in Section 6.02 hereof and the limitations contained in the Dillard Supplemental Agreement;

(d) The placement by a Developer Party or its tenants or licensees of patios and outdoor seating areas in the areas shown on the Site Plan; and

(f) Promotions sponsored and approved by the Shopping Center's promotional services program, if such a program exists at the Shopping Center, provided that: (i) no such promotion shall be conducted on the Dillard Parcel without the express written consent of Dillard's corporate office; (ii) no such promotion may unreasonably interfere with the flow of vehicular or pedestrian traffic; and (iii) no such promotion shall take place in any Parking Area from November 1 to December 31 without the written approval of Dillard.



## ARTICLE X -- MAINTENANCE AND REPAIRS

Section 10.01. Maintenance of Developer Buildings. During the Term of this Agreement, Developer, together with each Developer Party with respect to its respective Parcel within the Site Plan Improvement Area, will keep and maintain, or cause to be kept and maintained, at no cost or expense to Dillard except to the extent set forth in the Dillard Supplemental Agreement, the Developer Buildings within the Site Plan Improvement Area in good order, condition and repair in accordance with industry standards for the operation of first-class mixed-use regional shopping centers.

Section 10.02. Damage or Destruction of Developer Buildings. Developer, together with each Developer Party with respect to its respective Parcel within the Site Plan Improvement Area, hereby agrees with Dillard that in the event of the damage to or destruction of all or any part of the Developer Buildings within the Site Plan Improvement Area (exclusive of any Parking Structure and any exterior Common Area for which Section 10.03 hereof shall be applicable) during the time periods hereinafter provided from any casualty required to be insured against pursuant to this Agreement; Developer together with each applicable Developer Party shall promptly commence Rebuilding of such Developer Buildings, with reconstruction of the Enclosed Mall to conform to the requirements of Article III hereof, and shall diligently prosecute such reconstruction to completion to the extent hereinafter provided:

(a) If such damage or destruction occurs (i) prior to the date which is fifteen (15) years after the date the Dillard Building opens for business; or (ii) on or subsequent to the date which is fifteen (15) years after the date the Dillard Building opens for business but in the case of (ii) affects twenty percent (20%) or less of the Enclosed Mall if the Enclosed Mall is all that is damaged, then in the event of either (i) or (ii) above, Developer together with each applicable Developer Party shall Rebuild the Enclosed Mall to the standard of construction set forth herein for initial construction so that the Enclosed Mall will connect with the Dillard Building in the same location as existed before the damage or destruction and so that the Enclosed Mall and shall contain not less than eighty percent (80%) of the Floor Area which existed immediately prior to the occurrence of such damage or destruction; and

(b) If such damage or destruction occurs on or subsequent to the date which is fifteen (15) years after the date the Dillard Building opens for business and affects greater than twenty percent (20%) of the Enclosed Mall if the Enclosed Mall is all that is damaged, Developer and any applicable Developer Parties shall have no obligation to Rebuild the Developer Buildings.

Section 10.03. Damage or Destruction of Common Area (including the Parking Deck). If the Common Area or any part of it is damaged or destroyed by fire or other casualty (and as often as the Common Area or any part of it is damaged or destroyed by fire or other casualty) during the Term, then Developer together with the applicable Developer Party promptly shall Rebuild such Common Area as shown on the Site Plan (with parking in compliance with Section 14.01 hereof). Rebuilding, when once commenced by Developer and the applicable Developer Party, will be carried through diligently and continuously to conclusion by it, but delays caused by Force Majeure will not be deemed such an interruption as constitutes Developer and the applicable Developer Party in default in the obligation to cause such work to be done continuously to completion.

Section 10.04. Maintenance of the Dillard Building. Dillard covenants and agrees that from and after the initial opening of its Building on its Parcel for business to the public, and thereafter during the Term, it will keep and maintain, without cost or expense to any Developer Party, the exterior of its Building in good order, condition and repair in accordance with industry standards for the operation of first-class mixed-use regional shopping centers. The provisions of this Section 10.04 are subject to the provisions of Sections 10.05 and 10.07 hereof.



Section 10.05. Repair and Restoration of the Dillard Buildings. Dillard covenants that for and during the period that it is required to operate in its Building pursuant to its Operating Covenant set forth in the Dillard Supplemental Agreement, unless the period of Dillard's Operating Covenant shall have fewer than three years remaining therein or unless an Event of Release has occurred, in the event of the destruction or damage to its Building, or any part thereof, and as often as any such Building or any part thereof, shall, during the period, be destroyed or damaged by fire or other casualty against which Dillard is required to insure pursuant to Section 11.03(b) hereof, it shall promptly Rebuild the same. Dillard hereby agrees that anytime it is required to Rebuild the Dillard Building under the terms of this Agreement, the Dillard Building will be Rebuilt and ready for Occupancy within twenty-four months from the time when the loss or destruction occurred. Rebuilding, when once commenced, shall be carried through continuously to conclusion by it, but delays caused by Force Majeure shall not be deemed such an interruption as constitutes a default in the obligation to cause such work to be done continuously to completion, nor will such period of delay be deemed a part of the twenty-four month Rebuilding period.

Section 10.06. Parking Area Restoration. Developer covenants that in the event of any damage or destruction to the Parking Areas on the Developer Parcel during the Term of this Agreement, by any cause whatsoever, whether insured or uninsured, in the event a Developer Party is obligated to Rebuild under Section 10.03, Developer together with the applicable Developer Party shall Rebuild the Parking Areas on its Parcel with all due diligence. Notwithstanding the above, Developer shall be obligated to construct the parking stalls needed to comply with the parking ratio requirements of Section 14.01 and Rebuild those areas identified as Permanent Access Easement on the Site Plan for so long as Dillard, its successors and assigns are operating in the Dillard Building.

Section 10.07. Razing or Removal.

(a) During the period that a Party is required to operate its Building pursuant to its Operating Covenant as set forth in the Dillard Supplemental Agreement, unless an Event of Release has occurred, the Building constructed on such Party's Parcel shall not be razed or removed, except: (i) to the extent that may be necessary prior to Rebuilding following destruction or damage, pursuant to the provisions of this Article X or following Condemnation pursuant to Article XVI hereof; or (ii) at the option of the Party on whose Parcel such Building is located, following destruction or damage that does not require Rebuilding under the terms hereof.

(b) From and after the date a Party is no longer obligated to operate its Building pursuant to its Operating Covenant, such Party may cause its Building (or any portion thereof) to be razed or removed. Within 180 days of any damage or destruction, any portion of a Party's Building not razed or removed will be repaired, as needed, by such Party, in order to make the exterior of the same architecturally harmonious and compatible with the exterior of the other Party's Buildings. In addition, if a Party does raze or remove any improvements (whether or not following damage or destruction), and does not replace the razed improvements with other improvements that Party shall maintain the ground area formerly occupied by the razed improvements in good order and repair and in a sightly manner.

Section 10.08. Certain Alterations, Additions or Improvements. Any exterior alteration, addition or improvement to any Building constructed on a Party's Parcel(s) subsequent to completion of construction referred to in Sections 2.01 and 2.08 hereof will comply with Article III hereof, as well as any other applicable Sections and the Site Plan as if such alteration, addition or improvement were part of such Building as originally constructed. No such alteration, addition or improvement will restrict pedestrian and vehicular access to the Shopping Center or result in a reduction of parking spaces below the parking ratio set forth in Section 14.01 hereof.



Section 10.09. Developer Party Limitation of Liability. Notwithstanding any other provision of this Article X, no Developer Party, other than Developer, shall be liable for maintaining, constructing, or repairing, nor shall any Developer Party, other than Developer, have a duty to Rebuild, maintain, construct, or repair, any property that it does not own.

ARTICLE XI -- INSURANCE

Section 11.01. Construction Insurance. Each Party will maintain or require all of its contractors and sub-contractors to maintain at its sole cost and expense and to provide evidence thereof throughout any period of time during which it performs any construction of improvements, expansion, remodeling, extensive repairs or maintenance upon its Parcel or the Parcel of another Party, at least the following minimum insurance coverage:

- (a) Liability.
  - (i) Commercial general liability coverage written on an occurrence basis covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability and coverages:
    - (A) \$2,000,000 each occurrence (combined single limits for bodily injury and property damage) (\$1,000,000 shall be acceptable if contractor's umbrella/excess liability insurance is \$25,000,000);
    - (B) \$1,000,000 for personal injury liability;
    - (C) \$2,000,000 aggregate for products and completed operations (which should be maintained for a three year period following final completion of the work or throughout the warranty period, whichever is greater);
    - (D) \$2,000,000 general aggregate applying separately to each project.
  - (ii) Motor Vehicle Liability Insurance including coverage for owned, hired, and non-owned motor vehicles. The limits of liability shall not be less than \$1,000,000 per accident.
  - (iii) Umbrella/Excess Liability Insurance (which shall include the so-called "following form" provision) in the amount of at least \$10,000,000 where the amount of the contractor's contract exceeds \$3,000,000. If there is no per project aggregate under the commercial general liability policy, the umbrella/excess limit shall be increased to \$20,000,000 per occurrence and in the aggregate. If the contract amount is less than \$3,000,000 and the contractor is a subcontractor to a general contractor who maintains at least \$20,000,000 in umbrella/excess liability limits, then the subcontractor shall not be required to carry any additional umbrella/excess liability limits. Notwithstanding the amount of the contractor's contract, if the contractor is a subcontractor to a general contractor who maintains umbrella excess liability limits of \$25,000,000 then the subcontractor shall be required to carry \$1,000,000 for the insurance coverages described in clauses (a)(i)(A) through (D) immediately above and shall not be required to carry any additional umbrella excess liability limits

For the insurance described in clauses (i) and (iii), each other Party shall be an additional insured and such insurance shall provide that the same shall not be canceled, or reduced in amount of coverage below the foregoing requirements, without at least 30 days prior written notice (or ten



days for nonpayment) to each additional insured. If such insurance is canceled or expires then, upon notice of such cancellation or expiration, the constructing Party shall immediately stop all work until either the required insurance is reinstated or replacement insurance obtained. This insurance shall be endorsed to be primary and non-contributory over any other valid and collectible insurance.

(b) Property. Effective upon the commencement of construction of any Building on its Parcel, each Party shall maintain, or cause to be maintained, full-replacement cost property insurance that includes an ISO "Special Form" perils endorsement or equivalent coverage; covering loss or damage from, but not limited to, fire, lightning, windstorm, hail, explosion, riot attending a strike, civil commotion, aircraft, vehicles, smoke, vandalism, malicious mischief, sprinkler leakage, water damages and collapse throughout any period of time during which it performs any construction of improvements, expansion, or remodeling upon its Parcel. Such policy shall also include the perils of flood and earth movement. The proceeds of such insurance shall be payable to the Party and such Party's contractor as their interests may appear. This insurance will continue in force until such work is completed.

(c) Workers' Compensation. Each Party shall require evidence of Workers' Compensation with at least statutory limits and Employer's Liability Insurance or equivalent coverage from all contractors and subcontractors throughout any period of time during which it performs any construction of improvements, expansion, remodeling, extensive repairs or maintenance upon its Parcel. The contractor or subcontractor shall carry Employer's Liability or equivalent insurance coverage with limits of at least \$1,000,000 per accident, disease or aggregate by disease. Such evidence of insurance will be kept current until such work is completed.

(d) Self-Insurance. Notwithstanding anything in this Section 11.01 to the contrary, a Party shall not have to comply with the provisions stated in Sections 11.01(a)(i), if such Party is eligible to self-insure hereunder or has a net worth, either according to its last published report or as audited by an independent certified public accounting firm (not more than 18 months before such date), of at least \$200,000,000 adjusted by the CPI Adjustment and subject to the provisions of Section 11.04 (exclusive of its interest in the Shopping Center). In such case, such Party may cause its contractors and sub-contractors to maintain such insurance coverage as such Party determines in its sole discretion subject, however, to any applicable statutory requirements with respect to Workers' Compensation insurance.

Section 11.02. Liability Insurance for Common Area, Buildings, Employees and Motor Vehicles.

(a) Developer shall, during the Term, maintain, or cause to be maintained, in full force and effect, Commercial General Liability Insurance, including contractual liability covering all indemnities herein of Developer, covering the Common Area, the Developer Buildings, and all other buildings and improvements on the Developer Parcel with an insurer rated A-VII or better in the most recent addition of Best's Insurance reports, such insurance to afford protection of not less than \$10,000,000 per occurrence and in the aggregate for personal injuries, including bodily injury, death, libel, slander, wrongful eviction, false arrest, products, completed operations, and consequential damages arising therefrom to any number of Persons arising out of any one occurrence. Developer shall upon request furnish to Dillard evidence that the insurance referred to in this Section 11.02(a) is in full force and effect. Such insurance shall name Dillard and each other Developer Party as additional insureds thereunder, and shall provide that the same may not be canceled or materially altered without at least 30 days' (ten days for non-payment) prior written notice being given by the insurer to Dillard. If Dillard is operating and maintaining the Common Area on its Parcel, the insurance required by this Section 11.02(a) shall be carried by Dillard with respect to the Common Area on its Parcel.





(b) Dillard shall, during the Term, maintain in full force and effect Commercial General Liability and umbrella/excess Insurance covering the portions of its Parcel not included in Section 11.02(a) with an insurer rated A-VII or better in the most recent edition of Best's Insurance Reports, such insurance to afford protection of not less than \$10,000,000 per occurrence and in the aggregate for personal injuries, including bodily injury or death, libel, slander, wrongful eviction, false arrest, products, and completed operations liability to any number of Persons arising out of any one occurrence. Such insurance shall name the Developer Parties, as additional insureds thereunder, shall provide for severability of interests and shall provide that the same may not be canceled or materially altered without at least 30 days' prior written notice (except for non-payment) given by the insurer to Developer Parties.

(c) Dillard shall, during the Term, maintain in full force and effect Workers' Compensation with at least statutory limits (containing, where available, an alternate employer endorsement in favor of Developer) and Employer's Liability Insurance (or equivalent coverage) with minimum limits of \$1,000,000 per accident, \$1,000,000 per disease and \$1,000,000 policy limit on disease.

(d) Dillard shall, during the Term, maintain in full force and effect Motor Vehicle Liability Insurance with coverage for all owned, non-owned and hired vehicles with combined single limits of not less than \$1,000,000 per accident.

Section 11.03. Property Insurance for Completed Improvements.

(a) Developer covenants that (during the period Developer is obligated to operate the Developer Buildings pursuant to its operating covenant contained in the Dillard Supplemental Agreement or is in fact so operating the Developer Buildings) it shall carry or cause to be carried property insurance that includes an ISO "Special Form" perils endorsement or equivalent coverage, covering loss or damage from, but not limited to, fire, lightning, windstorm, hail, explosion, riot or strike, civil commotion, aircraft, vehicles, smoke, vandalism, malicious mischief, sprinkler damages, collapse, and water damage, with extended coverage for flood and earth movement, subject to the definitions and provisions contained in such policy, in an amount equal to 100% of the replacement cost (exclusive of the cost of excavation, foundations and footings) of the Developer Buildings, insuring against loss or damage from causes or events customarily included in an ISO Special Form perils policy. Developer shall, upon request, furnish to the Dillard not more than 30 days before the Dillard Building opens for business and on or before the effective date of any replacement policy, evidence that the insurance required by this Section 11.03(a) is in full force and effect. Developer agrees that such policies shall contain a provision that the same may not be canceled or materially changed without at least 30 days' prior written notice being (except for non-payment) given by the insurer to Dillard.

(b) Effective upon the completion of construction of the Dillard Building and for so long as the Dillard Building exists, Dillard covenants with Developer that it will carry Property Insurance that includes an ISO "Special Form" perils endorsement or equivalent coverage, covering loss or damage from, but not limited to, fire, lightning, windstorm, hail, explosion, riot or strike, civil commotion, aircraft, vehicles, smoke, vandalism, malicious mischief, sprinkler damages, collapse, and water damage, with extended coverage for floor and earth movement, subject to the definitions and provisions contained in such policy in an amount equal to 100% of the replacement cost (exclusive of the cost of excavation, foundations and footings) of its Building, insuring against loss or damage from causes or events that customarily are included in a Special Form perils policy. Dillard, upon request, shall furnish to Developer, prior to the effective date of any such policy, evidence that the insurance required by this Section 11.03(b) is in full force and effect or that it is self-insuring pursuant to Section 11.04 hereof. Dillard agrees that it will use reasonable efforts to secure a provision from its insurer that its policy will not be canceled or materially changed without at least 30 days' prior written notice (except ten days for non-payment) being given by Dillard to Developer.



Section 11.04. Self-Insurance or Blanket Policy. Any Party hereto (which for purposes of this Section 11.04 shall include an Affiliate of said Party which in the ordinary course of business obtains and/or provides insurance coverage on behalf of such Party and which furnishes a Certificate of Insurance (or its equivalent) which provides to the Party receiving it the equivalent assurance as would a Certificate of Insurance issued by a licensed commercial insurer which reflects that the Party is included in such Affiliate's self-insurance program) may elect to carry any insurance required to be carried under this Article XI, in whole or in part, under any plan of self-insurance or under a "loss limit" policy, so long as such Party (or Affiliate, as applicable) has a net worth of at least One Hundred Million Dollars (\$100,000,000.00), exclusive of its interest in and to its Parcel, according to its financial statement for the most recent full year certified by an officer of such Party (or Affiliate, as applicable). The current annual report to shareholders of the entity in question that is audited by an independent certified public accountant shall be sufficient evidence of such Party's net worth.

Any Party may carry any insurance required to be maintained under this Article XI under a "blanket policy" covering other property of such Party or of its Affiliate which obtains and/or provides the insurance required hereunder so long as there is specifically allocated under such "blanket policy" an amount sufficient to meet the requirements of this Article XI.

Section 11.05. Waiver of Subrogation. Each Party hereby releases (for itself and to the extent legally possible for it to do so on behalf of its insurer) the other Parties from any liability for any loss or damage to property located on the Shopping Center, which loss or damage is caused by a risk of the type generally covered by policies of insurance of the type referred to in Sections 11.01(b) and 11.03 hereof. Each Party covenants that it will, to the extent such insurance endorsement is available (even if such endorsement requires the payment of a reasonable additional premium), obtain for the benefit of each other Party a waiver of any right of subrogation that the insurer of the former Party might otherwise acquire against any other Party by virtue of the payment of any loss covered by such insurance.

Section 11.06. Payment of Proceeds. Proceeds of insurance under policies covered under Section 11.03 paid to a Party by reason of damage to or destruction of its Buildings and other improvements on its Parcel shall be used by such Party to Rebuild such damaged or destroyed Buildings and other improvements on its Parcel, to the extent required under Article X hereof.

To the extent Rebuilding is required under Article X hereof, any loss covered by insurance required pursuant to this Article XI shall be adjusted with the insured, and if the loss is in excess of Five Hundred Thousand Dollars (\$500,000.00) and the insured or its Affiliate which obtains and/or provides the insurance required hereunder is not qualified to self-insure under Section 11.04 hereof, the insurance proceeds shall be deposited in a bank or trust company reasonably satisfactory to each of the Parties hereto (or with the Institutional Lender of such Party's Parcel or the Buildings and other improvements thereon as hereinafter provided) to be held in trust and disbursed as the work of rebuilding, reconstruction and repair shall progress in amounts designated by certification, by architects licensed to do business in the State of Utah showing the application of said amounts as payment for such repairs, rebuilding and reconstruction. The insured shall pay to the trustee all reasonable fees for its services. Any excess of monies received from insurance remaining with the trustee or Institutional Lender after the reconstruction or repair of such Building or Buildings or other improvements, if there be no default on the part of the insured in the performance of the insured's obligation to rebuild or in the mortgage or note secured by such Party's Building or Buildings, shall be paid to the insured or its Mortgagee.

If the loss does not exceed Five Hundred Thousand Dollars (\$500,000.00) or the insured or its Affiliate which obtains and/or provides the insurance required hereunder is qualified to self-insure under



Section 11.04 hereof, the insurance proceeds shall be paid directly to the insured and applied in satisfaction of its obligations hereunder.

Such policies may be made payable to the holder of a first Mortgage which is a lien upon the interest of the insured in the Parcel or the Buildings and improvements located thereon under a standard mortgagee clause, provided such Mortgagee agrees that it will, in the event of loss, apply the proceeds to Rebuild in accordance with the provisions of this Agreement, and provided further that with respect to a Mortgagee on the Enclosed Mall, such Mortgagee shall only be required to apply insurance proceeds to Rebuild to the extent required under Article X hereof if (1) Dillard either (x) is then operating a Full-Line Dillard's, or (y) has suffered a casualty along with the Enclosed Mall and has agreed to Rebuild the Dillard Building contemporaneously with the Enclosed Mall, and (2) either (x) the Dillard Operating Covenant as defined in the Supplemental Agreement will be in effect for at least three (3) years after the date the Enclosed Mall is Rebuilt, or (y) Dillard extends or reinstates the Dillard Operating Covenant so that it will be in effect for at least three (3) years after the date the Enclosed Mall is Rebuilt.

