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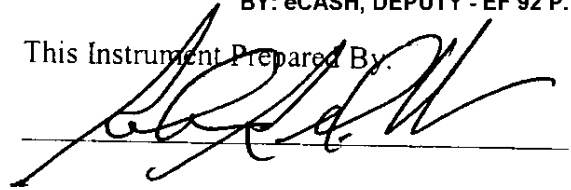
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OPERATION AND EASEMENT AGREEMENT

BETWEEN

TARGET CORPORATION

AND

THE DISTRICT L.C.

**OPERATION AND EASEMENT AGREEMENT
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OPERATION AND EASEMENT AGREEMENT

THIS OPERATION AND EASEMENT AGREEMENT ("OEA") is made and entered into as of the 24 day of January, 2005, between TARGET CORPORATION, a Minnesota corporation ("Target"), and THE DISTRICT L.C., a Utah limited liability company ("Developer").

WITNESSETH

WHEREAS, Target is the owner of a certain tract of land located at the intersection of 3600 West Street and 11400 South Street in the City of South Jordan, County of Salt Lake, State of Utah, legally described in Exhibit A-1 attached hereto and identified as the "Target Tract" on Exhibit X-1 (the "Site Plan") attached hereto; and

WHEREAS, Developer is the owner of, or is about to become the owner of, certain tract(s) of land adjacent, or in close proximity, to the Target Tract legally described in Exhibit B-1 attached hereto and identified as the "Developer Tract" on the Site Plan; and

WHEREAS, Developer or an Affiliated Entity (as defined in Section 1.0 below) is the owner of, or may become the owner of, certain tract(s) of land located adjacent, or in close proximity, to the Target Tract and the Developer Tract, described in Exhibit B-2 attached hereto and identified as the "Adjacent Tract" on the Site Plan attached hereto; and

WHEREAS, if and when, if ever, Developer or an Affiliated Entity acquires all or a portion of the Adjacent Tract or all or any portion of the Adjacent Tract is developed for shopping center purposes as a result of a transaction by, through or under Developer or Affiliated Entity, then such portion or all, as applicable, of the Adjacent Tract shall be subject to all of the terms, conditions and provisions of this OEA; and

WHEREAS, the signatories hereto intend to develop and operate their respective Tracts in conjunction with each other as integral parts of a mixed use development, but not a planned or common interest development/community, and in order to effectuate the common use and operation of their respective Tracts they desire to enter into certain covenants and agreements, and to grant to each other certain reciprocal easements, in, to, over, and across their respective Tracts.

NOW, THEREFORE, in consideration of the premises, the covenants and agreements hereinafter set forth and in furtherance of the parties' understanding, it is agreed as follows:

ARTICLE I – DEFINITIONS

1.0 Affiliated Entity. "Affiliated Entity" shall mean Developer, or any firm, corporation, partnership, association or other business entity which directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with Developer, or any successor to Developer by merger, consolidation or operation of law, or any partner or member of Developer.

1.1 Approving Party. "Approving Party" shall mean the Party designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this OEA. There shall be one (1) Approving Party representing the Target Tract and one (1) Approving Party representing the Developer's Tract. Developer shall have the right to designate one (1) additional Approving Party to represent that portion of the Developer Tract identified as the "Grocery Tract" on the Site Plan (the "Grocery Tract") if and when such party becomes an Occupant (as defined in Section 1.16) of the Grocery Tract. In addition, Developer may, by written notice to Target, appoint one (1) additional Approving Party to represent any one of the Central District, the West District, the Theatre District or the South District (the "Development Districts") provided that such additional Approving Party is the fee owner of a Building Area within a Development District containing at least seventy-five thousand (75,000) square feet of Floor Area together with all or a portion of the Adjacent Tract necessary to satisfy the minimum parking requirements set forth in Section 3.2(E); and provided further, at any one time there shall be no more than four (4) Approving Parties and, except with respect to the East District which may have Approving Parties representing the Target Tract, the Grocery Tract and the portion of the Developer Tract situated therein, no District shall have more than one (1) Approving Party. Each Approving Party shall have absolute discretion to make the decisions and/or give the approvals expressly designated to be made and/or given on behalf of the real estate represented by such position regardless of whether the Approving Party then owns all or less than all of the Developer Tract, the Target Tract (or the Grocery Tract or the Adjacent Tract, if applicable), as the case may be. The Party designated as Approving Party for the Developer Tract shall have the right, subject to the limitations hereinabove set forth, to assign such status to any other Party owning a Tract within the Developer Tract; provided, however, if such assignment is not made in

writing, then the status of Approving Party for the Developer Tract shall automatically be deemed assigned to the Party acquiring the last portion of the Developer Tract owned by the Party then holding the status of Approving Party for the Developer Tract. The Party designated as Approving Party for the Target Tract shall have the right to assign such status to any other Party owning a Tract within the Target Tract; provided, however, if such assignment is not made in writing, then the status of Approving Party for the Target Tract shall automatically be deemed assigned to the Party acquiring the last portion of the Target Tract owned by the Party then holding the status of Approving Party for the Target Tract. The Party designated as Approving Party for the Grocery Tract or a Development District, if and when such designation is made by Developer, shall have the right to assign such status to any other Party owning a Tract within the Grocery Tract or the Development Districts; provided, however, if such assignment is not made in writing, then the status of Approving Party for the Grocery Tract shall automatically be deemed assigned to the Party acquiring the last portion of the Grocery Tract owned by the Party then holding the status of Approving Party for the Grocery Tract and the status of Approving Party for the Development Districts shall automatically be deemed assigned to the Party acquiring the last portion of the Tract owned by the Party then holding the status of Approving Party for the Development District. Developer shall be the initial Approving Party for the Developer Tract; and Target shall be the initial Approving Party for the Target Tract.

1.2 Building. “Building” shall mean any permanently enclosed structure placed, constructed or located on a Tract, which for the purpose of this OEA shall include any building appurtenances such as stairs leading to or from a door, transformers, trash containers or compactors, canopies, supports, loading docks, truck ramps, and other outward extensions of such structure.

1.3 Building Area. “Building Area” shall mean the limited areas of the Shopping Center within which Buildings may be constructed, placed or located. Building Areas are designated on the Site Plan. One or more Buildings may be located within a Building Area.

1.4 Cart(s). “Cart(s)” shall mean any kiosk or portable retail device(s) measuring no larger than 10’ x 10’.

1.5 Central District. “Central District” shall mean the area as identified on Exhibit X-2.

1.6 Common Area. "Common Area" shall mean all areas within the exterior boundaries of the Shopping Center, exclusive of (i) any Building and (ii) any Outside Sales Area during the period such area is used for sales, display and/or storage purposes.

1.7 Constant Dollars. "Constant Dollars" shall mean the value of the U.S. dollar to which such phrase refers, as adjusted from time to time. An adjustment shall occur on the 1st day of June of the sixth (6th) full calendar year following the date of this OEA, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The "Base Index Number" shall be the level of the Index for the year this OEA commences; the "Current Index Number" shall be the level of the Index for the year preceding the adjustment year; the "Index" shall be the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (1996=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Approving Parties shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

1.8 District. "District" shall mean that portion of the Shopping Center know as the Central District, the East District, the South District, the Theater District, and the West District.

1.9 East District. "East District" shall mean the area as identified on Exhibit X-2.

1.10 East Main Drive. "East Main Drive" shall mean the roadway as identified on the Site Plan.

1.11 Front Drive. "Front Drive" shall mean the roadway as identified on the Site Plan.

1.12 Floor Area.

(A) "Floor Area" shall mean the aggregate of the actual number of square feet of space (i) contained on each floor within a Building, including any mezzanine (except the projection room and not more than five thousand (5,000) square feet of meeting space in a theater Building constructed in the Theater District, so long as such Building is utilized as a movie theater) or basement space, as measured from the exterior faces of the exterior walls or

store front and/or the center line of any common walls; (ii) within an Outside Sales Area in excess of fifteen thousand (15,000) square feet; and (iii) used for outdoor seating for customers of Restaurants and/or other food service businesses. Floor Area shall not include space attributable to any multi-deck, platform, rack or other multi-level system used solely for the storage of merchandise which is located above ground floor; any space used solely for Building utilities or mechanical equipment; any space used solely for the placement of any Cart(s) on the sidewalks in the Central District; nor any exterior trash or garbage enclosures, provided such enclosure is not protected by a roof. Within thirty (30) days after receipt of a request therefor, a Party shall certify to the requesting Party the amount of Floor Area applicable to such Party's Tract. If any Party causes an as-built survey to be prepared with respect to any portion of the Development, such Party shall furnish a copy of such survey to the other Parties for informational purposes only.

(B) During any period of rebuilding, repairing, replacement or reconstruction of a Building, the Floor Area previously attributable to that Tract shall be deemed to be the same as existed immediately prior to such period. Upon completion of such rebuilding, repairing, replacement or reconstruction, the Party owning such Tract shall cause a new determination of Floor Area for such Tract to be made in the manner described above, and such determination shall be sent to any other Party requesting the same.

1.13 Governmental Authorities. "Governmental Authorities" shall mean any federal, state, county, city or local governmental or quasi-governmental authority, entity or body (or any departmental agency thereof) exercising jurisdiction over a particular subject matter.

1.14 Governmental Requirements. "Governmental Requirements" shall mean all applicable laws, statutes, ordinances, codes, rules, regulations, orders, and applicable judicial decisions or decrees, as presently existing and hereafter amended, of any Governmental Authorities.

1.15 Main Drive. "Main Drive" shall collectively refer to the East Main Drive and the West Main Drive.

1.16 Occupant. "Occupant" shall mean any Person from time to time entitled to the use and occupancy of any portion of a Building in the Shopping Center under an ownership right or under any lease, sublease, license, concession, or other similar agreement.

1.17 Operator. "Operator" shall mean the Person, if any, designated from time to time by the Approving Parties to maintain and operate the Special Common Area (as defined in Section 4.3(A) below) and the Sign Structures (as defined in Section 2.4) of the Shopping Center. The Person designated as Operator shall serve in such capacity until he resigns upon 60-days prior written notice, or is removed by the Approving Parties. The Approving Parties hereby designate Developer as the initial Operator, and Developer hereby accepts such appointment.

1.18 Outparcel. "Outparcel" shall mean those portions of the Shopping Center designated as "EP1", "EP2", "EP3", "EP4", "CP1", "CP2", "CP5", "CP6", "CP7", "CP8", "CP10", "CP11", "CP12", "WP1", "WP2", "WP3", "WP4", "WP5", "WP6" and "WP7" on the Site Plan and more particularly described on Exhibit B-1 attached hereto.

1.19 Outside Sales Area. "Outside Sales Area" shall mean those areas, if any, designated on the Site Plan which may be used exclusively by an Occupant of the adjacent Building on a permanent or consistent basis for outside sales and/or publicly accessible merchandise display and/or storage areas.

1.20 Party.

(A) "Party" shall mean each signatory hereto and its respective successors and assigns during the period of such Person's fee ownership of any portion of the Shopping Center. A Party transferring all or any portion of its fee interest in the Shopping Center shall give notice to all other Parties and, if such Tract is located in the East District, to the Operator, if any, of such transfer and shall include in such notice at least the following information:

- (i) The name and address of the new Party;
- (ii) A copy of the legal description of the portion of the Tract transferred by such Party; and
- (iii) If the new Party is the designated Approving Party.

Each Party shall be liable for the performance of all covenants, obligations and undertakings applicable to the Tract or portion thereof owned by it that accrue during the period of such ownership, and such liability shall continue with respect to any portion of the Tract transferred by such Party until the notice of transfer set forth above is given. Until such notice of transfer is given, the transferring Party shall (for the purpose of this OEA only) be the transferee's agent. Once the notice of transfer is given, the transferring Party shall be released from all obligations pertaining to the portion of the Tract transferred arising subsequent to the notice of transfer. For

the purpose of this Section only, if the notice of transfer is given pursuant to the provisions of Section 6.4, the effective date of such notice shall be the date such notice is sent.

(B) If a Tract is owned by more than one (1) Party, the Party or Parties holding at least fifty-one percent (51%) of the ownership interest in such Tract shall designate in writing one (1) Person to represent all owners of the Tract and such designated Person shall be deemed the Person authorized to give consents and/or approvals pursuant to this OEA for such Tract.

(C) Nothing contained herein to the contrary shall affect the existence, priority, validity or enforceability of any lien permitted hereunder which is recorded against the transferred portion of the Shopping Center prior to receipt of such notice of transfer by the Party filing such lien.

1.21 Permittee. "Permittee" shall mean all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended development, use and occupancy of the Shopping Center. Persons engaged in civic, public, charitable or political activities within the Shopping Center, including but not limited to the activities set forth below, shall not be considered Permittees:

- (i) Exhibiting any placard, sign or notice.
- (ii) Distributing any circular, handbill, placard or booklet.
- (iii) Soliciting memberships or contributions for private, civic, public charitable or political purposes.
- (iv) Parading, picketing or demonstrating.
- (v) Failing to follow regulations established by the Parties relating to the use and operation of the Shopping Center.

1.22 Person. "Person" shall mean any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or Governmental Authority.

1.23 Primary Building Area. "Primary Building Area" shall mean collectively the Building Areas designated as such on the Site Plan, including the Building Area on the Target Tract.

1.24 Promotional Area. "Promotional Area" shall mean those areas, if any, designated on the Site Plan which may be used from time to time for temporary sales, display and/or storage purposes and/or promotional activity. The term "Promotional Area" shall specifically exclude any Outside Sales Area defined in Section 1.19 above.

1.25 Qualified Chain. "Qualified Chain" shall mean a retail company or franchise operation (including restaurants and banks and other enterprises commonly found in first class shopping centers) having a national or regional presence, operating or franchising the same retail business under the same trade name in at least seventy-five (75) business locations serving the public in the United States and utilizing relative to all or a substantial majority of such business locations a prototypical exterior building elevation (a "Prototypical Theme") or sign fascia design consisting of generally recognized logo or trademark emblems or other similar indicia of said Qualified Chain's identity (a "Prototypical Sign Design").

1.26 Restaurant. "Restaurant" shall mean any operation or business which requires a governmental permit, license and/or authorization to prepare and/or serve food for either on or off-site consumption; provided, however, notwithstanding anything contained herein to the contrary, a supermarket, grocery store or similar operation shall not be deemed a Restaurant. The term Restaurant shall include the following classes:

- (i) "Sit Down Restaurant" shall mean any Restaurant that prepares and serves food primarily for on-site consumption and at which customers are served by waitresses or waiters and any Restaurant that serves alcoholic beverages. Examples of Sit Down Restaurants include Chili's, Macaroni Grill and Red Lobster as operated on the date hereof.
- (ii) "Fast Casual Restaurant" shall mean any Restaurant that prepares and serves food for on-site or off-site consumption, at which customers customarily order and pick-up their food at a counter, and has limited waitress or waiter staff. Examples of Fast Casual Restaurants include Noodles, Baja Grill and Pei Wei as operated on the date hereof.
- (iii) "Quick-Serve Restaurant" shall mean any Restaurant that prepares and serves food for on-site or off-site consumption, at which customers order either at a counter or at a drive-through window. Examples of

Quick-Serve Restaurants include McDonald's, Wendy's and Taco Bell as operated on the date hereof.

1.27 Shopping Center. "Shopping Center" shall mean the Target Tract and the Developer Tract, including any Buildings or improvements thereon, and if the Adjacent Tract, or any portion thereof, is at any time and from time to time during the term of this OEA, developed for retail, hospitality or entertainment uses, the definition of Shopping Center shall be amended to include the Adjacent Tract, or applicable portion thereof.

1.28 South District. "South District" shall mean the area as identified on Exhibit X-2.

1.29 South Main Drive. "South Main Drive" shall mean the roadway as identified on the Site Plan.

1.30 Theater District. "Theater District" shall mean the area as identified on Exhibit X-2.

1.31 Tract. "Tract" shall mean that portion of the Shopping Center owned by a Party.

1.32 Utility Lines. "Utility Lines" shall mean those facilities and systems for the transmission of utility services, including the drainage and storage of surface water. "Common Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to both the Developer Tract and the Target Tract. "Separate Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to either the Developer Tract or the Target Tract. For the purpose of this OEA, the portion of a Utility Line extending between a Common Utility Line and a Building shall be considered a Separate Utility Line. Utility Lines installed pursuant to this OEA shall only provide service necessary for the development and/or operation of the Shopping Center.

1.33 West District. "West District" shall mean the area as identified on Exhibit X-2.

1.34 West Main Drive. "West Main Drive" shall mean the roadway as identified on the Site Plan.

ARTICLE II - EASEMENTS

2.1 Ingress, Egress and Parking.

(A) During the term of this OEA, each Party hereby grants and conveys to each other Party for its use and for the use of its Permittees, in common with others entitled to use the same, a non-exclusive easement for the passage and parking of vehicles over and across the parking and driveway areas of the grantor's Tract, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways and sidewalk areas of the grantor's Tract, as the same may from time to time be constructed and maintained for such use. The easement herein established shall be appurtenant to and for the benefit of each grantee's Tract, and shall be binding on, enforceable against and burden each grantor's Tract. Such easement rights shall be subject to the following reservations as well as the other applicable provisions contained in this OEA:

- (i) Each Party reserves the right to close-off any portion of its Tract for such reasonable period of time as may be legally necessary, in the opinion of such Party's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing-off any portion of its Tract, such Party shall give written notice to each other Party of its intention to do so, and shall attempt to coordinate such closing-off with each other Party so that no unreasonable interference with the passage of pedestrians or vehicles shall occur;
- (ii) Each Party reserves the right at any time and from time to time to exclude and restrain any Person who is not a Permittee from using its Tract; and
- (iii) Each Party reserves the right to temporarily erect or place barriers in and around areas on its Tract which are being constructed and/or repaired in order to insure either safety of Persons or protection of property.

