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SJ Marketplace, LLC
5670 Wilshire Boulevard, Suite 1250
Los Angeles, California 90036
Attn.: Steven Usdan

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Gary W. Ott
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**DECLARATION OF EASEMENTS,
COVENANTS, CONDITIONS
AND RESTRICTIONS**

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

This Declaration of Easements, Covenants, Conditions and Restrictions (this "**Declaration**") is made and entered into as of 2-28, 2014 (the "**Effective Date**") by SJ MARKETPLACE, LLC, a Delaware limited liability company ("**SJM**").

RECITALS

A. On the Effective Date, SJM has acquired fee title to that certain real property located in the City of South Jordan, Salt Lake County, Utah and more particularly described on Exhibit A attached hereto (together with all Improvements now or hereafter located thereon, the "**Shopping Center Property**").

B. The Shopping Center Property has been subdivided into several legal parcels as depicted on the plat of the Shopping Center Property attached to this Declaration as Exhibit B.

C. SJM intends for the Shopping Center Property to be developed, occupied, used and operated as an integrated retail development.

D. Immediately following the recordation of this Declaration, SJM is transferring one or more Parcels of the Shopping Center Property to third parties, and SJM contemplates the potential future transfer to other third parties of additional Parcels of the Shopping Center Property, in each instance for the development, occupancy, use and operation of such Parcels in accordance with the terms and provisions of this Declaration.

E. SJM desires to enter into this Declaration for the purpose of (1) the grant of certain easements in, on, under and over the Shopping Center Property; (2) the regulation of the development, alteration, maintenance, repair, replacement and operation of the Shopping Center Property, including, without limitation, those common areas of the Shopping Center Property designated for shared use or access; (3) the allocation between and among the Owners of certain shared common area costs and expenses; (4) the creation of certain rights and the imposition of certain restrictions and covenants on and with respect to the use and operation of the Shopping Center Property or portions thereof; and (5) certain other matters set forth herein.

ARTICLE 1

DEFINITIONS/RULES OF CONSTRUCTION

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

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

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

"Building" means each of the buildings now or hereafter situated on the Shopping Center Property.

"Claims" is defined in Section 5.6.

"Common Areas" mean all sidewalks, ramps, driveways, drive aisles, exterior plazas, parking areas, landscaped areas, fountains, exterior stairways or escalators, and other facilities or areas used in common by the Owners and Occupants of the Shopping Center Property, including all Improvements located thereon and used for such purposes. Notwithstanding any contrary provision of this Declaration, (a) the Common Areas shall exclude the interior portions of any Building, (b) any loading dock that serves a particular Building or Buildings shall be reserved for the exclusive use of the Occupants of such Building(s), but shall be included in Common Areas for all other purposes of this Declaration, and (c) the Common Areas shall include any drive-through lane for a Building but shall exclude any drive-through fixtures, equipment, signage or utility systems.

"Common Areas Expenses" is defined in Section 8.3.1.

"Common Areas Expenses Estimate" is defined in Section 8.3.3.

"Common Areas Expenses Statement" is defined in Section 8.3.3.

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

"Default Curing Owner" is defined in Section 11.3.

"Effective Date" is defined in the preamble to this Declaration.

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

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

“Ground Lease” means any future ground lease pursuant to which a portion of the Shopping Center Property is ground leased.

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

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

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

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

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

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

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

“Major Parcel” means the Parcel on which the Building marked on the Site Plan as Major 1 is located, as such Parcel may be re-platted, adjusted or modified pursuant to the terms and provisions of the definition of Parcel set forth in this Declaration.

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

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

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

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

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

“Pad Parcel” or **“Pad Parcels”** means individually or collectively each of the Parcels for which the Building to be located on that Parcel is marked on the Site Plan as Pad A (**“Pad Parcel A”**), Pad B (**“Pad Parcel B”**), Pad C (**“Pad Parcel C”**) or Pad D (**“Pad Parcel D”**), as such Parcels may be re-platted, adjusted or modified pursuant to the terms and provisions of the definition of Parcel set forth in this Declaration.

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

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

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

“Protected Drive Aisles” means the drive aisles marked on the Site Plan as “Protected Drive Aisles.”

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

“Real Estate Taxes and Assessments” means all real property taxes, possessory-interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, transit and traffic charges, housing fund assessments, open space charges, childcare fees, school, sewer and parking fees or any other assessments, levies, fees, exactions or charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen (including fees “in-lieu” of any such tax or assessment) which are assessed, levied, charged, conferred or imposed by any Governmental Body upon any real property or its operations, together with all taxes, assessments or other fees imposed by any Governmental Body upon or measured by any rent or other charges payable under any lease, including any gross receipts tax or excise tax levied by any Governmental Body with respect to receipt of rental income, or upon, with respect to or by reason of the development, possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy of the Shopping Center Property, together with any tax imposed in substitution, partially or totally, of any tax previously included within the aforesaid definition or any additional tax the nature of which was previously included within the aforesaid definition, together with any and all costs and expenses (including, without limitation, attorneys, administrative and expert witness fees and costs) of challenging any of the foregoing or seeking the reduction in or abatement, redemption or return of any of the foregoing.

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

“Shops Parcel” or **“Shops Parcels”** means individually or collectively each of the Parcels for which the Building or Buildings to be located on that Parcel is (or are) marked on the Site Plan as Shops A (**“Shops Parcel A”**), Shops B (**“Shops Parcel B”**), Major 2 (the **“Other Major Parcel”**), Shops C (**“Shops Parcel C”**), Shops D (**“Shops Parcel D”**), Shops E (**“Shops Parcel E”**), Shops F (**“Shops Parcel F”**), or Shops G (**“Shops Parcel G”**), as such Parcels may be re-platted, adjusted or modified pursuant to the terms and provisions of the definition of Parcel set forth in this Declaration. As of the date of this Declaration, Shops Parcel A, Shops Parcel B and the Other Major Parcel are one Parcel and all provisions of this Declaration that pertain to Shops Parcel A, Shops Parcel B and the Other Major Parcel shall pertain to such one Parcel until such Parcel is subdivided.

“Shopping Center Property” is defined in the recitals to this Declaration.

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

“Sprouts Lease” means that certain Shopping Center Lease dated September 6, 2013 between CCA Acquisition Company, LLC, as predecessor-in-interest to SJM, as landlord, and SFM, LLC, a Delaware limited liability company, as tenant, as such lease is amended, modified, extended, renewed or replaced with a new or substitute lease.

“West Commercial Property” means the real property located on the west side of 4000 West Street and marked on the Site Plan as “West Commercial Property,” which property is not part of the Shopping Center Property.

1.2 **List of Exhibits.**

<u>Exhibit A</u>	Legal Description of Shopping Center Property
<u>Exhibit B</u>	Platted Parcels of Shopping Center Property
<u>Exhibit C</u>	Site Plan
<u>Exhibit D</u>	Prohibited Uses
<u>Exhibit E</u>	Existing Exclusive Use Restrictions
<u>Exhibit F</u>	Special Provisions Affecting Pad Parcel B
<u>Exhibit G</u>	Special Provisions Affecting Pad Parcel D

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

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

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

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

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

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

ARTICLE 2

PURPOSE/INTENT TO BIND FUTURE OWNERS

2.1 **Purpose.** Declarant intends for this Declaration to govern (a) the grant of certain easements in, on, under and over the Shopping Center Property; (b) the regulation of the development, alteration, maintenance, repair, replacement and operation of the Shopping Center Property, including, without limitation, the Common Areas; (c) the allocation between and among the Owners of the Common Areas Expenses; (d) the creation of certain rights and the imposition of certain restrictions and covenants on and with respect to the Shopping Center Property or portions thereof; and (e) certain other matters set forth herein.

2.2 **Future Dispositions; Intent to Bind.** On and after the Effective Date, to ensure that the purposes set forth in Section 2.1 above are met, Declarant desires to impose upon the Shopping Center Property, and the Parcels and Improvements constituting a portion thereof, the mutual and beneficial covenants, conditions and restrictions set forth in this Declaration. Upon the Recordation of this Declaration, the Shopping Center Property, and the Parcels and Improvements constituting a portion thereof, shall be held, conveyed, hypothecated, encumbered, leased, used, occupied and improved subject to the easements, covenants, conditions and restrictions contained herein, all of which are declared and agreed to be equitable servitudes for the purpose of enhancing and protecting the value, desirability and attractiveness of the Shopping Center Property. All of the covenants, conditions and restrictions set forth herein shall run with the Shopping Center Property and all of the Parcels and Improvements constituting a portion thereof, and shall be binding upon and shall benefit each Owner

and their respective heirs, successors and assigns. All of the covenants, conditions and restrictions described herein are made for the direct, mutual and reciprocal benefit of each Parcel, and the Improvements located thereon, and shall create reciprocal rights and obligations, and privity of contract and estate between and among, the Owners and their respective heirs, successors and assigns.

ARTICLE 3

REGULATION OF IMPROVEMENTS

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

3.2 **General Development of Parcels.** Except with the prior written approval of Declarant, which approval may be withheld by Declarant in its sole and absolute discretion, (a) the Improvements constructed on each of the Parcels shall be in compliance with the Site Plan, including without limitation, the location and configuration of the Building(s) to be constructed on such Parcel, the location, configuration and number of parking spaces on such Parcel, and the location and configuration of the drive aisles, drive-thru facilities (if applicable) and other Improvements to be located on such Parcel as shown on the Site Plan; (b) all Buildings shall be one structural story (including mezzanine); (c) no building other than the buildings on the Major Parcel or the Other Major Parcel shall be of a height in excess of twenty two (22) feet measured from the elevation of the finished graded pad to the parapet of the Building and twenty four (24) feet to the highest point of the roof or other architectural feature of the Building; (d) notwithstanding the immediately preceding subsection (c), the Buildings shown as Shops A and Shops B on the Site Plan shall not be of a height in excess of eighteen (18) feet measured from the elevation of the finished graded pad to the highest point of the roof or other architectural feature of the Building; (e) the Building shown as Major 2 on the Site Plan shall not exceed the height of the Building located on the Major Parcel; and (f) the Gross Floor Area of each Building on a particular Parcel may be less than, but shall not be greater than, the square footage shown for each such Building on the Site Plan.