Section 11.07. Evidence of Insurance. Each Party will furnish to the other Parties hereto requesting the same, evidence that the insurance or self-insurance required of it by this Article XI is in full force and effect; provided, however, that with respect to evidence of self-insurance, a copy of an annual report that is audited by an independent certified public accountant which discloses that a Party is in compliance with the net worth requirement of Section 11.04 for self-insurance or the Web address where such annual report may be found, will be sufficient. If Dillard elects not to self-insure it shall use its diligent efforts to secure a provision from its insurer that all policies of insurance carried by Dillard pursuant to this Article XI, or endorsements issued under any blanket policy or policies covering these liabilities required to be insured against by this Article XI, may not be canceled or materially altered without at least 30 days' prior written notice being given by Dillard to Developer Parties. The failure of any Party to request such evidence of insurance or self-insurance, or the failure of any Party to provide evidence of such insurance, will not affect the obligation to obtain insurance or self-insure as provided in this Article XI.

## ARTICLE XII-- INDEMNIFICATION

Section 12.01. Indemnification. Dillard agrees to defend, indemnify, save and hold harmless (collectively, "Indemnify") the Developer Parties, the respective agents, contractors, Occupants and Permittees of the Developer Parties harmless against and from all claims, loss, damages, causes of action, costs and expenses, including reasonable attorneys' fees, related to personal injury, bodily injury or death of persons or destruction of or damage to property resulting from or arising out of or in any manner connected with Dillard's construction or as a result of personal injury, bodily injury or death of persons or destruction of or damage to property as shall occur within its respective Building or Truck Facilities (including claims that any portion of a the Dillard Building does not comply with requirements of applicable law). If Dillard shall be obligated for the maintenance of the Common Area on its Parcel as provided in Article VII hereof, then Dillard's indemnification above shall extend to any personal injury, bodily injury, or death of persons or destruction of or damage to property occurring on its Parcel during such period that it so maintains the Common Area on its Parcel. Developer agrees to defend, Indemnify and save Dillard and its respective agents, contractors, Occupants and Permittees harmless against and from all claims, loss, damages, causes of action, costs and expenses, including reasonable attorneys' fees, related to personal injury, bodily injury, death of persons or destruction of or damage to property anywhere in the Shopping Center (with the exception of within the Dillard Building or Dillard's Truck Facilities) resulting from or arising out of or in any manner connected with (a) the Enclosed Mall, (b) Floor Area on the Developer Parcel, (c) those portions of the Common Area in the Shopping Center (including claims that any portion of the Common Area does not comply with the requirements of any applicable law) if and for so long as Developer is obligated to maintain or cause to be maintained those portions in accordance with Article VII



and/or Article X hereof, (d) as a result of or in connection with Developer's construction activities at the Shopping Center, or (e) the Developer Buildings and related Truck Facilities. There shall be (a) included in such indemnity the results of the negligent or willful acts or omissions of the respective indemnitor or its employees or agents no matter where in the Shopping Center done or omitted to be done, except as otherwise specifically provided in (b) below; and (b) excluded from each such indemnity the result of the negligent or willful acts or omission of the Party otherwise indemnified or employees or agents of the indemnified party no matter where in the Shopping Center done or omitted to be done; provided, however, notwithstanding the foregoing inclusions and exclusions to the contrary, such inclusions or exclusions shall be null and void and of no effect as fully as though same were entirely omitted from this Agreement to the extent that such are inconsistent with and/or would achieve or cause a result contrary to the provisions regarding the release and waiver of subrogation set forth in Section 11.05 hereof. The indemnitee shall give the indemnitor notice of any suit or proceeding entitling the indemnitee to indemnification pursuant to this Section 12.02 hereof and the indemnitor shall protect, defend and hold the indemnitee harmless in any said suit or proceeding.

### ARTICLE XIII -- FORCE MAJEURE

Section 13.01. Force Majeure. Each Party shall (whether or not any particular provision of this Agreement makes specific reference to this Article XIII) be excused from performing any of its duties, obligations or undertakings provided in this Agreement (except any of its duties, obligations or undertakings to pay any sums of money) if and so long as the performance of such duty, obligation or undertaking is prevented, delayed, retarded or hindered by act of God, epidemic, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, mob violence, civil commotion, sabotage, malicious mischief, strikes, lock-outs, action of labor unions, Condemnation, order of civil or military or naval authorities, embargoes, impossibility of obtaining materials, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of the Party in question (any and all of which events are defined as "Force Majeure"). Specifically excluded are delays resulting from a Party's inability to obtain financing or a Party's lack of capital.

### ARTICLE XIV -- PARKING RATIO

#### Section 14.01. Required Ratio.

(a) Developer agrees to maintain or cause to be maintained at all times the following parking ratios within the "Parking Ratio Covenant Area" as depicted on Exhibit C attached hereto and made a part hereof: four (4) parking spaces per one thousand (1,000) square feet of retail Floor Area; three (3) parking spaces per one thousand (1,000) square feet of office Floor Area; one and one half (1 ½) parking spaces per residential unit; and one half (1/2) parking spaces per hotel room.

(b) Parking shall be shared and non-exclusive, except that each residential unit shall have up to one and one half (1 ½) exclusive reserved parking spaces adjacent to residential buildings and for every five thousand (5,000) square feet of office Floor Area up to one (1) parking stall may be reserved for exclusive use adjacent to office buildings.

(c) All vehicular parking spaces will be of the minimum dimensions shown on the Site Plan.

(d) Each Party agrees that it will not interfere with or obstruct the Parking Area configuration within the Site Plan Improvement Area shown on the Site Plan, including parking bays and lanes, except as may be necessary in connection with improvements constructed pursuant to Article II hereof or as otherwise specifically permitted in this Agreement.



Section 14.02. Parking Structures. Within the Site Plan Improvement Area except as shown on the Site Plan, no Parking Structures will be allowed in the Shopping Center without the prior written consent of all Parties hereto, which consent may be granted or withheld in their sole and absolute discretion. Prior to construction of any such Parking Structure, Developer shall obtain Dillard's approval to the plans, specifications, configuration, layout, graphics, and signage of and for such Parking Structure, which approval shall not be unreasonably withheld or delayed. In no event shall construction of any Parking Structure commence during the period commencing on October 15 of any year and ending on January 1 of the following year or during the 45-day period preceding Easter Sunday. Any such Parking Structures shall be deemed part of the Parking Area to be maintained by Developer in accordance with the provisions of Section 7.01 and included under the Commercial General Liability Insurance coverage to be maintained, or caused to be maintained, by Developer pursuant to Section 11.02. In addition, throughout the Term, Developer shall carry property insurance and pay or cause to be paid all taxes and assessments on such Parking Structures in compliance with the provisions of Sections 11.03 and 15.01, respectively, as if the Parking Structure were a Developer Improvement, and Developer's obligation to Rebuild Common Area under the provision of Section 10.03 shall apply to such Parking Structures during the entire Term and without qualification.

ARTICLE XV --REAL ESTATE TAXES, IMPOSITIONS AND UTILITIES

Section 15.01. Covenant to Pay. Each Party covenants to pay with respect to its Parcel, all real estate taxes and assessments (or taxes or charges levied in replacement thereof), all water and sewer rates (charged by governmental authorities), all charges for any services of utilities, if any, provided to its Parcel through the Common Utility Facilities, and all assessments hereafter made by governmental authorities for improvements hereafter commenced; provided, however, that Developer will pay all such assessments made at any time on any Parcel by reason of the On-Site and Off-Site Improvement Work described in Article II hereof or any other off-site work required to be performed by Developer or in connection with the construction contemplated herein and operation of the Shopping Center. Each Party's utilities shall be separately metered and the cost thereof paid by such Party.

Section 15.02. Right to Contest or Appeal. Each Party may defer payment of any such taxes, assessments, rates or charges payable by them, respectively, as aforesaid, while appealing or contesting the validity and/or amount thereof, provided that such contest shall be in good faith and that any such Party shall, upon receiving a final adverse ruling or decision, immediately pay any such taxes, assessments, rates or charges payable, and at all times take such steps as may be necessary, including the payment thereof under protest, to ensure that foreclosure or sale of the property in question will not occur.

ARTICLE XVI --CONDEMNATION

Section 16.01. Restoration Upon Condemnation. Subject to the provisions of Section 16.02 hereof, if any improved portion of the Parcel of any of the Parties is Condemned, the Party owning the Parcel or Parcels upon which the Condemnation occurs will promptly notify the other Parties thereof and will, insofar as it is practicable to do so in the reasonable exercise of good faith judgment of such Party, promptly upon payment of the award thereof, Rebuild any Building or improvement on its Parcel to the extent of such award. To the extent that the amount of the award may be insufficient to Rebuild both the Building and the other improvements (including the Parking Area) on the Condemned Parcel, then the award shall be allocated in the following priorities:



(a) First, Rebuild the Parking Area on the Condemned Parcel provided any Parking Structure not shown on the Site Plan shall require the reasonable consent of the Parties) to provide for the minimum number of automobile parking spaces required by Section 17.01 hereof to support the Floor Area that will exist on the Condemned Parcel after post-Condemnation Rebuilding has been completed;

(b) Second, to the extent that any portion of the award remains, Rebuild the other non-Building improvements on the Condemned Parcel; and

(c) Third, to the extent that any portion of the award remains, Rebuild the Buildings on the Condemned Parcel.

In no case, however, shall a Party be required to Rebuild after Condemnation, if such Party would not similarly have been required to Rebuild under Article X hereof had damage or destruction taken place on such Party's Parcel. In addition, nothing contained in this Article XVI shall be deemed to require any Party to construct a multi-level Parking Structure on its Parcel following Condemnation if no such Parking Structure existed on such Party's Parcel immediately prior to Condemnation. Further, no Party shall be required to use proceeds of a Condemnation on its Parcel to Rebuild Buildings or other improvements on another Party's Parcel.

If a Party required to Rebuild receiving the proceeds of such an award in an amount in excess of \$500,000 does not then meet the requirements for self-insurance under Section 11.04 hereof, such proceeds will be paid over to a trustee or to a Mortgagee designated pursuant to Section 11.06 hereof. Such proceeds shall be made available to such Party for the Rebuilding required by this Section 16.01 and shall be paid out by the such trustee or Mortgagee from time to time as the work of Rebuilding progresses, upon architects' certificates by architects licensed to do business in Utah that show the application of the amount paid for such Rebuilding. In case of a Party not beginning any Rebuilding of improvements which that Party is required to perform under this Agreement promptly after the date of payment of the award and prosecuting the same thereafter with such dispatch as may be necessary to complete the same in a reasonable time with due diligence but in no event more than 20 months (plus the period of delays caused by Force Majeure) thereafter, then the proceeds so collected or the balance thereof remaining with the trustee or Mortgagee, as the case may be, may be paid to the Party or Parties who shall have performed the required Rebuilding, at the option of such Party or Parties. Any excess proceeds remaining after the required construction and/or Rebuilding will belong to the Party owning the Condemned Parcel for which the award was made. Should so much of a Party's Parcel be condemned that such Party is not required by Section 16.02 hereof to Rebuild, but, rather, to raze, remove or level certain improvements and to convert that portion of its Parcel upon which those improvements were previously located to Parking Area (either landscaped or paved), upon compliance with this Article XVI, any excess funds remaining after the required razing, removing or leveling will belong to the Party owning the Condemned Parcel for which the award was made.

Section 16.02. Termination of Operations. If so much of a Parcel is Condemned that it is impracticable, in the good faith reasonable business judgment of the Party owning such Parcel, to operate thereon the improvements that such Party is required to operate or is operating pursuant to this Agreement or if, as a result of Condemnation, there is available within the Parking Ratio Covenant Area fewer than the required parking ratio under this Agreement and a Party elects to cease operating its improvements, then such Party shall be released from all obligations to operate, to maintain and insure the Common Area on its Parcel and in the case of Dillard, shall be released from its obligation to pay the Dillard Contribution under this Agreement and the Dillard Supplemental Agreement, effective at the date of such Condemnation, provided such Party notifies the other Parties of its election to so cease operating within 90 days of the effective date of such Condemnation. If any applicable Developer Party owning a Parcel within the Site Plan Improvement Area so elects to cease operating, Dillard may likewise cease operating. For purposes of determining "impracticability" under this Section 16.02, if so much of the Shopping Center is



Condemned that there is available within the Parking Ratio Covenant Area fewer than the required parking ratio under this Agreement, such unavailability shall be deemed, at such Party's option, to render the operation of the improvements thereon "impracticable." Provided, however, that the immediately preceding sentence shall not be read to necessarily imply that a Condemnation that leaves, within the Parking Ratio Control Area, more than the required parking ratio renders the operation of the improvements thereon "practicable." If any improvements of any Party are partially taken and such Party elects not to Rebuild the same (if such Party is not obligated to do so under this Article XVI) such Party will promptly raze and level such remaining improvements as it chooses and convert the affected land into Parking Area (either landscaped and/or paved). Developer shall, without cost to Dillard, maintain such Parking Area, and any other Common Area on the Dillard Parcel if it elects to cease operating under this Section 16.02, in good order and repair and in a sightly manner for the Term of this Agreement. Developer shall also continue to maintain liability insurance on such Common Area in accordance with Section 11.02 hereof for the Term. Nothing in this Section 16.02 shall be deemed to modify the required parking ratio in the Parking Ratio Covenant Area set forth in Section 14.01 hereof; except that should the number of automobile parking spaces in the Parking Ratio Covenant Area be reduced (by reason of Condemnation) to no fewer than the required number, then Developer will not be required to provide additional automobile parking spaces to bring the parking ratio in the Parking Ratio Covenant Area up to the parking ratio required in Section 14.01 hereof.

Section 16.03. Condemnation Does Not Affect Easements. A Condemnation will not affect the existence of the easements or licenses referred to in Article V hereof, except to the extent that they are taken as part of the Condemnation.

Section 16.04. Waiver of Award. Except for any award attributable to any easements which are perpetual under Article V hereof, each Party waives in favor of the Party whose Parcel or any portion thereof is Condemned any value attributable to any easements or licenses of the former and in the Parcels of the latter as to any award for the Condemnation; and no part of such award or proceeds will be payable to the owner of the dominant tenement by virtue of such easement or licenses.

Section 16.05 Protected Rights. Each Party (the "Acting Party") agrees that neither it nor any of its Affiliates, nor any person or entity acting for or on behalf of it or any of its Affiliates, shall directly or indirectly initiate, instigate, encourage, recommend, direct, or further the taking by eminent domain or condemnation of (a) any right of any other Party (the "Aggrieved Party") under this Agreement or the Dillard Supplemental Agreement to enforce any restrictions or covenants thereunder or to approve or withhold its consent to any expansion or other act by the Acting Party which is prohibited by this Agreement or the Dillard Supplemental Agreement (collectively, the "Protected Rights"), or (b) the whole or any part of any other Party's real property interests in the Shopping Center. In the event that any Protected Rights are taken by eminent domain or condemnation, whether or not any Party was involved therein, each Party, on behalf of itself and its successors and their respective Affiliates, agrees to continue to be bound by and honor all of the provisions of this Agreement and the Dillard Supplemental Agreement without modification that might otherwise be caused by such taking as if such Protected Rights were personal covenants of such Party.

ARTICLE XVII -- SIGNS

All outdoor and Enclosed Mall signs installed or maintained within the Site Plan Improvement Area shall conform to the Sign Criteria annexed hereto and hereby made a part hereof as Exhibit D; provided Developer and UPSPE may in their sole discretion approve variations thereto for any multi-store tenant to the extent such signage complies with applicable law and such tenant's prototype signage. Except as set forth above, no signs shall be erected or maintained in the Shopping Center which do not conform in all



material respects to said criteria. Dillard will occupy the top most or most prominent position on the pylon signs indicated on Exhibit B. The general design, location and height of any such pylon or monument sign are approved. The Parties hereto agree that the Dillard's building signage and pylon panel signage is in compliance with Exhibit D. Except as set forth above, each Party shall ensure all occupant signs on its Parcel comply with Exhibit D and any installed non-conforming sign shall immediately be brought into compliance with Exhibit D. Except as set forth above, any change made to any sign which initially conforms to the sign criteria which causes the same not to comply with the sign criteria is hereby prohibited. Any such unapproved changed sign within the Site Plan Improvement Area shall be considered as a new installation and any deviation from the criteria shall similarly be prohibited. Developer may place certain directional signs within the Parking Areas and other Common Area as shown on Exhibit D, and such other areas reasonably approved by Dillard.

## ARTICLE XVIII – TRANSFERS AND MORTGAGES

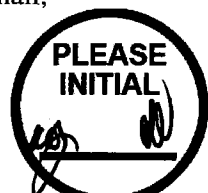
### Section 18.01. Rights to Make a Transfer, Mortgage or Sale and Leaseback.

(a) Permitted Transactions. Each Party shall have the right at any time, and from time to time, to Transfer its Parcel, to place a Mortgage on its Parcel, or to consummate a Sale and Leaseback or Lease and Subleaseback of its Parcel and its entire interest under this Agreement, but subject and subordinate to this Agreement and in accordance with the provisions hereof. A "Permitted Transferee" is any Transferee in a Transfer made in compliance with the applicable provisions of this Article XVIII.

(b) Intentionally Omitted.

(c) Assumption Agreement. Except as provided in Section 18.01(d) hereof, no Transfer (other than a Lease, provided that no such Lease shall be deemed or construed as releasing any Party from its obligations under this Agreement, including, without limitation, the obligations contained in the applicable Party's Operating Covenant set forth in the Dillard Supplemental Agreement) shall be effective unless and until the Transferee shall have executed and delivered to the other Parties (delivery thereof to be a condition of such Transfer and release), a written undertaking ("Assumption Agreement"), in which the Transferee expressly assumes and covenants effective upon the making of such Transfer, to perform and be bound by all the terms, covenants and conditions under this Agreement to be performed by the Transferor as to the transferred Parcel including, without limitation, this Article XVIII being applicable to any future Transfer of such Parcel and, in the case of a Transfer by Developer, the terms, covenants and conditions to be performed by Developer on or with respect to the Dillard Parcel.

(d) Assumption by Institutional Lender. Section 18.01(c) hereof shall not apply to a Sale and Leaseback or Lease and Subleaseback in which the Transferee is an Institutional Lender (or a Non-Institutional Lender who as part of the same transaction is procuring all or a major portion of the funds for such purchase by means of a Mortgage). The Transferee in such Sale and Leaseback or Lease and Subleaseback, and its successors and assigns, shall not be required to assume the terms, covenants and conditions under this Agreement to be performed by the Transferor or to execute an Assumption Agreement and shall therefore not be personally liable to the other Parties for default in performance of any of the terms, covenants or conditions under this Agreement to be performed in respect of the Parcel being transferred; but the Transferor (and, if applicable, Affiliate), as holder of the leasehold or subleasehold interest under the Lease that is a part of such Sale and Leaseback or Lease and Subleaseback shall continue to be bound thereby (if it is otherwise liable therefore on any other basis) for the benefit of the other Parties to this Agreement; provided, however, if the leasehold or subleasehold interest created in such Sale and Leaseback or Lease and Subleaseback is terminated, surrendered or expires, then the Transferee, or its successor or assign at such time as the owner (or lessor in the case of a sublease) of such Parcel, shall,





without further act, become (and shall be deemed to have agreed so to become) liable upon such terms, covenants and conditions, to the extent thereafter there are any terms, covenants and conditions under this Agreement to be performed with respect to such Parcel, but in all instances subject to the provisions of Section 18.01(e)(ii) hereof (and the Dillard Parcel, if the Transfer is of the Developer Parcel and Developer is obligated to perform any terms, covenants and conditions under this Agreement with respect to such Parcel) on that date when such Lease is terminated or is surrendered or expires, but only if, and so long as, such Transferee, or its successor or assign at such time, is owner thereof, but has not entered into another Lease under which a tenant makes, for the benefit of the other Parties to this Agreement, an undertaking with the same effect as if it had been the Transferee in a Transfer under Section 18.01(b) or Section 18.01(g) hereof, as the case may be, and had executed an Assumption Agreement.

(e) Mortgages.

(i) Mortgage Subordinate to this Agreement. In the event of the making of any Mortgage by the then owner of any Parcel, the Mortgagee will take its interest subject and subordinate to this Agreement, provided that nothing in this Agreement contained shall be deemed to make the Mortgagee liable to perform any term, covenant or condition under this Agreement to be performed by the Party that owns the Parcel in question. Notwithstanding the foregoing, with respect to defaults of covenants specifically involving the maintenance or operation of the mortgaged Parcel that are continuing following a foreclosure or deed in lieu thereof under such Mortgage, which defaults are susceptible of cure by the Person acquiring title (the "Purchaser"), subject to Section 18.01(e)(ii), Purchaser shall be responsible for curing such continuing defaults. In no event, however, shall Purchaser be liable for damages for such default accruing before the date it acquired title to the mortgaged Parcel. If and when title to such Parcel becomes vested in any Person other than a Mortgagee as a result of a default under such Mortgage, such Person shall become liable for the performance of any such term, covenant or condition thereafter to be performed and it will remain so liable so long as such title is vested in it. Neither the making of such Mortgage nor its foreclosure will release the maker thereof from any liability it would have had under this Agreement had such Mortgage not been made.