(B) In addition to the general easement specified in Section 2.1(A), Developer hereby grants and conveys to Target for its use and for the use of its Permittees, in common with others entitled to use the same, and subject to the reservations set forth in Section 2.1(A)(i) and (ii), a non-exclusive, perpetual easement for the passage and accommodation of pedestrians and vehicles (but not for parking purposes) upon, over and across those portions of the Developer's Tract designated on the Site Plan as "Entry Drive", "East Main Drive", "West Main Drive" and "Front Drive" (collectively, the "Access Drives"). In addition to the general easement specified

in Section 2.1(A), Target hereby grants and conveys to Developer for its use and for the use of its Permittees, in common with others entitled to use the same, and subject to the reservations set forth in Section 2.1(A)(i) and (ii), a non-exclusive, perpetual easement for the passage and accommodation of pedestrians and vehicles (but not for parking purposes) upon, over and across those portions of the Target Tract designated on the Site Plan as "East Main Drive" and "Front Drive" as existing from time to time on the Target Tract. The Entry Drive shall be not less than forty (40) feet wide (curb to curb), with three (3) lanes, one in each direction (including a center turn lane), the Main Drive shall be not less than forty (40) feet wide (curb to curb), with three (3) lanes, one in each direction (including a center turn lane), and the Front Drive shall be not less than thirty (30) feet wide (curb to curb), with two (2) lanes, one in each direction. The easements herein established shall be appurtenant to and for the benefit of the benefited Tracts, and shall be binding on, enforceable against and burden the Tract of the granting Party.

(C) During the term of this OEA, the Access Drives shall be maintained in accordance with the provisions governing the maintenance of the parking areas and driveways of the Common Areas, and the Access Drives shall not be relocated without the approval of the Approving Parties. After the termination of this OEA, those portions of the Shopping Center on which the Access Drives are located shall be maintained in a safe, clean and good state of repair and condition by the Party on whose Tract such Access Drive is located, at its sole cost and expense. In the event such Party shall fail to perform the required maintenance, any other Party after at least thirty (30) days prior notice to the Party required to perform such maintenance, shall have the right, but not the obligation, to cause such maintenance to be performed. If such curative measures are taken the Party required to perform such maintenance shall, upon demand, immediately pay to the Party performing such maintenance, all costs and expenses incurred with respect to such curative action. In addition, the Party performing such maintenance shall have the right to create a lien upon the Tract of the Party required to perform such maintenance in order to secure payment of the amount expended by the Party performing such maintenance, plus Interest at the rate set forth in Section 6.2 hereof. After the termination of this OEA, each Party may, at its expense, relocate the portion of the Access Drive located upon its Tract so long as the relocated portion remains reasonably direct and ties into/connects with the portions of such Access Drive located on each other Party's Tract. Notice of such relocation shall be provided to each Party at least thirty (30) days prior to relocation of any such Access Drive. The provisions of this Section 2.1(C) shall survive the expiration of this OEA.

2.2 Utilities.

(A) Each Party hereby grants and conveys to each other Party non-exclusive, perpetual easements in, to, over, under, along and across those portions of the grantor's Tract (exclusive of any portion located within Building Areas) necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, and removal of Utility Lines serving the grantee's Tract. The initial location of any Utility Line shall be subject to the prior written approval of the Party whose Tract is to be burdened thereby. Such easement area shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility company, or five (5) feet on each side of the centerline if the easement is granted to a Party. The grantee shall provide to the grantor a copy of an as-built survey showing the location of such Utility Line. All Utility Lines shall be underground except:

- (i) Ground mounted electrical transformers;
- (ii) As may be necessary during periods of construction, reconstruction, repair or temporary service;
- (iii) As may be required by Governmental Authorities;
- (iv) As may be required by the provider of such utility service; and
- (v) Fire hydrants.

At least thirty (30) days prior to utilizing the easement granted herein, the grantee shall provide the grantor with a written statement describing the need for such easement, shall identify the proposed location of the Utility Line, the nature of the service to be provided, the anticipated commencement and completion dates for the work. Prior to commencing any work on a grantor's Tract, including any emergency work, the grantee shall provide to the grantor evidence of insurance coverage as required by Section 5.4(C).

(B) Any Party electing to install a Separate Utility Line shall obtain all permits and approvals and shall pay all costs and expenses with respect to the initial construction and any subsequent relocation or abandonment of the Separate Utility Line. Such work shall be performed in compliance with all Governmental Requirements, as quickly as reasonably possible and after normal business hours whenever possible. The grantee of any Separate Utility Line agrees to defend, protect, indemnify and hold harmless the grantor from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and

liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the exercise of the right to install, maintain and operate the Separate Utility Line; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or the willful act or omission of the grantor.

(C) Except as may otherwise be agreed, the Parties (the "Cooperating Parties") electing to install a Common Utility Line shall obtain all permits and approvals and shall pay all costs and expenses with respect to the initial construction thereof.

(D) Each Party hereby grants and conveys to each other Party owning an adjacent Tract the perpetual right and easement to discharge surface storm water drainage and/or runoff from the grantee's Tract over, upon and across the Common Area of the grantor's Tract, upon the following conditions and terms:

(i) The grades and the surface water drainage/retention system for the Shopping Center shall be initially constructed in strict conformance with the plans and specifications approved by the Approving Parties; and

(ii) No Party shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Tract if such alteration would materially increase the flow of surface water onto an adjacent Tract either within the aggregate or by directing the flow of surface water to a limited area. All surface water collection, retention and distribution facilities shall be deemed a Common Utility Line.

(E) In the event a Party fails to perform its obligations under Section 2.2, any grantor shall have the right to claim a default pursuant to Section 6.1 and avail itself of all the provisions therein contained, including the right to lien a Defaulting Party's Tract, and receive Interest on all sums expended to cure such default.

(F) The grantor shall have the right to relocate a Utility Line on its Tract upon thirty (30) days prior written notice to the grantee(s), provided that such relocation:

(i) Shall not be commenced during the months of November, December or January;

(ii) Shall not interfere with or diminish the utility service to the grantee during the grantee's business hours; and if an electrical line/computer line is being relocated, then the grantor and grantee shall coordinate such interruption to eliminate any detrimental effects;

- (iii) Shall not reduce or unreasonably impair the usefulness or function of such Utility Line;
- (iv) Shall be performed without cost or expense to the grantee;
- (v) Shall be completed using materials and design standards which equal or exceed those originally used; and
- (vi) Shall have been approved by the provider of such utility service and the appropriate Governmental Authorities.

Documentation of the relocated easement area, including the furnishing of an "as-built" survey to all grantees, shall be at the grantor's expense and shall be accomplished as soon as possible following completion of such relocation.

2.3 Construction, Maintenance and Reconstruction.

(A) In order to accommodate any Building improvements, including, without limitation, underground piers, footings and/or foundations, which may inadvertently be constructed beyond a Tract's boundary line, each Party grants to each other Party owning an adjacent Tract, an easement, not to exceed a maximum lateral distance of six (6) inches, in, to, over, under, and across that portion of the grantor's Tract adjacent to such common boundary line for the maintenance and replacement of such encroaching Building improvements.

(B) The easements established under Section 2.3(A) shall be appurtenant to and for the benefit of each grantee's Tract, and shall be binding on, enforceable against and burden each grantor's Tract. Notwithstanding such easement grant, nothing herein shall diminish or waive the right of a grantor to recover damages resulting from a grantee's failure to construct its Building within its Tract. Such easements in each instance shall:

- (i) Continue in effect for the term of this OEA and thereafter for so long as the Building utilizing the easement area exists (including a reasonable period to permit reconstruction or replacement of such Building if the same shall be destroyed, damaged or demolished).
- (ii) Include the reasonable right of access necessary to exercise and enjoy such grant upon terms and with the limitations described in Section 3.1(E).

(E) With respect to Buildings constructed along the common boundary line between Tracts, nothing herein shall be deemed to create or establish:

- (i) A "common" or "party" wall to be shared with the adjacent Building.
- (ii) The right for a Building to receive support from or apply pressure to the adjacent Building.

2.4 Sign Easement.

(A) Developer hereby grants and conveys to Target, its successors and assigns as the owner of the Target Tract, a perpetual easement for the right and privilege to place or affix identification panel(s) on the freestanding sign structures ("Sign Structures") constructed or to be constructed in the Shopping Center at the location(s) designated on the Site Plan as "Shared Pylon A" and "Shared Monument", which identification panels shall be in the top position (both sides) on Shared Pylon A and the Shared Monument, and shall be of the dimensions specified in Exhibit C, together with reasonable access over, under, upon, through and across the Developer Tract to install, replace, maintain, repair and operate a Separate Utility Line pursuant to the terms and conditions set forth in Section 2.2 above in order to provide such panels with power. Developer reserves the right to grant additional panel easements, subject to the restrictions set forth in Section 5.3, for the remaining panel areas specified on Exhibit C, and each such additional grant shall recognize the easement right and privileges granted herein to Target, and shall specify which panel space on the Sign Structure is the subject of the easement grant. A copy of the recorded easement shall be delivered to Target and each other Person holding a prior panel easement with respect to such Sign Structure. In the event any Sign Structure is not constructed within the areas of the Shopping Center designated on the Site Plan therefor (the "Sign Areas") on or before February 3, 2006, or at any time thereafter, Developer hereby grants to Target the right, for Target to construct, reconstruct and/or replace the Sign Structure within the Sign Areas, and to install, replace, maintain, repair and operate a separate Utility Line pursuant to the terms and provisions set forth in Section 2.2 above in order to provide such Sign Structure and Target's panels with power. If Target elects to construct the Sign Structure, the design thereof shall be as specified on Exhibit C, or another design approved either during the term of this OEA by the Approving Parties and the Parties entitled to place panels on the Sign Structure pursuant to Section 5.3, or following the expiration of this OEA, by the Persons entitled to place panels on the Sign Structure pursuant to easement grants. The foregoing rights and easement, together with all rights and privileges specified, shall be for the benefit of the Target Tract and shall be binding on, enforceable against and burden the Developer Tract. Target shall have the right to release the easement, and upon such release Target shall remove its

panel(s) and thereafter have no further rights, duties or responsibilities with respect to the Sign Structure.

(B) If Developer or any Occupant hereafter constructs any pylon, monument or other freestanding sign structure located on or adjacent to the 11800 South Street ("Future Pylon A"), Target, its successors and assigns as the owner of the Target Tract, shall have a perpetual easement for the right and privilege to place or affix an identification panel on Future Pylon A, which identification panels shall be in a position (both sides) below only the name on the Shopping Center and the name of one Occupant of the South District, and shall be of the dimensions specified in Exhibit C for "Shared Pylon A". In the event Target elects to place an identification panel on Future Pylon A, Target shall pay a portion of the cost of construction of such Future Pylon A, which portion shall be equal to a fraction, the numerator of which shall be Target's identification panel area, and the denominator of which is the total identification panel area of all Occupants having a right to install identification panel on such Future Pylon A. If constructed, Future Pylon A and identification panels thereon shall be maintained and operated in accordance with Section 5.3 of this OEA. The foregoing rights and easement, together with all rights and privileges specified, shall be for the benefit of the Target Tract and shall be binding on, enforceable against and burden the South District. Target shall have the right to release the easement, and upon such release Target shall remove its panel(s) and thereafter have no further rights, duties or responsibilities with respect to Future Pylon A.

(C) During the term of this OEA, the right of other Occupants to place panels on a Sign Structure, the maintenance and/or replacement of the Sign Structures, and any relocation of the Sign Structures shall be governed by the provisions of Section 5.3 hereof.

(D) In the event a Sign Structure or Sign Area is taken by condemnation, Developer shall use the proceeds from the condemnation award or settlement to construct a new Sign Structure in replacement of the affected Sign Structure in accordance with Exhibit C in an area approved by Target and Developer with comparable visibility as close to the original location as reasonably possible. If the award received for a Sign Structure is less than the cost to replace the Sign Structure, the Parties entitled to place panels on the Sign Structure shall each pay a portion of such deficiency, which portion shall be equal to a fraction, the numerator of which is the number of square feet of panel area allocated to each pursuant to Exhibit C, or the then approved design, even if such panel area is not used, and the denominator of which is the total number of square feet of identification panel area available on the freestanding sign. The

award (whether paid separately or as part of a lump sum) attributable to each panel taken shall belong to the owner thereof. The provisions of this Section 2.4(C) shall continue after expiration of the term of this OEA.

2.5 Restriction. No Party shall grant any easement for the benefit of any property not within the Shopping Center; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by a Party on its Tract to Governmental Authorities or to public utility companies.

ARTICLE III - CONSTRUCTION

3.1 General Requirements.

(A) Each Party agrees that all construction activities performed or authorized by it within the Shopping Center shall be performed in compliance with all Governmental Requirements. All construction shall utilize new materials and shall be performed in a good, safe, workman-like manner.

(B) Each Party further agrees that any construction activities performed or authorized by it shall not:

(i) Cause any unreasonable increase in the cost of constructing improvements upon another Party's Tract.

(ii) Unreasonably interfere with construction work being performed on any other part of the Shopping Center.

(iii) Unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Shopping Center by any other Party or its Permittees.

(iv) Cause any Building located on another Tract to be in violation of any Governmental Requirements.

(C) Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys fees and cost of suit, arising out of or resulting from any construction activities performed or authorized by such indemnifying Party; provided, however, that the foregoing shall not be applicable to either events or circumstances caused by the negligence or willful act or omission of such indemnified Party, its licensees, concessionaires, agents, servants,

employees, or anyone claiming by, through, or under any of them, or claims covered by the release set forth in Section 5.4(D).

(D) In connection with any construction, reconstruction, repair or maintenance on its Tract, each Party reserves the right, at its expense, to create a temporary staging and/or storage area on its Tract at such location as will not unreasonably interfere with access between such Tract and the other areas of the Shopping Center. Prior to the commencement of any work which requires the establishment of a staging and/or storage area on its Tract, a Party shall give at least thirty (30) days prior notice to the Approving Parties, for their approval, of the proposed location of such staging and/or storage area. If substantial work is to be performed, the constructing Party shall, at the request of any Approving Party, fence such staging and/or storage area. Notwithstanding the foregoing, if a business is operating on the Target Tract then no other Party's staging and/or storage area shall be located within one hundred (100) feet of the Target Tract, unless such area is located within a Building Area or is otherwise shown on the Site Plan. If the Approving Parties do not approve the proposed location of the staging and/or storage area, the requesting Party shall modify the proposed location of the staging and/or storage area to satisfy the reasonable requirements of the Approving Parties. All storage of materials and the parking of construction vehicles, including vehicles of workers, shall occur only on the constructing Party's Tract, and all laborers, suppliers, contractors and others connected with such construction activities shall use only the access points located upon the constructing Party's Tract. Upon completion of such work, the constructing Party shall, at its expense, restore any damaged Common Area to a condition equal to or better than that existing prior to commencement of such work.

(E) Each Party hereby grants and conveys to each other Party and to such Party's contractors, materialmen and laborers a temporary license for access and/or use over and across the Common Area of the grantor's Tract as shall be reasonably necessary for the grantee to construct and/or maintain improvements upon the grantee's Tract; provided, however, that such license shall be in effect only during such periods of time when actual construction and/or maintenance is being performed and provided further that the use of such license shall not unreasonably interfere with the use and operation of the Common Area by the other Parties or their Permittees. Prior to exercising the rights granted herein, the grantee shall first provide the grantor with a written statement describing the need for such license and shall identify the area of use. Each grantee physically using a portion of the grantor's Tract in connection with the construction and/or maintenance of the grantee's Tract shall furnish a certificate of insurance

showing that its contractor has obtained the minimum insurance coverage required by Section 5.4(C), shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean the area, and restore and/or repair the affected portion of the grantor's Tract to a condition which is equal to or better than the condition which existed prior to the commencement of such work. Notwithstanding the foregoing, in the event a dispute exists between the contractors, laborers, suppliers and/or others connected with such construction activities, each Party shall have the right to prohibit the contractors, laborers, suppliers and/or others working for another Party from using the Common Area on its Tract.

3.2 Common Area. The Parties have agreed that the Common Area shall be constructed as shown on the Site Plan. No fence or other barrier which would prevent or unreasonably obstruct the passage of pedestrian or vehicular travel shall be erected or permitted within or across the Common Area, exclusive of the limited curbing and other forms of traffic control depicted on the Site Plan, permitted staging and/or storage areas and Outside Sales Areas. Contemporaneously with the construction of a Building upon its Tract, the constructing Party shall cause the Common Area on its Tract to be substantially completed no later than the day the first Occupant of such Tract opens for business with the public. Such work shall be done in accordance with Governmental Requirements, in a good and workmanlike manner and in accordance with good engineering standards; provided, however, the following minimum general design standards shall be complied with throughout the term of this OEA:

(A) The lighting system shall use a lamp source of metal halide, and shall be designed to produce a minimum maintained lighting intensity measured at grade at all points of at least:

- (i) 5.0 footcandles at curb in front of the entrance to any Building.
- (ii) 3.0 footcandles at entry drives to the Shopping Center.
- (iii) 3.0 footcandles in the general parking areas.
- (iv) 2.0 footcandles at the perimeter of the parking areas.

Each Party may elect to control the lighting system located on its Tract. The type and design of the Common Area light standards shall be approved by the Approving Parties.

(B) The slope in the parking area shall not exceed a maximum of three percent (3%) nor be less than a minimum of one and one-half percent (1 1/2%), and the slope at all entrances to the Shopping Center shall not exceed a maximum of three percent (3%), other than the entrance into the Shopping Center at the 11400 South Street and the Front Drive, which shall not exceed a maximum slope of six percent (6%).

(C) All sidewalks and pedestrian aisles shall be concrete or other materials approved by the Approving Parties; the automobile parking areas, driveways, and access roads shall be designed in conformity with the recommendations of a licensed soils engineer approved by the Approving Parties, which design shall require the installation of a suitable base and surfacing with an asphaltic concrete or concrete-wearing material.

(D) Utility Lines that are placed underground shall be at depths designated by consultants approved by the Approving Parties.