3.3 **Other Improvement Requirements.** In addition to the requirements set forth in Section 3.2 above, all Improvements or Improvement Changes shall comply with the following requirements: (i) all Improvements and Improvement Changes shall comply with all applicable Governmental Requirements in effect at the time of the construction of such Improvement or Improvement Change; (ii) all Improvements and Improvement Changes shall be consistent and compatible with a first-class retail and commercial center; (iii) all Improvements and Improvement Changes shall be architecturally compatible with the other Buildings on the Shopping Center Property; (iv) there shall be no Buildings, kiosks, permanent barriers, free-standing signs (other than parking related or directional signage approved by Declarant), other structures or outdoor sales areas except as shown on the Site Plan; (v) each parking space shall be at least nine (9) feet from center to center and eighteen (18) feet from end to end, except for handicapped parking spaces as may be required by Governmental Requirements, except that if and to the extent shown on the Site Plan up to ten percent (10%) of the parking spaces on a Parcel may be smaller for compact cars in accordance with Governmental Requirements; provided, however, that (A) the one hundred (100) parking spaces closest to the front entrance to the Building constructed

on the Major Parcel shall remain full sized spaces unless otherwise shown on the Site Plan; and (B) the total area devoted to parking on the Major Parcel, the Other Major Parcel, Shops Parcel A, Shops Parcel B, Shops Parcel C, Shops Parcel D, Pad Parcel C and Pad Parcel D shall not be diminished as a result of the conversion of any full-sized parking spaces depicted on the Site Plan; (vi) the slope of the parking areas and drive aisles shall not exceed four percent (4%); provided, however, that the slope of the parking areas shall not exceed two percent (2%) within one hundred (100) feet of the front wall of the Building constructed on the Major Parcel and in all handicap access areas; and (vii) all construction work or staging with respect to the construction of an Improvement or Improvement Change shall be confined to the Parcel on which the Improvement or Improvement Change is to be located, or other Parcel(s) owned by the same Owner, except as approved by the Owner of a Parcel on which another Owner desires to stage construction; provided, however, that no construction or staging shall interfere with the free flow of traffic over the Protected Drive Aisles.

Subject to the consent of the Owner of the Major Parcel, Declarant shall have the right to modify the Site Plan or modify or waive the requirements of Section 3.2 above or clauses (iii) through (vii) of this Section 3.3, in each case with respect to (a) any Parcel that is owned by Declarant as of the date of such modification or waiver, or (b) any other Parcel with respect to which such modification or waiver is requested or approved by the Owner of such Pad Parcel; provided, however, that no modification or waiver pursuant to this paragraph shall (x) reduce the number of parking spaces in the Shopping Center to below that required by applicable Governmental Requirements; (y) materially interfere with traffic flow over the Protected Drive Aisles; or (z) cause any other Parcel of the Shopping Center to be in violation of Governmental Requirements applicable to such Parcel. During any period during which the Sprouts Lease remains in effect, the consent of the Occupant of the Major Parcel shall be required for any modification or waiver pursuant to this paragraph. The consents of the Owner or Occupant of the Major Parcel under this Section 3.3 may be withheld in the sole and absolute discretion of such Owner or Occupant of the Major Parcel.

3.4 **Maintenance and Repair.** Subject to the terms and provisions of (a) Article 8 below regarding the maintenance and repair of the Common Areas, and (b) Article 10 regarding damage or destruction, each Owner of a Parcel shall maintain, repair, replace and restore such Owner's Parcel and the Improvements located thereon in a clean, orderly and first-class condition and appearance, and in compliance with all Governmental Requirements; provided, however, that the provisions of this Section 3.4 shall not be applicable to the interior portions of a Building that are not visible from the exterior of such Building.

3.5 **Construction Regulations.** All construction activities on the Shopping Center Property shall be performed in accordance with the following requirements:

3.5.1 All Improvements or Improvement Changes shall be constructed pursuant to plans and specifications submitted to and approved by Declarant, which approval shall not be unreasonably withheld; provided, that for purposes of clarification, interior components of Buildings that are not visible from the exterior of a Building shall not be subject to Declarant approval;

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

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

3.5.4 during the two (2) week "grand opening" period for the Sprouts market to be operated in the Building on the Major Parcel and thereafter during each period from November 15 to January 7 annually, provided that this paragraph shall not apply prior to December 31, 2014, there shall be no construction work in the Common Areas (excluding routine maintenance) unless required by Governmental Requirements or in a situation of a sudden and urgent nature requiring immediate action to avoid risk to person or damage to property; provided, however, that all construction or staging activities in the Common Areas located on the Other Major Parcel, Shops Parcel A or Shops Parcel B (except the parking area immediately south of the Building shown as Shops A on the Site Plan), Shops Parcel C and Shops Parcel D, and the portion of the parking areas located on Pad Parcel A that are east of the main drive aisle that runs north/south to the east of the Building located on Pad Parcel A, in connection with the construction of buildings on such Parcels, must be completed and all materials removed from such Common Areas by December 31, 2014; Declarant shall have the right to waive the requirements of this Section 3.5.4 with the consent of the Owner of the Major Parcel, which consent may be withheld in the sole and absolute discretion of the Owner of the Major Parcel; provided, further, that during any period during which the Sprouts Lease remains in effect, the consent of the Occupant of the Major Parcel shall be required for any waiver under this Section 3.5.4, which consent may be withheld in the sole and absolute discretion of the Occupant of the Major Parcel; and

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

3.6 Special Provisions Affecting Certain Parcels. Without limitation of the other terms and provisions of this Declaration, (a) the terms and provisions of Exhibit F shall bind and be applicable to Pad Parcel B; and (b) the terms and provisions of Exhibit G shall bind and be applicable to Pad Parcel D. Declarant shall have the right to amend this Declaration to (i) impose upon one or more Parcels additional covenants, conditions or restrictions that are specific to such Parcel(s), as long as at the time of such amendment Declarant is the owner of the Parcel(s) burdened by such additional covenants, conditions or restrictions, or Declarant obtains the written agreement of the Owner of such burdened Parcel(s) to same; and/or (ii) grant to one or more Parcels additional rights, easements or other terms for the benefit of such Parcel that encumber another Parcel or Parcel as long as at the time of such amendment Declarant is the owner of the Parcel(s) burdened by such additional rights, easements or other terms, or Declarant obtains the written agreement of the Owner of such burdened Parcel(s) to same.

ARTICLE 4

REGULATION OF OPERATIONS AND USES

4.1 Permitted Use In General. The Shopping Center Property shall be used only for retail, restaurant and other commercial uses and purposes consistent and compatible with the operation of a retail shopping center. All uses of the Shopping Center Property shall comply with Governmental

Requirements, and no portion of the Shopping Center Property shall be used or developed in any manner that would cause another Owner or another Owner's Parcel and/or the Improvements located thereon to be in violation or noncompliance with any Governmental Requirements. Except as permitted under Section 3.5 with respect to construction work, no use of the Shopping Center Property shall be permitted that causes or produces a nuisance or unreasonable disturbance to Occupants and activities on other Parcels, including, but not limited to, vibration, sound, odor, electro-magnetic disturbance, radiation, air or water pollution, dust and emission of odorous, toxic or non-toxic matter.

4.2 **Other Use Restrictions and Prohibited Conduct.**

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

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

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

4.2.4 No Owner or Occupant shall solicit business outside of its Parcel or distribute handbills in the Common Areas.

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

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

4.3 **Prohibited Uses.** No Owner or Occupant shall use any Parcel in violation of the use restrictions set forth on Exhibit D attached to this Declaration. Subject to the consent of the Owner of the Major Parcel, Declarant shall have the right to modify or waive any of the use restrictions set forth on Exhibit D; provided, however, during any period during which the Sprouts Lease remains in effect,

the consent of the Occupant of the Major Parcel also shall be required for any modification or waiver of the use restrictions set forth on Exhibit D. The consents of the Owner or Occupant of the Major Parcel under this Section 4.3 may be withheld in the sole and absolute discretion of such Owner or Occupant of the Major Parcel.

4.4 **Exclusive Use Restrictions.**

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

4.4.2 **Future Exclusive Use Restrictions.** No Parcel of the Shopping Center Property shall be used for any purpose that violates any future exclusive use restriction granted after the Effective Date by Declarant to an Occupant of another Parcel of the Shopping Center Property ("**Future Exclusive Use Restrictions**"), except to the extent that at the time of the grant of such Future Exclusive Use Restriction the subject Parcel is then being used, or a lease or occupancy agreement has been executed for the use of such subject Parcel, for a purpose that conflicts with the Future Exclusive Use Restriction. For purposes hereof, a Future Exclusive Use Restriction shall be considered to be "granted" as of the date that a written letter of intent, term sheet, lease or occupancy agreement has been executed after the Effective Date that includes such Future Exclusive Use Restriction and the Owner of the Parcel to be bound by such Future Exclusive Use Restriction has been given written notice of such grant; provided, however, that if the transaction that is the subject of any letter of intent or term sheet is terminated prior to the execution of a binding lease or occupancy agreement for such Future Exclusive Use Restriction, then for purposes of this paragraph the grant of such Future Exclusive Use Restriction shall be considered terminated (until subsequently granted, if applicable). Compliance with each Future Exclusive Use Restriction hereafter granted in favor of an Occupant of a Parcel as provided above shall be binding upon the Occupants of each other Parcel of the Shopping Center Property as long as such Future Exclusive Use Restriction remains in effect, regardless of whether the lease or occupancy agreement which contains the Future Exclusive Use Restriction is assigned, subleased, extended, renewed or modified, and if and so long as the lease or occupancy agreement that contains such Future Exclusive Use Restriction is replaced with a new lease or occupancy agreement with a then-existing Occupant or a new replacement Occupant, as long as any such new lease or occupancy agreement is executed within six (6) months after the date of the termination or expiration of the lease or occupancy agreement in which the Future Exclusive Use

Restriction was contained. Each Future Exclusive Use Restriction is enforceable only by the Owner and/or Occupant of the Parcel benefitted by the Future Exclusive Use Restriction as set forth in the notice of the grant of such Future Exclusive Use Restriction, and such Future Exclusive Use Restriction shall not be enforceable by the Owner or Occupant of any other Parcel. Although no amendment of this Declaration shall be required to document a Future Exclusive Use Restriction, Declarant shall have the right to amend this Declaration to document a Future Exclusive Use Restriction in accordance with the terms and provisions of this Section 4.4.2.