(ii) Mortgagee Obligations. Anything in this Agreement to the contrary notwithstanding, no Mortgagee shall at any time have any obligation or liability to comply with or satisfy any term, covenant or condition that accrues or pertains to the period prior to the period such Mortgagee holds title to the relevant Parcel and that is not specifically described in Section 18.01(e)(i) hereof, including without limitation, any indemnification liability or obligation and (x) no Person in which title to the Dillard Parcel shall so become vested as a result of or following a default under any Mortgage of such Parcel, including any such Mortgagee or its assigns or successors-in-interest, which acquires title to the Dillard Parcel through foreclosure or deed in lieu of foreclosure, and (y) no Person who is, or succeeds to the interest of, the Transferee under a Sale and Leaseback or Lease and Subleaseback of the Dillard Parcel shall be deemed to be obligated to perform the obligations of Dillard pursuant to Dillard's Operating Covenant as set forth in the Dillard Supplemental Agreement unless in such case such Person is an Affiliate of the Dillard.

(iii) Mortgagee Charges. While in no way restricting the right of a Party to place a Mortgage on its Parcel or to enter into a Sale and Leaseback or a Lease and Subleaseback, any Party so doing shall be solely responsible for, and shall hold the other Parties harmless from, any charges, fees, costs or the like (including but not limited to administrative charges, processing fees, out-of-pocket costs or fees of outside counsel) charged by its Mortgagee (including a lessor under a Sale and Leaseback or a Lease and Subleaseback) as consideration for or in connection with the giving of its (i.e., the Mortgagee's) consent and subordination to any modification of, restatement



of or amendment to this Agreement, or of any easement, estoppel certificate or other matter provided for in this Agreement.

(f) Release of Transferor. Upon the consummation of a Transfer and the delivery to the other Parties of an Assumption Agreement by such Transferee (other than a Sale and Leaseback or Lease and Subleaseback), and except for Transferor's obligations under its Operating Covenant, the Transferor shall be released from any and all liability that would thereafter arise from or in connection with any obligation imposed by any term, covenant or condition of this Agreement and to be performed by the Party that owns the Parcel so Transferred (and as to the Dillard Parcel, if the Transfer is of the Developer Parcel and Developer is obligated to perform any obligation imposed by this Agreement with respect to the Dillard Parcel), but the Transferor will remain liable for all such liability for events theretofore occurring prior to the Transfer.

(g) Release from Operating Covenant. A Transfer (other than a Sale and Leaseback or Lease and Subleaseback) of the Dillard Parcel by Dillard during the term of Dillard's Operating Covenant shall release Dillard from its Operating Covenant if the Transfer is part of a transaction or series of related transactions as a result of which the Transferee acquires ownership of all or substantially all of Dillard's then-existing retail department stores operating under a name consisting of, or in which there appears, the word "Dillard's" or under the name under which a majority of Dillard's retail department stores are then being operated in the Western United States and the Transferee expressly agrees to assume all of Dillard's duties, covenants and obligations under this Agreement and the Dillard Supplemental Agreement.

Section 18.02. Successors and Assigns Bound and Benefited. This Agreement will be binding upon and inure to the benefit of each Party and its respective successors and assigns, subject to this Article XVIII.

Section 18.03. Transfer to Exchange Intermediary. Developer shall have the right to transfer the Dillard Parcel to an Exchange Intermediary pursuant to the Purchase and Sale Agreement between Dillard and Developer. In the event Developer transfers the Dillard Parcel to an Exchange Intermediary, Dillard shall have the right to assign this Agreement to the Exchange Intermediary and the Exchange Intermediary shall replace Dillard as a Party to this Agreement without releasing Dillard from its obligations under this Agreement. An Exchange Intermediary shall have the right to transfer the Dillard Parcel to Dillard's, Inc. or to one or more wholly owned direct or indirect subsidiaries of Dillard's, Inc. ("Dillard Entity"). In connection therewith, such an Exchange Intermediary shall assign this Agreement to such Dillard Entity and such Dillard Entity shall assume all obligations of Dillard under this Agreement and replace the Exchange Intermediary as a Party to this Agreement upon notice from such Dillard Entity to the other Parties without the necessity of recording an amendment to this Agreement. Dillard shall memorialize such assignments and record such assignments in a form reasonably acceptable to Developer, which acceptance shall not be unreasonably withheld, conditioned or delayed. Upon such assignment to the Dillard Entity and such assumption by the Dillard Entity, the Exchange Intermediary shall be released from liability hereunder.

## ARTICLE XIX -- NOTICES

Section 19.01. Place and Manner of Notice. Except as may otherwise be expressly set forth in this Agreement, any notice, demand, request, consent, approval, designation or other communication that a Party is required or desires to give, make or communicate to the other Parties will be in writing and will be given, made or communicated in person or by United States registered or certified mail, return receipt requested, with postage fully prepaid, or by an independent, nationally recognized overnight delivery service that provides receipts to indicate delivery, addressed to:



in the case of any Developer Party:

University Mall Shopping Center, L.C.  
c/o Woodbury Corporation  
Attn: Lease Administration  
2733 East Parleys Way, Suite 300  
Salt Lake City, UT 84109

with a duplicate copy to:

University Mall Shopping Center, L.C.  
c/o Woodbury Corporation  
Attn: Legal Department  
2733 East Parleys Way, Suite 300  
Salt Lake City, UT 84109

in the case of Dillard:

U.S. Alpha, Inc.  
c/o Dillard's, Inc.  
1600 Cantrell Road  
Little Rock, Arkansas 72201  
Attention: President

with a duplicate copy to:

U.S. Alpha, Inc.  
c/o Dillard's, Inc.  
1600 Cantrell Road  
Little Rock, Arkansas 72201  
Attention: Vice President - Real Estate

subject to the right of any Party hereto to designate a different address by notice similarly given. Any notice, demand, request, consent, approval, designation or other communication so sent by registered or certified mail will be deemed to have been given, made, received, or communicated, as the case may be, on the date of delivery as shown on the return receipt; and any notice, demand, request, consent, approval, designation or other communication sent or delivered in any other manner will be deemed given, made, received or communicated, as the case may be, as of the time of the actual delivery thereof. In addition, (i) from and after the date that a Party receives notice from another Party containing the name and address of such Party's Mortgagee, each Party will give any and all notices given to such Party to the holder of the Mortgage covering such Party's Parcel, (such obligation to continue whether or not such Mortgagee is in possession of any Parcel of any Party); and (ii) each Party may designate no more than three other Persons to whom a copy of any notice will be sent.

ARTICLE XX – OPTIONS TO ACQUIRE THE DILLARD PARCEL

Section 20.01. Developer's Right to Repurchase. UPSPE shall have the right and option to purchase the Dillard Parcel and Dillard Building (including all of Dillard's rights under this Agreement and the Dillard Supplemental Agreement) on the terms and conditions set forth in the Dillard Supplemental Agreement.



Section 20.02. Developer's Right of First Refusal. UPSPE shall have a first right of refusal to purchase the Dillard Parcel and Dillard Building (including all of Dillard's rights under this Agreement and the Dillard Supplemental Agreement) on the terms and conditions set forth in the Dillard Supplemental Agreement.

## ARTICLE XXI – GENERAL PROVISIONS

Section 21.01. No Waiver. No waiver of any default by any Party hereto shall be implied from any omission by any other Party to take any action in response to such default if such default continues or is repeated. No express waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more waivers of any default in the performance of any term, provision or covenant of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant of this Agreement. The consent or approval by any Party to or of any act or request by any other Party requiring consent or approval shall not be deemed to waive or render unnecessary consent or approval to or of any subsequent similar acts or requests. The rights and remedies of each Party shall be deemed to be cumulative and none of such rights or remedies at law or in equity which any Party might otherwise have from a default under this Agreement and no exercise of any right or remedy by a Party hereto shall impair any such Party's standing to exercise any other right or remedy. Furthermore, any remedies of any Party specifically provided for shall be deemed additional to any and all other remedies to which any of them may be entitled in law or equity, and shall include the right to restrain by injunction any violation or threatened violation by any Party of any of the terms, covenants or conditions of this Agreement and by decree to compel performance of any such terms, it being agreed that the remedy at law for any breach of any such term is not adequate. Nothing in this Section 21.01 shall derogate from the provisions of this Agreement where certain provisions as to exclusivity of remedy are expressly set forth.

Section 21.02. Interest. Any sums payable by a Party to another Party pursuant to this Agreement that are not paid when due will bear interest from the date payment became due at the rate of 2% in excess of the "Prime Rate" compounded daily, but in no event exceeding the maximum rate per annum permitted by the laws of the State of Utah.

Section 21.03. No Relationship of Principal and Agent. Neither anything contained in this Agreement nor any acts of the Parties, including the acts of Developer in compliance with its maintenance obligations set forth herein, will be deemed or construed by any Party or by any third person to create the relationship of principal and agent or of limited or general partnership or of joint venture or of any association between or among the Parties.

Section 21.04. Separability of Void Provisions. If any provision of this Agreement, or the application thereof to a Party, and/or any Person and/or circumstances will be held to be invalid, void or illegal, the remaining provisions and/or the application of such provisions to a Party and/or any circumstances other than as to those which it is held to be invalid, void, or illegal, will nevertheless remain in full force and effect and not be affected thereby, and the Parties agree that they would have entered into this Agreement independently of any provision or provisions of this Agreement held to be invalid, void or illegal.

Section 21.05. Captions. The captions of the Sections, Articles and Table of Contents of this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation and construction. This document is the result of an arms-length transaction among the Parties and is to be construed according to its fair meaning and not strictly against any Party or Parties.



Section 21.06. Governing Law. This Agreement shall be governed by and construed in accordance laws of the State of Utah.

Section 21.07. Amendment. This Agreement may be amended or terminated by, and only by, the written agreement of the Parties hereto or their successors or assigns. Nothing herein will be deemed to prohibit any agreement between the Parties hereto supplementing this Agreement which deals with the rights, duties and obligations of the Parties to each other.

Section 21.08. Right to Enjoin. In the event of any violation or threatened violation by any party or any Occupant of any part of the Shopping Center of any of the terms of this Agreement, the Parties will have the right, in addition to any other rights and remedies at law or in equity, to apply to a court of competent jurisdiction for an injunction against such violation or threatened violation.

Section 21.09. Counterparts. This Agreement may be signed in several counterparts, each of which will be deemed an original and all such counterparts shall constitute one and the same instrument.

Section 21.10. Exhibits. The Exhibits attached hereto and referred to herein are hereby incorporated into and made a part of this Agreement as fully as if set forth in full herein. Any reference to any Exhibit contained within this Agreement will be deemed to mean any Exhibit to this Agreement as from time to time amended by the Parties.

Section 21.11. No Gift or Dedication. Nothing herein contained will be deemed to be a gift or dedication of any portion of the Shopping Center to the general public, or for the general public or for any public purpose whatsoever, it being the intention of the Parties that this Agreement will be strictly limited to and for the purpose expressed.

Section 21.12. Covenants Run with Land. The agreement of the Parties set forth in this Agreement will be construed as covenants and not as conditions. To the fullest extent legally possible, all of the covenants of the Parties will run with the land.

Section 21.13. No Brokers. The Parties represent, warrant and agree each to and with the others that no broker, agent or realtor was involved in the negotiations of, or the sale of property to or by it preceding this Agreement and each Party hereby agrees to Indemnify and hold harmless the other against any claims by any such broker, agent or realtor originating or based upon any contact, actual or alleged, with the indemnifying Party, including, without limitation, reasonable counsel fees and disbursements.

Section 21.14. Name of Shopping Center. The name of the Shopping Center is "University Place" and the Shopping Center shall only be advertised and operated under that name. The name of the Shopping Center shall not be changed without the written consent of Dillard.

Section 21.15. Recordation. Developer will cause a duplicate original of this Agreement to be recorded and the recording fees will be paid by Developer.

Section 21.16. No Third-Party Beneficiaries. Except as herein specifically provided, no rights, privileges or immunities of each Party hereto will inure to the benefit of any tenant, Occupant or other third party, nor will any tenant, Occupant or such other third party be deemed to be a third party beneficiary of any of the provisions contained herein.

Section 21.17. News Releases. Prior to the date the Dillard Building opens for business to the public, each Party preparing a news release (i.e., any written statement to be submitted to any news media,



such as newspapers, TV stations, radio stations, etc.) relating to the Shopping Center in which any other Party is named, will first submit the proposed news release to the other Party for approval.

Section 21.18. Rule Against Perpetuities. Notwithstanding anything to the contrary herein contained, any contingent license, easement or other right granted by this Agreement that has not vested by the "Vesting Date," as hereinafter defined, will terminate as of such Vesting Date. The Vesting Date is defined as the twenty-first anniversary of the death of the last to die of the living heirs of all Persons whose signatures appear on this Agreement, in whatever capacity.

Section 21.19. Exculpation.

(a) Dillard agrees that it will look solely to the estate and property of each Developer Party in the land and buildings comprising its portion of the Developer Parcel for the collection of any judgment (or other judicial process) requiring the payment of money by the defaulting Developer Party in the event of any default by such Developer Party with respect to any of the terms, covenants and conditions of this Agreement to be observed and/or performed by such Developer Party, and no other property or assets of such Developer Party shall be subject to levy, execution or other procedures for the satisfaction of Dillard's remedies. Dillard agrees that it will not satisfy or attempt to satisfy any judgment or other obtained remedy out of the separate assets of any member, partner, shareholder or owner of any other equity interest in the entity comprising any Developer Party, and that simultaneously with the entry by any court of any judgment, decrees or other remedy against the defaulting Developer Party, Dillard will enter in the court proceeding its statement in a form conforming to the procedures of said court, acknowledging and agreeing that said judgment, decree or other remedy is neither a lien upon any of the assets of, collectible from or otherwise enforceable against any member, partner, shareholder or owner of any other equity interest in the entity comprising the Developer Party and/or its assets. Nothing herein contained shall act as a limitation on the right of Dillard to: (i) seek and secure injunctive relief for the violation by a Developer Party of any of the terms of this Agreement; or (ii) make a deduction from any sums due to a Developer Party as provided in this Agreement or the Dillard Supplemental Agreement.

(b) Notwithstanding the foregoing provisions of this Section 21.19, each Developer Party shall be fully liable to Dillard to the same extent that it would be liable absent the foregoing provisions for: (i) fraud or willful misrepresentations by such Developer Party; or (ii) the misapplication by such Developer Party of (x) any proceeds paid to such Developer Party under any insurance policies by reason of damage, loss or destruction to any portion of the Shopping Center, or (y) any proceeds or awards resulting from the Condemnation, prior to any such foreclosure, of all or any part of the Shopping Center, paid to such Developer Party.

(c) Each Developer Party agrees that it will look solely to the estate and property of Dillard in the land and buildings comprising the Dillard Parcel for the collection of any judgment (or other judicial process) requiring the payment of money by Dillard in the event of any default by Dillard with respect to any of the terms, covenants and conditions of this Agreement to be observed and/or performed by Dillard, and no other property or assets of Dillard shall be subject to levy, execution or other procedures for the satisfaction of such Developer Party's remedies. Each Developer Party agrees that it will not satisfy or attempt to satisfy any judgment or other obtained remedy out of the separate assets of any member, partner, shareholder or owner of any other equity interest in the entity comprising Dillard, and that simultaneously with the entry by any court of any judgment, decrees or other remedy against Dillard, such Developer Party will enter in the court proceeding its statement in a form conforming to the procedures of said court, acknowledging and agreeing that said judgment, decree or other remedy is neither a lien upon any of the assets of, collectible from or otherwise enforceable against any member, partner, shareholder or owner of any other equity interest in the entity comprising Dillard and/or its assets. Nothing herein contained shall act as a limitation on the right of any Developer Party to: (i) seek and secure injunctive relief for the



violation by Dillard of any of the terms of this Agreement; or (ii) make a deduction from any sums due Dillard as provided in this Agreement or the Dillard Supplemental Agreement.

(d) Notwithstanding the foregoing provisions of this Section 21.19, Dillard shall be fully liable to Developer Parties to the same extent that it would be liable absent the foregoing provisions for: (i) fraud or willful misrepresentations by Dillard; or (ii) the misapplication by Dillard of (x) any proceeds paid to Dillard under any insurance policies by reason of damage, loss or destruction to any portion of the Shopping Center, or (y) any proceeds or awards resulting from the Condemnation, prior to any such foreclosure, of all or any part of the Shopping Center; or (iii) any breach of any covenant of Dillard to operate the Dillard Building as a department store.

Section 21.20. Indemnification of Related Parties. Whenever a Party has agreed in this Agreement to indemnify, defend and hold harmless another Party, such agreement to Indemnify shall include such other Party, its Affiliates and their respective officers, directors, shareholders, members, managers, partners, agents and employees.

Section 21.21. Hazardous Materials. Each Party agrees that there shall be no Hazardous Materials (defined below) on its Parcel or in its Building(s), except as part of the ordinary course of such Party's business in the construction and operation of a retail department store or a mixed use shopping center complex and in compliance with all applicable laws. Each Party agrees to Indemnify, defend and hold the other Parties harmless with respect to the existence of any Hazardous Material on its Parcel or in its Buildings if and to the extent that the sole source of the Hazardous Materials is the Parcel of the indemnifying Party and a release occurred in the first instance only on that Party's Parcel during such Party's ownership or occupancy thereof. As used herein, "Hazardous Materials" means hazardous polychlorinated biphenyl's, petroleum products, asbestos, and other toxic materials, hazardous substances or wastes within the meaning of any applicable statute, law, ordinance, regulation, rule, order or determination of any governmental or quasi-governmental authority, including the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Comprehensive Environmental, Response, Compensation and Liability Act (42 U.S.C. §§ 9601 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 181 et seq.), the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.) and the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.).

Section 21.22. Use of the word "Include" or "Including". Throughout this Agreement, whenever the word "include" or "including" is used, it shall be deemed to mean "include, without limitation" or "including, without limitation," unless specifically stated otherwise.

Section 21.23. Use of Singular and Plural. Whenever the context requires or permits, the singular shall include the plural, and the plural shall include the singular.

Section 21.24. Attorneys' Fees. In the event that a Party shall institute any action or proceeding against another Party relating to the provisions of this Agreement, or any default hereunder, then, and in that event, the unsuccessful litigant in such action or proceeding shall reimburse the successful litigant therein for the reasonable expenses of attorneys' fees and disbursements (but not exceeding the actual amount of such fees and disbursements) incurred therein by the successful litigant as an element of the cost of suit, and not as damages.

Section 21.25. Consent. In any instance in which a Party to this Agreement shall be requested to consent to or approve of any matter with respect to which such Party's consent or approval is required by any of the provisions of this Agreement, such consent or approval shall be given in writing, and shall not



be unreasonably withheld, delayed, conditioned or denied, unless the provisions of this Agreement with respect to a particular consent or approval shall expressly provide otherwise.

Section 21.26. Exercise of Approval Rights.

(a) Wherever in this Agreement approval of a Party is required, and unless a different time limit is provided by this Agreement, such approval or disapproval shall be given within 30 days following the receipt of the item to be so approved or disapproved, or the same shall be conclusively deemed to have been approved by such Party if paragraph (c) below is complied with. Any disapproval shall specify with particularity the reasons therefore; provided, however, that wherever in this Agreement a Party is given the right to approve or disapprove in its sole and absolute discretion (a) it may disapprove without specifying a reason therefor and (b) if approval is not given within 30 days the same shall conclusively deemed not to have been approved by such Party.

(b) Wherever in this Agreement a lesser period of time is provided for than the 30-day period hereinabove specified, such time limit shall not be applicable unless the notice to the Party whose approval or disapproval is required contains a correct statement of the period of time within which such Party shall act. Failure to specify such time shall not invalidate the notice but simply shall require the action of such Party within 30 days in lieu of such lesser time.

(c) Any document submitted for the consent or approval of a Party shall contain a cover page prominently reciting the applicable Section in this Agreement which is involved, listing the date mailed, and if applicable, containing a statement to the effect that the document or the facts contained within such document shall be deemed approved or consented to by the recipient unless the recipient makes an objection thereto within the correct time specified in such notice, which shall be 30 days unless this Agreement shall specify a different period. If the time specified in the notice is incorrectly or not set forth, the time limit shall be 30 days unless a longer period is specified in this Agreement, in which case the longer period of time shall control. Failure to specify such time shall not invalidate the notice but simply shall require the action of such Party within 30 days or such longer period, as the case may be.

