

129/56

Lots 10411, Centerville Market Place

02-161-0010 + 0011

SW-7-271-1E

02-026-0067 OPERATION AND EASEMENT AGREEMENT

E 1248273 B 2000 P 1799
CAROL DEAN PAGE, DAVIS CNTY RECORDER
1996 MAY 13 4:46 PM FEE 129.00 DEP DJW
REC'D FOR BACKMAN-STEWART TITLE SERVICES

BETWEEN

DAYTON HUDSON CORPORATION

AND

PROPERTY RESERVE, INC.

COURTESY RECORDING

This document is being recorded solely as a courtesy and an accommodation to the parties named therein. Backman-Stewart Title Services, LTD. hereby expressly disclaims any responsibility or liability as to the accuracy, enforceability, legality or content thereof.

OPERATION AND EASEMENT AGREEMENT

TABLE OF CONTENTS

<u>Section</u>		<u>Page</u>
	PARTIES	1
Article I	DEFINITIONS	2
1.1	Building Area	2
1.2	Common Area	2
1.3	Floor Area	2
1.4	Occupant	3
1.5	Party	3
1.6	Person	4
1.7	Permittee	4
1.8	Restaurant	5
1.9	Tract	5
1.10	Utility Lines	5
Article II	EASEMENTS	6
2.1	Ingress and Egress and Parking	6
2.2	Utilities	7
2.3	Restriction	11
Article III	CONSTRUCTION	11
3.1	General Requirements	11
3.2	Common Area	14
3.3	Building Improvements	17
Article IV	MAINTENANCE AND REPAIR	18
4.1	Utility Lines.....	18
4.2	Common Area	19

4.3	Building Improvements and Outside Sales Area	22
Article V	OPERATION OF THE CENTER	23
5.1	Uses	23
5.2	Occupant Signs	28
5.3	Insurance	29
5.4	Liens	34
Article VI	MISCELLANEOUS	35
6.1	Default	35
6.2	Interest	39
6.3	Estoppel Certificate	39
6.4	Notices	40
6.5	Approval Rights	41
6.6	Condemnation	41
6.7	Binding Effect	42
6.8	Construction and Interpretation.....	42
6.9	Negation of Partnership	44
6.10	Not a Public Dedication	44
6.11	Excusable Delays	45
6.12	Mitigation of Damages.....	45
6.13	OEA Shall Continue Notwithstanding Breach	45
6.14	Time	46
6.15	No Waiver	46
6.16	Limitation of Liability	46
Article VII	TERM	47
7.1	Term of this OEA	47

Exhibit A Legal Description of DHC Tract

Exhibit B Legal Description of PRI Tract

Exhibit X Site Plan

OPERATION AND EASEMENT AGREEMENT

THIS OPERATION AND EASEMENT AGREEMENT ("OEA") is made and entered into as of the _____ day of _____, 1996, between DAYTON HUDSON CORPORATION, a Minnesota corporation ("DHC") and Property Reserve, Inc., a Utah corporation, ("PRI").

WITNESSETH

WHEREAS, DHC is the owner of a certain tract of land described in Exhibit A attached hereto and identified as the "DHC Tract" on Exhibit X (the "Site Plan") attached hereto; and

WHEREAS, PRI is the owner of a certain tract of land described in Exhibit B attached hereto and identified as the "PRI Tract" on the Site Plan; and

WHEREAS, the DHC Tract and the PRI Tract are contiguous and adjacent as shown on the Site Plan; and

WHEREAS, the signatories hereto intend to develop and operate their respective Tracts in conjunction with each other as part of a retail shopping complex (the "Center"), but not a planned development, and in order to effectuate the common use and operation thereof they desire to enter into certain covenants and agreements as a part of a general plan, 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:

E 1248273 8 2000 P 1803

ARTICLE I

DEFINITIONS

1.1 Building Area. "Building Area" shall mean the limited areas on the Tracts within which buildings may be constructed, placed or located. The Building Areas are designated on the Site Plan.

1.2 Common Area. "Common Area" shall mean all areas within the exterior boundaries of the DHC Tract and the PRI Tract, exclusive of buildings, car washes and dispensing islands for gasoline, diesel and other fuels.

1.3 Floor Area. "Floor Area" shall mean the actual number of square feet of space contained on each floor within a building, including any mezzanine 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; provided, however, that the following areas shall not be included in such calculations: office space used by the Occupant for administrative purposes and which is not open or accessible to the general public; car washes; space attributable to any multi-deck, platform or structural levels used for the storage of merchandise which is located vertically above ground floor; canopies; and any space used for building utilities or mechanical equipment. Within thirty (30)

days of a request, a Party shall certify to the requesting Party the amount of Floor Area applicable to each building on its Tract.

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

1.5 Party. "Party" shall mean each signatory hereto and, after compliance with the notice requirements set forth below, their respective successors and assigns who become owners of any portion of the Center. Each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the portion of the Center owned by it which accrue during the period of such ownership, and such liability shall continue with respect to any portion transferred until the notice of transfer set forth below is given, at which time the transferring Party's personal liability for unaccrued obligations shall terminate. A Party transferring all or any portion of its interest in the Center shall give notice to all other Parties of such transfer and shall include therein at least the following information:

(i) the name and address of the new Party; and

(ii) a copy of the legal description of the portion of the Center transferred.