(E) The parking area on the Target Tract, and on each separate Tract comprising the Developer Tract, including the Grocery Tract (and on each separate Tract which may be established upon incorporation of the Adjacent Tract, or portions thereof, into the Shopping Center) shall contain sufficient ground level parking spaces, without reliance on parking spaces that may be available on another Tract, in order to comply with the greater of Governmental Requirements or the following minimum requirements:

(i) Five (5.0) parking spaces for each one thousand (1,000) square feet of Floor Area, exclusive of Restaurant parking requirements set forth below; provided, however, that compact car parking spaces, which may not exceed twenty percent (20%) of total parking spaces, shall be located only in the areas, if any, designated on the Site Plan; and if Target acquires fee title to that portion of the Developer Tract more particularly described on Exhibit A-3 attached hereto (the "Expansion Parcel"), and Target obtains a variance therefor from applicable Governmental Authorities, Target may reduce the usable parking spaces on the Target Tract to three and eight tenths (3.8) parking spaces for each one thousand (1,000) square feet of Floor Area, exclusive of Restaurant parking requirements set forth below.

(ii) If a business use contains a drive-up unit (such as a remote banking teller or food ordering/dispensing facility), then there shall also be created space for stacking not less than five (5) automobiles for each drive-up unit.

(iii) For each single Sit Down Restaurant which has less than five thousand (5,000) square feet of Floor Area, then ten (10) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use. For each single Sit Down Restaurant which has at least five thousand (5,000) square feet of Floor Area, but less than seven thousand (7,000) square feet of Floor Area, then fifteen (15) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use. For each single Sit Down Restaurant which has at least seven thousand (7,000) square feet or more of Floor Area, then twenty (20) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use.

(iv) For each single Fast Casual Restaurant which has less than one thousand five hundred (1,500) square feet of Floor Area, then five (5) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use. For each single Fast Casual Restaurant which has at least one thousand five hundred (1,500) square feet of Floor Area, but less than five thousand (5,000) square feet of Floor Area, then seven (7) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use. For each single Fast Casual Restaurant which has at least five thousand (5,000) square feet of Floor Area, but less than seven thousand (7,000) square feet of Floor Area, then eight (8) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use. For each single Fast Casual Restaurant which has at least seven thousand (7,000) square feet or more of Floor Area, then ten (10) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use.

(v) For each single Quick-Serve Restaurant which has less than one thousand five hundred (1,500) square feet of Floor Area, then five (5) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use. For each single Quick-Serve Restaurant which has at least one thousand five hundred (1,500) square feet of Floor Area, but less than three thousand five hundred (3,500) square feet of Floor Area, then seven (7) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use. For each single Quick-Serve Restaurant which has at least three thousand five hundred (3,500) square feet of Floor Area, but less than five thousand (5,000) square feet of Floor Area, then eight (8) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use. For each single Quick-Serve Restaurant which has at least five thousand (5,000) square feet or more of Floor Area, then ten (10) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use.

(vi) For any movie theater in the Theater District, parking shall be as shown on the Site Plan.

If an Occupant operates a Restaurant incidental to its primary business purpose, then so long as such incidental operation continues, the portion of the Floor Area occupied by such Restaurant shall be excluded from the application of (iii), (iv) and (v) above. For the purpose of this clause only, a Restaurant shall be an "incidental operation" if (x) it occupies less than seven percent (7%) of the Occupant's Floor Area or (y) it is incidental to the operation of a theater in the Theater District having not more than two hundred fifty (250) seats for patrons of such Restaurant, and (z) in either event, does not have a separate customer entry/exit door to the outside of the Building. In the event an Occupant utilizes Floor Area for Restaurant and other purposes, only the portion of Floor Area allocated for Restaurant purposes shall be subject to the increased parking requirements set forth above.

In the event of a condemnation of part of a Tract or a sale or transfer in lieu thereof that reduces the number of usable parking spaces on such Tract below that which is required herein, the Party whose Tract is so affected shall use its good faith efforts (including using proceeds from the condemnation award or settlement) to restore and/or substitute ground-level parking spaces in order to comply with the parking requirements set forth in this OEA. If such compliance is not reasonably possible, such Party shall not be deemed in default hereunder, but such Party shall not be permitted to expand the amount of Floor Area located on its Tract. If such Floor Area is thereafter reduced other than by casualty, then the Floor Area on such Tract may not subsequently be increased unless the parking requirements set forth above are satisfied.

Temporary unavailability of parking spaces caused by uses or promotions permitted under this OEA shall not result in or be deemed a violation of this Section 3.2(E).

(F) No Party shall make changes to the improved Common Area on its Tract without the approval of the Approving Parties, which approval may be granted or withheld in the Approving Party's good faith business judgment, except that each Party hereby reserves the right, from time to time without obtaining the consent or approval of any other Party, to make at its own expense any insignificant change, modification or alteration in the portion of the Common Area on its Tract, including the installation of convenience facilities such as mailboxes, public telephones, cart corrals, benches, bike racks, directional and/or parking information signs, provided that:

(i) The accessibility of such Common Area for pedestrian and vehicular traffic (as it relates to the remainder of the Shopping Center) is not unreasonably restricted or hindered, and parking stalls and rows and vehicular traffic lanes shall remain generally as shown on the Site Plan.

(ii) There shall be maintained at all times within such Common Area a sufficient number of vehicular parking spaces to meet the parking requirements set forth in Section 3.2(E); provided, however, that no more than two percent (2%) of the parking spaces depicted on the Site Plan for such Tract shall be eliminated.

(iii) No Governmental Requirements shall be violated as a result of such action; any and all Governmental Requirements applicable to such modifications shall be satisfied by the Party performing the same; and such action shall not result in any other Party being in violation of any Governmental Requirements.

(iv) No change shall be made in the access points between the Common Area and the adjacent public streets; provided, however, that additional access points may be created with the approval of the Approving Parties.

(v) At least thirty (30) days prior to making any such change, modification or alteration, the Party desiring to do such work shall deliver to each Approving Party copies of the plans therefor, and provided further that such work shall not occur during the months of October, November, December or January.

The provisions of this Section 3.2(F) do not apply to any changes, modifications or alterations of Common Area located within Building Area which result from or arise out of the construction, expansion or maintenance of Buildings or Outside Sales Areas.

3.3 Building Improvements.

(A) Building(s) shall only be located within the Building Areas designated on the Site Plan. While it is acknowledged and agreed that no Party shall have an obligation to commence construction of any Building on its Tract, each Party agrees that once it has commenced construction of a Building, such Building shall be completed within a reasonable time. If the Site Plan contains a caption which specifically establishes the maximum Floor Area to be located within a Building Area, such designated Floor Area shall not be exceeded. If the number of "square feet" of building space within the Shopping Center is restricted by Governmental Requirements, the Parties hereby allocate the permitted square footage as follows: (i) to the Target Tract, the number of square feet necessary to accommodate approximately one hundred twenty-six thousand (126,000) square feet of Floor Area or if Target acquires fee title to the Expansion Parcel, then one hundred seventy-five thousand (175,000) square feet of Floor Area, plus any Outdoor Sales Area; and (ii) to the Developer Tract, the balance of such permitted square footage. The Parties understand that the calculation of Building sizes shown on the Site Plan is based on the definition of "Floor Area" set forth in this OEA, and further that such term is

unique to this OEA and is not intended to mirror the definition of "square feet" set forth in codes/regulations established by the local Governmental Authorities.

(B) The Approving Parties have agreed upon an architecturally compatible theme for the exterior of all Buildings to be constructed, placed or located within the Shopping Center, as represented by the Building elevations (the "Theme") attached hereto as Exhibit D. Each Party agrees that any Building located on its Tract shall comply with such Theme and further, that such Building shall not have backlit lighting for any awning or canopy forming a part thereof. In order to insure compliance with such Theme, each Party shall, at least thirty (30) days prior to the commencement of any work on its Tract, submit to the Approving Parties for approval detailed plans ("Plans") as required by Exhibit E attached hereto covering the initial construction of each Building and any additions, remodeling, reconstruction or other alteration thereto which changes the exterior thereof; provided, however, the Approving Parties waive the requirement for the submission of Plans for the initial Building to be constructed on the Target Tract if such Building reflects a prototype "Target" retail store. If an Approving Party should reject the Plans for not complying with the Theme, the submitting Party and the Approving Parties shall mutually consult to establish approved Plans for the proposed work. The Approving Parties shall not withhold approval of the Plans or recommend changes in the Plans which otherwise conform with the requirements hereof, nor shall they withhold approval of exterior remodeling or exterior reconstruction which does not either substantially enlarge an existing Building, or substantially change an existing Building. In no event shall an Approving Party require any other Party to utilize design standards superior to those utilized by the Approving Party in the construction of any Buildings on its Tract. Approval of Plans by the Approving Parties shall not constitute assumption of responsibility for the accuracy, sufficiency or propriety thereof, nor shall such approval constitute a representation or warranty that the Plans comply with Governmental Requirements. No material deviation shall be made from the approved Plans.

(C) The Parties hereby specifically consent to the placement of Buildings along their respective common boundary lines, and each Party agrees to support any request by another Party for a side-yard or setback variance if the same is required in order to accommodate such construction. The second Party to construct a Building along a common boundary line shall:

- (i) Cause such construction to be completed in such a manner that the improvements on the adjoining Tract are not damaged, and so that the wall, roof,

foundation or other structure portion of one Building does not receive support from, nor apply pressure to the other Building.

(ii) Undertake and assume the obligation of completing and maintaining the nominal attachment (flashing and seal) of its Building to that of the existing Building on the adjoining Tract, it being the intent of the Parties to establish and maintain the appearance of one (1) continuous Building complex.

Along the common boundary line between the Developer Tract and the Target Tract, the separation of Building walls shall be no less than five (5) inches. Target agrees to use reasonable efforts to locate its Building wall at least three (3) inches from the common boundary line, but in no event more than five (5) inches therefrom. Developer agrees to locate its Building wall approximately (but not less than) five (5) inches from the Building wall on the Target Tract.

(D) The Parties acknowledge that Target initially proposes to construct on the Target Tract a Building which is classified as an "unlimited area" building under certain building codes (by way of explanation, but not limitation, an "unlimited area" building is designated II-N or V-N under the Uniform Building Code.) The Parties agree that all Buildings constructed within the Primary Building Area shall comply with the following requirements:

(i) No Building shall be constructed within sixty (60) feet of the Building Area on an adjoining Tract unless such Building, hereinafter referred to as the "Adjacent Building," shall be located immediately adjacent to the common boundary line and is attached to the Building, if any, on the adjacent Tract in accordance with Section 3.3.

(ii) If an Adjacent Building exists, then no Building shall be located within sixty (60) feet of the Adjacent Building unless such Building is attached to the Adjacent Building in accordance with Section 3.3; the Adjacent Building and all other Buildings on the Tract that are attached to the Adjacent Building and to each other are hereinafter referred to as the "Building Group".

(iii) Any Building that is not part of the Building Group shall be located at least sixty (60) feet distant from the Building Group.

(iv) The Adjacent Building or the Building Group, as the case may be, shall comply with the building code requirements applicable to an "unlimited area" building, including without limitation the installation of an approved sprinkler system for fire protection.

In addition to the requirements set forth above, the Parties agree that no Building shall initially be placed or constructed on their respective Tracts in a manner which will, based on then existing Governmental Requirements, either preclude the construction on the Primary Building Areas of an "unlimited area" building, or cause an existing "unlimited area" building thereon to no longer be in conformance with applicable building code requirements, it being understood and agreed, however, that subsequent changes in Governmental Requirements shall not obligate a Party to modify or alter its existing Building.

If required by any Governmental Authorities, each Party agrees to join in a recordable declaration which confirms the existence of a sixty (60) foot clear area around the Primary Building Areas.

(E) No Building, except in the South District and the Theater District, shall exceed one (1) story, and no Building shall exceed the following height restrictions:

- (i) On the Target Tract - 36 feet
- (ii) On the Developer Tract - 36 feet
(other than the Outparcels and the Buildings designated in the Site Plan as "Main Street Shops")
- (iii) On the Outparcels within the East District - 24 feet
- (vi) On the Outparcels within the remainder of the Shopping Center - 26 feet
- (v) Main Street Shops - as shown on Exhibit X-3
- (vi) In the Theater District (excluding the Building designated "EF" on the Site Plan) - 55 feet, plus a theater tower feature not exceeding an additional 25 feet
- (vii) The Building in the Theater District designated "EF" on the Site Plan - 36 feet

- (viii) On the South District - 55 feet for Building(s) constructed thereon primarily for retail purposes; no limit for Building(s) constructed thereon for other uses permitted pursuant to this OEA.

The height of any Building shall be measured perpendicular from the finished floor elevation to the top of the roof structure, including any screening, parapet, penthouse, mechanical equipment or similar appurtenance located on the roof of such Building. Any Party shall have the right to install, maintain, repair, replace and remove Communications Equipment (defined below) on the top of the Building on its Tract which may extend above the height limits established above; provided, however, such Communication Equipment shall be set back from the front of the Building to reduce visibility thereof by customers. As used herein, the phrase "Communications Equipment" means such things as satellite and microwave dishes, antennas and laser heads, together with associated equipment and cable.

(F) No Building constructed in the West District shall have service areas (by way of example, but not limitation, loading docks, trash containers, recycling facilities and compactors) facing West Main Street.

3.4 Liens. In the event any mechanic's lien is recorded against the Tract of one Party as a result of services performed or materials furnished for the use of another Party, the Party permitting or causing such lien to be so recorded agrees to cause such lien to be discharged within fifteen (15) days after the entry of a final judgment (after all appeals) for the foreclosure of such lien. Notwithstanding the foregoing, upon request of the Party whose Tract is subject to such lien, the Party permitting or causing such lien to be recorded agrees to promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge. Nothing herein shall prevent the Party permitting or causing such lien to be recorded from contesting the validity thereof in any manner such Party chooses so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such Party shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien of record. The Party permitting or causing such lien agrees to defend, protect,

indemnify and hold harmless the other Party and its Tract from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from such lien.

ARTICLE IV - MAINTENANCE AND REPAIR

4.1 Utility Lines.

(A) Separate Utility Lines shall be maintained in a safe, clean and good state of repair and condition by the Party whose Building or Tract is served thereby. Such work shall be performed in compliance with all Governmental Requirements, as quickly as possible and after normal business hours whenever reasonably possible. Except in the case of a maintenance emergency where such work may be initiated after reasonable notice, the grantee shall provide the grantor with at least fifteen (15) days prior notice before commencement of any work.

(B) Except as may otherwise be agreed, the Parties (the "Cooperating Parties") electing to install a Common Utility Line shall obtain all permits and approvals and shall pay all costs and expenses with respect to the initial construction thereof. Once constructed, any Cooperating Party shall have the right to maintain, repair or replace the Common Utility Line without submission of a budget or estimate of expenditures, except as hereinafter provided. If a Cooperating Party, in performing maintenance, repair or replacement of a Common Utility Line, is likely to incur costs of more than Twenty Thousand Dollars (\$20,000) in Constant Dollars for such work in any one instance (or series of related or repeated circumstances), such Cooperating Party shall first notify the other Cooperating Parties required to pay a portion of such costs, in which case the Cooperating Parties shall prepare a list of qualified bidders, shall seek competitive bids from the list of qualified bidders before performing the work and shall select the lowest, responsive qualified bidder to perform the work. If a list of bidders is not jointly prepared within fifteen (15) days of the request for bidders, the Cooperating Party desiring to perform the work may prepare the list (containing not less than three bidders) for such other Cooperating Parties' approval, which approval shall not be unreasonably withheld, from which bids will be solicited. After a Cooperating Party has incurred any costs for maintaining, repairing or replacing a Common Utility Line, it may send a statement of such costs, increased by an amount equal to the Administrative Fee (defined in Section 4.3(A)), together with a copy of any invoice reflecting any charge exceeding \$500.00 to each Cooperating Party benefiting from such Common Utility Line. Each Cooperating Party shall pay within thirty (30) days after

receipt of the statement of costs either its allocable share of such costs as agreed upon when the Common Utility Line was installed, or if no separate cost sharing agreement was made, then each cooperating party shall pay a portion of such costs, which portion shall be equal to a fraction, the numerator of which shall be the Floor Area contained in all Buildings constructed on the Tract of such Cooperating Party, and the denominator of which shall be the aggregate Floor Area of all Buildings constructed in the Tracts of the Cooperating Parties. Except in the case of a maintenance emergency where such work may be initiated after reasonable notice, the grantor shall be provided with at least fifteen (15) days prior notice before commencement of any work.

4.2 Common Area.

(A) Subject to the joint maintenance provision set forth in Section 4.3, each Party shall maintain, or cause to be maintained, at its sole cost and expense, the Common Area on its Tract in a sightly, safe condition and good state of repair. The unimproved Common Area shall be mowed and kept litter-free. The minimum standard of maintenance for the improved Common Area shall be comparable to the standard of maintenance followed in other first class mixed use developments of comparable type and size in Salt Lake County, Utah; notwithstanding the foregoing, however, the Common Area shall be operated and maintained in compliance with all applicable Governmental Requirements, and the provisions of this OEA. All Common Area improvements shall be repaired or replaced with materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony of the Shopping Center as a whole. Such operation, maintenance and repair obligation shall include but not be limited to the following:

(i) Drive and Parking Areas. Maintaining all paved surfaces and curbs in a smooth and evenly covered condition, including, without limitation, replacement of base, skin patch, resurfacing and, when necessary to restripe the parking area, resealing. (For the purpose of this Section, an overlay of the drives and parking areas shall be considered a maintenance item.)

(ii) Debris and Refuse. Periodically removing papers, debris, filth, refuse, ice and snow (2" on surface), including vacuuming and broom-sweeping to the extent necessary to keep the Common Area in a first-class, clean and orderly condition. All sweeping shall be at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Area by Permittees.

(iii) Directional Signs and Markers. Maintaining, cleaning and replacing any appropriate directional, stop or handicapped parking signs or markers; restriping

parking lots and drive lanes as necessary to maintain parking space designation and traffic direction; and keeping clearly marked fire lanes, loading zones, no parking areas and pedestrian cross-walks.

(iv) Lighting. Maintaining, cleaning and replacing Common Area lighting facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers, illuminating the Common Area pursuant to Section 5.2(A).

(v) Landscaping. Maintaining and replacing all landscape plantings, trees and shrubs in an attractive and thriving condition, trimmed and weed-free; maintaining and replacing landscape planters, including those adjacent to exterior walls of Buildings; providing water for landscape irrigation through a properly maintained system, including performing any modifications to such system to satisfy governmental water allocation or emergency requirements.