ARTICLE 5

INSURANCE/INDEMNIFICATION

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

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

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

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

5.4.1 be maintained under a valid and enforceable policy or policies issued by insurers qualified to do business in the state in which the Shopping Center Property is located and which are rated in Best's Insurance Guide at least A- :VII (or, if no Best's Insurance Guide rating is then available, having a comparable rating by a similarly nationally recognized rating agency);

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

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

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

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

5.5.1 be maintained under a valid and enforceable policy or policies issued by insurers qualified to do business in the state in which the Shopping Center Property is located and which are rated by Best's Insurance Guide at least A- :VII (or, if no Best's Insurance Guide rating is then available, having a comparable rating by a similarly nationally recognized rating agency);

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

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

5.6 **Indemnification by Parties.** Each Owner shall indemnify, defend and hold harmless all other Owners and Managing Agent, and each of their respective officers, directors, agents, members, shareholders and partners from and against all claims, liabilities, damages, causes of action, obligations, costs and expenses (including reasonable attorneys' fees) (collectively, "**Claims**") arising from the death of or bodily injury to any Person, or for damage to the Shopping Center Property of any Persons, as shall occur on such Owner's Parcel or the Improvements located thereon, except in each case to the extent the Claim both (i) is caused by or results from the negligence or willful misconduct of the Indemnitee or its employees, agents or contractors, and (ii) except in the case of the gross negligence or willful misconduct of the Indemnitee, is not covered by insurance and would not have been covered by insurance if such indemnifying Owner had carried the insurance required to be carried by such indemnifying Owner under this Declaration. Managing Agent shall indemnify, defend and hold harmless all Owners, and each of their officers, directors, agents, members, shareholders and partners from and against all Claims arising from the death of or bodily injury to any Person, or for damage to the property of any Persons, as shall occur in the Common Areas to the extent the Claim both (i) is caused by or results from the negligence or willful misconduct of Managing Agent, or its employees, agents or contractors, in performing obligations under Section 8.2 with respect to Common Areas of another Owner's Parcel, and (ii) except in the case of the gross negligence or willful misconduct of

Managing Agent, is not covered by insurance and would not have been covered by insurance if the Owner of the Parcel on which the Claim arose had carried the insurance required to be carried under this Declaration. Any costs or amounts incurred by Managing Agent in connection with Managing Agent's indemnification, defense and hold harmless obligations under this Section 5.6 in its capacity as Managing Agent shall be included in Common Areas Expenses except to the extent the Claim which is the subject of such indemnification, defense and hold harmless obligation is caused by the gross negligence or willful misconduct of Managing Agent. Each Indemnitee shall provide Indemnitor with prompt written notice of any Claim entitling Indemnitee to indemnification pursuant to this Section 5.6, and Indemnitor shall defend Indemnitee with respect to such Claim with counsel reasonably satisfactory to Indemnitee; provided, however, the failure of an Indemnitee to provide written notice of any Claim entitling Indemnitee to indemnification shall not relieve Indemnitor of the indemnification obligations set forth in this Section 5.6, except to the extent that such failure materially increases the liability of Indemnitor or materially adversely affects Indemnitor's defense against the Claim.

5.7 **Blanket Policies.** Each party may satisfy its obligations under Sections 5.1 through 5.5, in whole or in part, by means of a so-called blanket policy which is in conformity with the requirements of such Sections, provided that the aggregate limits in any blanket liability policy are applicable on a per location basis.

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

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

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

ARTICLE 6

USE AND OPERATON OF PARKING FACILITIES

6.1 **Reciprocal Use of Parking Facilities; Parking Easement.** The parking facilities located on the Shopping Center Property shall be used in common by all Owners and their respective Permittees as non-reserved parking on a first-come, first-served basis. Declarant hereby establishes and reserves for, and grants to, each Owner of a Parcel, the retained right to use, and an easement for access to and use of, the parking facilities located on the Shopping Center Property, on a non-exclusive shared basis. The easement described in this Section 6.1 shall include an easement for vehicular ingress and egress to, from and over the entrances, exits, driveways, drive aisles and other vehicular circulation paths on the Shopping Center Property for the purpose of the enjoyment of the parking easement described in this Section 6.1. Notwithstanding the foregoing, each Owner shall have the right to designate up to two (2) (or such greater number as approved by Declarant) of the parking spaces located on its Parcel as delivery, carryout or other short term parking for specific Occupants that require such parking due to the particular nature of their business. The Owner of the Major Parcel shall have the right to require that no employees of any Occupant of the Shopping Center occupying space in a Building outside of the Major Parcel park in the parking areas located on the Major Parcel, the Other Major Parcel, Shops Parcel A Parcel and Shops Parcel B (except the parking area immediately south of the Building shown as Shops A on the Site Plan), Shops Parcel C and Shops Parcel D, and the portion of the parking areas located on Pad Parcel A that are east of the main drive aisle that runs north/south to the east of the Building located on Pad Parcel A. Except for reimbursement of Common Area Expenses (if and as applicable), there shall be no charges for the shared use of the parking facilities on the Shopping Center Property.

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

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

6.4 **Miscellaneous Parking Provisions.**

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

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

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

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

6.4.5 Subject to the provisions of the next to last sentence of Section 6.1 above, each Owner shall require its employees to park on such Owner's Parcel or in the area designated as employee parking on the Site Plan attached hereto as Exhibit C (if any).

ARTICLE 7

OTHER EASEMENTS

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

7.2 **Vehicular and Pedestrian Access.**

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

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

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

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

7.5 **Construction.** Declarant hereby grants and reserves non-exclusive easements burdening each of the Parcels of the Shopping Center Property for the benefit of the other Parcels of the Shopping

Center Property for the installation, use, maintenance, repair, replacement and removal of any Improvement, or portion thereof, such as a footing, column, support or foundation, which is located either wholly on one Parcel or partly on the Parcel of one Owner and partly on the Parcel of another Owner, and which has been designed to be used and shared in common for the benefit of two or more Parcels.

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

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

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

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

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

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

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

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

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

7.8 **Signage.**

7.8.1 The proposed development of the Shopping Center Property includes the construction of certain multi-tenant pylon signs ("**Pylon Signs**") and multi and/or single-tenant monument signs ("**Monument Signs**"). Each Pylon Sign shall be in the approximate locations shown on the Site Plan, except that Declarant shall have the right to modify the location of a Pylon Sign with the consent of the Owner of the Parcel on which the modified Pylon Sign is located, which consent may be withheld in such Owner's sole and absolute discretion. Each Monument Sign shall be in a location approved by Declarant and the Owner of the Parcel upon which the Monument Sign is to be located, in each of their respective sole and absolute discretion, and shall be subject to applicable Governmental Requirements. Except with the consent of the Declarant and the Owner of the Parcel on which any additional Pylon Sign or Monument Sign will be located, no additional pylon, monument or other free-standing signs, or any flags or banners, shall be constructed or exhibited on the Shopping Center Property.

7.8.2 Declarant hereby grants and reserves an easement over each Parcel on which a Pylon Sign is to be located for the construction, use, maintenance, repair, replacement and access to such Pylon Sign, including the utility lines serving such Pylon Sign. Declarant shall own all Pylon Signs. Declarant shall have the right to allocate between and among the Owners of the Parcels of the Shopping Center Property the right to display the trade names of Occupants on sign panels on the Pylon Signs. Except as set forth in the immediately preceding sentence or on Exhibit G, no Owner shall have the right to use or display signage on a Pylon Sign.

7.8.3 Managing Agent, shall be responsible for the construction, operation, maintenance, repair and replacement of each Pylon Sign structure and, if applicable the sign panel on such Pylon Sign for the name of the Shopping Center Property, in good working order and first-class condition and appearance.

7.8.4 Each Owner that is allocated the right to use a particular sign panel or panels on a Pylon Sign shall be responsible for (a) reimbursement to Managing Agent of its pro rata share of the costs of the construction, operation, maintenance, repair and replacement of such Pylon Sign, with such pro rata share based on the relative sign fascia area of each Owner's sign panels on such Pylon Sign (excluding the sign panel for the name of the Shopping Center Property); and (b) the fabrication, installation, maintenance, repair and replacement of such Owner's allocated sign panels in good working order and first-class condition and appearance; provided, however, that Managing

Agent shall have the right to perform the work described in this clause (b) and to charge the particular Owner for the cost of such work.

7.8.5 The Owner of each Parcel on which a Monument Sign is located shall have the sole right to use the Monument Sign located on such Owner's Parcel, and shall be responsible at such Owner's sole cost and expense, for the construction, operation, maintenance, repair and replacement of such Monument Sign in good working order and first-class appearance and condition. Declarant shall have the right to approve the plans and specifications for each Monument Sign, and no modifications shall be made to a Monument Sign without the prior consent of Declarant, which consent shall not be unreasonably withheld, conditioned or denied. Without limitation of the foregoing, each Monument Sign shall comply with the requirements of Article 3 of this Declaration.

7.8.6 Pylon Signs and Monument Signs shall be used to display the trade names of Occupants of the Shopping Center Property or to otherwise advertise the Shopping Center Property and shall not be used to display or advertise the names of other businesses not located in the Shopping Center Property.

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

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

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

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

ARTICLE 8

COMMON AREAS

8.1 **Use of Common Areas.** The use of the Common Areas by each Owner and Occupant, and their respective Permittees, shall be in common with all other Owners and Occupants, and their respective Permittees. Each Owner shall keep the Common Areas on its Parcel free and clear of any obstructions created or permitted by such Owner, or resulting from such Owner's or its Occupants' or

their Permittees' activities, so as not to unreasonably interfere with the use and enjoyment by the other Owners and Occupants, and their respective Permittees, of the Common Areas.

8.2 Maintenance and Repair of Common Areas. Managing Agent shall be responsible for the maintenance, repair and replacement of all Common Areas located on the Shopping Center Parcel in a clean, orderly and first-class condition and appearance, and in compliance with all Governmental Requirements. The foregoing obligation of maintenance, repair and replacement shall include, without limitation, gardening, landscaping, repaving, resurfacing, sealing, repairing, painting, lighting, cleaning, sweeping, Common Area trash removal, replacing necessary appropriate directional signs, markers and lines, maintaining and replacing shrubs, trees, vegetation, the maintenance, repair and replacement of irrigation and lighting systems, and the maintenance, repair and replacement of all systems and equipment serving the Common Areas. Each Owner's easements for the use and enjoyment of the Common Areas are subject to the performance by Managing Agent of its obligations under this Section 8.2. Managing Agent shall perform its obligations under this Section 8.2 in a manner so as reasonably minimize, to the extent commercially practicable, interference with each Owner's rights of use and enjoyment of the Common Areas. Notwithstanding the foregoing, Declarant shall have the right, in its sole and absolute discretion, to permit the Owner of a Parcel to self-maintain the Common Areas on such Parcel with respect to all or portion of the duties under this Section 8.2. In such case, the designated Owner shall have obligation to perform the obligations of Managing Agent under this Section 8.2 as agreed upon between such Owner and Declarant, and such Owner shall not be required to share in Common Areas Expenses pursuant to Section 8.3 below with respect to any portion of the Common Areas maintenance obligations assumed by such Owner; provided, however, that in the administration of the self-maintenance of any Parcel, Declarant shall have the right to require that any self-maintained Parcel contain at least a proportionate share of the Common Areas (based on relative Gross Floor Area) and if such self-maintained Parcel does not contain at least a proportionate share of the Common Areas, then Declarant shall have the right to require that the self-maintaining Owner retain responsibility for a portion of the Common Area Expenses necessary for such Owner to pay its equitable share of the cost of the operation, management, maintenance, repair and replacement of the total Common Areas.

