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10116352  
This instrument was prepared by  
And after recording please return to:  
MALKERSON GILLILAND MARTIN LLP  
Suite 1500 AT&T Tower  
901 Marquette Avenue  
Minneapolis, MN 55402  
Attn: Kathleen M. Martin

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RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2001 Apr 30 5:00 pm FEE 21.00 BY SS  
RECORDED FOR BACKMAN-STEWART TITLE SERVI

### AMENDED AND RESTATED GRANT OF EASEMENTS

THIS AMENDED AND RESTATED GRANT OF EASEMENTS ("**Agreement**") is made effective as of March ~~26~~<sup>APRIL 26</sup>, 2001, by and between Net Lease Development LLC, a Delaware limited liability company ("**Net**") and ShopKo Stores, Inc., a Wisconsin corporation ("**ShopKo**").

#### RECITALS:

- A. A certain Grant of Easements executed by Harmon Management Corporation ("**Harmon**") in favor of ShopKo was recorded on September 8, 1989, as Entry No. 26564, in Book 2626, at Page 74, of Official Records, and re-recorded on September 11, 1989, as Entry No. 26675, in Book 2626, at Page 385, of Official Records and again re-recorded on February 15, 1990, as Entry No. 4759, in Book 2665, at Page 860, of Official Records (the "**Grant of Easements**").
- B. Net has acquired or will acquire from Harmon fee title to that certain real property located in Utah County, Utah legally described as Lot 7, Plat "A", Boyer Retail Center Subdivision, Orem, Utah, according to the official plat thereof on file in the office of the Recorder of Utah County, Utah ("**Lot 7**"), and upon such acquisition, Net will be a successor in interest of Harmon under the Grant of Easements.
- C. ShopKo is the owner of that certain real property located in Utah County, Utah legally described as Lot 3, Plat "A", Boyer Retail Center Subdivision, Orem, Utah, according to the official plat thereof on file in the office of the Recorder of Utah County, Utah ("**Lot 3**").
- D. The Grant of Easements was recorded prior to the recording of the plat of Plat "A", Boyer Retail Center Subdivision, Orem, Utah, and thus, contains underlying metes and bounds legal descriptions.
- E. Net and ShopKo desire to amend and restate the Grant of Easements in its entirety as set forth herein.

NOW, THEREFORE, in consideration of the foregoing Recitals, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Net and ShopKo hereby amend and restate the Grant of Easements in its entirety, as follows:

#### 1. Grant of Easements.

- 1.1 **Ingress/Egress and Utility Easement.** Net hereby grants to ShopKo, its employees, invitees, customers, agents and tenants and Lot 3, a non-exclusive, perpetual easement over, under, through, across and upon the southerly forty feet of Lot 7 for the purposes of providing vehicular and pedestrian ingress and egress, including the passage of delivery vehicles and for existing or to be constructed underground utility services that service Lot 3 (the "**Ingress/Egress Easement**"), through Lot 7 from the existing curb cut in State Street (the "**Access Opening**"), all as shown and marked on the Site Plan attached hereto as **Exhibit 1** (the "**Site Plan**") as the "**40' Easement Area**".
  - 1.2 **Access Easement.** Net hereby grants to ShopKo, and its tenants, customers, invitees, employees and agents, a perpetual, non-exclusive access easement (the "**Access Easement**") over, across, through and upon the paved drive aisles, walkways and roadways presently existing or to be constructed on Lot 7 for the purposes of providing vehicular and pedestrian access to and from Lot 7. The owner of Lot 7 shall, at its sole cost and expense, be responsible to keep the improvements within the Access Easement in good and serviceable condition and repair.
  - 1.3 **Encroachment Easement.** Net hereby grants to ShopKo an easement (the "**Encroachment Easement**") over, under and through that portion of Lot 7 legally described and depicted on the Site Plan, to permit the encroachment into Lot 7 of the building and the building footings (the "**ShopKo Building**") and the steps leading to the ShopKo Building predominately situated on Lot 3, and to further permit the repair and maintenance of the ShopKo Building and the said steps leading thereto. ShopKo shall conduct such maintenance in a safe, efficient and workmanlike manner and in a manner that will not interfere with the operations or business conducted on Lot 7. The Encroachment Easement shall expire five years after either (a) the Shopko Building is demolished and not rebuilt, or (b) 90% of the Shopko Building is damaged or destroyed and not rebuilt.
  - 1.4 **Open Space and Utility Easement.** Net hereby grants to ShopKo an open space and utility easement ("**Open Space and Utility Easement**") over the easterly 40 feet of Lot 7 as depicted and marked on the Site Plan as the "**40' Open Space and Utility Easement**" for the purposes of maintaining open space and for existing or to be constructed underground utility services that service Lot 3. ShopKo acknowledges that the ShopKo Building, the steps leading thereto and the existing parking spaces, drive aisles and parking lot improvements on Lot 7 lying within the Open Space and Utility Easement are permitted.
2. **Maintenance of Driveway and Utilities.**
    - 2.1. **Maintenance of Driveway.** Net, its agents or contractors, shall maintain the driveway located in the Ingress/Egress Easement and in the Open Space and Utility Easement (the "**Driveway**") in good repair and condition, free of debris, and conduct such other repair, replacement and maintenance (such as repainting, repairs or replacements of curb or gutter, resurfacing or subsurface reconstruction in whole or in part) as may be necessary to keep the Driveway in good, smooth and serviceable condition. The Access Opening shall in no event be blocked, closed, altered, removed or changed, and Net shall not permit the Driveway to be blocked or barricaded in any manner, except that it is acknowledged that there may be temporary blockage of the Driveway during construction on Lot 7 or the maintenance or repair of the Driveway or the Utilities.