(vi) Obstructions. Keeping the Common Area free from any obstructions, including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this OEA.

(vii) Sidewalks. Maintaining, cleaning and replacing sidewalks, including those adjacent and contiguous to Buildings located within the Shopping Center. Sidewalks shall be steam-cleaned at least monthly, shall be swept at appropriate intervals during such time as shall not interfere with the conduct of business or use of the Common Area and shall be cleared of ice or snow (after each snow fall of 2" or more).

(viii) Supervisory Personnel. Providing professional supervisory personnel for the Common Area, if reasonably required.

(ix) Traffic. Supervising traffic at entrances and exits to the Shopping Center and within the Shopping Center as conditions reasonably require in order to maintain an orderly and proper traffic flow.

Notwithstanding anything contained herein to the contrary, each Party shall have the obligation to operate, maintain, and repair, at its sole cost and expense, in a clean, sightly and safe condition, the following items (if any) located on its Tract: any exterior shipping/receiving dock area; any truck ramp or truck parking area; any recycling center or similarly designated area for the collection of items intended for recycling; and any refuse, compactor or dumpster area.

(B) Subject to the provisions of Section 4.1 regarding Common Utility Lines, if any portion of the Common Area is damaged or destroyed by any cause whatsoever, whether insured or uninsured, during the term of this OEA, other than damage caused by ordinary use or

wear and tear, the Party upon whose Tract such Common Area is located shall repair or restore such Common Area at its sole cost and expense with all due diligence; provided, however, that no Party shall be required to expend more than \$250,000 in Constant Dollars in excess of insurance proceeds which may be available (or which would have been available except for such Party's election of deductibles or self-insurance, which amount such the Party shall be responsible to contribute) for such repair or restoration. Notwithstanding the limitation set forth in the preceding sentence, a Party may require another Party to do such restoration work if the requiring Party has agreed in writing to pay the costs in excess of \$250,000.00. Except to the extent limited by Section 5.4(D), if such damage or destruction of Common Area on its Tract is caused in whole or in part by another Party or a third Person, the Party obligated to make such repair or restoration reserves and retains the right to proceed against such other Party or third Person for indemnity, contribution and/or damages.

4.3 Common Area Maintenance by Operator.

(A) Commencing on the earlier of (i) thirty (30) days prior to the date specified by the Occupant of the Target Tract that it intends to open for business with the general public or (ii) the date the Approving Parties designates in writing, Operator shall operate and maintain the Common Area within the East District of the Shopping Center, the Access Roads and any Common Utility Lines serving the East District of the Shopping Center (collectively, the "Special Common Areas") in accordance with the requirements of Section 4.2(A). Operator shall obtain separate competitive bids for operation and maintenance of the Special Common Area and shall expend only such funds as are reasonably necessary for the operation and maintenance of the Special Common Area, including premiums for insurance required by Section 5.4(A) and the performance of other obligations imposed on Operator pursuant to Section 5.3(A) hereof, and shall promptly pay such costs ("Common Area Maintenance Costs") when incurred. Within thirty (30) days following the commencement of such maintenance and operation, Operator shall provide the Approving Parties owning a Tract within the East District (the "Special Approving Parties") an estimated budget for the balance of the current calendar year containing the information required by Section 4.2(C), and each Party within the East District agrees to pay its share of Common Area Maintenance Costs incurred for the balance of such year, in accordance with Section 4.3(D). Operator may hire companies affiliated with it to perform the maintenance and operation of the Special Common Area, but only if the rates charged by such companies are competitive with those of other companies furnishing similar services in the metropolitan area in which the Shopping Center is located, it being agreed that

this provision shall be construed strictly against Operator. Each Party owning a Tract which includes a portion of the Special Common Areas hereby grants to Operator, its agents, contractors and employees, a license to enter upon such Party's Tract to discharge Operator's duties to operate, maintain and repair the Special Common Area. For the purpose of this OEA, Common Area Maintenance Costs shall not include:

- (i) Any late charges or fees; any cost, fee, fine, penalty or similar charge arising out of or resulting from any violation by Operator or anyone else relating to the Shopping Center.
- (ii) Any charge for electricity for exterior Building lighting, Building accent lighting, lighting associated with a canopy or other architectural feature forming a part of a Building, and Building security lighting, shall be considered a part of such Building, and the maintenance and replacement of such fixtures, and the cost of illumination, shall not be considered a Common Area Maintenance Cost and shall be the obligation of the Party upon whose Tract such fixtures are located. Also, with respect to any party that separately pays the cost of power to illuminate the Common Area on its Tract, any charge for the cost of power to illuminate any portion of the Common Area on the balance of the Shopping Center.
- (iii) With respect to any party that separately pays the cost of water for irrigating the landscaping upon its Tract, any charge for the cost of water for irrigating any portion of landscaping on the balance of the Shopping Center.
- (iv) Any costs for promotional, marketing, seasonal or holiday events of any type (including, without limitation, costs of promotional equipment, banners, decorations and/or lighting).
- (v) Any costs to clean up or repair the Special Common Area resulting from any promotional, marketing, seasonal or holiday activities, from construction, maintenance or replacement of a Party's Building.
- (vi) Any costs resulting from or arising out of the repair or replacement of items covered by warranties or guaranties including, but not limited to, such as site improvements, signs, trees, plants or other landscaping.
- (vii) Real property taxes and assessments on the Common Area.
- (viii) Operator's profit, administrative and overhead costs including, but not limited to: office space, equipment and utilities; legal, accounting and administrative service; Operator's personnel who are not permanently located at the Shopping Center; and premiums relating to bonding over mechanic's liens.

(ix) Trash and/or garbage removal from a Party's Building shall not be considered a Common Area Maintenance Cost since such removal obligation is covered by Section 4.4(A)

(x) If any Party or Occupant within the East District requires "special" landscaping (i.e. flowers, shrubs, trees, etc.) beyond the standard landscaping requirements for the remainder of the Shopping Center, or if landscaping additions/modifications are required as a result of a Building addition, expansion or remodel, the cost of installation, replacement and maintenance of such special or required landscaping shall be borne solely by such Party or Occupant, as the case may be, and shall not be included in Common Area Maintenance Costs.

(xi) Any fee or charge relating to the management and/or supervision of the operation of the Common Area, or any part thereof, paid to a third party, commercial management company or similar provider.

(xiii) Entertainment, transportation, meals and lodging of anyone.

(xiv) Cost of maintaining the Sign Structures; Operator shall maintain the Sign Structures and allocate the cost for each Sign Structure in accordance with Section 5.3(B).

(B) In lieu of Operator's profit, administrative and overhead costs, Operator shall be permitted to charge an amount ("Administration Fee") determined pursuant to a separate agreement, which separate agreement shall be binding on all subsequent Operators in accordance with its terms. If any of Operator's personnel at the Shopping Center perform services, functions or tasks in addition to Common Area duties, then the cost of such personnel shall be equitably allocated according to time spent performing such duties.

(C) Operator shall, at least ninety (90) days prior to the beginning of each calendar year during the term of this OEA, submit to the Special Approving Parties an estimated budget ("Budget") for the Common Area Maintenance Costs and the Administration Fee for operating and maintaining the Special Common Area for the ensuing calendar year. The Budget shall be in a form and content reasonably acceptable to the Special Approving Parties and shall identify separate cost estimates for at least the categories specified under Section 4.2(A), plus:

(i) Premiums for Commercial General Liability Insurance covering the Special Common Area as required by Section 5.4(A); provided, however, such premiums shall not exceed the current filed Insurance Services Offices (ISO) rate for premises operations, adjusted by the increased limits factor, and if a blanket

policy is utilized by Operator, then there shall be a reasonable allocation of premium between such covered locations, taking into account the amount of Special Common Area and ISO rates applicable to each location.

- (ii) Rental or purchase of equipment and supplies used in maintaining or repairing the Special Common Area.
- (iii) Depreciation or trade-in allowance applicable to items purchased for purposes of operating and maintaining the Special Common Areas.
- (iv) Maintenance of Sign Structure(s) pursuant to Section 5.3(A).
- (v) Maintenance of Common Utility Line(s) serving the Special Common Areas pursuant to Section 4.1(B).
- (vi) The Administration Fee, as applicable to each Special Approving Party.

If an item of maintenance or replacement is to be accomplished in phases over a period of calendar years during the term of this OEA, such as resurfacing of the drive and/or parking areas of the Special Common Areas, then the Budget shall separately identify the cost attributable to the applicable calendar year (including the portion of the Special Common Area affected) and shall note the anticipated cost and timing (indicating the portion of the Special Common Area affected) of such phased work during succeeding calendar years. The cost of approved "phased" work shall be paid by the Parties approving the same, or their successors or assigns, as the case may be, notwithstanding that when such work is performed a Party may not then be participating in the joint maintenance of the Special Common Area.

If a Special Approving Party disapproves the proposed Budget, it shall consult with the other Special Approving Party(ies) and Operator to establish a final approved Budget. If a Budget is not approved by December 1st of any calendar year, Operator shall have the right to terminate its maintenance obligation with respect to the Special Common Area located on the Tract of the disapproving Special Approving Party by written notice given prior to December 10th of such calendar year. If such notice is given, commencing on the following April 1st, such Special Approving Party shall (i) maintain and operate the Common Area on its Tract at its expense; and (ii) contribute towards the costs of the specified maintenance and operation functions performed by Operator set forth in Section 4.3(E) as though it was a withdrawing Party; and Operator shall maintain and operate the balance of the Special Common Area covered by its maintenance obligations; during the period from January 1st to March 31st, such Special

Approving Party shall pay its share of maintenance of the Special Common Area pursuant to Section 4.3(D). If such notice is not given, then Operator shall continue to maintain and operate all of the Special Common Area for the next calendar year. Approval of the Budget, or any of the line items comprising a part thereof, shall not be considered a waiver of a Party's right to audit and/or contest, challenge or dispute the Reconciliation (defined in Section 4.3.D).

Operator shall use its diligent, good faith efforts to operate and maintain the Special Common Area in accordance with the Budget. Notwithstanding the foregoing, Operator shall have the right to make emergency repairs to the Special Common Area to prevent injury or damage to Persons or property, it being understood that Operator shall nevertheless advise each Special Approving Party of such emergency condition as soon as reasonably possible, including the corrective measures taken and the cost thereof. If the cost of the emergency action exceeds \$10,000.00 in Constant Dollars, then Operator shall submit a supplemental billing to each Special Approving Party, together with evidence supporting such cost, and each Special Approving Party shall pay its share thereof within thirty (30) days after receipt of such billing. If the cost limitation set forth above is not exceeded then such costs shall be included as part of the Common Area Maintenance Costs for that year.

(D) Common Area Maintenance Costs shall be allocated to each Tract within each the East District, as follows:

- | | | |
|------|------------------------|--------|
| (i) | To the Developer Tract | 49.55% |
| (ii) | To the Target Tract | 50.45% |

In the event an existing Tract within the East District is divided, the Party causing such division shall, at its expenses, prorate the allocation of Common Area Maintenance Costs attributable to the original Tract between the newly created Tracts, file a recorded declaration confirming such allocation and deliver a copy of such declaration to Operator and each other Party. If and when, from time to time, Buildings are constructed within the areas of the east District designated as Outparcels on the Site Plan, the allocation of Common Area Maintenance Costs shall be redetermined based on the Floor Area contained within each Tract and the Special Approving Parties shall file a recorded amendment to this Section 4.3(D) confirming such redetermination and deliver a copy of such amendment to Operator and each other Special Approving Party. Each Party owning a tract within the East District shall pay to the Operator in equal monthly payments, in advance, the share of the Common Area Maintenance Costs

attributable to such Party's Tract based either upon the amount set forth in the approved Budget or, if a Budget is not approved, then the lesser of the amount set forth in the unapproved Budget or the monthly payment established for such Party for the prior year. The Party's owning a Tract within the East District shall have no obligation to pay for the cost of operating or maintaining the Common Areas of the Shopping Center other than the Special Common Areas. Within sixty (60) days after the end of each calendar year, Operator shall provide each Party owning a Tract within the East District with a statement certified by an authorized Person, together with supporting invoices and other materials setting forth the actual Common Area Maintenance Costs paid by Operator for the operation and maintenance of the Special Common Area (such statement and supporting data are collectively called the "Reconciliation"), the Administration Fee, and the share of the aggregate thereof that is attributable to each Party's Tract. The Reconciliation shall separately identify cost categories specified in Sections 4.2(A) and 4.3(C), and shall be in a form reasonably acceptable to the Special Approving Parties. If the amount paid with respect to a Tract for such calendar year shall have exceeded the share allocable to such Tract, Operator shall refund by check the excess to the Party owning such Tract at the time the Reconciliation is delivered, or if the amount paid with respect to a Tract for such calendar year shall be less than the share allocable to such Tract, the Party owning such Tract at the time such Reconciliation is delivered shall pay the balance of such Party's share to Operator within thirty (30) days after receipt of such Reconciliation, less any amounts disputed in writing. If Operator does not refund amounts shown by the Reconciliation to be owed a Party, then such Party may offset the refund owed, plus Interest, against payments for Common Area Maintenance Costs and Administration Fee due for any future period. Notwithstanding anything contained herein to the contrary, if during a calendar year the Operator resigns or is replaced, the replacement Operator shall be responsible for the Reconciliation adjustments, including any reimbursement due to a Party for such calendar year.

Within three (3) years after the date of receipt of a Reconciliation, each Party owning a Tract within the East District shall have the right to audit Operator's books and records pertaining to the operation and maintenance of the Special Common Area for the calendar year covered by such Reconciliation. A Party shall notify Operator of such Party's intent to audit at least fifteen (15) days prior to the designated audit date. If such audit shall disclose any error in the determination of the Common Area Maintenance Costs, the Administration Fee or any allocation thereof to a particular Tract, the auditing Party shall provide Operator with a copy of the audit, and an appropriate adjustment shall be made forthwith. The cost of any audit shall be

assumed by the auditing Party unless such Party shall be entitled to a refund in excess of three percent (3%) of the amount calculated by Operator as such Party's share for the applicable calendar year, in which case Operator shall pay the cost of such audit. If Operator does not respond to the results of such audit within ninety (90) days after receipt of the audit, then the auditing Party shall have the right to offset the refund claimed, plus Interest, from the date Operator receives the audit, plus costs of the audit if appropriate, against subsequent payments due Operator.

(E) Operator agrees to defend, indemnify and hold each Party owning a Tract which includes the Special Common Area harmless from and against any mechanic's, materialmen's and/or laborer's liens, and all costs, expenses and liabilities in connection therewith, including reasonable attorney's fees and court costs, arising out of the maintenance and operation by Operator of the Special Common Area, and if any Tract shall become subject to any such lien, Operator shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting such bond or other security as shall be required by law to obtain such release and discharge.

(F) Subject to the provisions of Section 4.1(B) regarding Common Utility Lines, if any portion of the Common Area is damaged or destroyed by any cause whatsoever, whether insured or uninsured, during the term of this OEA, other than damage caused by ordinary use or wear and tear, the Party upon whose Tract such Common Area is located shall repair or restore such Common Area at its sole cost and expense with all due diligence; provided, however, that no Party shall be required to expend more than \$250,000 in Constant Dollars in excess of insurance proceeds which may be available (or which would have been available except for such Party's election of deductibles or self-insurance, which amount such the Party shall be responsible to contribute) for such repair or restoration. Notwithstanding the limitation set forth in the preceding sentence, a Party may require another Party to do such restoration work if the requiring Party has agreed in writing to pay the costs in excess of \$250,000.00. Except to the extent limited by Section 5.4(D), if such damage or destruction of Common Area on its Tract is caused in whole or in part by another Party or a third Person, the Party obligated to make such repair or restoration reserves and retains the right to proceed against such other Party or third Person for indemnity, contribution and/or damages.

(G) Target shall have the right, upon giving not less than sixty (60) days written notice to Operator, to take-over and assume the maintenance of the Common Area upon

the Target Tract. Following the effective date of such take-over and assumption, Target shall maintain the Common Area on its Tract, and shall pay all costs and expenses incurred in connection therewith; provided, however, Operator shall continue to (i) maintain the Common Utility Lines serving the East District, including any detention/retention ponds, regardless of location, (ii) maintain the Special Common Area supervisory program, if any, (iii) insure the Common Area on the Target Tract under the Operator's Common Area public liability insurance program if Target elects to participate therein by written notice to Operator, and (iv) maintain any Sign Structure upon which a Target panel is attached. Upon such take-over and assumption, Target shall be released from the obligation to contribute towards Common Area Maintenance Costs for the Special Common Area and the balance of the Common Area in the Shopping Center, except with respect to those functions identified above for which continued participation is mandatory or elected. Target's share of such costs shall be paid in accordance with the allocation set forth in Section 4.3(D) or, with respect to Signs, Section 5.3(A). Operator shall continue to maintain the balance of the Special Common Area in accordance with the standards set forth herein.

Target shall have the right to cause Operator to resume the operation and maintenance of the Common Area on the Target Tract upon the satisfaction of the following conditions:

- (i) Target shall give Operator at least sixty (60) days prior notice of Target's intention to have Operator reassume the operation and maintenance of the Common Area on the Target Tract; provided, however, such date for reassumption shall always be the first day of a calendar quarter; and
- (ii) Prior to the date established for Operator to reassume the maintenance and operation thereof, Target shall, at its sole cost and expense, cause the Common Area on its Tract to be at least equal to the same condition of maintenance then existing on the other portions of the Special Common Area then being maintained by Operator.

Provided the above conditions are satisfied, concurrently with the designated date, Operator shall resume full operation and maintenance of the Common Area located on the Target Tract and Target shall be responsible for its share of Common Area Maintenance Costs as set forth in Section 4.3(D).

4.4 Building and Outside Sales Area.

(A) After completion of construction, each Party covenants and agrees to maintain and keep the exterior portion of the Buildings and Outside Sales Area, if any, located on its Tract in first-class condition and state of repair, in compliance with all Governmental Requirements, and in compliance with the provisions of this OEA, including either the Theme or the exterior architectural concept approved for such Building by the Approving Parties. Each Party further agrees to store all trash and garbage on its Tract in adequate containers, to locate such containers so that they are not readily visible from the parking area, and to arrange for regular removal of such trash or garbage.