8.3 Common Areas Expenses.

8.3.1 Definition. For purposes of this Declaration, the term "**Common Areas Expenses**" means all expenses and costs incurred in connection with the operation, management, maintenance, repair and replacement of the Common Areas. Common Area Expenses include, without limitation, any costs and expenses for (i) wages, salaries and other compensation and benefits attributable to actual time spent by persons in the operation, maintenance, repair or security of the applicable Common Areas, employer's social security taxes, unemployment taxes or insurance, and any taxes which may be levied on such wages, salaries, compensation and benefits; (ii) the cost of supplying all utilities, Common Area refuse removal, cleaning and sweeping services; (iii) the cost of maintaining, repairing and replacing the applicable Common Areas and all electrical, plumbing, irrigation, mechanical, sanitary, storm drainage and other utility systems serving such Common Areas; (iv) the cost of materials and supplies used in connection with the operation, maintenance and repair of such Common Areas; (v) the cost of sweeping, resurfacing, sealing, repaving, re-striping or painting such Common Areas; (vi) the cost of keeping the Common Areas reasonably drained and free of standing water, ice, snow (including removal of ice and snow from loading dock areas), mud, sand, rubbish and other obstructions; (vii) the cost of any capital or non-capital improvements or expenditures which are

required to comply with Governmental Requirements or necessary to keep the applicable Common Areas in the same or better condition in which they exist as of the Effective Date, or as otherwise required hereunder; (viii) the cost of maintaining and replacing landscaping in such Common Areas; (ix) the cost of security services for such Common Areas; (x) the cost of the installation, repair, maintenance, replacement and operation of directional and operational signage; (xi) any costs incurred for the benefit of the Shopping Center for the matters described in the foregoing provisions of this Section 8.3.1 with respect to areas between the Shopping Center and perimeter streets or highways; and (xii) management and/or administrative fees or charges in an amount not exceeding the prevailing market rate management and administrative fees and charges paid in connection with the operation, management, maintenance and repair of comparable common areas in other similar retail and commercial projects in the geographic area in which the Shopping Center Property is located; provided, however, that in no event shall the management and administrative fees exceed ten percent (10%) of the total of all other Common Areas Expenses. In the event that a cost or expense is incurred for the applicable Common Areas and other Common Areas or non-Common Areas portions of the Shopping Center Property, such cost or expense shall be allocated in an equitable manner.

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

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

8.3.2 Allocation of Common Areas Expenses. Each Owner shall be responsible for a pro rata share of the total Common Areas Expenses. Such pro rata share shall be the Gross Floor Area of all Buildings located on such Owner's Parcel divided by the total Gross Floor Area of all Buildings located on all Parcels (excluding any Parcel that is self-maintained pursuant to Section 8.2 above). Notwithstanding the foregoing, if a Parcel has not been developed with a Building, then Managing Agent shall equitably allocate to such Owner the cost to maintain and repair the surface and/or Common Areas of such Parcel and such Owner shall not be required to pay its pro rata share of the remaining Common Areas until an occupancy permit is received for the Building developed on such Parcel. Notwithstanding any contrary term or provision hereof, Managing Agent shall have the right to equitably allocate to an individual Owner (and to exclude from the pro rata allocation of the remaining Common Areas Expenses), costs and expenses for the operation, maintenance, repair and replacement of (a) any loading dock dedicated to the Building located on such Owner's Parcel, (b) landscaping immediately adjacent to a Building and on the inside of any sidewalk on the immediate exterior of a Building located on such Owner's Parcel, (c) any drive-through lane and associated curbing or related Improvements for a Building located on such Owner's Parcel, (d) any outdoor seating area located on such Owner's Parcel; and (e) lighting or operation of the Common Areas beyond 11:00 p.m. Managing

Agent shall exercise its rights under the immediately preceding sentence in an equitable, consistent manner. Any expenses allocated to a particular Owner pursuant to clauses (a) through (e) above shall be added to and paid by such Owner as a part of such Owner's Common Areas Expenses payment obligation pursuant to this Section 8.3.

8.3.3 Payment. Prior to the commencement of each calendar year, Managing Agent shall submit to the Owners an estimate of the Common Areas Expenses for the following calendar year (the "**Common Areas Expenses Estimate**"). On or before the first day of each month during such year, each Owner shall pay to Managing Agent one-twelfth (1/12th) of its share of the projected Common Areas Expenses as set forth in the Common Areas Expenses Estimate. Within ninety (90) days after the end of each calendar year, Managing Agent shall submit to the Owners a statement setting forth the actual Common Areas Expenses for the preceding year (the "**Common Areas Expenses Statement**"). Within thirty (30) days following receipt of such Common Areas Expenses Statement, each Owner shall pay to Managing Agent the amount, if any, by which such Owner's share of the actual Common Areas Expenses exceeds the total estimated payments made by such Owner, or if the total estimated payments made by such Owner exceed such Owner's share of the actual Common Areas Expenses, then such Owner shall be entitled to a refund from Managing Agent of any such overpayment. If the Common Areas Expenses Estimate is not submitted by Managing Agent prior to the commencement of a calendar year, Managing Agent shall not be in breach of this Declaration, but each Owner shall continue to make estimated monthly payments based on the most recently delivered Common Areas Expenses Estimate until such time as a new Common Areas Expenses Estimate is delivered. On not more than two (2) occasions during any calendar year, Managing Agent shall have the right to adjust the Common Areas Expenses Estimate, in which case the monthly estimated payments to be made by each Owner shall thereafter be adjusted to reflect any change in such estimate.

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

ARTICLE 9

REAL ESTATE TAXES AND ASSESSMENTS

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

ARTICLE 10

DAMAGE OR DESTRUCTION OF IMPROVEMENTS

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

10.2 **Damage or Destruction of Common Areas.** If any of the Common Areas are damaged or destroyed by any casualty, or any portion thereof is taken by condemnation or the exercise of the power of eminent domain, the Owner of the Parcel on which the affected Common Areas are located shall, at such Owner's sole cost and expense, promptly restore the damaged Common Areas (or such portion thereof that has not been taken by condemnation or the exercise of the power of eminent domain) to their condition existing immediately prior to the damage or taking, subject to such alterations as may be permitted pursuant to Section 3.2 of this Declaration. The repair, restoration or other work described in this Section 10.2 shall be commenced and completed in a diligent manner.

ARTICLE 11

DEFAULTS / ENFORCEMENT

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

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

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

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

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

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

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

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

ARTICLE 12

TERM

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

ARTICLE 13

RIGHTS OF LENDERS

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

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

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

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

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

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

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

ARTICLE 14

ASSOCIATION

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

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

ARTICLE 15

MISCELLANEOUS PROVISIONS

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

15.2 **Notices.**

15.2.1 Except as otherwise expressly provided in this Declaration or required by law, all notices, consents, requests, demands, approvals, authorizations and other communications provided for herein shall be in writing and shall be sent by personal delivery, certified mail, return receipt requested, or by recognized overnight courier service, to the intended party at its last known address. For purposes of this Section 15.2.1, "last known address" with respect to any Owner shall mean such Owner's address last supplied to the other then Owners of the Shopping Center Property. If no address is supplied, then such Owner's address shall be deemed to be the address of any Parcel owned by such Owner.

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

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

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

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

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

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

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

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


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

[SIGNATURES ON FOLLOWING PAGE]

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

SJ MARKETPLACE, LLC,
a Delaware limited liability company

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

By: 
Name: _____
Title: **Steven Usdan**
Managing Member

State of California

County of Los Angeles

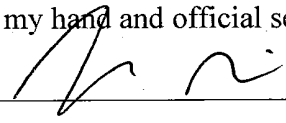
On February 20, 2014 before me, Jocelyn Sierad, Notary Public,
(here insert name and title of the officer)

personally appeared Steven Udan

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

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

WITNESS my hand and official seal.

Signature 

(Seal)

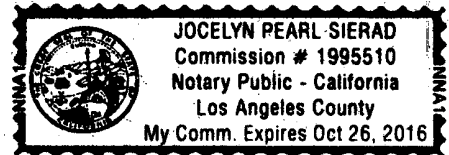


EXHIBIT A

LEGAL DESCRIPTION OF SHOPPING CENTER PROPERTY

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

LOT 3

BEGINNING AT A POINT SOUTH 00°04'39" EAST ALONG THE SECTION LINE 234.42 FEET AND EAST 233.50 FEET FROM THE WEST QUARTER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE NORTH 00°04'39" WEST 167.20 FEET; THENCE SOUTH 89°49'25" EAST 144.62 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY ALONG THE ARC OF A 50.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 89°50'40" A DISTANCE OF 78.40 FEET (CHORD BEARS SOUTH 44°54'05" EAST 70.61 FEET); THENCE SOUTH 00°01'15" WEST 116.48 FEET; THENCE SOUTH 89°55'21" WEST 194.20 FEET TO THE POINT OF BEGINNING.

CONTAINS 31,878 SQ. FT. OR 0.732 ACRES.

LOT 4

BEGINNING AT A POINT SOUTH 00°04'39" EAST ALONG THE SECTION LINE 234.42 FEET AND EAST 233.50 FEET FROM THE WEST QUARTER CORNER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE NORTH 89°55'21" EAST 194.20 FEET; THENCE SOUTH 00°01'15" WEST 44.09 FEET; THENCE SOUTH 03°47'36" EAST 92.72 FEET; THENCE SOUTH 81°55'21" WEST 153.65 FEET; THENCE SOUTH 89°55'21" WEST 47.97 FEET; THENCE NORTH 00°04'39" WEST 145.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 29,452 SQ. FT. OR 0.676 ACRES.