Section 21.27. Ordinances. Each Party shall, at all times, both during and after the completion of construction of its Improvements, comply with all Federal, State, County and Municipal laws, ordinances, rules and regulations.

Section 21.28. Estoppel.

(a) Upon written request by a Party, any other Party will promptly (within thirty (30) days after receipt of such request) issue to any proposed Mortgagee, or proposed purchaser of all of the requesting Party's interest in its Parcel, an estoppel certificate stating: (i) whether to its actual knowledge, the Party to whom the request has been directed has knowledge of any default by the requesting Party under this Agreement which has not been cured, and specifying the nature of any defaults; (ii) whether to its actual knowledge this Agreement has been assigned, modified or amended (and if it has, then stating the nature thereof); and (iii) whether this Agreement as of that date is in full force and effect. Such statement shall act solely as a waiver of any claim by the Party furnishing it to the extent the claim is based upon contrary facts asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. However, such statement shall in no event constitute a waiver of any claim by the Party furnishing such statement against the Party requesting such statement and shall in no event subject the Party furnishing it to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such Party to disclose correct and/or relevant information. The requested Party may condition its estoppel certificate on receipt of a reciprocal estoppel from the requesting Party.





(b) No Party shall be required to execute and deliver an estoppel certificate more than two (2) times in any twelve (12) month period.



IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered as of the date and year first above written.

**UNIVERSITY MALL SHOPPING CENTER, L.C.**  
a Utah limited liability company

By: **WOODBURY MANAGEMENT COMPANY, L.C.**  
a Utah limited liability company, its Manager

By: **WOODBURY CORPORATION**  
a Utah corporation, its Manager

By: *O. Randall Woodbury*  
O. Randall Woodbury, President

By: *W. Richards Woodbury*  
W. Richards Woodbury, Chairman

**ACKNOWLEDGMENTS**

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the 18<sup>th</sup> day of Aug. 2020, before me personally appeared O. Randall Woodbury, to me personally known to be the President of Woodbury Corporation, a Utah corporation, the Manager of Woodbury Management Company, L.C., a Utah limited liability company, the Manager of University Mall Shopping Center, L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of such company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.



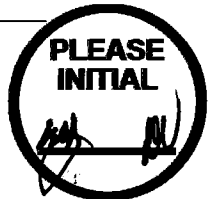
*Tiffany M. Steele*  
Notary Public

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the 18<sup>th</sup> day of Aug. 2020, before me personally appeared W. Richards Woodbury to me personally known to be the Chairman of Woodbury Corporation, a Utah corporation, the Manager of Woodbury Management Company, L.C., a Utah limited liability company, the Manager of University Mall Shopping Center, L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of such company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.



*Tiffany M. Steele*  
Notary Public



UPSTAR L.L.C., a Utah limited liability company

By: **WOODBURY MANAGEMENT COMPANY, L.C.**  
a Utah limited liability company, its Manager

By: **WOODBURY CORPORATION**  
a Utah corporation, its Manager

By: *O. Randall Woodbury*  
O. Randall Woodbury, President

By: *W. Richards Woodbury*  
W. Richards Woodbury, Chairman

**ACKNOWLEDGMENTS**

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the 18<sup>th</sup> day of Aug. 2020, before me personally appeared D. Randall Woodbury, to me personally known to be the President of Woodbury Corporation, a Utah corporation, the Manager of Woodbury Management Company, L.C., a Utah limited liability company, the Manager of Upstar L.L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of such company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.



*Tiffany Steele*  
Notary Public

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the 18<sup>th</sup> day of Aug. 2020, before me personally appeared W. Richards Woodbury, to me personally known to be the Chairman of Woodbury Corporation, a Utah corporation, the Manager of Woodbury Management Company, L.C., a Utah limited liability company, the Manager of Upstar L.L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of such company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.



*Tiffany Steele*  
Notary Public



**UNIVERSITY PLACE SPE L.L.C.**  
**a Utah limited liability company**

**By: WOODBURY MANAGEMENT COMPANY, L.C.**  
**a Utah limited liability company, its Manager**

**By: WOODBURY CORPORATION**  
**a Utah corporation, its Manager**

By: *O. Randall Woodbury*  
O. Randall Woodbury, President

By: *W. Richards Woodbury*  
W. Richards Woodbury, Chairman

**ACKNOWLEDGMENTS**

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the 18<sup>th</sup> day of Aug. 2020, before me personally appeared O. RANDALL WOODBURY, to me personally known to be the President of WOODBURY CORPORATION, a Utah corporation, as Manager of WOODBURY MANAGEMENT COMPANY, L.C., a Utah limited liability company, known to be the Manager of UNIVERSITY PLACE SPE L.L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of such company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.



*Tiffany M. Steele*  
Notary Public

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the 18<sup>th</sup> day of Aug. 2020, before me personally appeared *W. Richards Woodbury*, to me personally known to be the *Chairman* of WOODBURY CORPORATION, a Utah corporation, as Manager of WOODBURY MANAGEMENT COMPANY, L.C., a Utah limited liability company, known to be the Manager of UNIVERSITY PLACE SPE L.L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of such company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.



*Tiffany M. Steele*  
Notary Public



**WOODTUSK III L.L.C., a Utah limited liability company**

**By: WOODBURY MANAGEMENT COMPANY, L.C.  
a Utah limited liability company, its Manager**

**By: WOODBURY CORPORATION  
a Utah corporation, its Manager**

By: *O. Randall Woodbury*  
O. Randall Woodbury, President

By: *W. Richards Woodbury*  
W. Richards Woodbury, Chairman

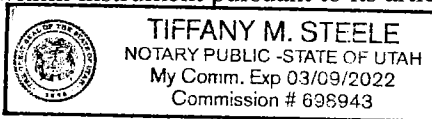
**By: ICO MULTIFAMILY HOLDINGS, LLC,  
a Utah limited liability company, its Manager**

By: \_\_\_\_\_  
James G. Seaberg, Manager

**ACKNOWLEDGMENT**

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the 18<sup>th</sup> day of Aug. 2020, before me personally appeared D. Randall Woodbury to me personally known to be the President of Woodbury Corporation, a Utah corporation, the Manager of Woodbury Management Company, L.C., a Utah limited liability company, a Manager of Woodtusk III L.L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of such company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.



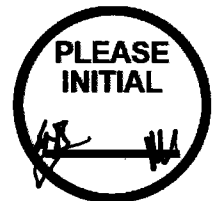
*Tiffany M. Steele*  
Notary Public

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the 18<sup>th</sup> day of Aug. 2020, before me personally appeared W. Richards Woodbury to me personally known to be the Chairman of Woodbury Corporation, a Utah corporation, the Manager of Woodbury Management Company, L.C., a Utah limited liability company, a Manager of Woodtusk III L.L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of such company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.



*Tiffany M. Steele*  
Notary Public



**WOODTUSK III L.L.C., a Utah limited liability company**

**By: WOODBURY MANAGEMENT COMPANY, L.C.  
a Utah limited liability company, its Manager**

**By: WOODBURY CORPORATION  
a Utah corporation, its Manager**

By: \_\_\_\_\_  
O. Randall Woodbury, President

By: \_\_\_\_\_  
\_\_\_\_\_

**By: ICO MULTIFAMILY HOLDINGS, LLC,  
a Utah limited liability company, its Manager**

By: *James G. Seaberg*  
James G. Seaberg, Manager

**ACKNOWLEDGMENT**

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the \_\_\_\_\_ day of \_\_\_\_\_ 2020, before me personally appeared \_\_\_\_\_, to me personally known to be the \_\_\_\_\_ of Woodbury Corporation, a Utah corporation, the Manager of Woodbury Management Company, L.C., a Utah limited liability company, a Manager of Woodtusk III L.L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of such company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.

\_\_\_\_\_  
Notary Public

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the \_\_\_\_\_ day of \_\_\_\_\_ 2020, before me personally appeared \_\_\_\_\_, to me personally known to be the \_\_\_\_\_ of Woodbury Corporation, a Utah corporation, the Manager of Woodbury Management Company, L.C., a Utah limited liability company, a Manager of Woodtusk III L.L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of such company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.

\_\_\_\_\_  
Notary Public



STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

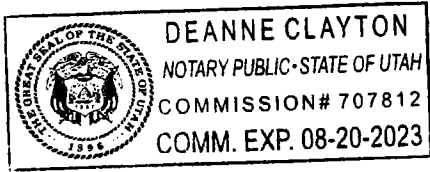
On the \_\_\_\_\_ day of \_\_\_\_\_ 2020, before me personally appeared James G. Seaberg, to me personally known to be the Manager of ICO Multifamily Holdings, LLC, a Manager of Woodbury Management Company, L.C., a Utah limited liability company, the Manager of Woodtusk III L.L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of such company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization

\_\_\_\_\_  
Notary Public



STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the 19th day of August 2020, before me personally appeared James G. Seaberg, to me personally known to be the Manager of ICO Multifamily Holdings, LLC, a Manager of Woodbury Management Company, L.C., a Utah limited liability company, the Manager of Woodtusk III L.L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of such company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization



*Deanne Clayton*  
\_\_\_\_\_  
Notary Public





**UNIVERSITY PLACE PARKING PHASE 1 L.L.C.  
a Utah limited liability company**

**By: WOODBURY MANAGEMENT COMPANY, L.C.  
a Utah limited liability company, its Manager**

**By: WOODBURY CORPORATION  
a Utah corporation, its Manager**


By: *O. Randall Woodbury*  
O. Randall Woodbury, President

By: *W. Richards Woodbury*  
W. Richards Woodbury, Chairman

**ACKNOWLEDGMENTS**

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the 18<sup>th</sup> day of Aug. 2020, before me personally appeared O. Randall Woodbury, to me personally known to be the President of Woodbury Corporation, a Utah corporation, the Manager of Woodbury Management Company, L.C., a Utah limited liability company, the Manager of University Place Parking Phase 1 L.L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of such company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.

 **TIFFANY M. STEELE**  
NOTARY PUBLIC -STATE OF UTAH  
My Comm. Exp 03/09/2022  
Commission # 698943

*Tiffany Steele*  
Notary Public

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the 18<sup>th</sup> day of Aug. 2020, before me personally appeared W. Richards Woodbury, to me personally known to be the Chairman of Woodbury Corporation, a Utah corporation, the Manager of Woodbury Management Company, L.C., a Utah limited liability company, the Manager of University Place Parking Phase 1 L.L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of such company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.

 **TIFFANY M. STEELE**  
NOTARY PUBLIC -STATE OF UTAH  
My Comm. Exp 03/09/2022  
Commission # 698943

*Tiffany Steele*  
Notary Public

**PLEASE INITIAL**  
*WS* *OR*

**UP TOWER L.L.C.**  
**a Utah limited liability company**

**By: WOODBURY MANAGEMENT COMPANY, L.C.**  
**a Utah limited liability company, its Manager**

**By: WOODBURY CORPORATION**  
**a Utah corporation, its Manager**

By: *O. Randall Woodbury*  
O. Randall Woodbury, President

By: *W. Richards Woodbury*  
W. Richards Woodbury, Chairman

**ACKNOWLEDGMENTS**

STATE OF UTAH )  
: ss.  
COUNTY OF SALT LAKE )

On the 18<sup>th</sup> day of Aug. 2020, before me personally appeared O. Randall Woodbury, to me personally known to be the President of Woodbury Corporation, a Utah corporation, the Manager of Woodbury Management Company, L.C., a Utah limited liability company, the Manager of UP Tower L.L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of such company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.



*Tiffany M. Steele*  
Notary Public

STATE OF UTAH )  
: ss.  
COUNTY OF SALT LAKE )

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*Tiffany M. Steele*  
Notary Public



**LOLOMA L.L.C.**  
**a Utah limited liability company**

**By: WOODBURY MANAGEMENT COMPANY, L.C.**  
**a Utah limited liability company, its Manager**

**By: WOODBURY CORPORATION**  
**a Utah corporation, its Manager**

By: *O. Randall Woodbury*  
O. Randall Woodbury, President

By: *W. Richards Woodbury*  
W. Richards Woodbury, Chairman

**ACKNOWLEDGMENTS**

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the 18<sup>th</sup> day of Aug. 2020, before me personally appeared D. Randall Woodbury, to me personally known to be the President of Woodbury Corporation, a Utah corporation, the Manager of Woodbury Management Company, L.C., a Utah limited liability company, the Manager of Loloma L.L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of such company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.



*Tiffany Steele*  
Notary Public

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the 18<sup>th</sup> day of Aug. 2020, before me personally appeared W. Richards Woodbury, to me personally known to be the Chairman of Woodbury Corporation, a Utah corporation, the Manager of Woodbury Management Company, L.C., a Utah limited liability company, the Manager of Loloma L.L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of such company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.




*Tiffany Steele*  
Notary Public



**DILLARD:**

**U.S. ALPHA, INC.  
a Nevada corporation**

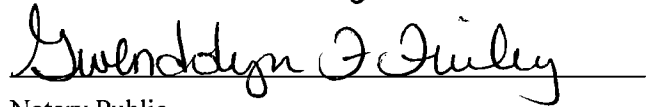
**By: Dillard's, Inc.  
a Delaware corporation,  
its ultimate parent corporation**

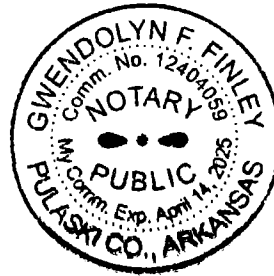
By:   
Chris B. Johnson, Senior Vice President

STATE OF ARKANSAS            )  
  )    SS:  
COUNTY OF PULASKI        )

BEFORE ME, the undersigned authority, personally appeared Chris B Johnson, to me known and known to me to be the individual described in and who executed the foregoing instrument as SVP of the ultimate parent corp of U.S ALPHA, INC., a Nevada corporation, and acknowledged to and before me that he executed such instrument as such SVP of the ultimate parent corp of such corporation, and that said instrument is the free act and deed of such company.

WITNESS my hand and official seal this 18<sup>th</sup> day of August, 2020.

  
Notary Public



**DILLARD:**

**U.S. ALPHA, INC.  
a Nevada corporation**

**By: Dillard's, Inc.  
a Delaware corporation,  
its ultimate parent corporation**

By: \_\_\_\_\_  
Chris B. Johnson, Senior Vice President

STATE OF ARKANSAS            )  
  )   SS:  
COUNTY OF PULASKI        )

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_,  
to me known and known to me to be the individual described in and who executed the foregoing instrument  
as \_\_\_\_\_ of U.S ALPHA, INC., a Nevada corporation, and acknowledged to  
and before me that he executed such instrument as such \_\_\_\_\_ of such corporation,  
and that said instrument is the free act and deed of such company.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public



**Exhibit A**

Legal Descriptions of Developer Parcel and Dillard Parcel

Developer Parcel

University Mall Shopping Center, L.C.:

Lots 14, 26, 30, 31, 32, 33, and 34, University Place Subdivision Plat 'B', recorded as Entry No. 131493:2019 and Map Filing No. 16877 on December 12, 2019, according to the official records of the Utah County Recorder.

Upstar L.L.C.:

Lots 3B and 5A, University Place Subdivision Plat 'B', recorded as Entry No. 131493:2019 and Map Filing No. 16877 on December 12, 2019, according to the official records of the Utah County Recorder.

University Place SPE L.L.C.:

Lots 1, 2, 3, 3D, 3E, 4, 5B, 6A, 7, 8C, 8D, 9, 10, 12, 20, 21, 22, 24, and 25, University Place Subdivision Plat 'B', recorded as Entry No. 131493:2019 and Map Filing No. 16877 on December 12, 2019, according to the official records of the Utah County Recorder.

Woodtusk III L.L.C.:

Lot 6C, University Place Subdivision Plat 'B', recorded as Entry No. 131493:2019 and Map Filing No. 16877 on December 12, 2019, according to the official records of the Utah County Recorder.

University Parking Phase 1 L.L.C.:

Lot 6B, University Place Subdivision Plat 'B', recorded as Entry No. 131493:2019 and Map Filing No. 16877 on December 12, 2019, according to the official records of the Utah County Recorder.

UP Tower L.L.C.:

Lot 3G, University Place Subdivision Plat 'B', recorded as Entry No. 131493:2019 and Map Filing No. 16877 on December 12, 2019, according to the official records of the Utah County Recorder.

Loloma L.L.C.:

Lot 23, University Place Subdivision Plat 'B', recorded as Entry No. 131493:2019 and Map Filing No. 16877 on December 12, 2019, according to the official records of the Utah County Recorder.

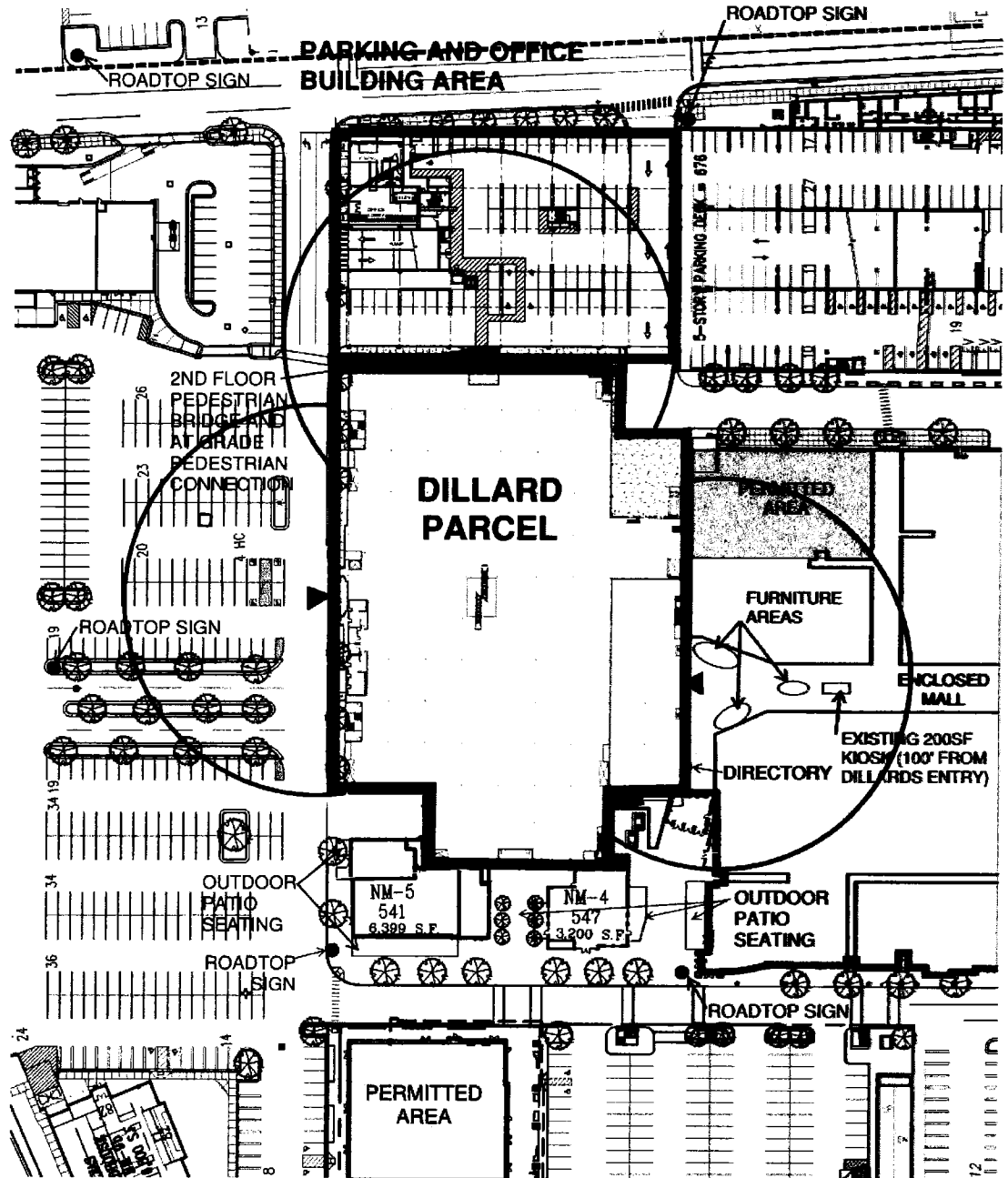
Dillard Parcel

Lot 3F, University Place Subdivision Plat 'B', recorded as Entry No. 131493:2019 and Map Filing No. 16877 on December 12, 2019, according to the official records of the Utah County Recorder.