(B) In the event any of the Buildings in the Shopping Center are damaged by fire or other casualty (whether insured or not), the Party upon whose Tract such Building is located shall, subject to Governmental Requirements and/or insurance adjustment delays, immediately remove the debris resulting from such casualty and provide a sightly barrier, and within a reasonable time thereafter shall either (i) repair or restore the Building so damaged to a complete unit, such repair or restoration to be performed in accordance with all provisions of this OEA, or (ii) erect another Building in such location, such construction to be performed in accordance with all provisions of this OEA, or (iii) demolish the damaged portion and/or the balance of such Building and restore the cleared area to either a hard surface condition or a landscaped condition in which event the area shall be Common Area until a replacement Building is erected. Such Party shall have the option to choose which of the foregoing alternatives to perform, but such Party shall be obligated to perform one (1) of such alternatives. Such Party shall give notice to each other Party within ninety (90) days from the date of such casualty of which alternative such Party elects.

ARTICLE V - OPERATION OF THE SHOPPING CENTER

5.1 Uses.

(A) The Shopping Center shall be used only for retail sales, offices, Restaurants or other permitted commercial purposes. "Business Office" shall mean an office which does not provide services directly to consumers; "Retail Office" shall mean an office which provides services directly to consumers, including but not limited to financial institutions, real estate, stock brokerage and title companies, travel and insurance agencies, and medical, dental and legal clinics. No more than ten percent (10%) of the total Floor Area on each of the Target Tract, and the portions of the Developer Tract located within the East District; twenty

percent (20%) of the total Floor Area in the Central District; ten percent (10%) of the total Floor Area in the West District; and twenty percent (20%) of the total Floor Area in the Theater District (with no restriction on the South District), may be used for Retail Office and/or Business Office purposes; provided, however, that office space used by an Occupant for administrative purposes, and which is not open to the general public, shall not be considered Retail Office or Business Office for the purpose of this limitation.

(B) No use shall be permitted in the Shopping Center which is inconsistent with the operation of a first-class mixed use development. Without limiting the generality of the foregoing, the following uses shall not be permitted:

- (i) Any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any Building in the Shopping Center.
- (ii) An operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation.
- (iii) Any "second hand" store, "surplus" store, or pawn shop.
- (iv) Any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.
- (v) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any Building.
- (vi) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.
- (vii) Any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in shopping centers in the metropolitan area where the Shopping Center is located.
- (viii) Any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation except if located within the South District.
- (ix) Any bowling alley (except within the South District), or skating rink.

(x) Any hotel, motel, short or long term residential use, including but not limited to: single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments or lodging rooms.

(xi) Any veterinary hospital or animal raising or boarding facility; provided, however, this prohibition shall not be applicable to pet shops. Notwithstanding the foregoing exception, any veterinary or boarding services provided in connection with the operation of a pet shop shall only be incidental to such operation; the boarding of pets as a separate customer service shall be prohibited; all kennels, runs and pens shall be located inside the Building; and the combined incidental veterinary and boarding facilities shall occupy no more than fifteen percent (15%) of the Floor Area of the pet shop.

(xii) Any mortuary or funeral home.

(xiii) Any establishment selling or exhibiting pornographic materials or which sells drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff and/or any massage parlors or similar establishments.

(xiv) Any bar, tavern, Restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds forty percent (40%) of the gross revenues of such business.

(xv) Any flea market, amusement or video arcade, pool or billiard hall, car wash or dance hall. The foregoing shall not be deemed to prohibit video arcade activities or games incidental to the business operation being conducted by an Occupant, or a video arcade, not exceeding seven thousand five hundred (7,500) square feet of Floor Area, in a Building within the Central District within one hundred (100) feet of a theater located in the Theater District.

(xvi) Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an Occupant incidental to the conduct of its business at the Shopping Center nor the South District.

(xvii) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not be applicable to government sponsored gambling activities or charitable gambling activities, so

long as such activities are incidental to the business operation being conducted by the Occupant.

(C) No Party shall use, or permit the use of, Hazardous Materials on, about, under or in its Tract, or the balance of the Shopping Center, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws. Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including but not limited to costs of investigation, remedial or removal response, and reasonable attorneys' fees and cost of suit, arising out of or resulting from any Hazardous Material used or permitted to be used by such Party, whether or not in the ordinary course of business.

For the purpose of this Section 5.1(C), the term (i) "Hazardous Materials" shall mean and refer to the following: petroleum products and fractions thereof, asbestos, asbestos containing materials, urea formaldehyde, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials, substances and wastes listed or identified in, or regulated by, any Environmental Law, and (ii) "Environmental Laws" shall mean and refer to the following: all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

(D) No merchandise, equipment or services, including but not limited to vending machines, promotional devices and similar items, shall be displayed, offered for sale or lease, or stored within the Common Area; provided however, that the foregoing prohibition shall not be applicable to (i) the storage of shopping carts on the sidewalks adjacent to any Building or in so-called "cart corrals" located in the Common Area on a Party's Tract, (ii) or the installation of an "ATM" banking facility on the sidewalks adjacent to any Building, (iii) or the installation of not more than six (6) movie theater ticket vending machines located on the sidewalks in the Central District, (iv) the seasonal display and sale of bedding plants on the sidewalk in front of any Building, (v) the promotional display, or temporary seasonal display, and sale of merchandise on the sidewalk in front of the Buildings, provided that all such displays shall be kept in an orderly and safe manner and shall not prohibit the passage of pedestrian traffic on such sidewalks, (vi) temporary promotions, except that no promotional activities will be allowed in the Common Area without the prior written approval of the Approving Parties, (vii) any

recycling center required by law, the location of which shall be subject to the approval of the Approving Parties, (viii) any Cart located on the sidewalks in the Central District or (ix) any designated Promotional Area; provided, however, such Promotional Area (x) may be used not more than three (3) times per calendar year; (y) may not be used during the period commencing on October 15th and ending on December 27th; (z) may not be used more than one hundred twenty-five (125) consecutive days during the period commencing February 15th and ending on July 10th; and (xx) may not be used more than thirty (30) consecutive days during any other period.

(E) The following use and occupancy restrictions shall be applicable to the Developer Tract, to any Tract which may be established upon incorporation of the Adjacent Tract, or portions thereof into the Shopping Center:

(i) No Restaurant shall be located thereon within three hundred (300) feet of the Building Area located on the Target Tract, except if located on Outparcel EP2.

(ii) No pet shop shall be located thereon within three hundred (300) feet of the Building Area located on the Target Tract, provided however, the foregoing shall not prohibit a "Petco" or "PetsMart" located not less than one hundred fifty (150) feet of the Building Area located on the Target Tract.

(iii) No movie theater shall be located thereon except within the Theater District as shown on the Site Plan.

(iv) No health spas shall be located thereon within six hundred fifty (650) feet of the Building Area located on the Target Tract.

(v) No drug store which is not incorporated into another retail operation shall be located thereon.

(vi) No discount department store shall be located thereon, provided however, the foregoing shall not be deemed to prohibit a traditional department store, such as J.C. Penney, or a wholesale membership club, such as Costco.

(F) The names "Target", "Greatland", "SuperTarget" or any variation using the name "Target" shall not be used to identify the Shopping Center or any business or trade conducted on the Developer Tract. Until the Approving Parties agree upon a name change, the Shopping Center shall be called "The District at South Jordan" or "The District".

(G) Except to the extent required by law, no Permittee shall be charged for the right to use the Common Area; provided, however, for the purpose of this provision, a tax assessment or other form of charge applicable to parking spaces or parking lots may be deemed by the Approving Parties an imposition required by law.

(H) Each Party shall use its reasonable efforts to cause the employees of the Occupants of its Tract to park their vehicles only on such Tract.

(I) This OEA is not intended to, and does not, create or impose any obligation on a Party to operate, continuously operate, or cause to be operated a business or any particular business at the Shopping Center or on any Tract.

5.2 Lighting.

(A) After completion of the Common Area lighting system on its Tract, each Party hereby covenants and agrees to keep its Tract fully illuminated each day from dusk to at least 10:30 p.m. unless the Approving Parties agree upon a different time. Each Party further agrees to keep any exterior Building security lights and lights along the Access Drives located on each Party's Tract on from dusk until dawn. During the term of this OEA, each Party grants an irrevocable license to each other Party for the purpose of permitting the lighting from one Tract to incidentally shine on the adjoining Tract.

(B) It is recognized that Occupants within the Shopping Center may be open for business at different hours, and that a Party may wish to have the Common Area lights on another Tract illuminated before or after the required time period. Each Party ("Requesting Party") shall have the right, at any time, to require the Party that controls the lighting on such Tract ("Requested Party") to keep the Common Area lights it controls operating as stipulated by the Requesting Party, provided that the Requesting Party notifies the Requested Party of such request not less than fifteen (15) days in advance. The Requesting Party shall state the period during which it wishes such Common Area lights to be kept operating and shall pay to the Requested Party a prepayment as follows:

(i) If the period is less than thirty (30) days, then the prepayment shall be one hundred ten percent (110%) of the reasonable cost for such additional operation (including electrical power, bulbs and manpower), as reasonably estimated by the Requested Party; and

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- (ii) If the period is thirty (30) days or longer, then the prepayment shall be one hundred ten percent (110%) of the reasonable cost for such additional operation (including electrical power, bulbs and manpower) for thirty (30) days, as reasonably estimated by the Requested Party, and the Requesting Party shall renew such prepayment at the end of each thirty (30) day period.

If the Requesting Party is of the opinion that the estimated prepayment established by the Requested Party is greater than one hundred ten percent (110%) of such additional operation, the Parties shall attempt to agree upon the cost of such additional operation but if they cannot do so, then the amount the Requesting Party is obligated to pay shall be estimated by the electrical utility company furnishing such power, or if the electrical utility company elects not to do so, by a reputable electrical engineer. Upon the failure of a Requesting Party to pay the estimated amount or renew a prepayment as required hereby, the Requested Party shall have the right to discontinue such additional lighting and to exercise any other remedies herein provided. Any such request for additional lighting may be withdrawn or terminated at any time by written notice from the Requesting Party, and a new request or requests for changed hours of additional operation may be made from time to time.

5.3 Occupant Signs.

(A) No freestanding sign shall be permitted within the Shopping Center unless constructed in one of the specific areas designated on the Site Plan (the "Sign Areas"), and only one (1) such Sign Structure may be located in each Sign Area. If a Sign Area is no longer available for use because of condemnation or Governmental Requirements, a replacement Sign Area may be approved by the Approving Parties, subject to the consent, which shall not be unreasonably withheld, of the Party owning the Tract to be burdened by the replacement Sign Area location.

- (i) Developer shall have the right to attach one (1) identification panel to Shared Pylon A for each of up to four (4) Occupants of the Developer Tract, and Target shall have the right to attach one (1) identification panel to Shared Pylon A for each of up to two (2) Occupants of the Target Tract. The panel areas allocated to Developer and Target are designated on Exhibit C.
- (ii) Developer shall have the right to attach one (1) identification panel to Shared Pylon B for each of up to four (4) Occupants of the Developer Tract.
- (iii) Developer shall have the right to attach one (1) identification panel to Shared Pylon C for each of up to four (4) Occupants of the Developer Tract.

(iv) Developer shall have the right to attach one (1) identification panel to the Shared Monument for one (1) Occupant of the Developer Tract, and Target shall have the right to attach one (1) identification panel to the Shared Monument for each of up to two (2) Occupants of the Target Tract. The panel areas allocated to Developer and Target are designated on Exhibit C.

(v) Developer shall have the right to attach one (1) identification panel to Future Pylon A for each of up to four (4) Occupants of the Developer Tract, and Target shall have the right to attach one (1) identification panel to Future Pylon A for each of up to two (2) Occupants of the Target Tract. The panel areas allocated to Developer and Target are designated on Exhibit C.

(vi) Developer shall have the right to attach one (1) identification panel to Future Pylon B for each of up to four (4) Occupants of the Developer Tract.

(B) Developer and Target shall cause their respective panels to be attached to the Sign Structures when desired. Once constructed, Operator shall maintain each of the foregoing Sign Structures as originally constructed, or if there is no Operator, then such maintenance shall be performed by a Person designated by the majority of Parties entitled to place panels on the particular Sign Structure, and all costs (including cost of providing power for illumination of the sign panels thereon) expended for such purpose shall be separately billed to each Party based on the identification sign panel area allocated to each, even if such sign panel area is not used.

(C) Each Party shall cause the identification panel (including any backlit lighting) of its Occupant attached to or forming a part of a Sign Structure to be maintained at its sole cost and expense pursuant to Governmental Regulations, in a safe condition and in a good state of repair. In the event a Party elects not to attach an identification panel to a Sign Structure when initially constructed, but later decides to have its Occupant's identification panel attached thereto, then the Party making such later decision shall pay all costs, regardless of nature or origin, necessary to permit the attachment of the identification panel to the Sign Structure; provided however, that none of the previously attached identification panels on such Sign Structure shall be required to be modified or relocated in order to permit the attachment of such additional identification panel.

(D) The Approving Parties shall have the right to approve the design and size of all Sign Structures not shown on Exhibit C, including the identification panels to be attached thereto; provided, however, that the identification panel for an Occupant (a) of more than forty

thousand (40,000) square feet of Floor Area or (b) which is a Qualified Chain, shall not be subject to the approval of the Approving Parties so long as such identification panel is the standard prototype panel for said Occupant, as the same exists from time to time and such panel complies with the requirements set forth in Sections 5.3(A) and 5.3(F). No "reader board" type sign shall be permitted within the Shopping Center.

(E) Any Occupant occupying less than fifteen thousand (15,000) square feet of Floor Area may have only one (1) identification sign placed on the exterior of the Building it occupies; provided, however, that if the space occupied by any such Occupant is located at a corner of a Building or is the entire Building, then such Occupant may have one (1) identification sign on each of two (2) sides of the Building. Any Occupant occupying at least fifteen thousand (15,000) square feet of Floor Area may have more than one (1) identification sign placed on the exterior of the Building it occupies.

(F) No identification sign attached to the exterior of a Building shall be:

(i) Placed on canopy roofs extending above the Building roof, placed on penthouse walls, or placed so as to project above the parapet, canopy or top of the wall upon which it is mounted; provided, however, the foregoing shall not apply to the Target Tract.

(ii) Placed at any angle to the Building; provided, however, the foregoing shall not apply to any sign located under a sidewalk canopy if such sign is at least eight (8) feet above the sidewalk and shall not apply to any Building located adjacent to Main Street as shown on the Site Plan.

(iii) Painted on the surface of any Building.

(iv) Flashing, moving or audible.

(v) Made utilizing exposed raceways, exposed neon tubes, exposed ballast boxes, or exposed transformers.

(vi) Made of paper or cardboard, or be temporary in nature [exclusive of contractor signs, "grand opening" banners (provided such "grand opening" banner shall not remain on the exterior of any Building for a period not to exceed thirty [30] days) and light pole flags utilized for seasonal and holiday displays], or be a sticker or decal; provided, however, the foregoing shall not prohibit the placement at the entrance of each Occupant's space of a small sticker or decal indicating hours of

business, emergency telephone numbers, acceptance of credit cards and other similar items of information.

(G) No Occupant (i) of less than sixty thousand (60,000) square feet of Floor Area or (ii) which is not a Qualified Chain occupying at least eighteen thousand (18,000) square feet of Floor Area, shall have an exterior sign which identifies leased departments and/or concessionaires operating under such Occupant's business or trade name, nor shall such sign identify specific brands or products for sale or services offered within a business establishment, unless such identification is used as part of the Occupant's trade name.

(H) Notwithstanding anything contained herein to the contrary, each Party shall be permitted to place within the Common Area located on its Tract the temporary display of leasing information and the temporary erection of one (1) sign identifying each contractor working on a construction job on its Tract. Each Party shall have the obligation to operate, maintain and repair, in a clean, sightly and safe condition, all signs, including components thereof, located upon its Tract pursuant to Section 5.3(B) or the provisions hereof.

(I) Exclusive of signs permitted by Section 5.3(B), (C) and (F), no other form of exterior expressions, including, but not limited to, pennants, pictures, notices, flags (except for the American flag respectfully displayed and maintained), seasonal decorations, writings, lettering, designs or graphics, shall be placed on or attached to the exterior of any Building or in the Common Areas.

5.4 Insurance.

(A) During the period, if any, Operator is maintaining the Special Common Areas, Operator shall maintain or cause to be maintained in full force and effect at least the minimum insurance coverages in Constant Dollars set forth below:

(i) Commercial General Liability Insurance covering the Special Common Area with a combined single limit of liability of Five Million Dollars (\$5,000,000.00) in Constant Dollars for bodily injury, personal injury and property damage, arising out of any one occurrence; each Party and its designated Occupants shall be a "named insured" under such policy. The Parties agree that the insurance maintained by Operator shall be primary insurance and not contributory with the insurance maintained by each of the Parties pursuant to Section 5.4(B), or any other insurance maintained by any of the Parties. If any Party is operating and maintaining the Special Common Area on its Tract, and such Party elects not to participate in Operator's liability insurance program

regarding the Special Common Area, then Operator shall be released from its obligation to carry such insurance on such Party's Tract.

- (ii) Workers' Compensation and Employer's Liability Insurance:
 - (a) Worker's compensation insurance as required by any applicable law or regulation.
 - (b) Employer's liability insurance in the amount of \$1,000,000 for each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.
- (iii) Automobile Liability Insurance for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

Operator agrees to defend, protect, indemnify and hold each Party owning a Tract which includes the Special Common Area harmless from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind, including reasonable attorneys' fees and cost of suit, asserted or incurred in connection with or arising out of the performance, or failure to perform, by Operator of its duties or obligations under this OEA with respect to the maintenance and operation of the Special Common Area; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or the willful act or omission of the Party to be indemnified. In the event it is determined that such Party was not at fault, then Operator shall reimburse such other Party for all reasonable expenses and/or costs incurred by such Party defending against such claim or demand.