LOT 5

BEGINNING AT A POINT SOUTH 00°04'39" EAST ALONG THE SECTION LINE 392.42 FEET AND EAST 233.50 FEET FROM THE WEST QUARTER CORNER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE NORTH 89°55'21" EAST 47.97 FEET; THENCE NORTH 81°55'21" EAST 153.65 FEET; THENCE SOUTH 03°47'36" EAST 87.68 FEET; THENCE SOUTH 00°01'15" WEST 24.11 FEET; THENCE SOUTH 81°55'21" WEST 113.41 FEET; THENCE SOUTH 89°55'21" WEST 93.47 FEET; THENCE NORTH 00°04'39" WEST 106.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 22,429 SQ. FT. OR 0.515 ACRES.

LOT 6

BEGINNING AT A POINT SOUTH 00°04'39" EAST ALONG THE SECTION LINE 610.42 FEET AND EAST 233.50 FEET FROM THE WEST QUARTER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE NORTH 00°04'39" WEST 112.00 FEET; THENCE NORTH 89°55'21" EAST 93.47 FEET; THENCE NORTH 81°55'21" EAST 113.41 FEET; THENCE SOUTH 00°01'15" WEST 118.73 FEET; THENCE SOUTH 89°55'21" WEST 101.57 FEET; THENCE SOUTH 00°04'39" EAST 9.05 FEET; THENCE SOUTH 89°55'21" WEST 104.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 22,999 SQ. FT. OR 0.528 ACRES.

LOT 7

BEGINNING AT A POINT SOUTH 00°04'39" EAST ALONG THE SECTION LINE 610.42 FEET AND EAST 233.50 FEET FROM THE WEST QUARTER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE NORTH 89°55'21" EAST 104.00 FEET; THENCE NORTH 00°04'39" WEST 9.05 FEET; THENCE NORTH 89°55'21" EAST 101.57 FEET; THENCE SOUTH 00°01'15" WEST 110.05 FEET; THENCE SOUTH 89°55'21" WEST 205.38 FEET; THENCE NORTH 00°04'39" WEST 101.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 21,671 SQ. FT. OR 0.497 ACRES.

LOT 8

BEGINNING AT A POINT SOUTH 00°04'39" EAST ALONG THE SECTION LINE 711.43 FEET AND EAST 229.50 FEET FROM THE WEST QUARTER CORNER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE NORTH 89°55'21" EAST 209.38 FEET; THENCE SOUTH 00°01'15" WEST 255.65 FEET; THENCE SOUTH 02°15'47" EAST 30.31 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY ALONG THE ARC OF A 4037.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 03°09'04" A DISTANCE OF 222.02 FEET (CHORD BEARS SOUTH 03°50'19" EAST 222.00 FEET) TO A POINT ON THE ARC OF A 4025.00 FOOT NON TANGENT RADIUS CURVE TO THE LEFT; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 01°26'17" A DISTANCE OF 101.01 FEET (CHORD BEARS SOUTH 03°51'58" EAST 101.01 FEET); THENCE SOUTH 89°55'21" WEST 246.50 FEET; THENCE NORTH 00°04'39" WEST 231.25 FEET; THENCE NORTH 89°55'21" EAST 15.17 FEET; THENCE NORTH 00°04'39" WEST 377.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 134,210 SQ. FT. OR 3.081 ACRES.

LOT 9

BEGINNING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF 4000 WEST STREET, SAID POINT BEING SOUTH 00°04'39" EAST ALONG THE SECTION LINE 362.68 FEET AND EAST 42.50 FEET FROM THE WEST QUARTER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE NORTH 00°04'39" WEST ALONG SAID RIGHT OF WAY LINE 166.00 FEET; THENCE NORTH 89°55'21" EAST 159.00 FEET; THENCE SOUTH 00°04'39" EAST 38.00 FEET; THENCE NORTH 89°55'21" EAST 32.00 FEET; THENCE SOUTH 00°04'39" EAST 158.00 FEET; THENCE SOUTH 89°55'21" WEST 32.00 FEET; THENCE NORTH 00°04'39" WEST 30.00 FEET; THENCE SOUTH 89°55'21" WEST 159.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 31,450 SQ. FT. OR 0.722 ACRES.

LOT 10

BEGINNING AT A POINT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF 4000 WEST STREET, SAID POINT BEING SOUTH 00°04'39" EAST ALONG THE SECTION LINE 362.68 FEET AND EAST 42.50 FEET FROM THE WEST QUARTER CORNER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE NORTH 89°55'21" EAST 159.00 FEET; THENCE SOUTH 00°04'39" EAST 30.00 FEET; THENCE NORTH 89°55'21" EAST 32.00 FEET; THENCE SOUTH 00°04'39" EAST 152.00 FEET; THENCE SOUTH 89°55'21" WEST 32.00 FEET; THENCE NORTH 00°04'39" WEST 7.92 FEET; THENCE SOUTH 89°55'21" WEST 159.00 FEET TO SAID EASTERLY RIGHT OF WAY LINE; THENCE NORTH 00°04'39" WEST ALONG SAID EASTERLY RIGHT OF WAY LINE 174.08 FEET TO THE POINT OF BEGINNING.

CONTAINS 32,543 SQ. FT. OR 0.747 ACRES.

LOT 11

BEGINNING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF 4000 WEST STREET, SAID POINT BEING SOUTH 00°04'39" EAST ALONG THE SECTION LINE 711.68 FEET AND EAST 42.50 FEET FROM THE WEST QUARTER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE NORTH 00°04'39" WEST ALONG SAID RIGHT OF WAY LINE 174.92 FEET; THENCE NORTH 89°55'21" EAST 159.00 FEET; THENCE SOUTH 00°04'39" EAST 7.92 FEET; THENCE NORTH 89°55'21" EAST 32.00 FEET; THENCE SOUTH 00°04'39" EAST 167.00 FEET; THENCE SOUTH 89°55'21" WEST 191.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 33,156 SQ. FT. OR 0.761 ACRES.

LOT 12

BEGINNING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF 4000 WEST STREET, SAID POINT BEING SOUTH 00°04'39" EAST ALONG THE SECTION LINE 711.68 FEET AND EAST 42.50 FEET FROM THE WEST QUARTER OF SECTION 20, TOWNSHIP 3 SOUTH,

RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE NORTH 89°55'21" EAST 187.00 FEET; THENCE SOUTH 00°04'39" EAST 377.00 FEET; THENCE SOUTH 89°55'21" WEST 15.17 FEET; THENCE SOUTH 00°04'39" EAST 231.25 FEET; THENCE SOUTH 89°55'21" WEST 171.83 FEET TO SAID RIGHT OF WAY LINE; THENCE NORTH 00°04'39" WEST ALONG SAID RIGHT OF WAY LINE 608.25 FEET TO THE POINT OF BEGINNING.

CONTAINS 110,235 SQ. FT. OR 2.531 ACRES.

LOT 15

BEGINNING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF 4000 WEST STREET, SAID POINT BEING SOUTH 00°04'39" EAST ALONG THE SECTION LINE 196.68 FEET AND EAST 42.50 FEET FROM THE WEST QUARTER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE NORTH 00°04'39" WEST ALONG SAID RIGHT OF WAY LINE 109.96 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG THE ARC OF A 20.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 90°15'14" A DISTANCE OF 31.50 FEET (CHORD BEARS NORTH 45°02'58" EAST 28.35 FEET); THENCE SOUTH 89°49'25" EAST 170.91 FEET; THENCE SOUTH 00°04'39" EAST 167.20 FEET; THENCE SOUTH 89°55'21" WEST 32.00 FEET; THENCE NORTH 00°04'39" WEST 38.00 FEET; THENCE SOUTH 89°55'21" WEST 159.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 25,888 SQ. FT. OR 0.594 ACRES.