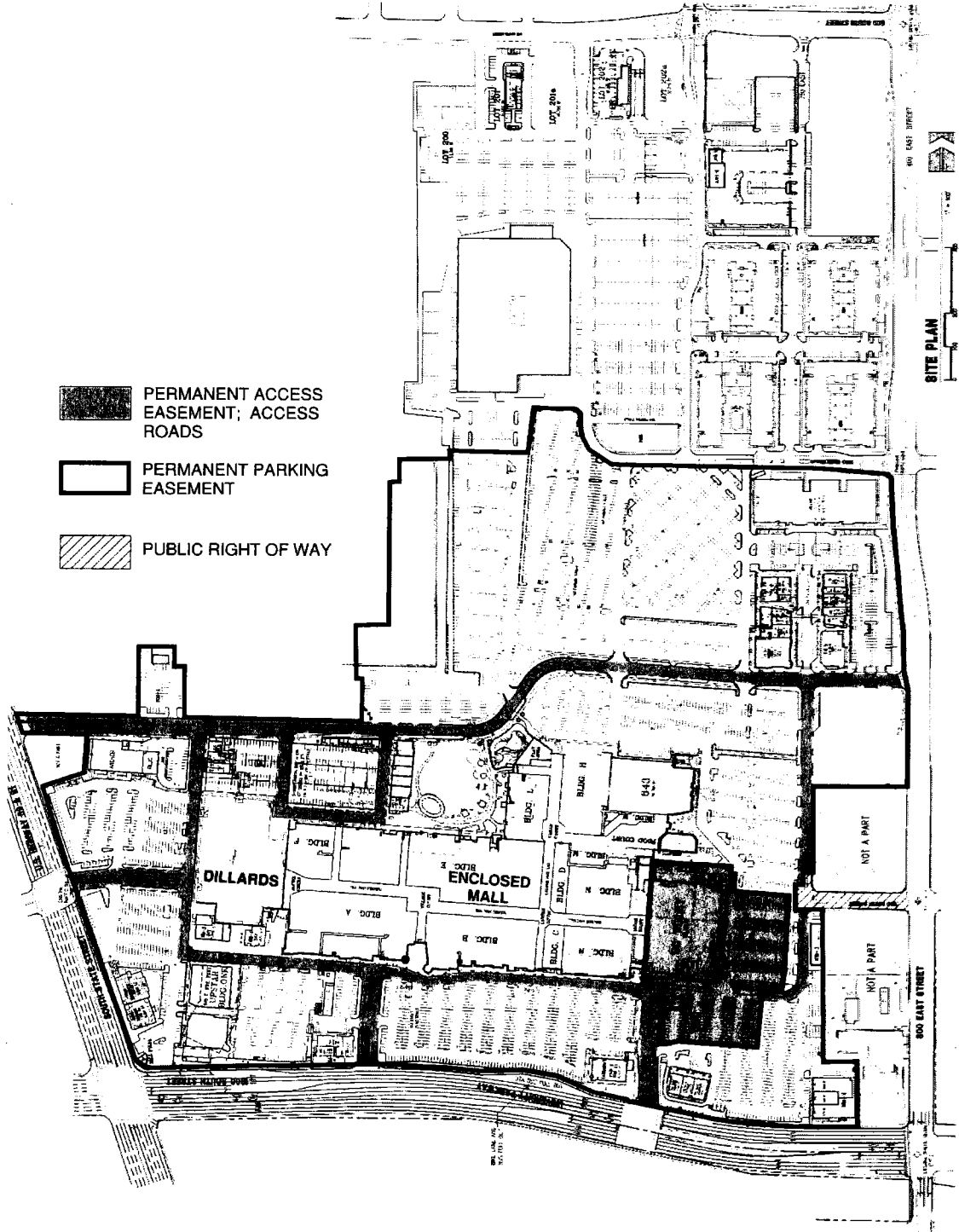


**EXHIBIT B-2**  
**Site Plan**





**EXHIBIT B-3**  
**Site Plan**



**EXHIBIT C**

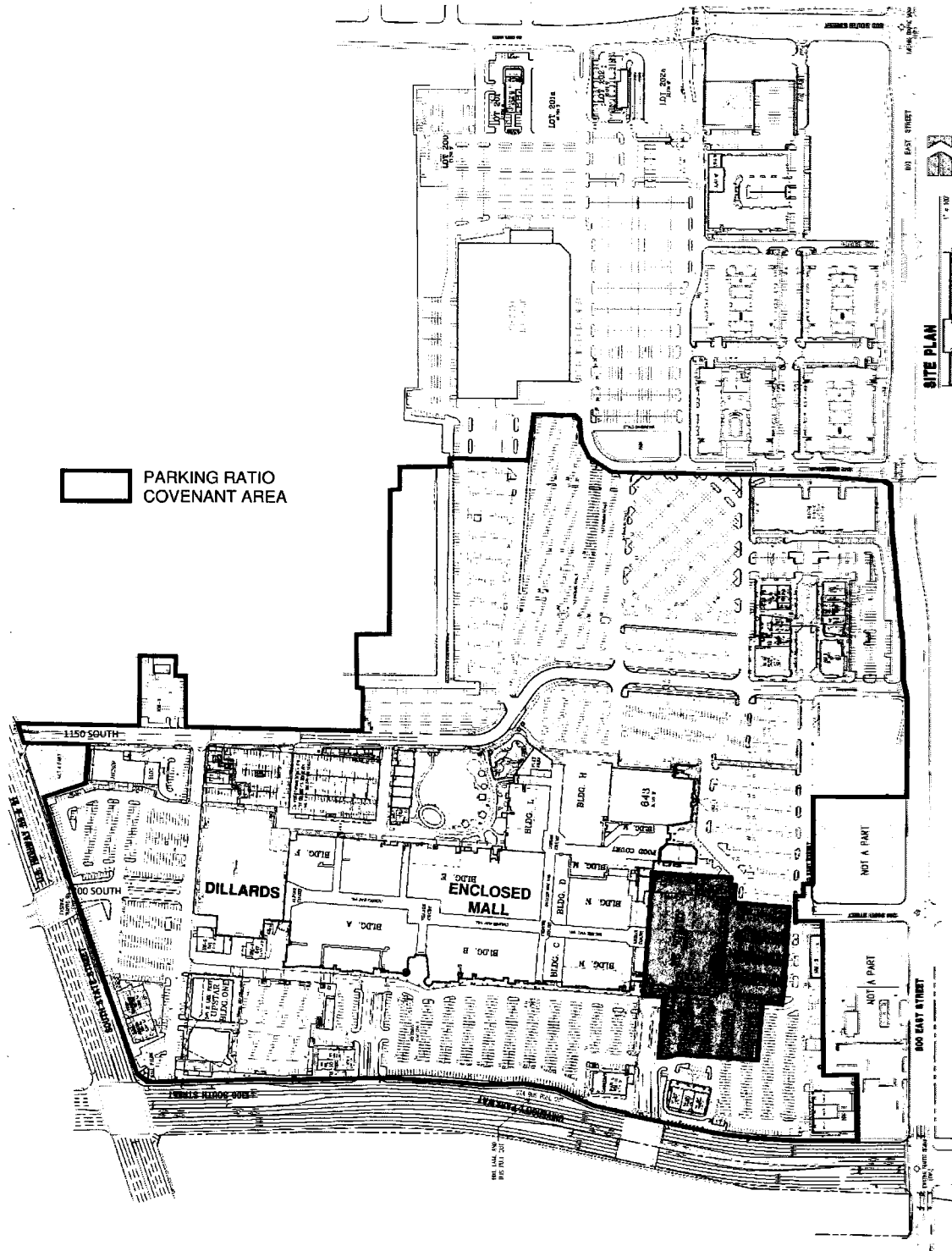
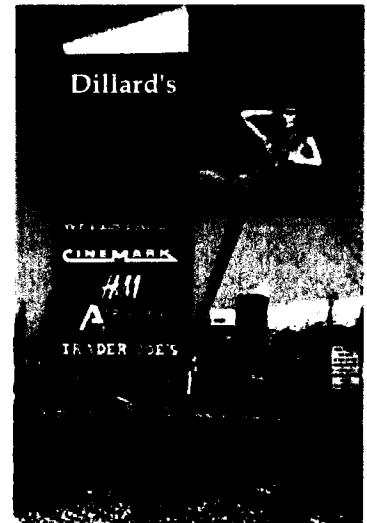
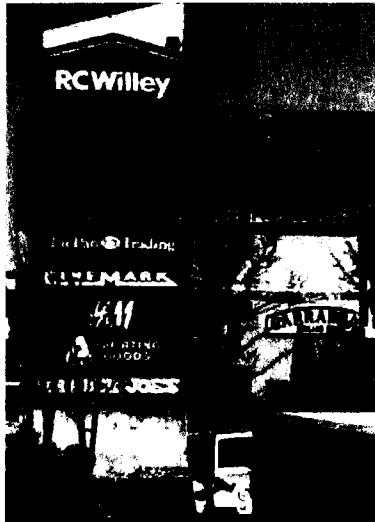
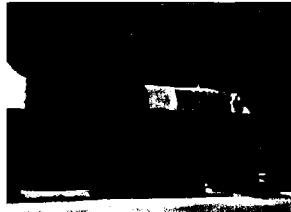


EXHIBIT D

**UP** **SIGN CRITERIA**  
**UNIVERSITY PLACE, OREM, UTAH**



The goals of these criteria are to maintain University Place as the leading regional mixed-use center, by providing an exciting, dynamic, and comfortable customer experience, and to unite the tenants of University Place into a uniquely diverse mixed-use community that exhibits a consistently high level of quality.

## TABLE OF CONTENTS

1. GENERAL SIGN CRITERIA
2. MAIN MALL BUILDING INTERIOR TENANT SIGN CRITERIA
3. MAIN MALL BUILDING EXTERIOR TENANT SIGN CRITERIA
4. EXTERIOR NM PAD BUILDINGS SIGN CRITERIA
5. THE VILLAGE SIGN CRITERIA
6. OFFICE BUILDING SIGNAGE
7. RESIDENTIAL SIGNAGE
8. PERFORMANCE THEATER SIGNAGE
9. WAYFINDING SIGNAGE
10. SIGNAGE MAP SHOWING SIGNS REGULATED BY PD 34 ZONE SIGN CRITERIA
11. PD 34 ZONE ORDINANCE - SIGNAGE
  - a. LARGE ENTRY SIGNS - WITH LED SCREENS  
LARGE ENTRY SIGNS - WITHOUT LED SCREENS  
LARGE ENTRY SIGNS - TENANT PANELS
  - b. MEDIUM ENTRY SIGNS
  - c. SMALL ENTRY SIGNS
  - d. STATE STREET AND UNIVERSITY AVENUE CORNER SIGN
  - e. SYNCHRONIZED COMBINATION SIGNS
  - f. SCREEN SIGNS
  - g. KIOSK SIGNS
  - h. WALL SIGNS



**1. UNIVERSITY PLACE GENERAL SIGN CRITERIA**

**A. General**

1. Approval of "store design drawings" or working drawings and specifications for the Leased Premises does not constitute approval of any sign work. Tenant shall submit to Landlord's architect for approval, drawings showing all proposed sign work to be erected in connection with the Leased Premises. Such signs shall conform to the sign criteria as outlined herein and drawings submitted for approval shall clearly show graphic as well as construction and attachment details of all signs.
2. Erection of any signs shall be prohibited unless approved in writing by Landlord's architect and necessary public regulatory officials.
3. The cost of such signs and the installation thereof shall be part of Tenant's Work. Any installed non-conforming or unapproved signs must be brought into conformance at the expense of Tenant.
4. It is intended that the signing of the stores and other buildings in University Place shall be developed in an imaginative and varied manner. The criteria herein below set forth shall govern.
  - a. Although previous and current signing practices of Tenant shall be considered, they shall not govern signs to be installed in University Place.
  - b. Landlord's written approval of Tenant's sign drawings and specifications is required. Tenant shall submit its sign drawings and specifications in electronic format for Landlord's approval prior to fabrication of sign. Such drawings shall show location of sign on storefront or designated space, include section cuts through letters and any background fascias, panels or cabinets, and describe color, materials, attachment devices and construction details.
5. All signs shall have concealed attachment devices, clips, wiring, transformers, lamps, tubes and ballasts.
6. Illumination levels must be sufficiently high to provide clear contrast between the letter face and the background fascia. LED light layout and lamps must be provided by General Electric or Sloan and provide a sufficient level of illumination based on the letter style, face color, and font. Transformers and neon elements for exterior signs must be minimum 60 milli-amps. Transformers and neon elements for interior signs must be minimum 30 milli-amps. Tenant shall replace illumination elements when reasonably requested by Landlord where Tenant's signs do not have a comparable brightness to other signage within the shopping center.
7. Illuminated signage in exterior display windows behind glass shall not be permitted unless they comply with all of the requirements herein.



**D. Prohibited Signs and Sign Components - Applicable to Interior and Exterior Signs:**

1. Signs employing moving, or flashing lights, other than Landlord Approved LED Screens
2. Signs employing exposed raceways, ballast boxes or transformers.
3. Sign manufacturer's names, stamps or decals.
4. Signs employing painted non-illuminated letters, unless incorporated into a Landlord approved mural.
5. Signs employing luminous-vacuum formed type plastic letters.
6. Signs of box or cabinet type employing luminous flat plastic panels and painted lettering.
7. Signs employing unedged or uncapped plastic letters or letter with no returns and letters with exposed fastenings.
8. Paper or cardboard signs, stickers or decals hung around, on or behind storefront glass (doors and/or windows) or openings.
9. Signs employing noise making devices and components.

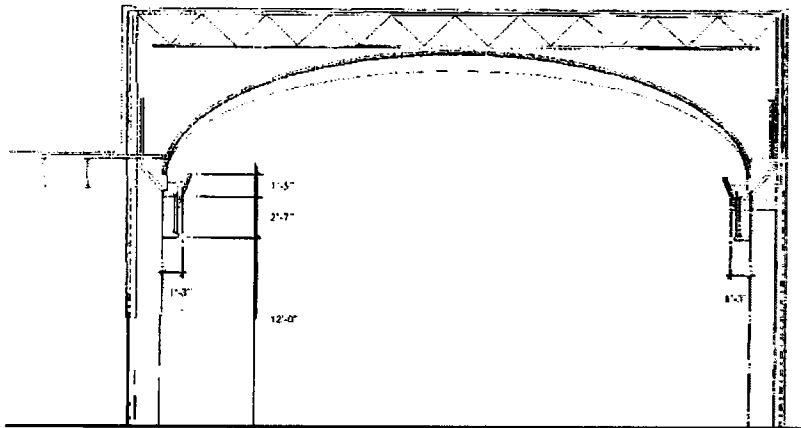
**E. New Technology**

1. Sign technology and market practices continue to evolve and emerge. Landlord reserves the right to reasonably modify this criteria to adopt new technologies and market practices.
2. University Place reserves the right to install new technology, including but not limited to LED screens, computer screens, interactive screens and technology, in various locations around University Place.

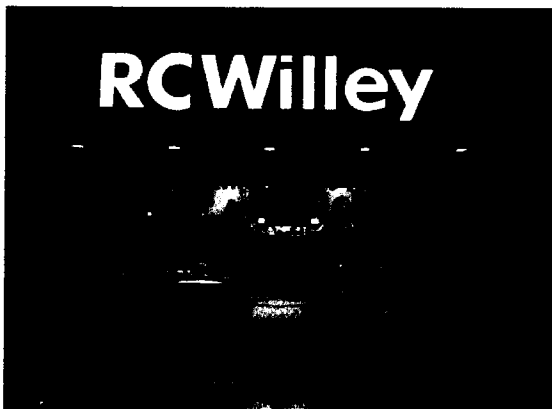
**F. Landlord Advertising Programs**

1. Promotional and/or advertising signs shall be permitted within the Enclosed Mall and shall be operated and maintained by Landlord and/or its designees consistent with the goals of these criteria as stated on page 2. Such promotional and/or advertising signage shall include but not be limited to posters, banners, affixed sign structures with back lit posters, affixed LED or other digital screens. Landlord shall use its reasonable discretion to create such signage in formats and in locations that enhance the experience of University Place patrons and provide an exciting, dynamic, and comfortable customer experience.





**TYPICAL MALL CROSS SECTION**



5



**2. MAIN MALL BUILDING INTERIOR TENANT SIGN CRITERIA**

**A. GENERAL**

1. Signs are an important finishing touch for storefronts, and must receive the same quality of design and construction as the rest of the Tenant work. Form, scale, and proportion are to balance with the storefront design. Tenants are encouraged to utilize dramatic illumination, individual dimensional letters, neon, and specialty finishes. Creative adaptations of Tenant's current sign practices to these specific criteria may be necessary.
2. All signs shall be fabricated and installed at the Tenant's expense.
3. One sign is permitted for each storefront elevation. A second sign will be considered by the Landlord on a case by case basis for Tenants located on a 90 degree corner.
4. Storefront signs are to state the store name and/or logo as stated on the lease, and may not advertise or list items sold. Sign shop drawings for all signs, logos and graphics visible from the Common Area are to be submitted for Landlord design review.
5. Signs must be compatible with nearby tenant storefronts. Overlay demanding signs are not permitted.
6. Electrical raceways are not to be visible.
7. High quality fabrications are required. Hums, flickers and light leaks are not permitted. Attachment devices, bolts, clips, threaded rods, fasteners, tubes, raceways, conduit and other mechanisms are to be concealed. All labels must be away from public view.
8. Signs are to be on during mall business hours. Signs to be controlled by a time clock and on a separate circuit from other Tenant lighting.
9. Signs must comply with all codes and regulations, must bear the U.L. label, and must have current sign permits.
10. For some Tenants, secondary storefront signs may consist of lettering and/or logos applied directly onto storefront glazing. Only etched, sandblasted, gold leaf, or paint stenciled applications are permitted. Dye-cut vinyl or decal letters are allowed with a maximum height of 4". Glazing signs are to be reverse reading, and applied directly to the interior of the glass surface.
11. Sign height above floor is 8'-0" A.F.F to bottom of sign. Proportional letters are required. 24" maximum leading capital, 18" maximum following lower case letters. If all capital letters, then 18" maximum.
12. Sign length is limited to 60% of the store frontage.





**B. Criteria - Signs on the Interior of the Enclosed Mall at Storefronts.**

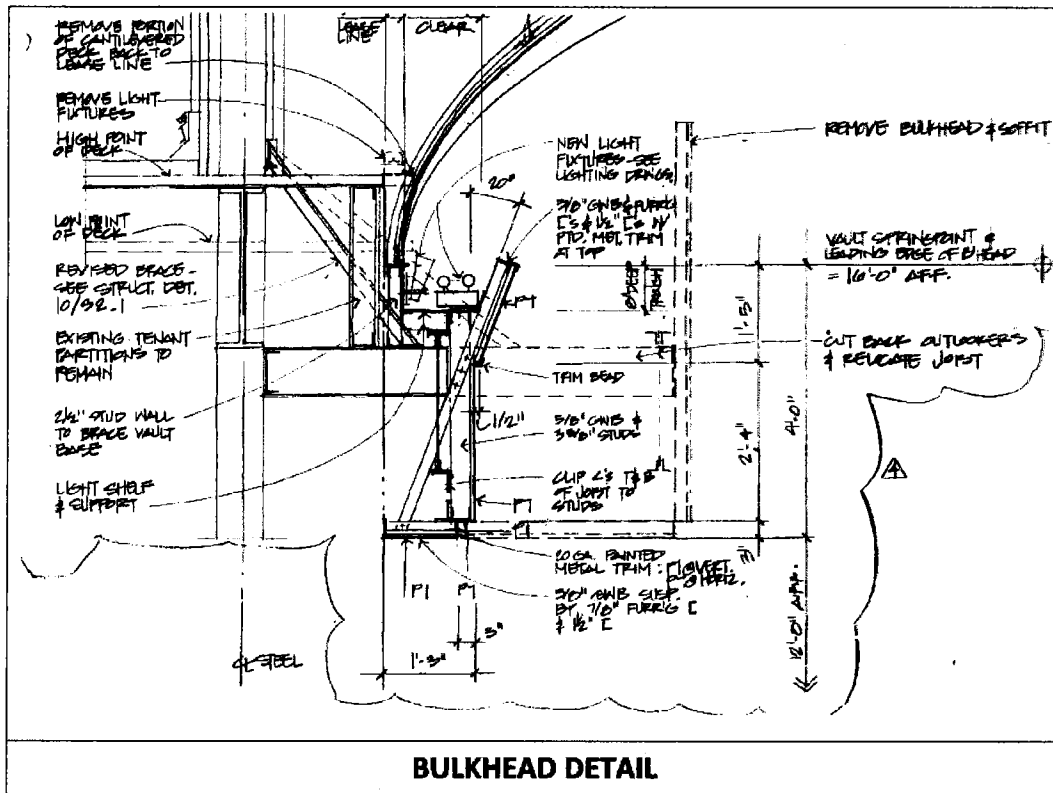
1. Tenant shall be required to identify the Leased Premises by signs. All signs and identifying marks shall be within the limitations of the Leased Premises between the floor line and ceiling line. All such signs shall be subject to the requirements and limitations as outlined hereinafter and any specific notations or clarification made by Landlord's architects on approved submittals.
2. All sign letters shall be illuminated and shall be either pan-channel or channelume type construction, or decorative cabinet type construction with opaque face and routed or punch-through letters.
3. The wording of sign shall be Tenant's trade name
4. The use of corporate crests, shields, or insignia shall be permitted provided such corporate crests, shields or insignia shall not exceed the average maximum permitted height for sign letters.
5. Multiple or repetitive signing shall be allowed provided the area of such signing conforms to the limitations set forth herein.
6. Location and Placement.
  - a. Signs shall not project beyond the line of the permitted storefront construction bordering Common Area more than two inches (2") if less than eight feet (8') above finish floor line or more than six inches (6") if above eight feet (8').
  - b. The extreme outer limits of sign letters, components or insignia shall fall within a rectangle with each of the two (2) short sides thereof not falling closer than twenty-four inches (24") to the side lease lines of the Leased Premises.
  - c. Signs should generally be centered over the primary storefront entry or entrance portal. The bottom edge of any sign cabinet or background fascia shall be no lower than eight feet (8') above the floor.
7. Size:
  - a. The average height of sign letters or components on stores containing less than 12,500 sq. ft. on one (1) level shall not exceed sixteen inches (16"). The average height of sign letters or components on stores containing more than 12,500 sq. ft. shall not exceed 24".
  - b. Lettering may be placed on multiple rows and the height of each row shall be calculated independently.
  - c. Average height is determined by circumscribing a rectangle around each section of letters then calculating the proportionate sum of the individual heights divided by the total length.