(B) Each Party (as to its Tract only) shall maintain or cause to be maintained in full force and effect at least the minimum insurance coverages in Constant Dollars set forth below:

- (i) Commercial General Liability Insurance with a combined single limit of liability of Five Million Dollars (\$5,000,000.00) in Constant Dollars for bodily injury, personal injury and property damage, arising out of any one occurrence; the other Parties shall be "additional insureds" under such policy as it applies to the insuring Party's Tract. Each Party owning a Tract which includes the Special Common Areas agrees to look first to the insurance coverage obtained by Operator pursuant to Section 5.3(A), and to exhaust all limits thereof before making any claim, other than to preserve rights if coverage under Section 5.3(A) is inadequate, under the insurance carried by another Party hereunder.

- (ii) Workers' compensation and employer's liability insurance:
 - (a) Worker's compensation insurance as required by any applicable law or regulation.
 - (b) Employer's liability insurance in the amount of \$1,000,000 each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.
- (iii) Automobile Liability Insurance for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceedings brought thereon, and all costs, losses, expenses and liability of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the injury to or death of any Person, or damage to the property of any Person located on the Tract owned by each indemnifying Party; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or willful act or omission of such other Party, its licensees, concessionaires, agents, servants, or employees, or the agents, servants, or employees of any licensee or concessionaire thereof. In the event it is determined that such other Party was not at fault, then the indemnifying Party shall reimburse such other Party for all reasonable costs and/or expenses incurred by it defending against such claim or demand.

(C) Prior to commencing any construction activities within the Shopping Center, each Party and Operator shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverages in Constant Dollars set forth below:

- (i) Workers' compensation and employer's liability insurance:
 - (a) Worker's compensation insurance as required by any applicable law or regulation.
 - (b) Employer's liability insurance in the amount of \$1,000,000 each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.
- (ii) Commercial General Liability insurance covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability and coverages:

- (a) Required coverages:
 - (1) Premises and Operations.
 - (2) Products and Completed Operations.
 - (3) Contractual Liability, insuring the indemnity obligations assumed by contractor under the contract documents.
 - (4) Broad Form Property Damage (including Completed Operations).
 - (5) Explosion, Collapse and Underground Hazards.
 - (6) Personal Injury Liability.
- (b) Minimum limits of liability:
 - (1) \$1,000,000 each occurrence (for bodily injury and property damage).
 - (2) \$1,000,000 for Personal Injury Liability.
 - (3) \$2,000,000 aggregate for Products and Completed Operations.
 - (4) \$2,000,000 general aggregate applying separately to this project.

(iii) Automobile liability insurance including coverage for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage. The contractor shall require each of his subcontractors to include in their liability insurance policies coverage for automobile contractual liability.

(iv) The contractor shall also carry umbrella/excess liability insurance in the amount of \$5,000,000. If there is no per project aggregate under the Commercial General Liability policy, the limit shall be \$10,000,000.

If the construction activities involve the use of another Tract, then the constructing Party shall cause (x) the owner of such other Tract to be an additional insured on each policy for the Commercial General Liability policy pursuant to a CG 2010 11-85 version Form B endorsement, or equivalent), (y) with respect to the work on such other Tract, the coverage set forth in (ii)-(b)-(3) above to be extended for a three (3) year period following final completion of work, and (z) each such policy to provide that the same shall not be canceled, allowed to expire, nor reduced in amount or coverage below the requirements set forth above without at least thirty (30) days prior written notice to each insured. If any of the insurance policies are canceled, expire or the amount or coverage thereof is reduced below the level required, then the constructing Party shall immediately stop all work on and use of the other Tract until either the required insurance

is reinstated, or replacement insurance is obtained, and evidence thereof is given to the owner of such other Tract.

(D) Effective upon the commencement of construction of any Building on its Tract and so long as such Building exists, a Party shall carry, or cause to be carried, property insurance with "Special Form" coverage, in the amount of one hundred percent (100%) of full replacement cost thereof (excluding footings, foundations and excavations).

(E) Each Party (the "Releasing Party") hereby releases and waives for itself, and each Person claiming by, through or under it, each other Party (the "Released Party") from any liability for any loss or damage to all property of such Releasing Party located upon any portion of the Shopping Center, which loss or damage is of the type covered by the insurance required to be maintained under Section 5.4(D), irrespective of the amount of such insurance required or actually carried, including any deductible or self insurance reserve. Each Releasing Party agrees to use its reasonable efforts to obtain, if needed, appropriate endorsements to its policies of insurance, and to the policies of insurance carried by its Occupants, with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release and waiver hereinabove given.

(F) Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit asserted by or through any Occupant of the indemnifying Party's Tract for any loss or damage to the property of such Occupant located upon the indemnifying Party's Tract, which loss or damage would have been covered by the insurance required to be maintained under Section 5.4(D).

(G) All insurance required by Section 5.4 shall be written on an occurrence basis and procured from companies rated by Best's Rating Guide not less than A-/X which are authorized to do business in the state where the Shopping Center is located. All insurance may be provided under (i) an individual policy covering the Shopping Center, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Party; provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than \$20,000,000 in Constant Dollars, then such insuring Party shall also maintain excess liability coverage necessary to establish a total liability insurance limit

of \$20,000,000 in Constant Dollars, (iii) a plan of self-insurance, provided that any Party so self-insuring notifies the other Parties of its intent to self-insure and agrees that upon request it shall deliver to such other Parties each calendar year a copy of its annual report that is audited by an independent certified public accountant which discloses that such Party has \$250,000,000 in Constant Dollars of both net worth and net current assets, (iv) an increased coverage or "umbrella policy" provided and utilized to increase the coverage provided by individual or blanket policies in lower amounts (provided the aggregate limits of liability shall comply with the provisions of this Section 5.4), or (v) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by a Party in compliance with Section 5.4, such Party shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed \$50,000.00 in Constant Dollars unless such Party complies with the requirements regarding self-insurance pursuant to (iii) above. Each Party and Operator, if any, agrees to furnish to any Party requesting the same, a certificate(s) of insurance, or statement of self-insurance, as the case may be, or the Web address where such insurance information is contained, evidencing that the insurance required to be carried by such Party or Operator, as the case may be, is in full force and effect.

(H) The insurance required pursuant to Section 5.4(A) and Section 5.4(B) shall include the following provisions:

- (i) Shall provide that the policy shall not be canceled or reduced in amount or coverage below the requirements of this OEA, nor shall such policy be allowed to expire without at least thirty (30) days prior written notice by the insurer to each insured and to each additional insured.
- (ii) Shall provide for severability of interests.
- (iii) Shall provide that an act or omission of one (1) of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other insureds.
- (iv) Shall provide for contractual liability coverage with respect to the indemnity obligation set forth in Section 5.4(A) for Operator and Section 5.4(B) for a Party.

5.5 Taxes and Assessments.

(A) Each Party shall pay, or cause to be paid prior to delinquency, all taxes and assessments with respect to its Tract, the Building, and other improvements located thereon, and any personal property owned or leased by such Party in the Shopping Center, provided that if such taxes or assessments or any part thereof may be paid in installments, each Party may pay each such installment as and when the same becomes due and payable. Nothing contained herein shall prevent any Party from contesting at its sole cost and expense any taxes and assessments with respect to its Tract in any manner such Party elects, so long as such contest is maintained with reasonable diligence and in good faith. At the time such contest is concluded (allowing for appeal to the highest appellate court), the contesting Party shall promptly pay all taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

(B) Developer warrants and represents that Developer has not formed or requested the formation of, and covenants that Developer shall not form or request the formation of, any special assessment district for the payment of on-site or off-site improvements related to the initial development or any subsequent alteration or expansion of the Shopping Center which would affect the Target Tract, without Target's prior written approval, which approval may be granted or withheld in Target's sole discretion. If such a district which would affect the Target Tract has been or is hereafter formed without Target's prior written approval, Developer shall indemnify, defend and hold Target harmless from and against all costs and expenses, including the cost of increased real estate taxes and/or assessments imposed against the Target Tract as a result of the formation of said district.

ARTICLE VI - MISCELLANEOUS

6.1 Default.

(A) The occurrence of any one or more of the following events shall constitute a material default and breach of this OEA by the non-performing Party (the "Defaulting Party"):

(i) The failure to make any payment required to be made hereunder within ten (10) days after the due date.

(ii) The failure to observe or perform any of the covenants, conditions or obligations of this OEA, other than as described in (i) above, within thirty (30) days after the issuance of a notice by another Party or Operator, as the case may be (the "Non-Defaulting Party") specifying the nature of the default claimed.

(B) With respect to any default under Section 6.1(A)(ii), any Non-Defaulting Party shall have the right following the expiration of any applicable cure period, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party; provided, however, that in the event such default shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Non-Defaulting Party shall have the right to enter upon the Tract of the Defaulting Party (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. Each Party shall be responsible for the default of its Occupants. In the event any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses incurred in connection with such curative action, plus Interest as provided herein, within ten (10) days after receipt of demand therefor, together with reasonable documentation supporting the expenditures made. The right to cure the default of another Party shall not be deemed to:

(i) Impose any obligation on a Non-Defaulting Party to do so.

(ii) Render the Non-Defaulting Party liable to the Defaulting Party or any third party for an election not to do so.

(iii) Relieve the Defaulting Party from any performance obligation hereunder.

(iv) Relieve the Defaulting Party from any indemnity obligation as provided in this OEA.

(C) Costs, expenses and Interest accruing and/or assessed pursuant to Section 6.1(A)(i) and/or Section 6.1(B) above shall constitute a lien against the Defaulting Party's Tract. Such lien shall attach and take effect only upon recordation of a claim of lien in the office of the Recorder of the County of the State in which the Shopping Center is located by the Party making such claim. The claim of lien shall include the following:

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- (i) The name of the lien claimant.
 - (ii) A statement concerning the basis for the claim of lien and identifying the lien claimant as a Non-Defaulting Party.
 - (iii) An identification of the owner or reputed owner of the Tract or interest therein against which the lien is claimed.
 - (iv) A description of the Tract against which the lien is claimed.
 - (v) A description of the work performed which has given rise to the claim of lien and a statement itemizing the amount thereof.
 - (vi) A statement that the lien is claimed pursuant to the provisions of this OEA, reciting the date and document number of recordation hereof.

The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the Party against whom the lien is claimed, by personal service or by mailing pursuant to Section 6.4 below. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law, including without limitation, a suit in the nature of a suit to foreclose a mortgage/deed of trust or mechanic's lien under the applicable provisions of the law of the State in which the Shopping Center is located.

(D) Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other Person, violating or attempting to violate or defaulting upon any of the provisions contained in this OEA, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another Party or Person of any of the terms, covenants or conditions of this OEA, or to obtain a decree to compel performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to a Party under this OEA or at law or in equity shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

6.2 Interest. Any time a Party shall not pay any sum payable hereunder to another Party within five (5) days of the due date, such delinquent Party or Operator shall pay interest on such amount from the due date to and including the date such payment is received by the Party entitled thereto, at the lesser of:

- (i) The highest rate permitted by law to be either paid on such type of obligation by the Party obligated to make such payment or charged by the Party to whom such payment is due, whichever is less.
- (ii) The prime rate, plus three percent (3%). As used herein, "prime rate" shall mean the rate of interest published from time to time as the "Prime Rate" in the Wall Street Journal under the heading "Money Rates"; provided, however, that (i) if more than one such rate is published therein the prime rate shall be the highest such rate and (ii) if such rate is no longer published in the Wall Street Journal or is otherwise unavailable, the prime rate shall be a substantially comparable index of short term loan interest rates charged by U.S. banks to corporate borrowers selected by the Approving Parties.

6.3 Estoppel Certificate. Each Party and Operator, if any, agree that upon written request (which shall not be more frequent than three (3) times during any calendar year) of any other Party or Operator, it will issue within thirty (30) days after receipt of such request to such Party, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge as of such date:

- (i) Whether it knows of any default under this OEA by the requesting Party, and if there are known defaults, specifying the nature thereof in reasonable detail.
- (ii) Whether this OEA has been assigned, modified or amended in any way by it and if so, then stating the nature thereof in reasonable detail.
- (iii) Whether this OEA is in full force and effect.

Such estoppel certificate shall act to estop the issuer from asserting a claim or defense against a bona fide encumbrancer or purchaser for value to the extent that such claim or defense is based upon facts known to the issuer as of the date of the estoppel certificate which are contrary to the facts contained therein, and such bona fide purchaser or encumbrancer has acted in reasonable reliance upon such estoppel certificate without knowledge of facts to the contrary. The issuance of an estoppel certificate shall in no event subject the issuer to any liability for the negligent or inadvertent failure of the issuer to disclose correct and/or relevant information, nor shall such issuance be construed to waive any rights of the issuer to perform an audit or obtain an

adjustment with respect to Common Area Maintenance Costs for any year it is entitled to do so, or to challenge acts committed by other Parties for which approval by the Approving Parties was required but not sought or obtained.

6.4 Notices. All notices, demands and requests (collectively, the "notice") required or permitted to be given under this OEA must be in writing and shall be deemed to have been given as of the date such notice is (i) delivered to the Party intended, (ii) delivered to the then designated address of the Party intended, (iii) rejected at the then designated address of the Party intended, provided such notice was sent prepaid, or (iv) sent by nationally recognized overnight courier with delivery instructions for "next business day" service, or by United States certified mail, return receipt requested, postage prepaid and addressed to the then designated address of the Party intended. The initial addresses of the Parties shall be:

Target: Target Corporation
Property Development
Attn: Property Administration
1000 Nicollet Mall
Minneapolis, MN 55403

Developer: The District L.C.
c/o The Boyer Company
90 South 400 West, Suite 200
Salt Lake City, Utah 84109
Attention: Wade Williams

Copy to: Nelson Christensen & Helsten
68 South Main Street, 6th Floor
Salt Lake City, Utah 84101
Attention: Stephen K. Christensen

Upon at least ten (10) days prior written notice, each Party shall have the right to change its address to any other address within the United States of America.

6.5 Approval Rights.

(A) Except as otherwise provided herein, with respect to any matter as to which a Party has specifically been granted an approval right under this OEA, nothing contained in this OEA shall limit the right of a Party to exercise its business judgment, or act in a subjective

manner, or act in its sole discretion or sole judgment, whether or not "objectively" reasonable under the circumstances, and any such decision shall not be deemed inconsistent with any covenant of good faith and fair dealing which may be implied by law to be part of this OEA. The Parties intend by this OEA to set forth their entire understanding with respect to the terms, covenants, conditions and standards pursuant to which their obligations are to be judged and their performance measured.

(B) Unless provision is made for a specific time period, each response to a request for an approval or consent required to be considered pursuant to this OEA shall be given by the Party to whom directed within thirty (30) days after receipt thereof. Each disapproval shall be in writing and, subject to Section 6.5(A), the reasons therefor shall be clearly stated. If a response is not given within the required time period, the requested Party shall be deemed to have given its approval if the original notice stated in capitalized letters that failure to respond within the applicable time period will be deemed an approval. Notwithstanding anything contained herein to the contrary, the provisions of this paragraph (B) do not apply in any manner or fashion to any request which requires an amendment to this OEA, such requests being governed solely by the provisions of Section 6.8(E).

(C) If the Approving Parties' approval is requested, unanimous approval must be given.

6.6 Condemnation. In the event any portion of the Shopping Center shall be condemned, or conveyed under threat of condemnation, the award shall be paid to the Party owning the Tract or the improvements taken, and the other Parties hereby waive and release any right to recover any value attributable to the property interest so taken, except that (i) if the taking includes improvements belonging to more than one (1) Party, such as Utility Lines or Pylon Signs, the portion of the award allocable thereto shall be used to relocate, replace or restore such jointly owned improvements to a useful condition, and (ii) if the taking includes easement rights which are intended to extend beyond the term of this OEA, the portion of the award allocable to each such easement right shall be paid to the respective grantees thereof. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this OEA which does not reduce or diminish the amount paid to the Party owning the Tract or the improvement taken, then the owner of such other property interest shall have the right to seek an award for the taking thereof. Except to the extent they burden the

land taken, no easement or license set forth in this OEA shall expire or terminate based solely upon such taking.

6.7 Binding Effect. The terms of this OEA and all easements granted hereunder shall constitute covenants running with the land and shall bind the Tracts described herein and inure to the benefit of and be binding upon each Party. This OEA is not intended to supersede, modify, amend or otherwise change the provisions of any prior instrument affecting the land burdened hereby.

6.8 Construction and Interpretation.

(A) This OEA and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior negotiations, correspondence, memoranda or agreements are superseded in total by this OEA and the Exhibits attached hereto. This OEA has been fully negotiated at arms length between the signatories hereto, and after advice by counsel and other representatives chosen by such Parties, and such Parties are fully informed with respect thereto; no such Party shall be deemed the scrivener of this OEA; and, based on the foregoing, the provisions of this OEA and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party.

(B) Whenever required by the context of this OEA, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa, and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter.

(C) The captions preceding the text of each article and section of this OEA are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this OEA. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this OEA.

(D) Invalidation of any of the provisions contained in this OEA, or of the application thereof to any Person by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other Person and the same shall remain in full force and effect.

(E) This OEA may be amended by, and only by, a written agreement signed by all of the then current Approving Parties and shall be effective only when recorded in the county and state where the Shopping Center is located; provided, however, that no such amendment shall impose any materially greater obligation on, or materially impair any right of, a Party or its Tract without the consent of such Party. No agreement to any amendment of this OEA shall ever be required of any Occupant or Person other than the Parties, nor shall any Occupant or Person other than the Parties have any right to enforce any of the provisions hereof. Since the submission of a proposed amendment to the Parties is not an item of "consent" or "approval", each Party may consider any proposed amendment to this OEA in its sole and absolute discretion without regard to reasonableness or timeliness.

(F) This OEA may be executed in several counterparts, each of which shall be deemed an original. The signatures to this OEA may be executed and notarized on separate pages, and when attached to this OEA shall constitute one (1) complete document.