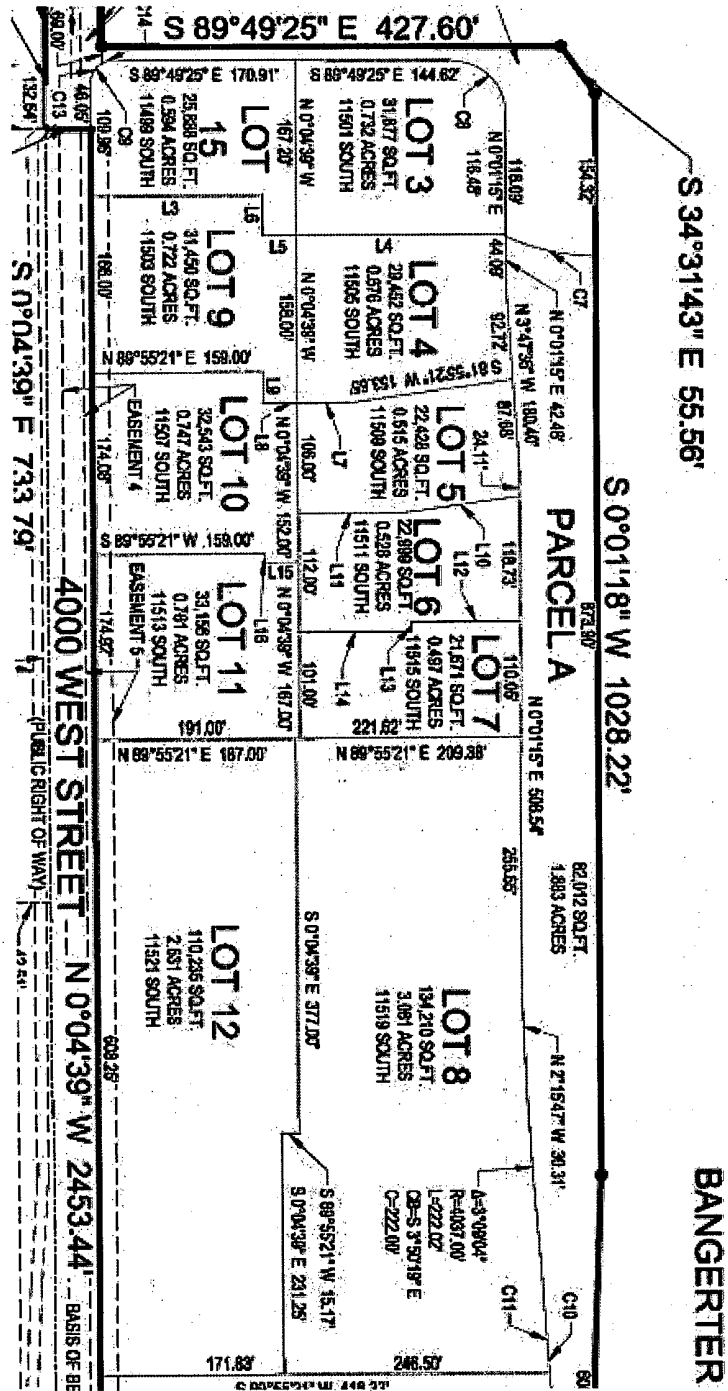
27-19-430-002

27-19-431-002

27-20-302-002

EXHIBIT B

PLATTED PARCELS OF SHOPPING CENTER PROPERTY



22450669.5 22450669.4 22450669.3 22450669.2 22450669.1 22045429.1

B-1

BK 10212 PG 7744

EXHIBIT C

SITE PLAN FOR SHOPPING CENTER PROPERTY

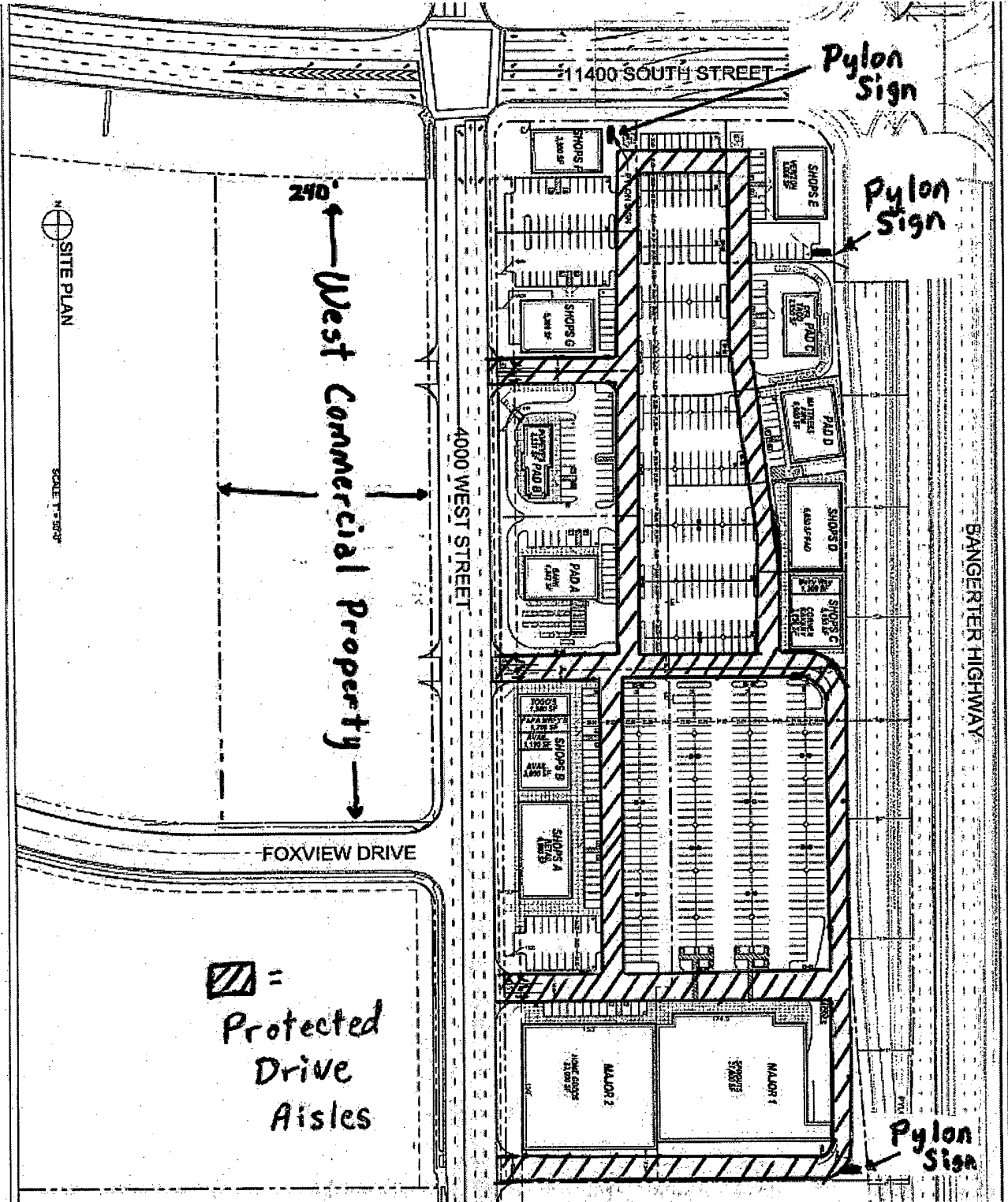


EXHIBIT D

PROHIBITED USES

1. The following uses are prohibited in the Shopping Center Property, except as set forth below:
 - a. any so-called single price point discount or discount dollar stores (such as Dollar Tree, 99 Cents and More, Family Dollar, Dollar General, or any stores with a similar business plan or similar operation);
 - b. any use causing unreasonably loud noises (including any business using exterior loud speakers);
 - c. manufacturing facility;
 - d. dry cleaner, except that Declarant shall have the right to permit (i) one (1) dry cleaner which does not use perchloroethylene or any other hazardous substances regulated by Governmental Requirements, or (ii) one (1) facility for drop off and pick up of clothing cleaned at another location, provided that during the period that the Sprouts Lease remains in effect, neither of the foregoing uses shall be located within a 300 foot radius of the Building on the Major Parcel;
 - e. any facility for the sale, lease or rental of automobiles, trucks, motorcycles, recreational vehicles, boats or other vehicles;
 - f. car wash, tire store, automobile repair shop or service station or any facility storing or selling gasoline or diesel fuel in or from tanks shall not be located within the Major Parcel, Other Major Parcel, Shops Parcel A or Shops Parcel B;
 - g. used clothing or thrift store, a "Salvation Army" or "Goodwill" type store or similar business, or a "second hand" store where principle business is selling used merchandise;
 - h. a donation drop-off facility;
 - i. a "surplus" store selling under stock or overstock merchandise or liquidation outlet;
 - j. amusement center, carnival, virtual reality, laser tag, jump/trampoline facility, game arcade, or a children's recreational facility or play center of any kind, including, but not limited to, concepts such as "Boomerang's," "Funtastic," "Chuck E. Cheese," "Jump Zone" and "Peter Piper Pizza," or other stores operating under similar business plans and operations, provided that Declarant shall have the right to permit one such use in the Shopping Center Property provided that during the period that the Sprouts Lease is in effect such use shall not be located within a 400 foot radius of the Building on the Major Parcel;
 - k. spa or massage parlor, except that Declarant shall have the right to permit 1 "Massage Envy" or similar therapeutic massage retailer operating in a first-class manner;
 - l. sale of adult products, and adult book or audio/video products store (which shall be defined as stores with at least 10% of the inventory of which is not available for sale or rental to

children under the age of majority in the state of Utah because such inventory explicitly deals with or depicts human sexuality);

- m. mortuary or funeral parlor;
- n. coin operated laundry;
- o. cocktail lounge, bar or tavern or sale of alcoholic beverages, whether or not packaged, excluding (i) the sale of alcoholic beverages in conjunction with the operation of a restaurant not prohibited under this Paragraph 1 of this Exhibit D, and (ii) the sale of alcohol for off-premises consumption by a convenience store that is located outside of the Major Parcel, the Other Major Parcel, Shops Parcel A and Shops Parcel B;
- p. night club and dance hall;
- q. cinema, theater, auditorium and meeting hall, provided that Declarant shall have the right to permit such uses outside of the Major Parcel, the Other Major Parcel, Shops Parcel A and Shops Parcel B;
- r. health club, gym or exercise facility, except that Declarant shall have the right to permit (i) a health club occupying 5,000 square feet or less of Gross Floor Area, or (ii) a health club, gym or exercise facility, outside of the Major Parcel, the Other Major Parcel, Shops Parcel A and Shops Parcel B;
- s. bowling alley, pool hall, or skating rink;
- t. animal raising or storage facility (except incidental to a full-line retail pet supply store), veterinary services and vaccination clinics and overnight stay pet facilities (except that a national/regional pet store such as PetSmart or Petco and a veterinary clinic occupying less than 3,000 square feet of Gross Floor Area shall be permitted);
- u. pawn shop, auction house, swap meet, or junk yard;
- v. the drilling for and/or removal of subsurface substances, dumping, disposal, incineration or reduction of garbage or refuse, other than in enclosed receptacles intended for such purposes;
- w. hotels or lodging facilities intended for human use;
- x. church;
- y. gun range or shooting club;
- z. day-care facility, educational facility or School (defined below), except that Declarant shall have the right to permit one "Sylvan," "Kumon" or similar tenant operating in a first-class manner, provided that during the period that the Sprouts Lease is in effect such use may not be located within a 300 foot radius of the Building located on the Major Parcel, and further provided such use may not occupy more than 2,500 square feet of Gross Floor Area; "School" means a beauty school, barber college, reading room, place of instruction or any other operation serving primarily students or trainees rather than retail customers;
- aa. drive-thrus shall be prohibited in the Major Parcel, the Other Major Parcel, Shops Parcel A and Shops Parcel B;

bb. restaurants or any other use that requires more than 5 parking spaces per 1,000 square feet of Gross Floor Area shall be prohibited within the Major Parcel, the Other Major Parcel, Shops Parcel A and Shops Parcel B, except a "fast casual" (defined below) restaurant occupying up to 4,000 square feet of Gross Floor Area shall be permitted so long as such fast casual restaurant is not located in-line with the Building located on the Major Parcel; a "fast casual" restaurant shall mean a restaurant without table service (table service being a waiter or waitress taking food orders from customers and then bringing food orders to customers) and which does not sell alcohol;

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

dd. any nursing home, old age center, or governmental facility (other than a post office and State of Utah offices typically found in grocery anchored shopping centers in the greater Salt Lake City, Utah area), recruiting center (other than U.S. military) or employment center shall be prohibited in the Major Parcel, the Other Major Parcel, Shops Parcel A and Shops Parcel B; and

ee. offices (other than retail offices typically found in shopping centers such as insurance offices, tax preparation offices such as H&R Block, etc. and other than medical office typically found in shopping centers such as a dentist, orthodontist, optometrist, etc. occupying in the aggregate no more than 3,500 square feet of Gross Floor Area) shall be prohibited in the Major Parcel, the Other Major Parcel, Shops Parcel A and Shops Parcel B.