8. Pan channel and Channelume type signs.
- a. Individual letters may be either channelume with metal-ply back or pan channel type construction. Depth of letters shall be no more than six inches (6").
  - b. Except as permitted in paragraph B.8.f. below, sign letters or components shall not have exposed neon or other lamps and all light sources shall be concealed by translucent material. Sign letters or components may be back-illuminated with lamps contained wholly within the depth of the letter. Backs may be eliminated at Tenant's option so as to achieve a halo effect. Maximum brightness in any event shall not exceed 100 foot-lamberts.
  - c. Except as permitted in paragraphs B.8.f. below, face of letters shall be of soft glow plexiglass, matte finish, no less than one-eighth (1/8) inch thick with color selection and letter style at Tenant's option, giving due consideration to neighboring sign colors.
  - d. Letter returns shall be painted sheet metal, brass, chrome or aluminum no more than six inches (6") deep, with a minimum twenty-two (22) gauge thickness.
  - e. Three-fourths (3/4) inch silvatrium retainers (color selection by Tenant) to be used as plexiglass and sheet metal joint at all pan channel letters.
  - f. Notwithstanding these criteria, Tenant, may install clear plexiglass on sign letters, lighted with neon tubing so as to visually expose the neon tubing. Such construction may be utilized for accent bands where exposed neon is desired. Such accent bands shall not be considered in the calculation of overall sign size unless they are integral with the wording.
9. Signs in Decorative Cabinets.
- a. Cabinets must either be built-in as an integral component of the storefront construction or separately suspended apart from the storefront. Cabinets attached to the face of a storefront fascia shall not be permitted.
  - b. Cabinets must be constructed of decorative materials such as brass, stainless steel, aluminum, chrome or materials matching those used in the remainder of the storefront construction.
  - c. The face of all cabinets shall be three (3) dimensional and opaque with the individual letters routed out or punched through the surface. Letters must have translucent plexiglass faces. Color shall be as selected by Tenant.



10. Stores with an overall frontage exceeding 40', or at the exterior end of an entrance, may install a blade type sign perpendicular to the storefront. In no case shall such a sign be located closer than twenty feet (20') to a side lease-line nor extend into the mall Common Area more than thirty-six inches (36") from the lease line. All such signs shall be illuminated and have identical sign faces on each side. The construction and detailing of the cabinet, as well as the manner of connection shall be fully described and subject to any additional criteria or requirements that Landlord's architect may impose.
  
11. Other Storefront Signs
  - a. Tenant shall be permitted to place upon its storefront and any other entrance to the Leased Premises, not more than one hundred forty-four (144) sq. inches of gold leaf or decal application lettering not to exceed two inches (2") in height, indicating hours of business, emergency telephone numbers, etc.
  
  - b. Tenant may place on the back side of any storefront glass or display windows decals or vinyl lettering, not to exceed four inches (4") in height, identifying Tenant's name, logo, or other graphic form. Such signage shall not cover more than five percent (5%) of the glass area.



### 3. MAIN MALL BUILDING EXTERIOR TENANT SIGN CRITERIA

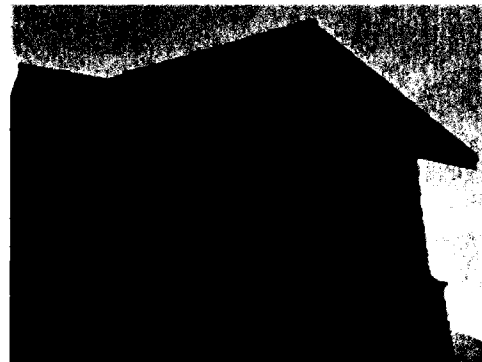
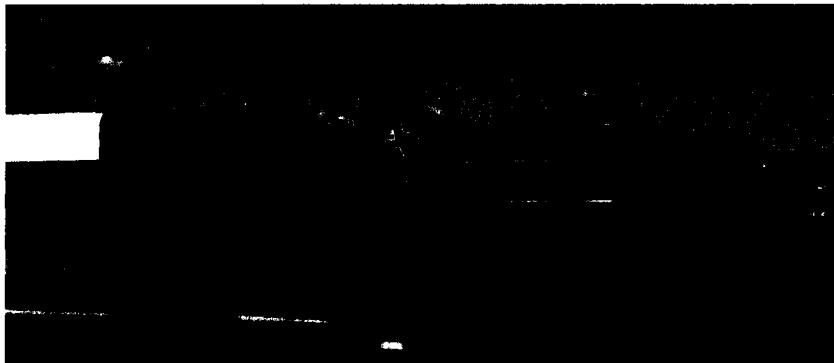
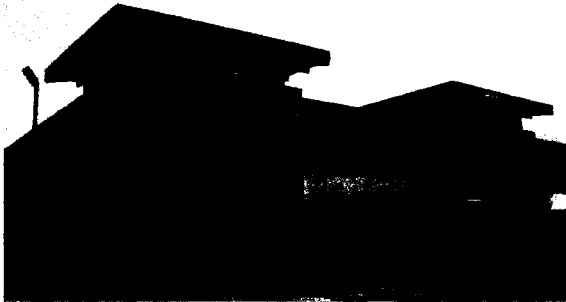
1. Tenants, who's Leased Premises extend to an exterior wall or who have customer access or entrances directly from the exterior, may install signs on the exterior of the building. All such signs shall be subject to the requirements and limitations as outlined hereinafter and any specific notations or clarification made by Landlord's architect on approved submittals.
2. All sign letters shall be illuminated and shall be either pan channel or channelume type construction or decorative cabinet type construction with opaque face and routed or punched through letters.
3. The wording on signs shall be Tenant's trade name
4. The use of corporate crests, shields, insignia, and logos shall be permitted.
5. Signs should generally be centered over the primary storefront entry or entrance portal or over display windows of stores without customer entrances. Where no display windows exist, the location of signage shall be as dictated by Landlord's architect.
6. The average height of sign letters or components shall generally not exceed twenty-four inches (24") and shall have a pleasing proportion to the size of the fascia panel to which the sign is attached as determined in the sole judgment of Landlord's architect.
7. Depth of letter or cabinet shall be no more than eight inches (8").
8. All sign and letter faces shall either be opaque or translucent such that the light source is not visible. No exposed neon shall be permitted.
9. DEPARTMENT STORE SIGNAGE  
Department stores are entitled to have exterior signage of the size and type that is consistent with that used at other regional shopping centers.
10. PARKING STRUCTURE SIGNAGE  
Parking structures may include the following types of signage:
  - a. Parking Count Reader Boards
  - b. Digital Reader Boards
  - c. LED screens
  - d. Wall signs and large scale artwork as described in the PD 34 Zone.
  - e. Parking Structure Entry Signage
  - f. Interior painted and/or other directional signage identifying each level, entries, exits, stairways, elevators



## 4. EXTERIOR NM PAD BUILDINGS SIGNAGE

Pad building tenants have some leniency in determining the look of their exterior facade and signage to reflect their business image. All building designs and signage must be approved by Landlord, and all designs must adhere to the same quality of design and construction as the existing pad buildings within the University Place development.

Landlord's Architect shall be the sole judge in determining whether the quality and construction is consistent with the standards of a first class regional mixed-use development.

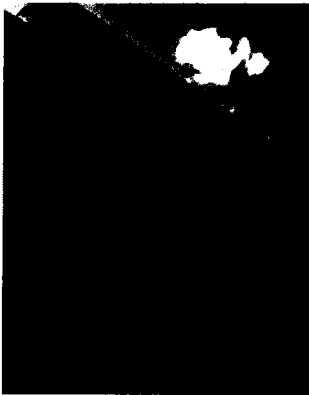


**5. THE VILLAGE SIGNAGE**



The Village tenants have some leniency in determining the look of their exterior facade and signage to reflect their business image. All building designs and signage must be approved by Landlord, and all designs must adhere to the same quality of design and construction as the existing buildings within the Village. Tenants are encouraged to use awnings and artwork to create varied facades.

Landlord's Architect shall be the sole judge in determining whether the quality and construction is consistent with the standards of a first class regional shopping center development.



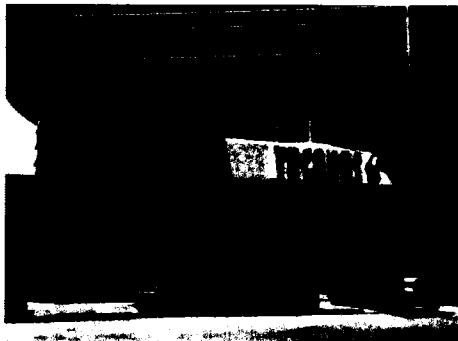
**6. OFFICE BUILDING SIGNAGE**

**OFFICE TENANT BUILDING CROWN SIGNAGE**



Multi-floor or Anchor tenants are entitled to crown signage. Signage shall fit in the designated band at the top of the building. Tenants may install both their logo and company name. Letters shall be internally lit, no raceway or conduit shall be visible.

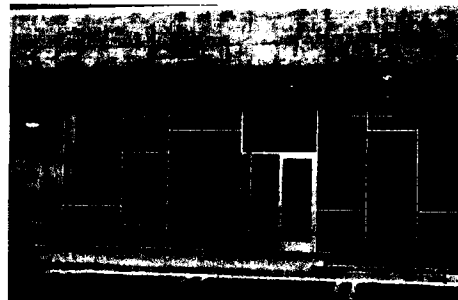
**OFFICE BUILDING RETAIL TENANT SIGNAGE**



Retail tenant signage shall be internally lit, individual letters, placed in the designated signage band above the tenants entrance. Tenants may be allowed additional signage on wall areas adjacent to their storefronts.

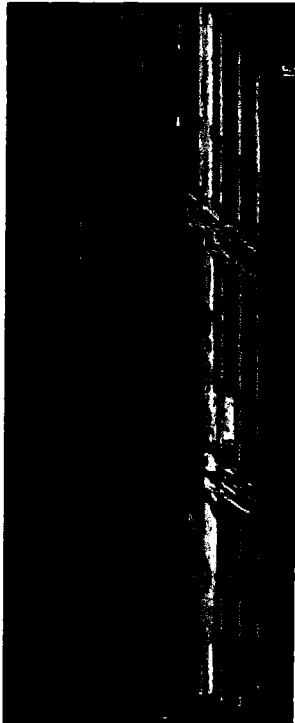
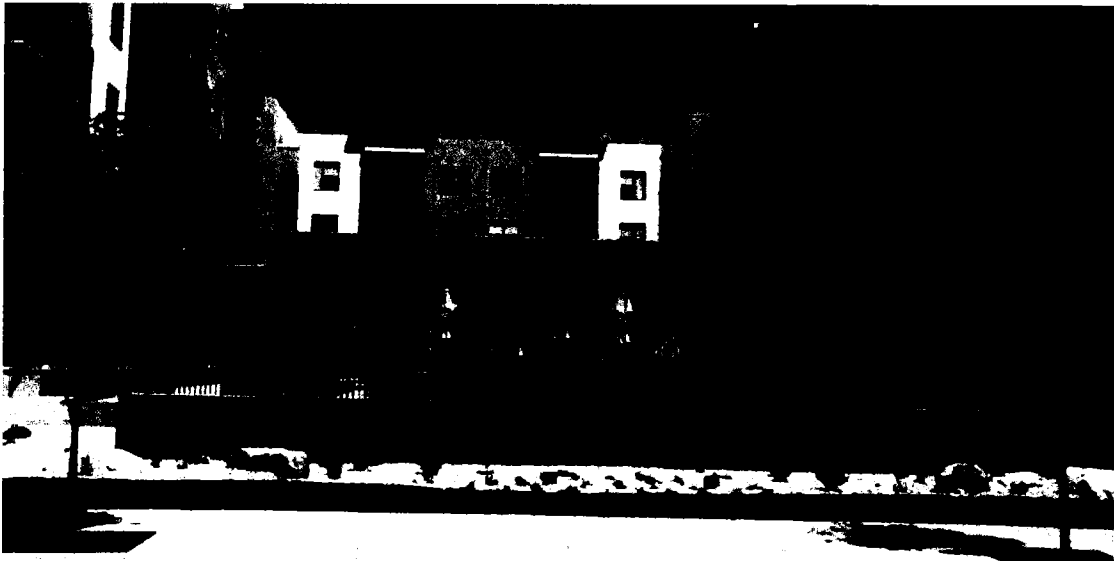


**Retail Storefront Display Windows:** Tenant shall be permitted to place signage in storefront windows behind the glass only if such signs are of a permanent nature and are professionally painted or attached. No moving or flashing elements shall be permitted. Maximum size shall not exceed 5% of the glass area behind which signage is placed. Tenant agrees to remove any signs in show windows and storefronts which Landlord deems inappropriate, unprofessional or otherwise objectionable in Landlord's sole judgment.



**Prohibited Sign Types:**  
No flashing, blinking, noise making or moving elements shall be permitted. Box, cabinet, or exposed neon signs are prohibited. Tenants occupying upper level floors shall not place signage, graphics, advertising, banners or logos in the windows, behind the glass or in lobbies and other Common Areas.





Signage designating the name of the development shall be permitted at all major entries to the residential building, and at the corners of roads entering the the building. Blade signs with the name of the building are permitted at each of the building corners.

Retail tenant signage in the ground floor of residential buildings shall be limited to the designated sign band area. Lettering shall be internally lit, individual letters, and shielded if necessary to prevent glare into surrounding residential units.





**8. PERFORMANCE THEATER SIGNAGE**



10' x 3' CLOTH BANNERS  
MARQUEE LIGHTING AND SIGNAGE ON CANOPY  
WALL SIGNAGE ON EAST AND WEST WALLS

The signage for the performance theater is intended to create a festive and elegant atmosphere typical of a major performance theater. As such, the theater is given more latitude than most buildings within University Place. Theater may use uplighting to highlight their facade. Cloth banners may be hung from both the building and street lights in front of the building. Large marquee style lettering is permitted on the front canopy. A lit sign on the east side of the building is also permitted. Signage on the west side is only permitted if the light generated from the sign is not visible to the single family homes located north and west of the theater parcel.

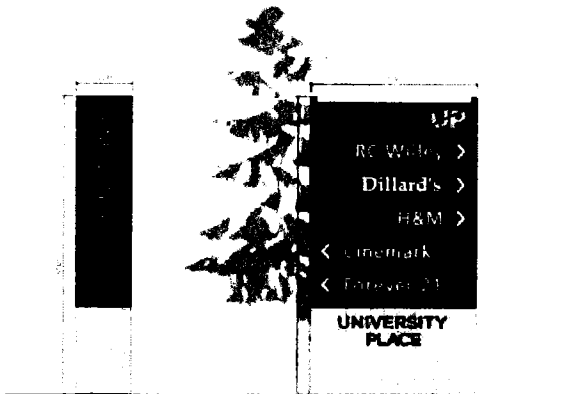
Digital boards for advertising current and upcoming shows may be incorporated, but must be sized and placed on the facade in a pleasing and appropriate manner as determined by the sole judgment of Landlord's Architect.



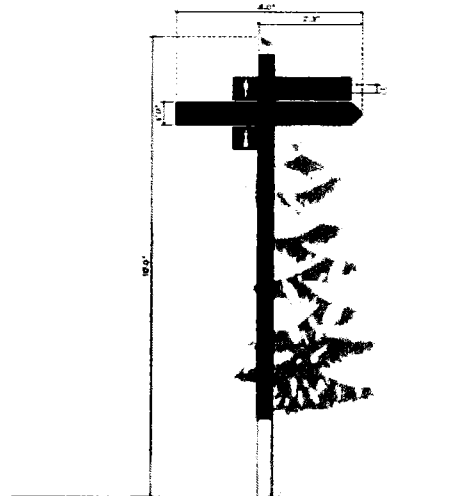
# 9. WAYFINDING SIGNAGE

The following types of wayfinding signage may also be utilized at University Place. These signs may be placed as needed to improve customer wayfinding.

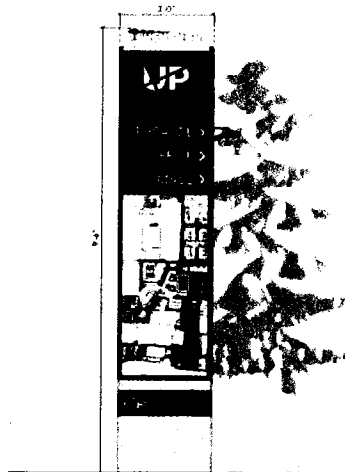
## VEHICULAR DIRECTIONAL FORM & MATERIAL STUDIES



## PEDESTRIAN DIRECTIONAL FORM & MATERIAL STUDIES



## DISTRICT MARKER/DIRECTIONAL FORM & MATERIAL STUDIES












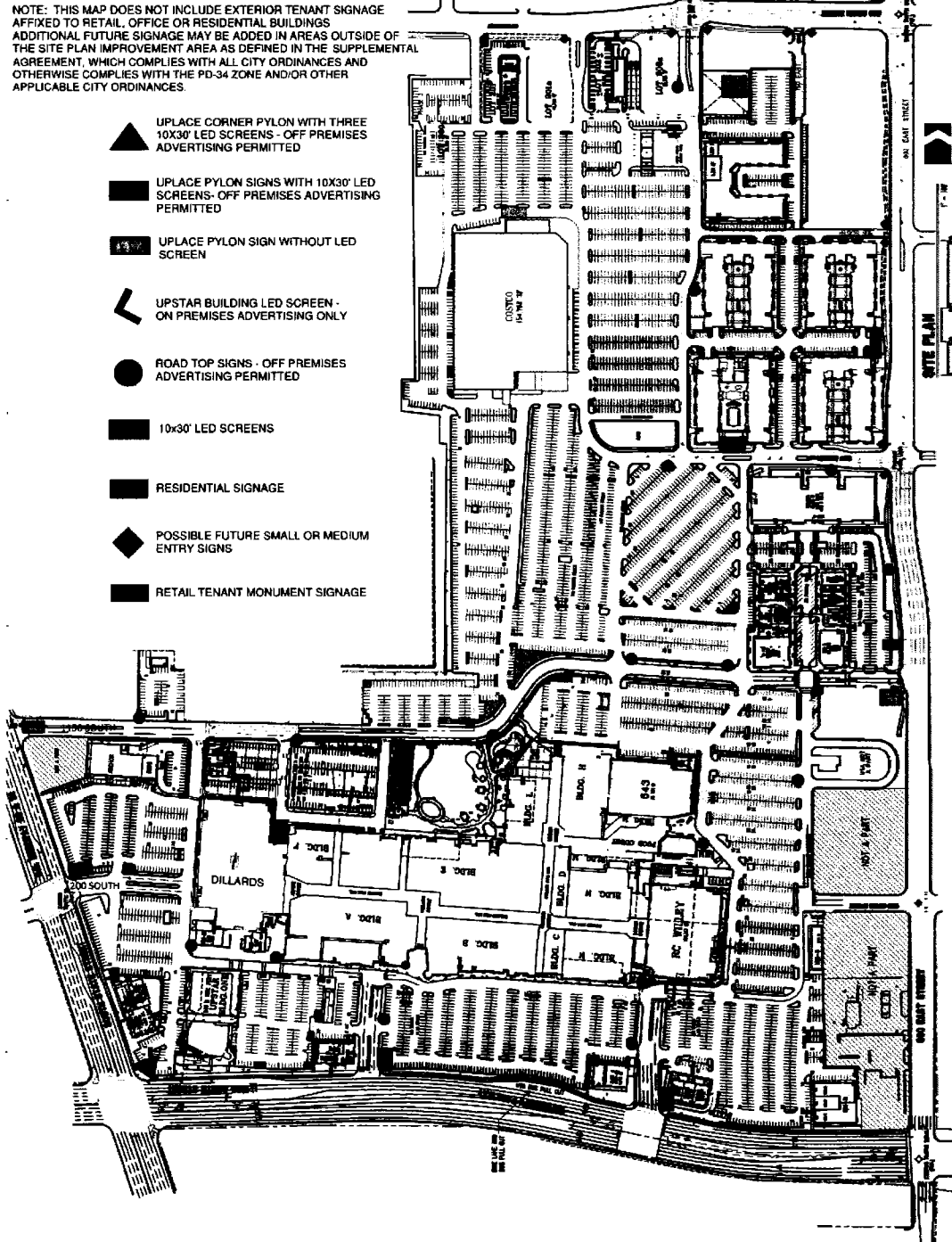
DISTRICT MARKER - FORM STUDY





NOTE: THIS MAP DOES NOT INCLUDE EXTERIOR TENANT SIGNAGE AFFIXED TO RETAIL, OFFICE OR RESIDENTIAL BUILDINGS. ADDITIONAL FUTURE SIGNAGE MAY BE ADDED IN AREAS OUTSIDE OF THE SITE PLAN IMPROVEMENT AREA AS DEFINED IN THE SUPPLEMENTAL AGREEMENT, WHICH COMPLIES WITH ALL CITY ORDINANCES AND OTHERWISE COMPLIES WITH THE PD-34 ZONE AND/OR OTHER APPLICABLE CITY ORDINANCES.