6.9 Negation of Partnership. None of the terms or provisions of this OEA shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Party shall be considered a separate owner, and no Party shall have the right to act as an agent for another Party, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

6.10 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any Tract or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Party hereto shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

6.11 Excusable Delays. Whenever performance is required of any Party hereunder, such Party shall use all due diligence to perform and take all necessary measures in good faith to

perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such Party, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this Section shall not operate to excuse any Party from the prompt payment of any monies required by this OEA.

6.12 Mitigation of Damages. In all situations arising out of this OEA, each Party and Operator, if any, shall attempt to avoid and mitigate the damages resulting from the conduct of any other Party. Each Party shall take all reasonable measures to effectuate the provisions of this OEA.

6.13 OEA Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this OEA shall (i) entitle any Party to cancel, rescind, or otherwise terminate this OEA, or (ii) defeat or render invalid the lien of any mortgage or trust deed made in good faith and for value as to any part of the Shopping Center. However, such limitation shall not affect in any manner any other rights or remedies which a Party may have hereunder by reason of any such breach.

6.14 Time. Time is of the essence of this OEA.

6.15 No Waiver. The failure of any Party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that Party may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. No waiver by any Party of any default under this OEA shall be effective or binding on such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One (1) or more written waivers of any default under any provision of this OEA shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this OEA. The failure of a Party to provide a Reconciliation or statement for amounts owed within a specified

time shall not act as a waiver of such Party's right to collect such amount upon the later issuance of the required reconciliation or statement.

ARTICLE VII - TERM

7.1 Term of this OEA. This OEA shall be effective as of the date first above written and shall continue in full force and effect until 11:59 p.m. on December 31, 2079; provided, however, that the easements referred to in Article II hereof which are specified as being perpetual or as continuing beyond the term of this OEA shall continue in full force and effect as provided herein. Upon the termination of this OEA, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this OEA, except as relates to the easements mentioned above, shall terminate and have no further force or effect; provided, however, that the termination of this OEA shall not limit or affect any remedy at law or in equity that a Party may have against any other Party with respect to any liability or obligation arising or to be performed under this OEA prior to the date of such termination.

ARTICLE VIII - EXCULPATION

8.1 Certain Limitations on Remedies. None of the Persons comprising a Party (whether partners, shareholders, officers, directors, members, trustees, employees, beneficiaries or otherwise) shall ever be personally liable for any judgment obtained against a Party. Each Party agrees to look solely to the interest in the Shopping Center of a defaulting Party for recovery of damages for any breach of this OEA; provided, however, the foregoing shall not in any way impair, limit or prejudice the right of a Party:

- (i) Casualty Insurance and Condemnation Proceeds. To recover from another Party all damages and costs on account of, or in connection with, casualty insurance or condemnation proceeds which are not applied or used in accordance with the terms of this OEA.
- (ii) Hazardous Substances. To recover from another Party all damages and costs arising out of or in connection with, or on account of, a breach by such Party of its obligations under Section 5.1(C).
- (iii) Liability Insurance. To recover from another Party all damages and costs arising out of or in connection with, or on account of, a breach by such Party of its obligations under Section 5.4.

(iv) Taxes, Assessments and Liens. To recover from a Party all damages and costs arising out of or in connection with, or on account of, the failure by such Party to pay when due any tax, assessment or lien as specified in Section 5.5 and Section 6.1.

(v) Fraud or Misrepresentation. To recover from another Party all damages and costs as a result of any fraud or misrepresentation by such Party in connection with any term, covenant or condition in this OEA.


(vi) Equitable Relief; Costs. To pursue equitable relief in connection with any term, covenant or condition of this OEA, including a proceeding for temporary restraining order, preliminary injunction, permanent injunction or specific performance, and recover all costs, including Interest thereon, relating to such enforcement action.

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SIGNATURE PAGE
FOR
OPERATION AND EASEMENT AGREEMENT
BETWEEN
TARGET CORPORATION
AND
THE DISTRICT, L.C.

IN WITNESS WHEREOF, the Parties have caused this OEA to be executed effective as of the day and year first above written.

THE DISTRICT, L.C.
("Developer")
By: Boyer District Holdings, L.C.
Its: Manager
By: The Boyer Company, L.C.
Its: Manager



By: Steven B. Ostler
Its: Manager

TARGET CORPORATION
("Target")
By: _____
Name: _____
Title: _____

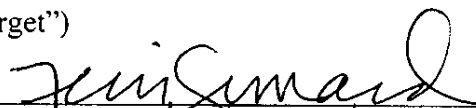
SIGNATURE PAGE
FOR
OPERATION AND EASEMENT AGREEMENT
BETWEEN
TARGET CORPORATION
AND
THE DISTRICT L.C.

IN WITNESS WHEREOF, the Parties have caused this OEA to be executed effective as of the day and year first above written.

THE DISTRICT L.C.
("Developer")

By: _____
Name: _____
Title: _____

TARGET CORPORATION
("Target")

By: 
Name: Terri Eward
Title: Assistant Secretary

STATE OF Utah)
) ss.
COUNTY OF Salt Lake)

On this 25th day of January, 2005, before me, a Notary Public within and for said County, personally appeared Steven B. Ostler to me personally known, being first by me duly sworn, did say that he is the Manager of The Paper Company, L.C. and that said instrument was signed on behalf of said corporation by authority of its Board of Directors and Steven B. Ostler acknowledged said instrument to be the free act and deed of said corporation.

Rachael Nolan

Notary Public

My commission expires: 8.20.07



STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On this _____ day of January, 2005, before me, a Notary Public within and for said County, personally appeared _____ to me personally known, being first by me duly sworn, did say that he is the _____ of Target Corporation and that said instrument was signed on behalf of said corporation by authority of its Board of Directors and _____ acknowledged said instrument to be the free act and deed of said corporation.

Notary Public

My commission expires: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of January, 2005, before me, a Notary Public within and for said County, personally appeared _____ to me personally known, being first by me duly sworn, did say that he is the _____ of _____ and that said instrument was signed on behalf of said corporation by authority of its Board of Directors and _____ acknowledged said instrument to be the free act and deed of said corporation.

Notary Public

My commission expires: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On this 24th day of January, 2005, before me, a Notary Public within and for said County, personally appeared Terr Simard to me personally known, being first by me duly sworn, did say that he is the Assistant Secretary of Target Corporation and that said instrument was signed on behalf of said corporation by authority of its Board of Directors and Terr Simard acknowledged said instrument to be the free act and deed of said corporation.

Thomas Francis Dawson

Notary Public

My commission expires: 1/31/07

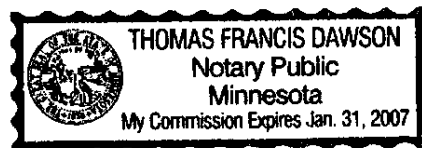


EXHIBIT A-1

LEGAL DESCRIPTION OF TARGET TRACT

A part of the Southwest Quarter of Section 20, Township 3 South, Range 1 West, Salt Lake Base & Meridian, U.S. Survey in South Jordan, Salt Lake County, Utah:

Beginning at a point on the West Line of 3600 West Street as it is to be dedicated to 35.50 foot half-width being 1560.39 feet North 0°00'42" East along the Quarter Section Line; and 35.50 feet North 89°59'18" West from the South Quarter Corner of said Section 20; and running thence North 89°59'18" West 234.51 feet; thence North 0°00'42" East 59.75 feet; thence North 89°59'18" West 76.00 feet; thence South 0°00'42" West 59.75 feet; thence North 89°59'18" West 16.12 feet; thence South 0°00'42" West 78.99 feet; thence North 89°59'18" West 272.54 feet; thence North 0°00'42" East 194.00 feet; thence North 89°59'18" West 136.50 feet; thence North 0°00'42" East 450.97 feet; thence South 89°59'18" East 442.16 feet; thence South 0°00'42" West 48.40 feet; thence South 89°59'18" East 76.00 feet; thence North 0°00'42" East 49.73 feet; thence South 89°50'00" East 217.51 feet to the West Line of said 3600 West Street as it is to be dedicated to 35.50 foot half-width; thence South 0°00'42" West 566.73 feet along said West Line to the point of beginning.

**Contains 414,207 sq. ft.
or 9.509 acres**

EXHIBIT A-2

LEGAL DESCRIPTION OF EXPANSION PARCEL

A part of the Southwest Quarter of Section 20, Township 3 South, Range 1 West, Salt Lake Base & Meridian, U.S. Survey in South Jordan, Salt Lake County, Utah:

Beginning at a point 1560.39 feet North 0°00'42" East along the Quarter Section Line; and 270.01 feet North 89°59'18" West from the South Quarter Corner of said Section 20; and running thence North 89°59'18" West 76.00 feet; thence North 0°00'42" East 59.75 feet; thence South 89°59'18" East 76.00 feet; thence South 0°00'42" West 59.75 feet to the point of beginning.

Contains 4,541 sq. ft.

ALSO:

Beginning at a point 2077.97 feet North 0°00'42" East along the Quarter Section Line; and 253.01 feet North 89°59'18" West from the South Quarter Corner of said Section 20; and running thence North 89°59'18" West 76.00 feet; thence North 0°00'42" East 49.94 feet; thence South 89°50'00" East 76.00 feet; thence South 0°00'42" West 49.73 feet to the point of beginning.

Contains 3,787 sq. ft.

EXHIBIT B-1

LEGAL DESCRIPTION OF DEVELOPER TRACT

A part of the Southwest Quarter of Section 20, Township 3 South, Range 1 West, Salt Lake Base & Meridian, U.S. Survey in South Jordan, Salt Lake County, Utah:

Beginning at a point on the West Line of 3600 West Street as it is to be widened to 35.50 foot half-width being 1560.39 feet North 0°00'42" East along the Quarter Section Line; and 35.50 feet North 89°59'18" West from the South Quarter of said Section 20; and running thence South 0°00'42" West 725.19 feet along said West Line of 3600 West Street as widened to a point on the projection of the Northerly Boundary of a future subdivision; thence along said projection and along the Northerly Boundary Lines of said future subdivision the following four courses: North 89°50'48" West 732.05 feet; South 0°00'23" East 169.51 feet; South 89°59'12" West 164.88 feet; and South 0°00'48" East 268.12 feet to the North Line of Merced Estates II, a subdivision in Salt Lake County, Utah as it exists on the ground; thence South 89°59'12" West 353.54 feet along said North Line to the center of an existing 50 foot wide lane (3800 West Street); thence North 413.84 feet along said center of lane to the projection of the Northerly Line of the Andreason Property; thence along the Northerly Line of said property the following three courses: South 89°59'12" West 472.96 feet; North 0°00'09" East 193.90 feet; and South 89°59'12" West 208.40 feet to the Easterly Line of Bangerter Highway as it exists on the ground; thence along said Easterly Line the following two courses: North 2°00'49" West 460.33 feet; and North 0°00'09" East 1091.29 feet; thence North 42°46'49" East 58.80 feet to the South Line of 11400 South Street as it is to be widened; thence along said South Line of 11400 South Street as it is to be widened the following five courses: South 89°47'29" East 429.46 feet to a point of curvature; Southeasterly along the arc of a 300.00 foot radius curve to the right a distance of 96.43 feet; (Central Angle equals 18°25'01" and Long Chord bears South 80°34'58" East 96.02 feet) to a point of reverse curvature; Easterly along the arc of a 1076.00 foot radius curve to the left a distance of 691.73 feet (Central Angle equals 36°50'02" and Long Chord bears South 89°47'29" East 679.88 feet) to a point of reverse curvature; Northeasterly along the arc of a 300.00 foot radius curve to the right a distance of 96.43 feet (Central Angle equals 18°25'01" and Long Chord bears North 81°00'01" East 96.02 feet) to a point of tangency; and South 89°47'29" East 589.40 feet; thence South 44°53'24" East 28.33 feet to the West Line of 3600 West Street as it is to be widened to 35.50 foot half-width; thence South 0°00'42" West 447.42 feet along said West Line; thence North 89°50'00" West 217.51 feet; thence South 0°00'42" West 49.73 feet; thence North 89°59'18" West 76.00 feet; thence North 0°00'42" East 48.40 feet; thence North 89°59'18" West 442.16 feet; thence South 0°00'42" West 450.97 feet; thence South 89°59'18" East 136.50 feet; thence South 0°00'42" West 194.00 feet; thence South 89°59'18" East 272.54 feet; thence North 0°00'42" East 78.99 feet; thence South 89°59'18" East 16.12 feet; thence North 0°00'42" East 59.75 feet; thence South 89°59'18" East 76.00 feet; thence South 0°00'42" West 59.75 feet; thence South 89°59'18" East 234.51 feet to the point of beginning.

**Contains 3,131,479 sq. ft.
or 71.889 acres**

EXHIBIT B-2

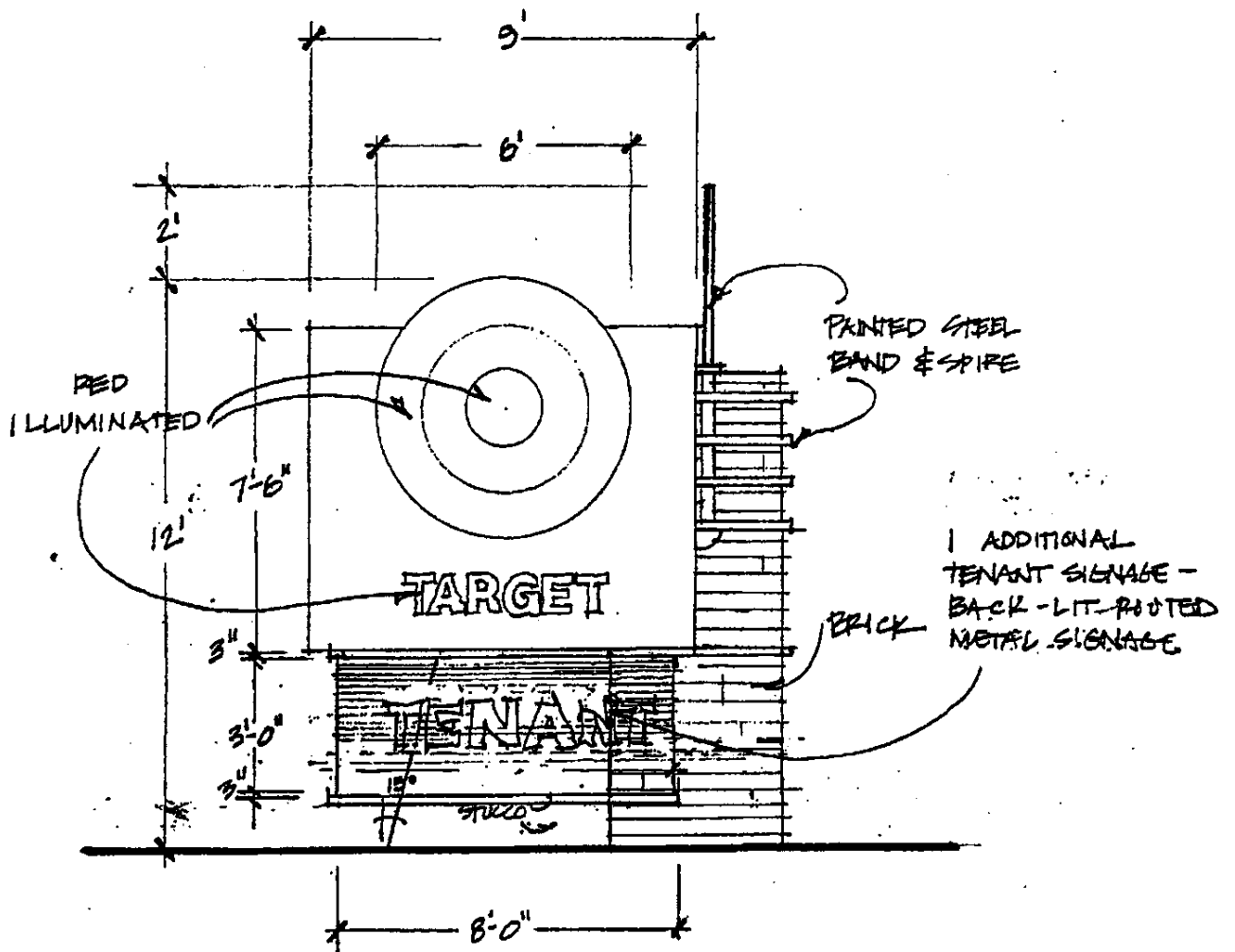
LEGAL DESCRIPTION OF ADJACENT TRACT

A part of the Southwest Quarter of Section 20, Township 3 South, Range 1 West, Salt Lake Base & Meridian, U.S. Survey in South Jordan, Salt Lake County, Utah:

Beginning at a point on the North Line of 11800 South Street as it is to be widened to 42.50 foot half-width being 1284.74 feet North 89°50'48" West along the Section Line; and 42.50 feet North 0°00'48" West from the South Quarter Corner of said Section 20; and running thence North 89°50'48" West 648.60 feet along said North Line to the Easterly Line of Bangerter Highway as it exists on the ground; thence North 2°00'49" West 959.92 feet along said Easterly Line of Bangerter Highway to the Northwesterly Corner of the Andreason Property; thence along the Northerly Line of said property the following three courses: North 89°59'12" East 208.40 feet; South 0°00'09" West 193.90 feet; and North 89°59'12" East 472.96 feet to the center of an existing 50 foot wide lane (3800 West Street); thence South 413.84 feet along said center of lane to the projection of the North Line of Merced Estates II, a subdivision in Salt Lake County, Utah as it exists on the ground; thence North 89°59'12" East 25.89 feet along said subdivision line projection and said subdivision line to the Northwest Corner of Lot 4 of said subdivision as it exists on the ground; thence South 0°00'48" East 353.55 feet along the West Line of said Lot 4 and the West Line of Lot 3 to the North Line of 11800 South Street as it is to be widened to 42.50 foot half-width; thence North 89°50'48" West 25.00 feet along said North Line to the West Line of said Merced Estates Subdivision and the point of beginning.