To determine whether a use which is otherwise prohibited within a specified radius of a particular Building is in fact in violation of such radius restriction, the measurement taken shall be the distance from the Building (from the point nearest point to the benefitted Building) from which such alleged use is occurring to the point of the benefitted Building closest to such other Building in which the use is being conducted.

2. Without limitation of the prohibited uses set forth in Paragraph 1 of this Exhibit D, the following uses shall also be prohibited in the Shopping Center Property, except that this Paragraph 2 shall not bind the Major Parcel as long as the Sprouts Lease is in effect: (i) a pinball, video game, or any form of entertainment arcade, provided that this clause shall not prohibit or restrict the use of game or entertainment machines as an ancillary part of a different primary use; (ii) a gambling or betting office, other than for the sale of lottery tickets; (iii) a massage parlor, other than a legitimate massage business; (iv) a cinema, theater, video store or bookstore that in each case under this clause (iv) sells, rents, or exhibits primarily material of a pornographic or adult entertainment nature; (v) an adult entertainment bar or club; (vi) a bowling alley; (vii) a roller skating or ice skating rink; (viii) a billiards parlor or pool hall; (ix) a firearms shooting range or any other similar use, if it creates or causes excessive noise that is a nuisance to the Occupant of the northernmost building on the West Commercial Property; (x) a flea market; or (xi) a warehouse. The terms and provisions of this Paragraph 6 shall run for the benefit of and be enforceable by the Owner of the northernmost building located on the West Commercial Property.

EXHIBIT E

EXISTING EXCLUSIVE USE RESTRICTIONS

1. Exclusive Use Restrictions Benefitting the Major Parcel. During any period that the Sprouts Lease remains in effect, and during such additional period as elected by Declarant, there shall be no operation and sale, either singly or in any combination, of any of the following activities and/or merchandise in or from any Parcels or Buildings on the Shopping Center Property other than the Building located on the Major Parcel: (a) the operation of a grocery store, meat or seafood market or produce market, and the sale of any such items; (b) the sale of vitamins and supplements, packaged ethnic foods, natural or health foods, or packaged ice cream; (c) the sale of natural cosmetics, natural health or beauty products; (d) the sale of packaged beer and wine for off-premises consumption; and (e) the operation of a full service bakery and/or over-the-counter delicatessen offering sliced or butchered meats and cheeses for off-premises consumption (all of which are included in and referred to as the "Sprouts Exclusive"), provided that the Sprouts Exclusive shall not prohibit sales on an Incidental Basis (defined below), other than fresh meat, seafood and produce for which there is no exception. In addition, the Sprouts Exclusive shall not apply to the following: (i) retail stores that primarily sell beauty products such as Sally's, ULTA and Beauty Planet; (ii) pharmacies such as CVS or Walgreens; (iii) fast food, quick serve and sit down restaurants that serve food primarily for on-site consumption so long as such fast food, quick serve or sit down restaurant does not contain and/or is a deli or bakery; and (iv) a gas station such as Maverik with a convenience store that may sell soda, candy and other typical convenience store items but may not sell milk and eggs. For purposes of this Paragraph 1, "Incidental Basis" means the area dedicated to the sale of such items occupies the lesser of: (a) 250 square feet of Gross Floor Area; or (b) 3% of the sales area of the subject premises; provided not more than 2 linear feet of retail selling space shall be dedicated to the display and sale of any one category of ancillary products.

2. Exclusive Use Restriction Benefitting Pad Parcel B. For so long as the Building on Pad Parcel B is open and operating for use as a fast food restaurant whose primary sales item (defined as more than twenty-five percent (25%) of gross sales) are derived from the sale of chicken or chicken-related items, no portion of the Shopping Center Property, except for the Buildings located on the Major Parcel and Pad Parcel B, shall be used for the operation of a freestanding fast food restaurant with drive-thru, whose primary sales items (defined as more than twenty-five percent (25%) of gross sales) are derived from the sale of chicken or chicken-related items. The Owner of a Parcel on which an Occupant (other than such Owner) operates in violation of this Paragraph 2 shall not be liable for the breach of this Paragraph 2 if such operation by the Occupant is in violation of such Occupant's lease or operating agreement and the Owner of such Parcel diligently attempts to enforce its rights against such Occupant from violating this Paragraph 2. The immediately preceding sentence shall not affect the right of the Owner of Pad Parcel B to enforce this Paragraph 2 against any Occupant of the Shopping Center Property that violates this Paragraph 2.

3. Exclusive Use Restriction Benefitting the Togo's Space in the Shops B Building. For so long as space in the Building shown on the Site Plan as Shops B is open and operating as a restaurant featuring deli-type sandwiches and other menu items typically sold in a Togo's franchise restaurant, or is used by any successor or assign in accordance with the requirements of the lease for such space, no other portion of the Shopping Center Property, except for the Building located on the Major Parcel, shall be used for the operation of a Subway, Quiznos, Firehouse Subs, Jimmy Johns, Which Wich, Pot Belly's Subs, Gandolfo's or other equivalent submarine sandwich shop, or for the primary purpose of a deli sandwich shop. The exclusive use restriction set forth in this Paragraph 3 shall not apply to any Occupant that

occupies more than 10,000 square feet of Gross Floor Area in the Shopping Center Property. Without limitation of other restaurants that do not violate the exclusive use restriction set forth in this Paragraph 3, for clarification purposes, the parties confirm that the exclusive use restriction set forth in this Paragraph 3 is not be applicable to: (a) the operation of a Melty Way or other similar grilled sandwich restaurant; (b) the operation of a sit down restaurant; or (c) the operation of a quick service, fast food restaurant selling burgers, chicken sandwiches or other similar sandwiches such as, without limitation, those sold by Wendy's, McDonald's, Carls Jr., Burger King, Chick Fil-A, Popeye's, Del Taco, Smashburger, Corner Bakery or similar restaurants, which restaurant occupies more than 1,800 square feet of Gross Floor Area in the Shopping Center. "Primary use" shall mean use generating more than twenty percent (20%) of sales. "Sit down restaurant" shall mean a restaurant at which patrons order and are served primarily by wait staff at seating areas. "Deli sandwiches" shall mean sandwiches containing thin-sliced ham, beef or other deli meats excluding shwarma, lamb or other ethnic non-standard meats, specialty cut at the restaurant premises. The Owner of a Parcel on which an Occupant (other than such Owner) operates in violation of this Paragraph 3 shall not be liable for the breach of this Paragraph 3 if such operation by the Occupant is in violation of such Occupant's lease or operating agreement and the Owner of such Parcel diligently attempts to enforce its rights against such Occupant from violating this Paragraph 3. The immediately preceding sentence shall not affect the right of the Owner of the Shops B Building to enforce this Paragraph 3 against any Occupant of the Shopping Center Property that violates this Paragraph 3.

4. Exclusive Use Restriction Benefitting the Papa Murphy's Space in the Shops B Building. For so long as space in the Building shown on the Site Plan as Shops B is open and operating as a Papa Murphy's or other lawful restaurant, no other portion of the Shopping Center Property, except for the Building located on the Major Parcel, shall be used for the operation of a restaurant whose primary business is the sale of quick service pizza to go. The exclusive use restriction set forth in this Paragraph 4 shall not apply to (a) any grocery or drug store, (b) any sit down restaurant, or (c) any Occupant that occupies more than 10,000 square feet of Gross Floor Area in the Shopping Center Property. In addition, the exclusive use restriction set forth in this Paragraph 4 shall not apply to the incidental sales by an Occupant. For purposes of this Paragraph 4, "incidental" means that less than ten percent (10%) of such Occupant's gross sales are derived from the sale of quick service pizza to go. The Owner of a Parcel on which an Occupant (other than such Owner) operates in violation of this Paragraph 4 shall not be liable for the breach of this Paragraph 4 if such operation by the Occupant is in violation of such Occupant's lease or operating agreement and the Owner of such Parcel diligently attempts to enforce its rights against such Occupant from violating this Paragraph 4. The immediately preceding sentence shall not affect the right of the Owner of the Shops B Building to enforce this Paragraph 4 against any Occupant of the Shopping Center Property that violates this Paragraph 4.

5. Exclusive Use Restriction Benefitting Pad Parcel D. For so long as the Building on Pad Parcel D is open and operating for use as a mattress store, no portion of the Shopping Center Property, except for the Building located on the Major Parcel or the Building located on Pad Parcel D, shall be used or occupied by a tenant or occupant whose primary use of the space it occupies in the Shopping Center Property is the sale of mattresses and/or waterbeds. For purposes of this Paragraph 5, a use shall be deemed a "primary use" if such tenant or occupant derives more than fifteen percent (15%) of its gross sales from such items. The Owner of a Parcel on which an Occupant (other than such Owner) operates in violation of this Paragraph 5 shall not be liable for the breach of this Paragraph 5 if such operation by the Occupant is in violation of such Occupant's lease or operating agreement and the Owner of such Parcel diligently attempts to enforce its rights against such Occupant from violating this Paragraph 5. The immediately preceding sentence shall not affect the right of the Owner of Pad Parcel D to enforce this Paragraph 5 against any Occupant of the Shopping Center Property that violates this Paragraph 5.

6. CVS Exclusive Use Restriction Benefitting the West Commercial Property. Subject to the terms and provisions of this Paragraph 6, no portion of the Shopping Center shall be used for any of the following uses (the "**CVS Exclusives**"): (1) a drug store, a pharmacy prescription department; or a business selling items requiring dispensing by or through a registered or licensed pharmacist, including without limitation a pharmacy mail order facility (collectively, a "**Pharmacy**"); (2) a cigarette or smoke shop; (3) a health and beauty aids store; (4) a "Dollar Store" (as hereinafter defined); (5) a greeting card, party goods or gift store; (6) a vitamin store or supplements store; (7) a convenience store; (8) a store selling alcoholic beverages, including, without limitation, beer, wine and distilled spirits, for off-premises consumption; or (9) a store offering on-site photo processing including, without limitation, one hour or less photo processing.

For purposes of this Paragraph 6, the following terms shall be defined as follows:

(i) In addition to the above definition, a "**Pharmacy**" shall include the dispensing, distribution or furnishing of prescription drugs by physicians, dentists, other health care practitioners, or a facility which accepts prescriptions from customers which are filled elsewhere and delivered to the customer, or entities such as health maintenance organizations, in each such case under this sentence where such dispensing is for a fee or a profit. A Pharmacy shall not include the distribution or furnishing of free samples of prescription drugs by physicians, dentists, other health care practitioners or entities such as clinics or health maintenance organizations.