-  UPLACE CORNER PYLON WITH THREE 10X30' LED SCREENS - OFF PREMISES ADVERTISING PERMITTED
-  UPLACE PYLON SIGNS WITH 10X30' LED SCREENS- OFF PREMISES ADVERTISING PERMITTED
-  UPLACE PYLON SIGN WITHOUT LED SCREEN
-  UPSTAR BUILDING LED SCREEN - ON PREMISES ADVERTISING ONLY
-  ROAD TOP SIGNS - OFF PREMISES ADVERTISING PERMITTED
-  10x30' LED SCREENS
-  RESIDENTIAL SIGNAGE
-  POSSIBLE FUTURE SMALL OR MEDIUM ENTRY SIGNS
-  RETAIL TENANT MONUMENT SIGNAGE



The permissible signage contemplated in the PD-34 Zone as of June 1, 2019 shall also be permissible at University Place. Below is the PD-34 Zone Sign Ordinance language as of June 1, 2019.

**11. PD 34 ZONE ORDINANCE - SIGNAGE**

**J. Signs--Purpose and Intent.** Due to the size and nature of the PD-34 zone, the purposes and objectives pertaining to signage in the PD-34 zone are significantly different from those of any other area in the City. Therefore, the regulations applicable to signage in the PD-34 zone shall also differ significantly from the regulations applicable to signage in other areas of the City. Signage in the PD-34 zone shall be subject to more exacting/stringent requirements as to architectural style and aesthetics and shall also have more liberal treatment as to off-premise signage than other areas in the City. The more stringent requirements (as to aesthetics) and the more liberal treatment (as to off-premise signage) are justified by the following:

a. Development in the PD-34 zone (both existing and future) is the most intensive area of commercial activity in the City both in terms of size (acreage) and commercial activity (based on retail sales) as compared to any other development in the City. The area of the PD-34 zone is effectively the commercial hub of the City. It is anticipated that with the adoption of the PD-34 zone, commercial activity will become even more intense with the addition of new retail buildings, office buildings and parking structures. Off-premise signs are consistent and compatible with a development of this size, scale and intensity of use while they are not appropriate in most other commercial areas of the City. Off-premise signage is allowed in other large commercial and mixed use developments throughout the country that are similar to development in the PD-34 zone (both existing and future) and the City has determined that off-premise signage will also be compatible in the PD-34 zone.

b. The signage allowed in the PD-34 zone, including off-premise signage, will enhance the aesthetic quality of the PD-34 zone. Unlike any other zone or area in the City, signage in the PD-34 zone will be required to conform to strict standards of architectural style and aesthetic quality. Signage in the PD-34 zone is considered a critical component of development in the zone, not just for the messages they contain, but also for the aesthetic appeal of the signs themselves. In addition to their architectural quality, different types of signs, including allowable off-premise signs, are intended to enhance the aesthetic quality of the development in several ways, including, but not limited to the following:

- (i) Mitigating and improving the appearance of normally unsightly parking structures by covering unattractive structure facades with attractive and aesthetically appealing signage.
- (ii) Enhancing the appearance of bare walls of buildings.
- (iii) Improving the appearance and adding interest to streetscapes, parking areas, sidewalks.
- (iv). Creating an aesthetically pleasing "grand entrance" or "gateway" effect through the placement of signage at entryways into the development.



c. The overall signage scheme in the PD-34 zone, with its variety in types of signs combined with the unique architecture, style, light, color and electronic display is designed to create a visual experience and a sense of excitement, energy and vibrancy that cannot be achieved or replicated on smaller, individual parcels. This will enhance the quality of the PD-34 zone as a "destination" and gathering place for consumers in the city, county and state.

d. Signage in the PD-34 zone, including off-premise signage, will be part of a controlled and coordinated whole that is designed to enhance and be harmonious with its surroundings as opposed to an uncontrolled and uncoordinated scheme of individual sign approvals. This will dramatically reduce the risk of a proliferation of unattractive signage by numerous and disparate private parties.

**K. Signs-Regulations.** The provisions of Chapter 14 of the City Code shall not apply to the PD-34 zone except as provided below. For purposes of determining allowable signage, the PD-34 zone is divided into the following three sign zones: the perimeter sign zone, the internal sign zone, and the limited sign zone. The area of each of these sign zones is shown in Appendix "BB." On-premise advertising is allowed on all signs. Off-premise advertising shall be allowed as described below. However, notwithstanding any other provision to the contrary, the total number of signs displaying off-premise advertising that is visible from a public street shall not exceed fourteen (14). The signs that are permitted in each of the sign zones are limited to the following:

**1. Perimeter sign zone.** Allowable signage in the perimeter zone is limited to the following:

**a. Large entry signs.**

**(1) Definition and Requirements.** Large entry signs are signs that are located at an entrance to the PD-34 zone. Large entry signs shall not exceed a height of forty feet (40') and shall have a maximum of three hundred (300) square feet of electronic signage and two hundred square feet of static signage per sign face. A large entry sign may have up to four sign faces. Large entry signs may include an electronic screen on all or part of the sign faces.

**(2) Allowable Use.** A total of seven (7) large entry signs are permitted, but are restricted to the following locations:

- (i) the entrance at 1150 South State Street
- (ii) the entrance at approximately 1200 South State Street
- (iii) both entrances to the PD-34 zone from University Parkway
- (iv) the entrance at 1200 South 800 East
- (v) the entrance at 1100 South 800 East

**(3) Architectural Standards.** Large entry signs must conform to the architectural and aesthetic quality illustrated for such signs in Appendix BB. In addition, sign supports shall be veneered with materials such as brick or stone, or shall be covered with other materials that are consistent with other signs within the PD-34 zone.

**(4) Off-premise Advertising.** Off-premise advertising is allowed on all large entry signs.



**b. Medium Entry Signs.**

**(1) Definition and Requirements.** Medium entry signs are signs that are located at an entrance to the PD-34 zone. Medium entry signs shall not exceed a height of thirty feet (30') and shall have a maximum of two hundred (200) square feet per sign face. A medium entry sign may have up to four sign faces. Medium entry signs may include an electronic screen as all or part of the sign faces.

**(2) Allowable Use.** A total of twelve (12) medium entry signs are permitted, but are restricted to the following locations:

- (i) both entrances from State Street
- (ii) both entrances from University Parkway
- (iii) all four entrances from 800 East
- (iv) the entrance at approximately 700 East 800 South

**(3) Architectural Standards.** Medium entry signs must conform to the architectural and aesthetic quality illustrated for such signs in Appendix BB.

**(4) Off-premise Advertising.** Off-premise advertising is allowed on medium entry signs that are located adjacent to State Street, University Parkway and at the entrances at 800 East 1100 South and 800 East 1200 South.

**c. Small Entry Signs.**

**(1) Definition and Requirements.** Small entry signs are signs that are located at an entrance to the PD-34 zone. Small entry signs shall not exceed a height of twenty feet (20') and shall have a maximum of fifty (50) square feet per sign face. A small entry sign may have up to four sign faces, but the total area of all sign faces shall not exceed one hundred fifty (150) square feet. Small entry signs may include an electronic screen as all or part of the sign faces.

**(2) Allowable Use.** A total of four (4) small entry signs are permitted, but are restricted to the following locations:

- (i) the entrance at 1200 South 800 East
- (ii) the proposed new entrance at approximately 850 South 800 East (two signs permitted at this location)
- (iii) the entrance at approximately 650 East 800 South

**(3) Architectural Standards.** Small entry signs must conform to the architectural and aesthetic quality illustrated for such signs in Appendix BB.

**(4) Off-premise Advertising.** Off-premise advertising is allowed on small entry signs that are located adjacent to State Street, University Parkway and at the entrances at 800 East 1100 South and 800 East 1200 South.



**d. State Street and University Avenue Corner Sign.**

**(1) Definition and Requirements.** The State Street and University Avenue Corner Sign (the "Corner Sign") is a sign that is located at the corner of State Street and University Avenue. The Corner Sign shall not exceed a height of forty feet (40') and shall have a maximum of three hundred (300) square feet per sign face and no more than fifty (50) square feet of additional static advertising space per sign face. The Corner Sign may have up to three sign faces. The Corner Sign may include an electronic screen as all or part of the sign faces. Sign supports shall be veneered with materials such as brick or stone, or shall be covered with other materials that are consistent with other signs within the PD-34 zone.

**(2) Allowable Use.** Only one Corner Sign is permitted.

**(3) Off-premise Advertising.** Off-premise advertising is allowed on the Corner Sign.

**e. Synchronized Combination Signs.**

**(1) Definition and Requirements.** A synchronized combination sign is a sign that consists of multiple separate structures that are closely spaced apart and generally in line with each other. The message or display portrayed on such sign is designed to move from one structure to the next to create a combined synchronized effect that displays a unified message or theme. Each structure that forms a part of the synchronized combination sign shall not exceed seventeen feet (17') in height and shall have a maximum sign face area of sixty (60) square feet. A synchronized combination sign shall be set back at least ten feet (10') from any public right-of-way.

**(2) Allowable Use.** A total of four synchronized combination signs are permitted but may only be located adjacent to State Street, University Avenue and on that part of 800 East located south of 1000 South.

**(3) Architectural Standards.** Synchronized combination signs must conform to the architectural and aesthetic quality illustrated for such signs in Appendix BB.

**(4) Off-premise Advertising.** Off-premise advertising is allowed on all synchronized combination signs.

**f. Screen Signs.**

**(1) Definition and Requirements.** A screen sign is a sign that consists of a screen like material that is attached to a wall or parking deck and is capable of displaying electronic messages.

**(2) Allowable Use.** A total of three screen signs are permitted in the perimeter sign zone, but may only be located along the frontage of University Parkway, State Street or facing inward toward the interior of the PD-34 zone.

**(3) Architectural Standards.** Screen signs must conform to the architectural and aesthetic quality illustrated for such signs in Appendix BB.

**(4) Off-premise Advertising.** Off-premise advertising is allowed on all permitted screen signs.



**g. Kiosk signs.**

- (1) Definition and Requirements.** Kiosk signs are round, triangular or other shaped signs that have a maximum height of seventeen feet (17').
- (2) Allowable Use.** One kiosk sign shall be allowed in the perimeter sign zone for every three hundred feet (300') of street frontage.
- (3) Architectural Standards.** Kiosk signs must conform to the architectural and aesthetic quality illustrated for such signs in Appendix BB.
- (4) Off-premise Advertising.** Off-premise advertising is allowed on all kiosk signs except for kiosk signs located adjacent to 800 South or on 800 East north of 1000 South.

**h. Wall signs.** Wall signs as defined and regulated in Chapter 14 shall be allowed in the perimeter sign zone. Wall signs must conform to the architectural and aesthetic quality illustrated for such signs in Appendix BB. Off-premise advertising is allowed only on wall signs that face State Street, University Parkway or 800 East south of 1000 South.

**2. Internal sign zone.** There is no limit on the type of signs in the internal sign zone except that abandoned signs and roof signs are not allowed. There is no limit on the number of signs allowed in the internal sign zone except for building entrance signs. However, no sign shall exceed a height of twenty feet (20') except for wall signs, screen signs and building entrance signs.

**a. Building entrance signs.**

- (1) Definition and Requirements.** Building entrance signs are signs that are located at the entrance to a building and are attached to the building or other architectural feature such as a tower. Building entrance signs shall not exceed a height of seventy feet (70').
- (2) Allowable Use.** A total of eight (8) building entrance signs are allowed in the PD-34 zone.

**b. Canopy signs and wall signs.** Canopy signs and wall signs shall comply with the standards applicable to such signs set forth in Chapter 14.

**c. Off-Premise Advertising.** Off-premise advertising shall be allowed on screen signs in the internal zone that face State Street or University Parkway. Other than screen signs, off-premise advertising shall be permitted in the internal sign zone only on signs whose copy is not legible from a public street.

**3. Limited sign zone:** Allowable signage in the limited sign zone is limited to the following:

- a. Wall signs as defined in Article 14 of the City Code.
- b. All signs that are permitted in residential zones as governed by Article 14 of the City Code.
- c. No off-premise advertising that is visible from a public street shall be allowed.





**4. Sign Permit.** It shall be unlawful for any person to erect, alter or relocate a sign without first obtaining a sign permit from the City. However, a sign permit is not required for interior signs, portable signs, and window signs. An applicant for a sign permit shall follow the procedures outlined in Chapter 14 for obtaining a sign permit.

**5. Compliance with Sight Triangles.** No sign shall be located in any sight triangle if such location would violate the standards established by the American Association of State Highway and Transportation Officials (AASHTO) pertaining to sight triangles.

**6. Unsafe or Dangerous Signs.** If an unsafe or dangerous sign as determined by the Chief Building Official is not repaired or made safe within five working days after the City has given written notice by registered mail to repair or make the sign safe, the Chief Building Official shall at once abate the sign according to the procedures in the Uniform Code for the Abatement of Dangerous Buildings.

**7. Maintenance.** All signs shall be kept in good repair, maintained in a safe and attractive condition by the owner, and displayed so as to conform to any conditions required by a sign permit. Signs in disrepair which have not been repaired for sixty (60) consecutive days after written notice from the City to the owner shall be removed from the building or premises by the owner, the person having control of the premises or the person receiving benefit of such sign.

**8. Prohibited Sign Locations.** No person shall erect any sign so as to interfere with or restrict access to windows, fire escapes, or require exits. No person shall erect any sign which constitutes a safety hazard as determined by the City.

**9. Signs May Not Overhang Public Right of Way.** No sign may overhang any public right of way.

**10. Additional Regulations for Electronic Signs.** Electronic signs or Electronic Message Centers (EMCs)(as defined in Section 14-3-2) shall be subject to the following requirements:

- a. An EMC shall not be a flashing sign (as defined in Section 14-3-2);
- b. An EMC may have motion;
- c. The interval between message changes on an EMC sign shall not be more frequent than eight seconds and the actual message rotation process must be accomplished in three seconds or less; and
- c. Brightness on an EMC sign shall not exceed 0.3 lumens above ambient light.

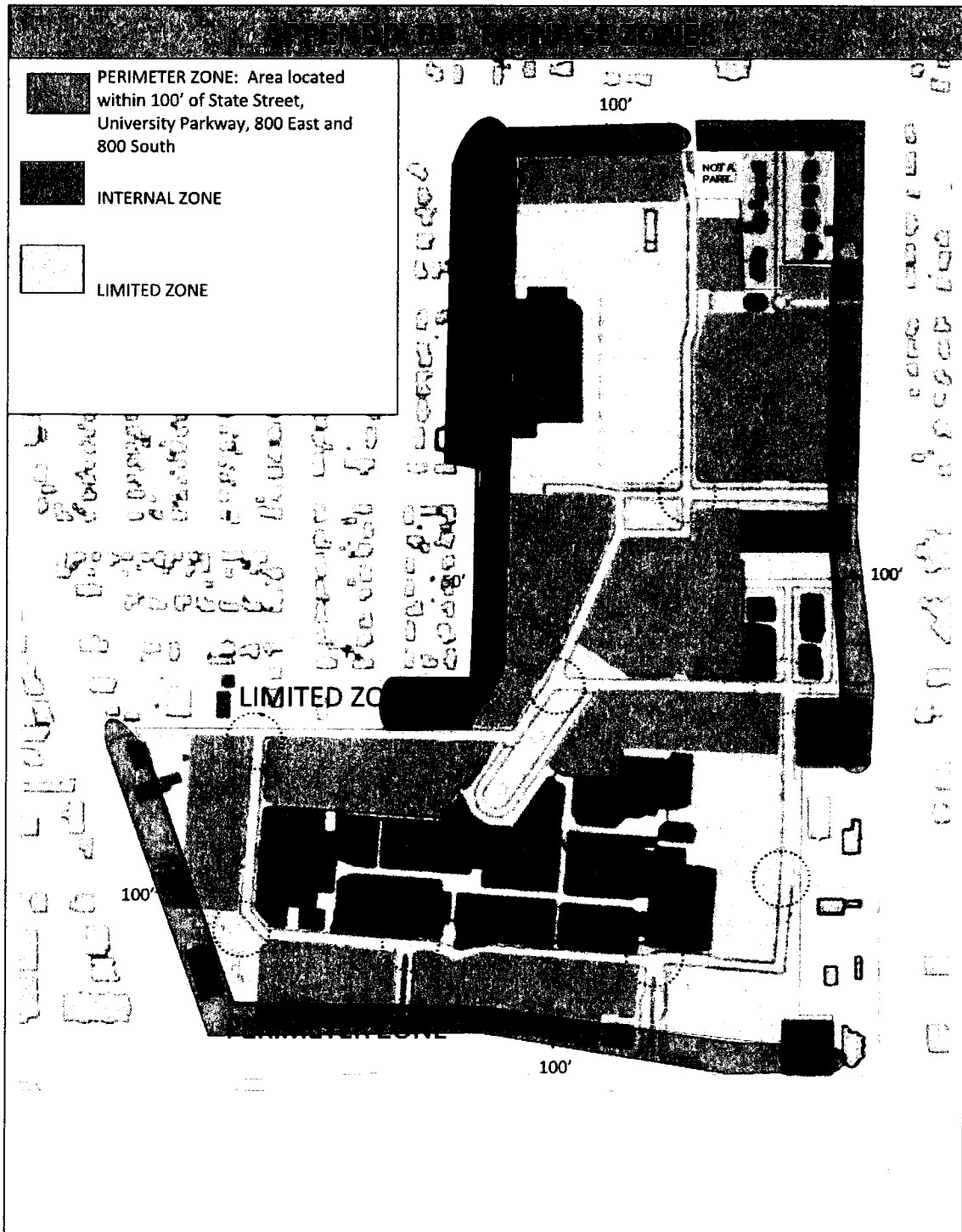


**11. Definitions.** The definition of off-premise advertising as used in this Section 22-11-47 shall be the same as the definition of off-premise sign in Section 14-3-2. The definition of on-premise advertising shall be the same as the definition of on-premise sign in Section 14-3-2. The definitions contained in Section 14-3-2 for the following terms shall apply to such terms as used in this Section 22-11-47:

- Abandoned sign
- Canopy sign
- Clear vision area
- Flag pole sign
- Interior sign
- Portable sign
- Roof sign
- Signs
- Sign face
- Window sign

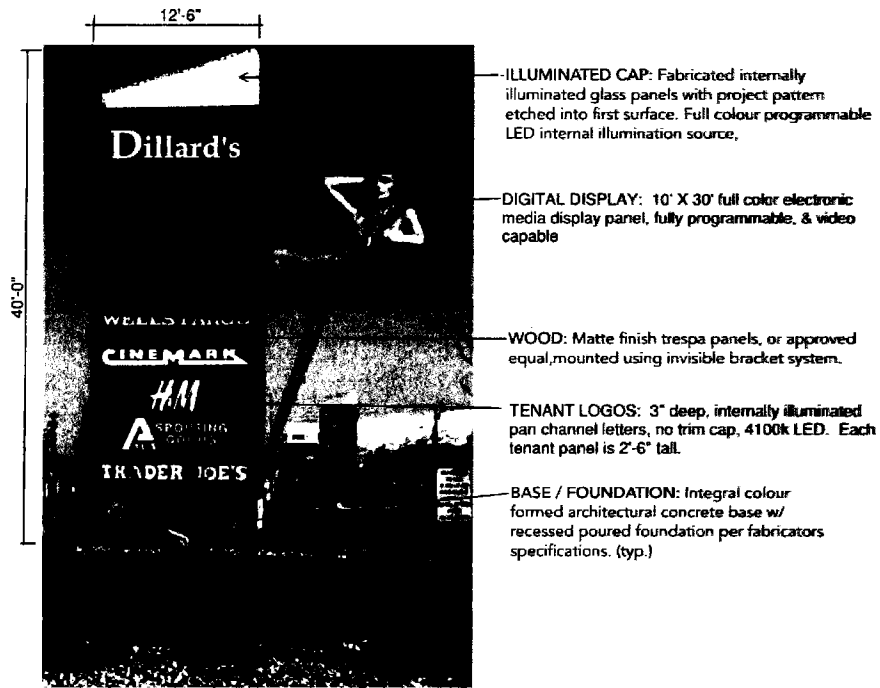
**12. Additional Provisions.** The provisions of Sections 14-1-5 (Interpretation), 14-1-6 (Appeals), 14-1-7 (Penalties), 14-2-1 (Permits), 14-2-2 (Maintenance), 14-2-5 (Prohibited Sign Locations), 14-2-7 (Abandoned Signs) and 14-2-8 (Unsafe or Dangerous Signs) shall apply to signs in the PD-34 zone. In addition, the regulations contained in Chapter 14 pertaining to canopy signs, flag pole signs and portable signs shall apply to the PD-34 zone.