**Contains 555,535 sq. ft.
or 12.753 acres**

EXHIBIT C
DESIGN OF SIGNS



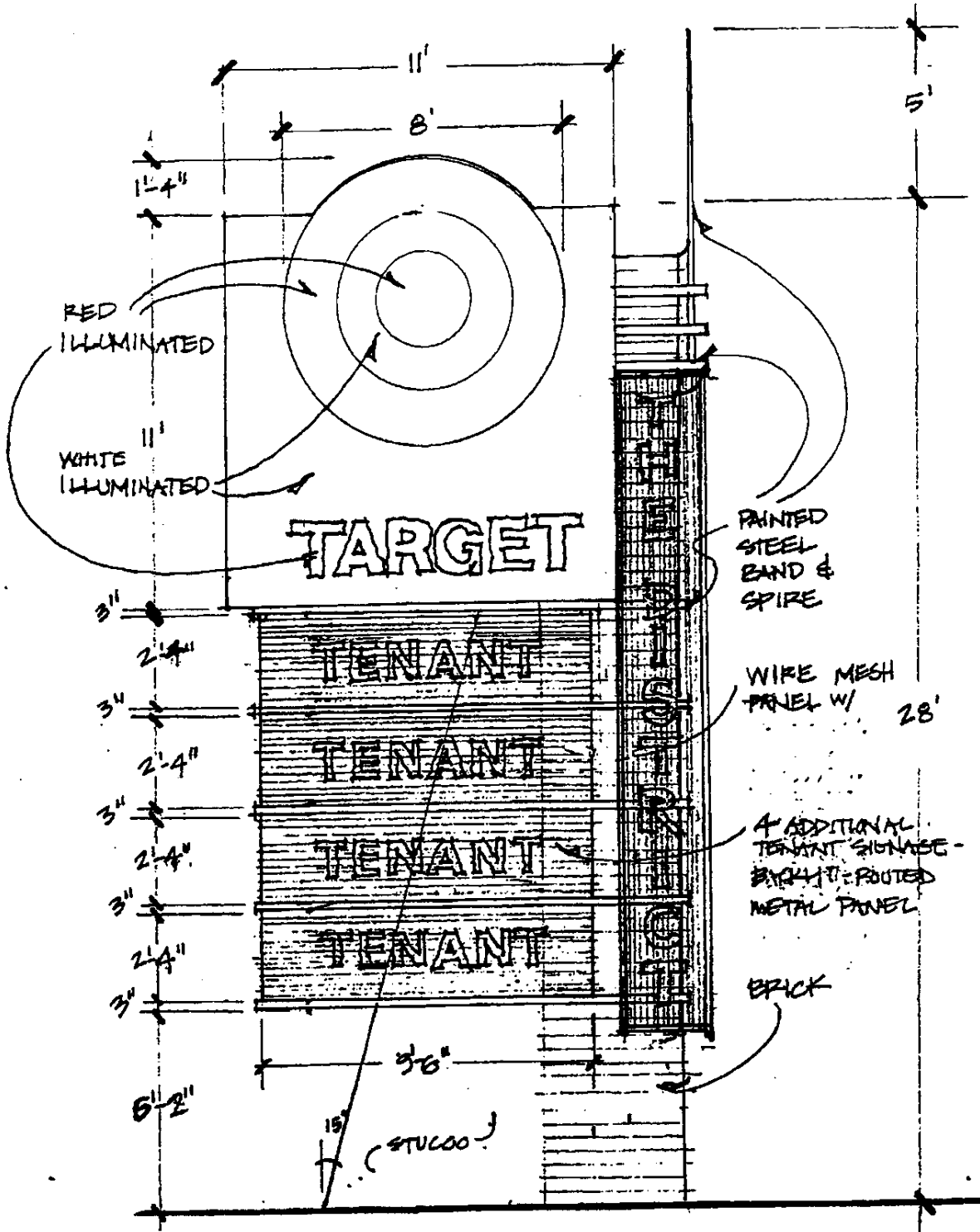
THE DISTRICT - SOUTH JORDAN, UTAH

E. 20 DECEMBER 2004

MONUMENT SIGN

SCALE: 1/4"=1'-0"

BABCOCK
DESIGN
GROUP

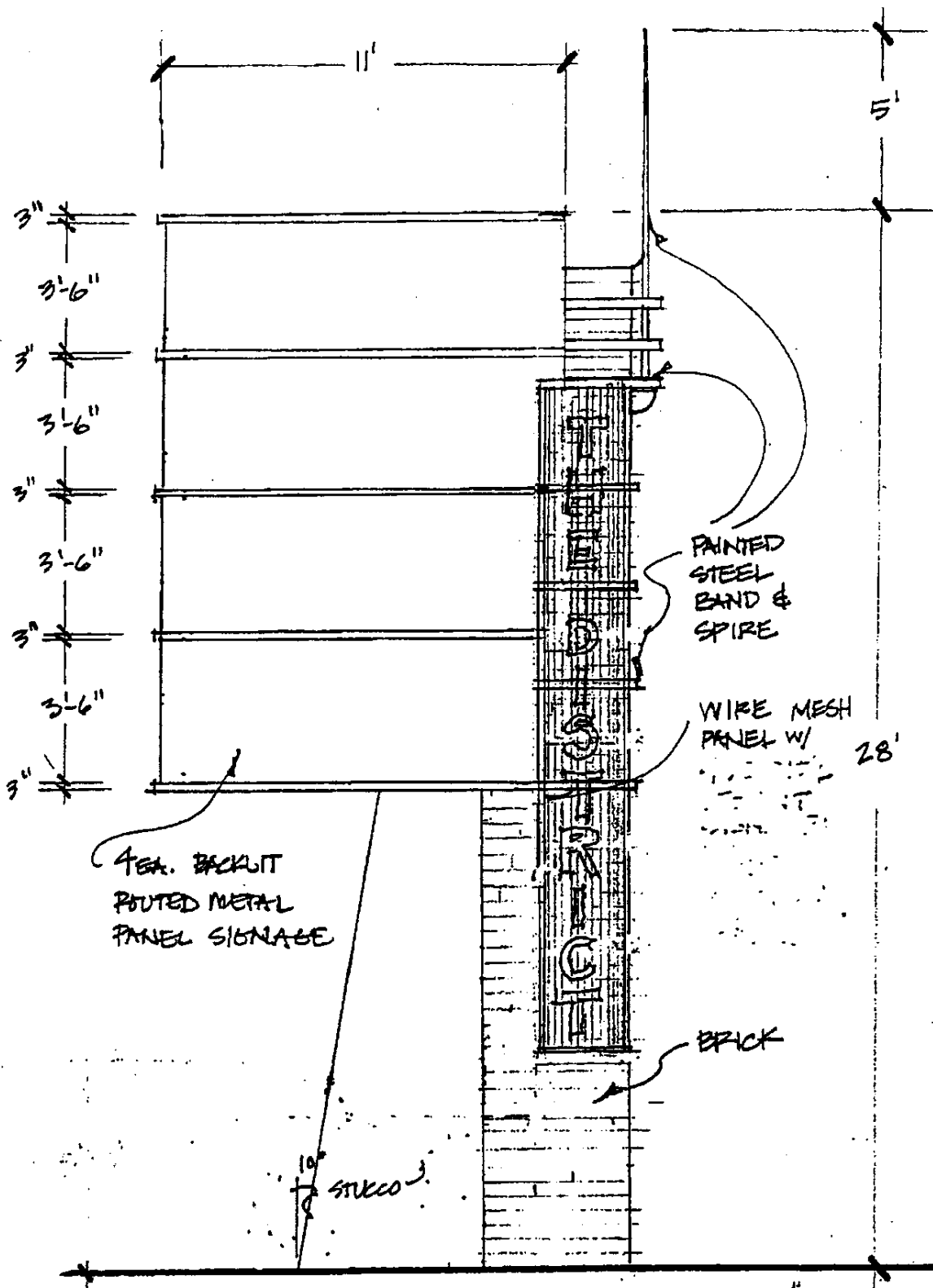


Pylon Sign A
Future Pylon Sign A

THE DISTRICT - SOUTH JORDAN, UTAH
DATE 20 DECEMBER 2004

SCALE: 1/4" = 1'-0"





THE DISTRICT - SOUTH JORDAN, UTAH

DATE: 20 DECEMBER 2004

FUTURE PYLON B
 SHARED PYLON SIGN B
 SHARED PYLON SIGN C

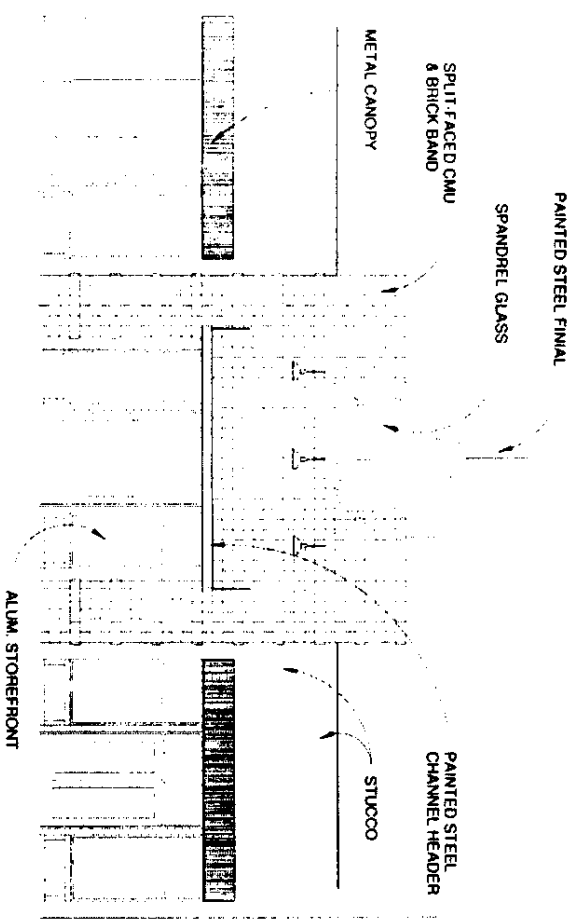
SCALE: 1/4" = 1'-0"

BABCOCK
 DESIGN
 GROUP

EXHIBIT D
ARCHITECTURAL THEME



WEST ELEVATION - TARGET &
 1 ADJACENT RETAIL
 1" = 40'-0"



2 DETAIL - WEST ELEVATION
 1/8" = 1'-0"

THE DISTRICT - SOUTH JORDAN, UTAH

DATE: 6 DECEMBER 2004

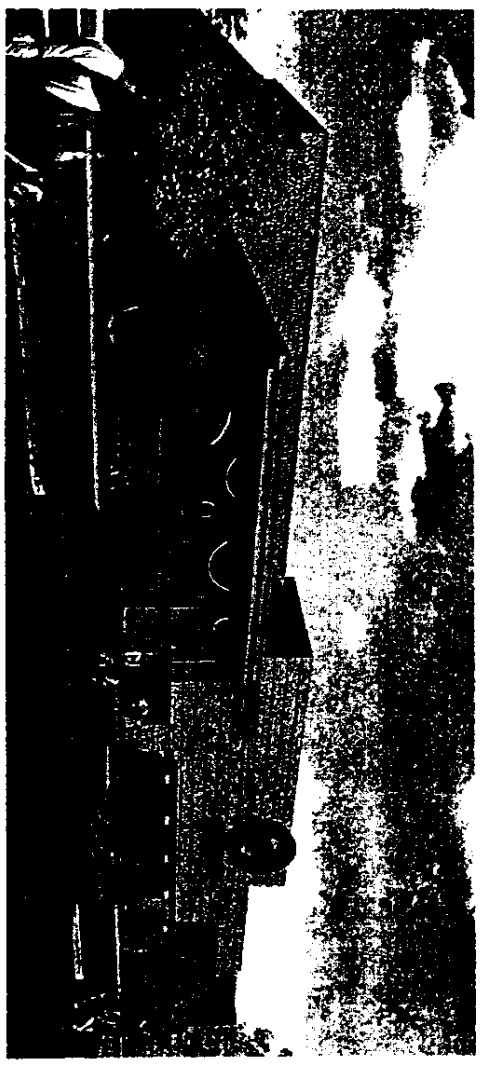
FRONT ELEVATION



ARCHITECT: GUY HARRIS, C.A. W/ C.A. 113 8400000
ARCHITECT: GUY HARRIS, C.A.

ARCHITECT: GUY HARRIS, C.A. W/ C.A. 113 8400000
ARCHITECT: GUY HARRIS, C.A.

CONTRACTOR: JEFFREY, CANNON
ALAN, STEINBERG



SOUTH JORDAN, UT

Target Store Planning & Design, Architecture & Engineering



NORTH ELEVATION

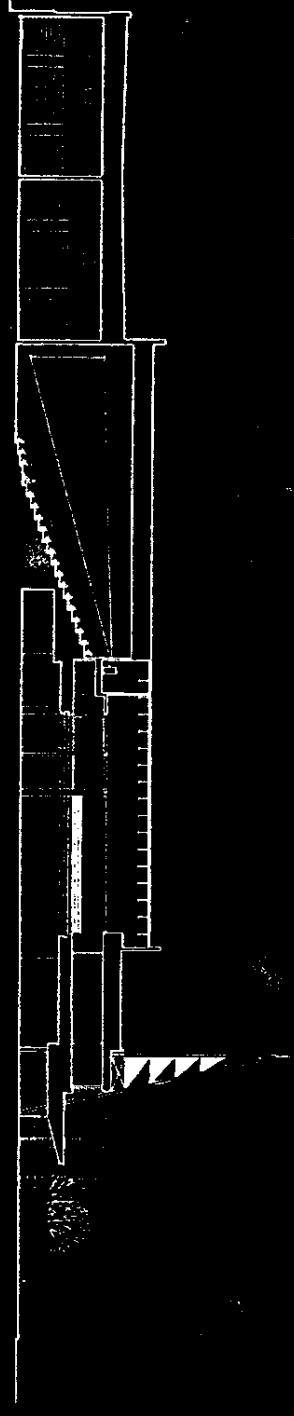
N 01 100 11

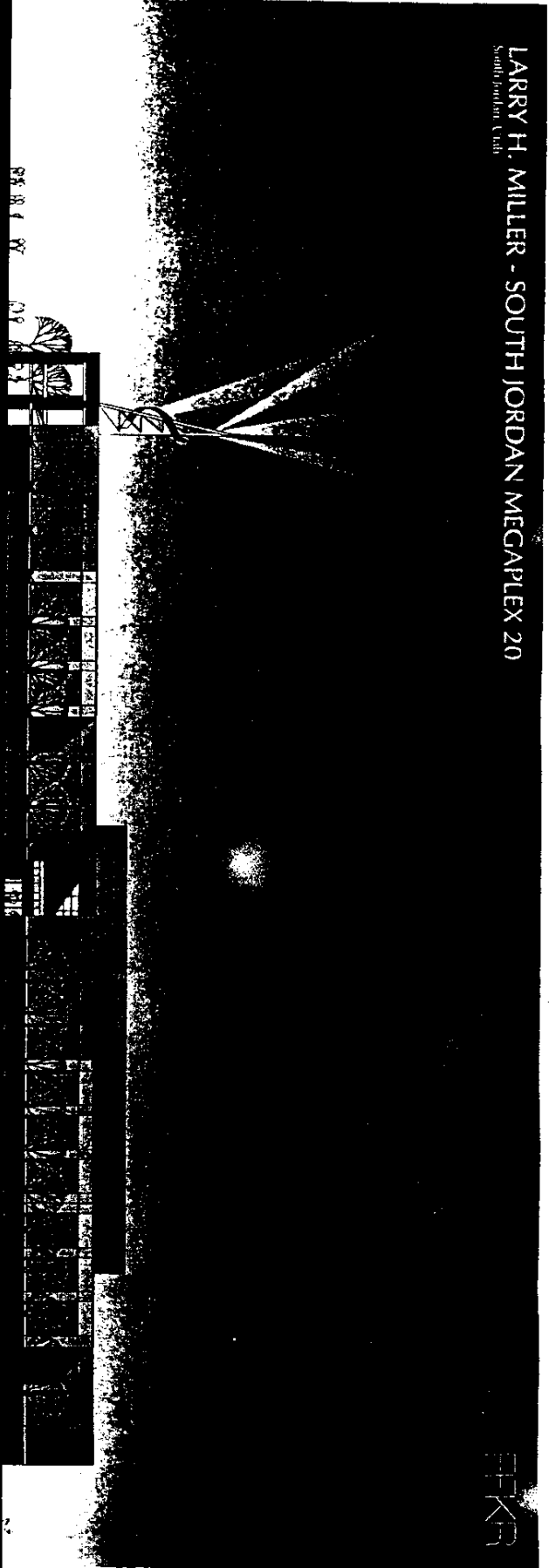


BUILDING SECTION A

N 01 100 11

- 1. 1st Floor
- 2. 2nd Floor
- 3. 3rd Floor
- 4. 4th Floor
- 5. 5th Floor
- 6. 6th Floor
- 7. 7th Floor
- 8. 8th Floor
- 9. 9th Floor
- 10. 10th Floor
- 11. 11th Floor
- 12. 12th Floor
- 13. 13th Floor
- 14. 14th Floor
- 15. 15th Floor
- 16. 16th Floor
- 17. 17th Floor
- 18. 18th Floor
- 19. 19th Floor
- 20. 20th Floor





WEST ELEVATION

SCALE 1/8" = 1'-0"



BUILDING SECTION B

SCALE 1/8" = 1'-0"

EXHIBIT E

SUBMISSION GUIDELINES

1. Exterior Elevation Drawings to Indicate the Following:
 - o Opaque wall areas with doors and store fronts
 - o Proposed building sign standards
 - o Paint color chips and samples of other materials such as brick or concrete aggregates (glass or aluminum finishes may be annotated on the elevations)
 - o Proposed large scale details of key section conditions to show exterior design intent
 - o Major penthouses or rooftop equipment profiles
 - o Canopies and overhangs
 - o Features such as special masonry patterns, bands or special materials and textures
 - o Rain leaders or scuppers
 - o Wall sections at various exterior locations including at the demising wall to the adjoining building with key vertical dimensioning

**EXHIBIT X-1
SITE PLAN**

EXHIBIT X-2
DISTRICT PLAN

EXHIBIT X-3
MAIN STREET SHOPS ELEVATIONS