(ii) A "**health and beauty aids store**" shall mean a store which devotes more than the lesser of 150 square feet or five percent (5%) of its retail selling space to the display and sale of health and beauty aids.

(iii) A "**Dollar Store**" means a discount, 99 cents store or "dollar" store which sells general merchandise. Examples of a Dollar Store (without limiting such Dollar Stores only to those listed) are stores such as Fred's, Dollar Store, Dollar General, or Family Dollar. Neither Landlord, nor any of Landlord's Affiliates shall sell or transfer any interest in such real estate, if the intended use after such sale would violate this Section.

(v) A "**convenience store**" shall include, but not be limited to such notable stores such as "7-Eleven", "Circle-K", "Quik Check" and "ABC Stores".

The CVS Exclusives described in categories (2) through (9) shall not apply to incidental sales which do not exceed the lesser of 150 square feet or 5% of the retail floor area of another premises. In addition, the CVS Exclusives in categories (1) through (9) shall not apply to the Building located on the Major Parcel. In addition, the CVS Exclusives in categories (2) through (9) shall not apply to a traditional or specialty grocery store (including Sprouts Farmers Market) which operates in premises exceeding more than 25,000 square feet, nor shall the CVS Exclusives in (2) through (9) apply to a domestic retail store that sells goods primarily for the bedroom and bathroom, as well as the kitchen and dining room, such as a Bed, Bath & Beyond store.

If the Occupant of the northernmost building on the West Commercial Property ceases to offer for sale, at such building, any individual category of the CVS Exclusives, excluding the Pharmacy (i.e., categories (2), (3), (4), (5), (6), (7), (8) and/or (9)) (the "**Discontinued Use**") for a period of twelve (12) consecutive months, the provisions of this Paragraph 6 shall terminate as to the Discontinued Use upon sixty (60) days' prior written notice from the Owner of the northernmost building on the West Commercial Property to the Occupant of such building unless, within such sixty (60) day period, such Occupant reinstates the Discontinued Use. For purposes of this paragraph, such Occupant shall not be deemed to have ceased the sale of a category of the CVS Exclusives if such Occupant is closed

temporarily for remodeling, repairs, alterations or due to fire, casualty, catastrophe or condemnation, or if such Occupant is closed due to strike, lockout, inability to obtain merchandise for any reason except such Occupant's failure to pay vendors or if such Occupant is closed due to forced closing by any governmental agency or body, the default of its landlord or any other cause beyond the reasonable control of such Occupant, provided that such Occupant reinstates operation of such building for business within a reasonable time after the cause of temporary closure has abated. In no event shall the provisions of this paragraph extinguish the Pharmacy portion of the CVS Exclusive, regardless of whether the Occupant of the northernmost building on the West Commercial Property ceases to operate a Pharmacy at such building. Notwithstanding the last sentence of Section 4.4.1 of the Declaration, the terms and provisions of this Paragraph 6 shall run only for the benefit of and be enforceable (or waived) only by the Owner of the northernmost building located on the West Commercial Property.

7. Hamburger Exclusive Use Benefitting the West Commercial Property. As long as the southernmost building located on the West Commercial Property is occupied by an establishment that conducts business involving the sale of hamburgers, then there shall be not more than one establishment that conducts business involving the sale of hamburgers in the Shopping Center. For purposes of this Paragraph 7, "conduct business involving the sale of hamburgers" means the operation of a business in which the sale of hamburgers amounts to 50% or more of the total gross sales of such business; provided, however, that the following businesses shall be deemed to conduct business involving the sale of hamburgers regardless of the level of hamburger gross sales: Habit Burger, 5 Guys Burgers & Fries, Training Table, Mooyahs, Steak n Shake, Johnny Rockets, Salt City Burgers. Declarant shall have the right to determine the one establishment that is permitted under this Paragraph 7, and no establishment that conducts business involving the sale of hamburgers (as defined herein) shall be operated in the Shopping Center without Declarant's consent. Notwithstanding the last sentence of Section 4.4.1 of the Declaration, the terms and provisions of this Paragraph 7 shall run only for the benefit of and be enforceable (or waived) only by the Owner of the southernmost building located on the West Commercial Property, except that the immediately preceding sentence shall run for the benefit of and be enforceable (or waived) by Declarant.

EXHIBIT F

SPECIAL PROVISIONS AFFECTING PAD PARCEL B

The terms and provisions of this Exhibit F shall bind and affect Pad Parcel B.

1. Pad Parcel B shall be developed in accordance with the Site Plan and other development plans and drawings approved by Declarant.
2. Without limitation of Paragraph 1, the Building constructed on Pad Parcel B shall not exceed 2,600 square feet of Gross Floor Area, with a height not exceeding 21.6 feet to the parapet and 24 feet to the highest architectural feature, and shall be located within the building envelope depicted on the Site Plan.
3. Pad Parcel B shall contain not less than the number of parking spaces depicted on the Site Plan and in no event less than the number of parking spaces required by all applicable Governmental Requirements for a fast food restaurant with a drive through lane (taking cross-parking rights under the Declaration into account), and no material changes shall be made to the parking and drive aisles on Pad Parcel B without the approval of Declarant.
4. The Building on Pad Parcel B shall initially be used for restaurant purposes but, following five (5) years' operation as a restaurant, the Building on Pad Parcel B may be used for any lawful retail or restaurant purpose which does not violate the terms and provisions of this Declaration, including without limitation, the restrictions set forth in Exhibits D and E.
5. Subject to any Declarant-caused delay or event described in Section 11.7 of this Declaration, the Owner of Pad Parcel B shall be obligated to construct the restaurant Building on Pad Parcel B and open such Building for business within twelve (12) months after the later of (i) timely completion of the site development work for Pad Parcel B by Declarant, including platting, zoning, and the Grading and Utility Work on Pad Parcel B to be performed by Declarant pursuant to the Purchase and Sale Agreement (as amended) between Declarant and the Owner of Pad Parcel B for Declarant's sale of Pad Parcel B to such Owner; and (ii) Owner's receipt of all necessary permits and licenses for Owner's construction work (provided that Owner has filed for such permits and licenses in a timely manner and thereafter diligently pursued the same) (the "Required Opening Date").
6. If, subject to the provisions of Paragraph 5 above, Owner fails to construct the restaurant Building on Pad Parcel B and open for business in such Building by the Required Opening Date, Declarant shall have the right to re-purchase Pad Parcel B (and all Improvements located thereon) at a purchase price equal to the purchase price for Pad Parcel B paid by Owner to Declarant.
7. If after the restaurant Building on Pad Parcel B is opened for business to the public such Building thereafter is closed for more than six (6) consecutive months (excluding any reasonable period required to restore casualty damage and excluding any temporary closure for not longer than sixty (60) days for renovation or remodeling), then Declarant shall have the right to re-purchase Pad Parcel B (and all Improvements located thereon) at a purchase price equal to the purchase price for Pad Parcel B paid by Owner to Declarant plus the unamortized improvement costs incurred by Owner for the construction of Improvements on Pad Parcel B, which costs shall be amortized on a straight-line basis over the useful life of such improvements.

8. Notwithstanding anything to the contrary in Paragraphs 6 and 7 above, Declarant's rights to repurchase Pad Parcel B set forth in Paragraphs 6 and 7 above shall be expressly conditioned on the completion of the site development work for both Pad Parcel B and the remainder of the Shopping Center Property.

EXHIBIT G

SPECIAL PROVISIONS AFFECTING PAD PARCEL D

The terms and provisions of this Exhibit G shall bind and affect Pad Parcel D.

1. Pad Parcel D shall be developed in accordance with the Site Plan and other development plans and drawings approved by Declarant.
2. Without limitation of Paragraph 1, the Building constructed on Pad Parcel D shall not exceed 5,000 square feet of Gross Floor Area and shall be located within the building envelope depicted on the Site Plan.
3. Pad Parcel D shall contain not less than the number of parking spaces depicted on the Site Plan and no material changes shall be made to the parking and drive aisles on Pad Parcel D without the approval of Declarant.
4. The Building on Pad Parcel D shall initially be used for the operation of a retail mattress store, subject to the right to subsequently change the use to any other retail use consistent and compatible with a first-class retail shopping center that does not violate the terms and provisions of this Declaration, including without limitation, the restrictions set forth in Exhibits D and E.
5. Subject to delay caused by an event described in Section 11.7 of this Declaration, the Owner of Pad Parcel D shall be obligated to construct the retail Building on Pad Parcel D and open such Building for business within twelve (12) months after the date the Owner (other than Declarant) acquires title to Pad Parcel D. If such Owner fails to construct the retail Building on Pad Parcel D and open such Building for business within such twelve (12) month period (as extended for any delay caused by an event described in Section 11.7 of this Declaration), then Declarant shall have the right to re-purchase Pad Parcel D (and all Improvements located thereon) at a purchase price equal to the purchase price for Pad Parcel D paid by Owner to Declarant. In order to exercise such re-purchase right, Declarant must elect to do so, if at all, by no later than ninety (90) days after the expiration of the twelve (12) month period referenced above.
6. This Paragraph 6 shall apply following a transfer of Pad Parcel D by Declarant to another Owner and shall continue in effect only during such period as the original Declarant continues to own fee title to a portion of the Shopping Center Property. Prior to any sale or transfer of Pad Parcel D by the Owner of Pad Parcel D to a third party buyer, Owner shall notify Declarant of its desire to sell Pad Parcel D. During the twenty (20) day period after receipt of such notice Declarant shall have the right of first negotiation to purchase Pad Parcel D (including the Improvements located thereon) and the parties shall negotiate in good faith to agree upon the terms of the sale of Pad Parcel D to Declarant. If at the expiration of such twenty (20) day period Owner and Declarant have been unable to reach agreement for the sale of Pad Parcel D to Declarant, then Owner shall have the right to sell or transfer Pad Parcel D to a third party buyer. This Paragraph 6 shall not apply to transfers or sales to an Affiliate of Owner or to transfers or sales to or by a lender of Owner. This Paragraph 6 shall not prohibit Owner from marketing Pad Parcel D for sale prior to providing the notice to Declarant required above. This Paragraph 6 shall expire at such time as the initial Declarant under this Declaration no longer owns fee title to any portion of the Shopping Center Property.

7. The Occupant of Pad Parcel D shall have the right to display its trade name on a sign panel located on the Pylon Sign located nearest to Pad Parcel D in a location that is generally commensurate with the relative size of the Pad Parcel D Building.