The following subsections of the PD-34 Zone Ordinance - Signage - show additional descriptions and depictions of the signage described in the PD-34 Zone Ordinance, and that either exist or are permitted and designed for University Place.

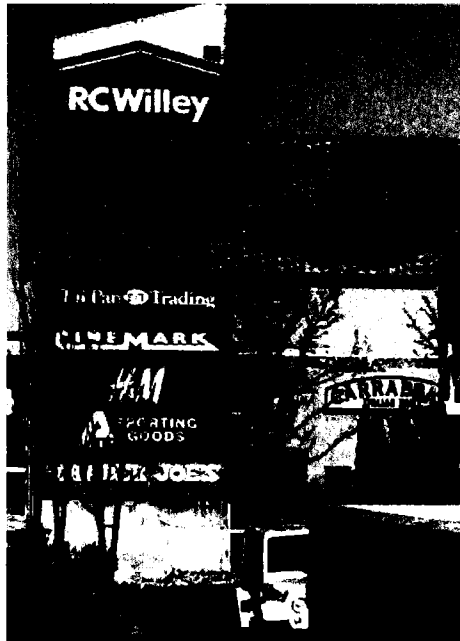
**11 a. LARGE ENTRY SIGN WITH LED SCREEN**



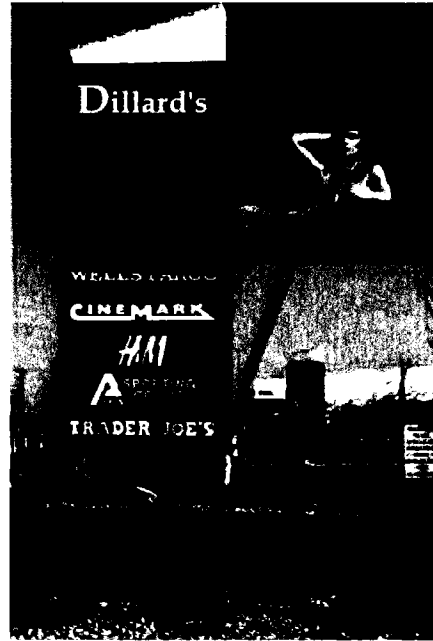
**GENERAL NOTES:**

- All final Messaging and sign locations are to be determined by client team.
- Electronic media display to be full color, fully programmable, & video capable LED display system.





575 E. University Pkwy



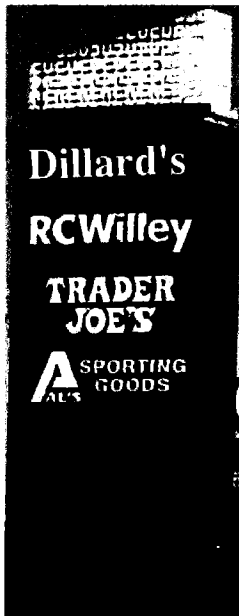
1200 S. State



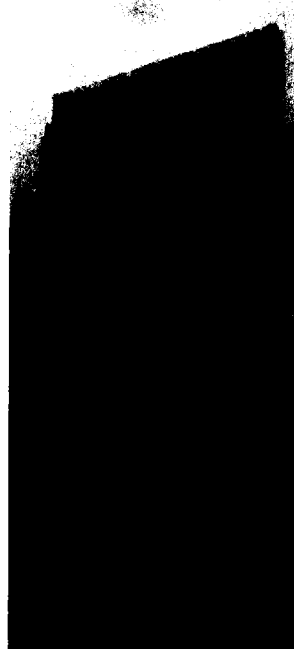
550 E. University Pkwy



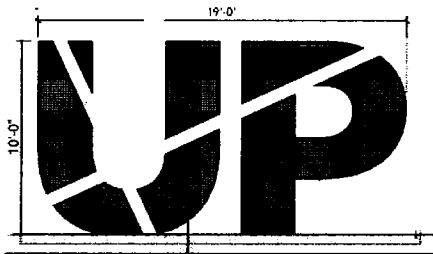
**11.a LARGE ENTRY SIGNS - WITHOUT LED SCREENS**



1150 S. State  
(State & Park Avenue)



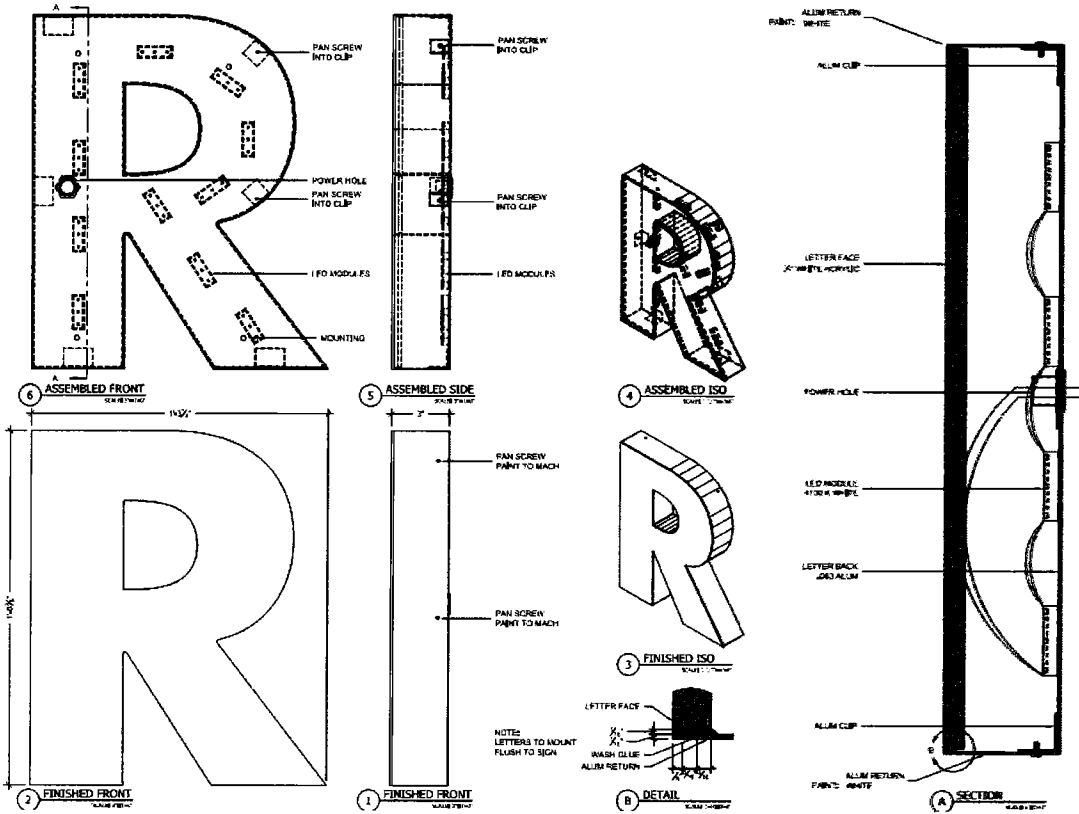
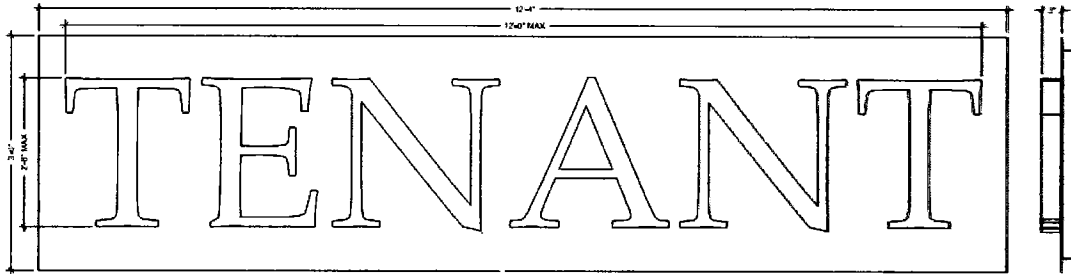
1100S 800E  
(Park Avenue & 800E)

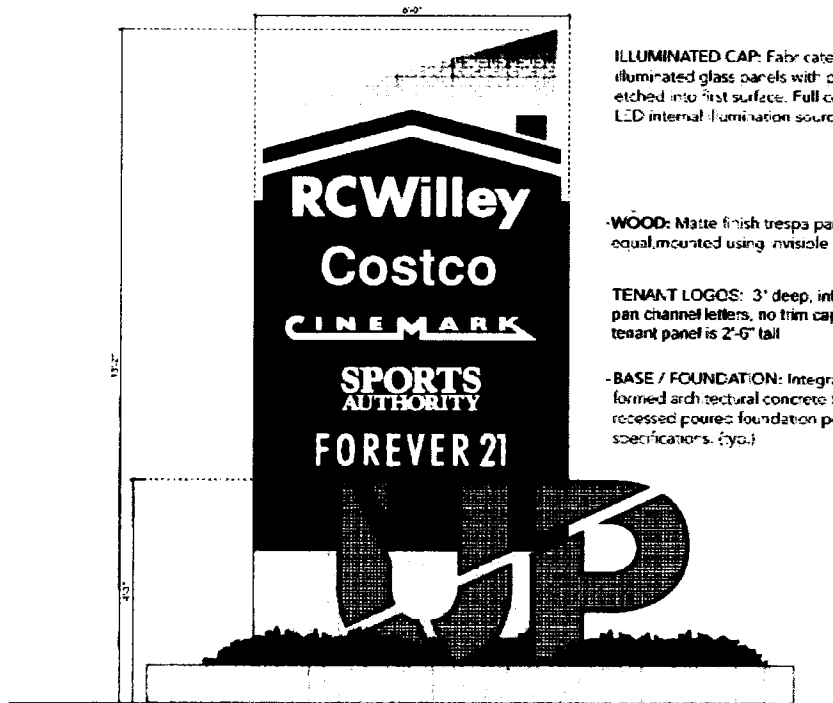


10' X 19' UP LOGO Sculptures are permitted in various locations around the University Place site. Final locations to be determined by Landlord

UP LOGO: 10' tall 2'-6" thick fabricated, internally illuminated letters w/ galbron style face; see 3 1 6 for details. (typ)







**ILLUMINATED CAP:** Fabricated internally illuminated glass panels with project pattern etched into first surface. Full colour programmable LED internal illumination source.

**WOOD:** Matte finish trespa panels, or approved equal, mounted using invisible bracket system.

**TENANT LOGOS:** 3" deep, internally illuminated pan channel letters, no trim cap, 4100k LED. Each tenant panel is 2'-6" tall.

**BASE / FOUNDATION:** Integral colour formed architectural concrete base w/ recessed poured foundation per fabricators specifications. (typ.)

MEDIUM ENTRY ID ELEVATION







**MANUFACTURE & INSTALL**

**(1) MONUMENT SIGN**

- Ⓐ MAIN SIGN BODY: ALL ALUMINUM FRAME CONSTRUCTION WITH 090 ALUMINUM SKIN
  - Ⓑ FACES: 090 ALUMINUM PAINTED TO MATCH FRENCH WALNUT TRESPA
  - Ⓒ BLACK BORDER AND RETURNS
  - Ⓓ TOP CAP: FACES SHALL BE 1/4" CLEAR ACRYLIC WITH 2ND SURFACE AND 1ST SURFACE WHITE VINYL COPY (CU) LEDS SHALL BE RGB COLOR MORPHING PROGRAMING
  - Ⓔ 1/8" ALUMINUM BAND MOUNTED TO ACRYLIC TOP CAP
  - Ⓕ SIDE PANEL CUT OUT COPY AND BACKED WITH 3/16" AND LIT WITH RGBS
- INTERNALLY ILLUMINATED WITH RGB LEDS
  - POWER SUPPLY HOUSED IN SIGN BODY
  - SUPPORT AND FOOTING (TBD)
  - VISIBLE DISCONNECT SWITCH AT SIGN
  - ELECTRICAL SWEEP BY OTHERS
  - 120V SERVICE SUPPLIED BY OTHERS
  - ELECTRICAL GROUNDED TO PIPE SUPPORT

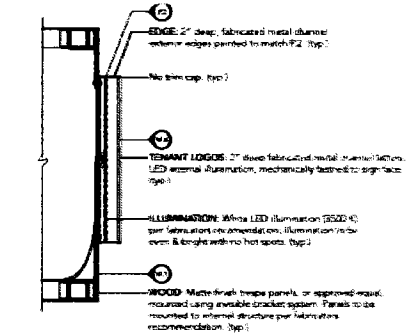
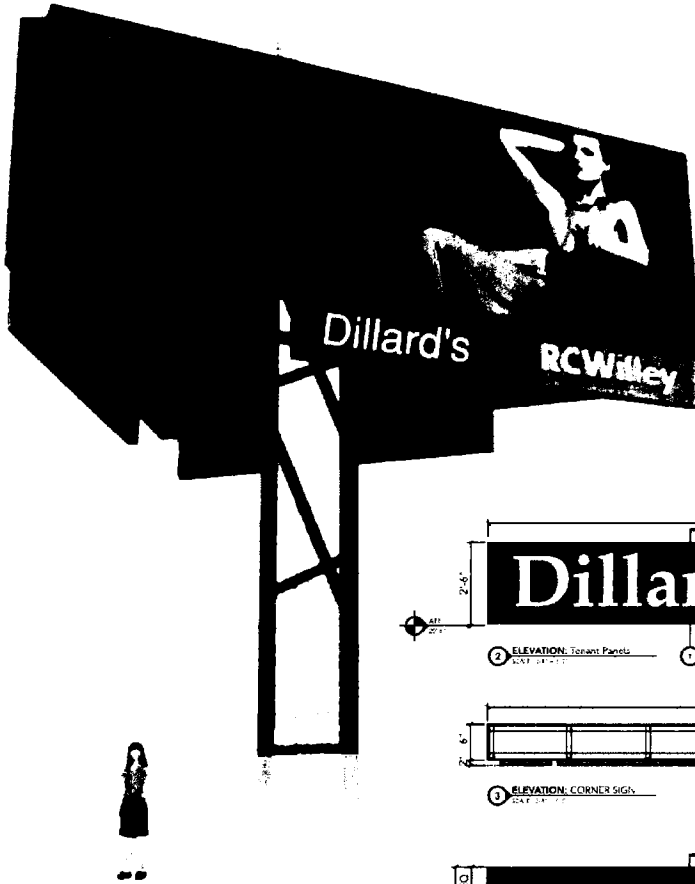
**CHANNEL LETTERS**

**MANUFACTURE & INSTALL**

**(2) SETS OF CHANNEL LETTERS (ONE FOR EACH SIDE)**

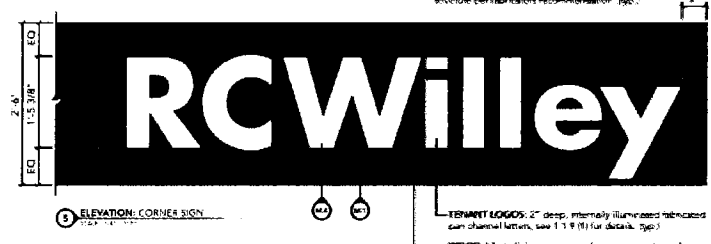
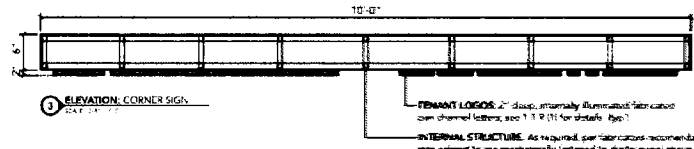
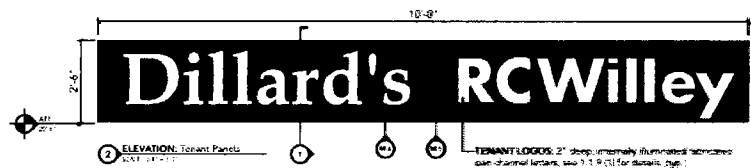
- Ⓐ FACES: 3/16" TRANS WHITE SG PLEX
  - Ⓑ NO TRIMCAP
  - Ⓒ RETURNS: .040 WHITE ALUMINUM 3" DEEP
  - Ⓓ BACKS: .063 ALUMINUM STOCK COLOR
  - Ⓔ ILLUMINATION: WHITE LEDS
  - Ⓕ POWER SUPPLY: REMOTE HOUSED IN SIGN CABINET
  - Ⓖ MOUNTED TO FASCIA
- VISIBLE DISCONNECT SWITCH AT SIGN
  - 120V SERVICE SUPPLIED BY OTHERS

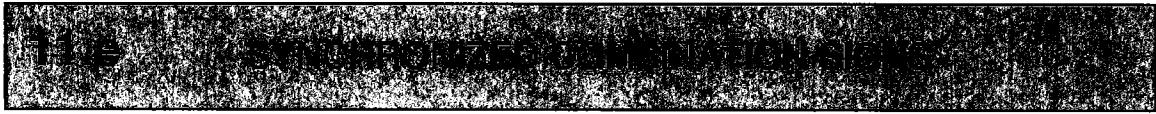




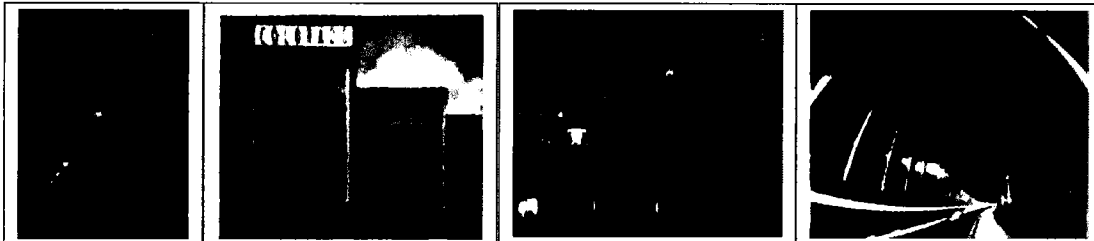
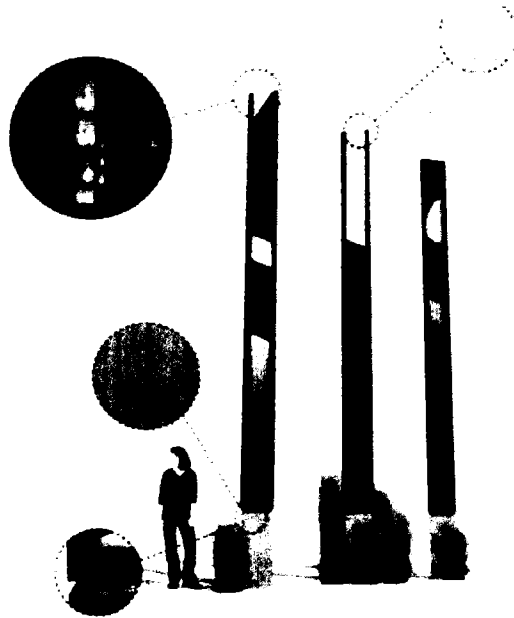
1 DETAIL: ILLUMINATED LOGO

TENANT PANELS





**SYNCHRONIZED COMBO SIGNS**



**SYNCHRONIZED COMBINATION SIGN EXAMPLES**







11.h.

WALL SIGNAGE



Wall signage and artwork is permitted on large wall surfaces as a means to break up blank areas and provide visual interest.

Wall signage may include tenant's name if done tastefully and artistically.

All wall signage must be approved by Landlord's Architect, and content must be consistent with the quality feel of the surrounding University Place Development. Approval of wall signs is at Landlord Architect's sole discretion.