- 2.2. **Maintenance of Utilities.** The costs to maintain any water, sewer, gas, electric, phone or cable service (the "Utilities") existing in the easements granted herein that are not maintained by a public agency or private utility provider, shall be borne by (and conducted by) the owner of the Lot which is served by the Utilities. For example, if a sewer line solely serves Lot 3, then Lot 3 shall be solely responsible for the conduct and expenses involved with such maintenance; if such line services both Lot 3 and Lot 7, then the owner of Lot 3 shall conduct such maintenance and the owners of the Lot 3 and Lot 7 shall each pay an equal share therefor. Any maintenance, repair or replacement of the Utilities shall be conducted in a timely manner and in such a manner as to not unreasonably interfere with the business of either Lot 3 or Lot 7.
3. **Effect of Agreement.** The easements, restrictions, benefits and obligations of this Agreement shall create mutual benefits and servitudes running with the land, and shall bind and inure to the benefit of all tenants, successors and assigns of ShopKo and Net and to the Lots.
4. **Remedies.**
- 4.1. **Failure to Perform.** If either owner fails to perform any obligation set forth in this Agreement (hereafter, a "Defaulting Owner") the other owner and its tenants (the "Curing Party") shall have the right (i) to perform such obligation on the Defaulting Owner's behalf and expense (which right shall be exercisable immediately in the event of an emergency and otherwise upon thirty (30) days prior written notice to the Defaulting Owner, or (ii) to pursue any and all of its rights and remedies available at law, in equity or otherwise for such failure, including recovery of reasonable attorney fees and other costs.
- 4.2. **Right to Lien.** If a Defaulting Owner fails to pay any amount due to a Curing Party, whether arising by right of indemnity, right of reimbursement or otherwise, the Curing Party shall have a lien for such amount against the Defaulting Owner's Parcel, which lien shall be subordinate to the lien of any mortgage or deed of trust or other financing instrument then of record. Any such unpaid amount, together with interest at the rate of the lesser of 12% per annum or the highest rate permitted by law, plus the costs and expenses of collecting such amount (including reasonable attorney fees if the party claiming such fees is successful on the merits), shall also be the personal obligation of the Defaulting Owner. Such lien (including such interest, costs and expenses) may be foreclosed in the same manner as the foreclosure of a mortgage or deed of trust in the State of Utah.
5. **No Partnership.** Neither this agreement nor any other agreement or arrangement among ShopKo and Net set forth herein is intended to create any partnership or joint venture among the owners, and any such relationship is hereby expressly disclaimed.
6. **Headings; Number; Gender; Counterparts.** The headings herein are inserted only for convenient reference, and in no way define, limit or describe the scope or intent of this Agreement or in any way affect the terms or provisions hereof. The singular number includes the plural and the masculine gender includes all genders. This Agreement may be executed in counterparts.

- 7. **Entire Agreement.** This Agreement embodies the entire agreement between the parties and supersedes all prior understandings regarding the subject matter hereof, including without limitation the Grant of Easements which by the recording hereof is terminated and of no further force and effect. This Agreement may only be amended or supplemented by an instrument in writing recorded in the real property records of Utah County, Utah.
- 8. **Notices.** Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice hereunder by like notice to the other party. The notice addresses of the owners are as follows:

ShopKo:                      ShopKo Stores, Inc.  
                                      700 Pilgrim Way  
                                      Post Office Box 19060  
                                      Green Bay, WI 54307-9060  
                                      Attention: Real Estate Department

Net Lease:                    Net Lease Development LLC  
                                      527 Marquette Avenue South, Suite 1000  
                                      Minneapolis, MN 55402  
                                      Attn: Richard J. Hauser

- 9. **Bankruptcy.** In the event of any bankruptcy affecting the owner or tenant of any Lot, this Agreement shall, to the maximum extent permitted by law, be considered an agreement that runs with the land that is not rejectable, in whole or in part, by the bankrupt person or entity.

**IN WITNESS WHEREOF**, the owners have executed this Agreement as of the date set forth above.

NET LEASE DEVELOPMENT LLC, a  
 Delaware limited liability company

By \_\_\_\_\_  
 Richard J. Hauser, Its Sole Member  
 and Manager

SHOPKO STORES, INC., a  
 Wisconsin corporation

By \_\_\_\_\_  
 Sr. VP. Store Marketing

STATE OF MINNESOTA )  
 )  
COUNTY OF HENNEPIN ) ss.

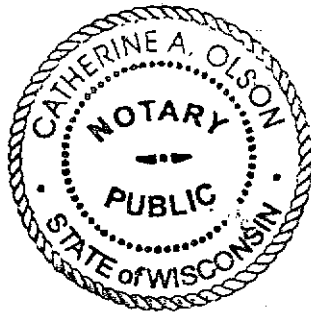
This instrument was acknowledged before me on April 2, 2001, by Richard J. Hauser, the Sole Member and Manager of Net Lease Development LLC, a Delaware limited liability company, on behalf of the company.



Miriam R. Haak  
Notary Public

STATE OF WISCONSIN )  
 )  
COUNTY OF BROWN ) ss.

This instrument was acknowledged before me on March 29, 2001, by Bradley Lawrence, the Sr. VP of Store Marketing of SHOPKO STORES, INC., a Wisconsin corporation, on behalf of the corporation.



Catherine A. Olson  
Notary Public

EXHIBIT A  
Site Plan

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