If a Tract is owned by more than one Party holding undivided interests in the same portion of the Center, the Party or Parties

holding at least 51% of the ownership interest in the Tract shall designate one of their number to represent all owners of the Tract and such designated Party shall be deemed the "Party" for such Tract for purposes of notice under this OEA. Until the notice of transfer is given, the transferring Party shall (for the purpose of this OEA only) be the transferee's agent.

Nothing contained herein to the contrary shall affect the existence, priority, validity or enforceability of any lien permitted hereunder which is placed upon the transferred portion of the Center prior to receipt of the notice.

1.6 Person. "Person" shall mean any individual, partnership, firm, association, corporation, trust, or any other form of business or government entity.

1.7 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 Center. Among others, Persons engaging in the following activities on the Common Area will not be considered to be Permittees:

- (i) Exhibiting any placard, sign, or notice;
- (ii) Distributing any circular, handbill, placard, or booklet;
- (iii) Soliciting memberships or contributions;
- (iv) Parading, picketing, or demonstrating; and

(v) Failing to follow regulations relating to the use of the Center.

1.8 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, that no portion of a convenience grocery store shall be deemed to be a "Restaurant" whether or not such store prepares or serves food, provided that convenience grocery store does not provide seating for more than twelve people.

1.9 Tract. "Tract" shall mean that portion of the Center owned by a Party in fee simple or by two or more Parties holding undivided interests in the same portion.

1.10 Utility Lines. "Utility Lines" shall mean those facilities and systems for the transmission of utility services, including drainage and storage of surface water. "Common Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to more than one Tract. "Separate Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to only one 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.

ARTICLE II

EASEMENTS

E 1248273 8 2000 P 1807

2.1 Ingress, Egress and Parking.

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 (but not parking) of vehicles over and across the 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 driveways and sidewalk areas of the grantor's Tract, as the same may from time to time be constructed and maintained for such use. Specifically, PRI shall have the right to construct a vehicular drive and use the same for purposes of access across that certain Access Easement identified as such on Exhibit X. Such easement rights shall be subject to the following reservations as well as other provisions contained in this OEA:

(i) Each Party further reserves the right to close off its portion of the Common Area 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 the Common Area, as herein provided, such Party shall give written notice to each other Party of its intention to do so, and shall attempt to coordinate such closing with each other Party so that no

unreasonable interference in the passage of pedestrians or vehicles shall occur.

E 1248273 B 2000 P 1803

(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 portion of the Common Area on its Tract.

(iii) Target may temporarily close the Access Easement from time to time to permit the orderly development of its Tract provided, however, that if such Access Easement is then in use by PRI, Target shall insure that adequate substitute access is provided.

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 Common Area (exclusive of any portion located within a Building Area except that this limitation shall not apply to the staging of the initial construction of any such utility which construction does not interfere with any existing building or the construction thereof) located on the grantor's Tract necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, and removal of Utility Lines serving the grantee's Tract, including but not limited to, sanitary sewers, storm drains, water (fire and domestic), gas, electrical, telephone and communication lines. All Utility Lines shall be located as shown on the Site Plan and 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 agencies having jurisdiction;
- (iv) as may be required by the provider of such service; and
- (v) fire hydrants.

Prior to exercising the right granted herein, the grantee shall first provide the grantor with a written statement describing the need for such easement, shall identify the proposed location of the Utility Line, and shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by 5.3(A) hereof. Except as otherwise agreed to by the grantor and the grantee, any Party installing Separate Utility Lines pursuant to the provisions of this subparagraph shall pay all costs and expenses with respect thereto and shall cause all work in connection therewith (including general clean-up and proper surface and/or subsurface restoration) to be completed as quickly as possible and in a manner so as to minimize interference with the use of the Common Area. If the Parties elect to install Common Utility Lines, all repair, maintenance, replacement and other work thereon shall be performed by the Party on whose Tract said utility work is needed and the

costs thereof shall be apportioned between the Parties on the basis of the total land area of each Tract with the Party not performing the work paying its share to the other Party within 30 days after receipt of an invoice in reasonable detail of the actual costs of such work.

(B) The initial location of any Utility Line shall be subject to the prior written approval of the Party whose Common Area is to be burdened thereby, such approval not to be unreasonably withheld or delayed. The easement area shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility, or five feet (5') on each side of the centerline if the easement is granted to a Party. Upon request, the grantee shall provide to the grantor a copy of a legal description and an as-built survey showing the location of such Utility Line. The grantor shall have the right at any time to relocate a Utility Line upon thirty (30) days' prior written notice, provided that such relocation:

(i) shall not interfere with or diminish the utility service to the grantee during the grantee's business hours;

(ii) shall not reduce or impair the usefulness or function of such Utility Line;

(iii) shall be performed without cost or expense to grantee;

(iv) shall be completed using materials and design standards which equal or exceed those originally used; and

(v) shall have been approved by the provider of such service and the appropriate governmental or quasi-governmental agencies having jurisdiction thereover.

Documentation of the relocated easement area, including the furnishing of an "as-built" survey, shall be the grantor's expense and shall be accomplished as soon as possible.

(C) Each Party hereby grants and conveys to each Party owning an adjacent Tract the perpetual right and easement to discharge surface storm 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 Common Area grades and the surface water drainage/retention system for the Center shall be initially constructed in strict conformance with the details approved by the 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 in the aggregate or by directing the flow of surface water to a limited area.

The surface water collection, retention and distribution facilities shall be deemed a Common Utility Line.

2.3 Restriction. No Party shall grant any easement for the purpose set forth in this Article for the benefit of any property not within the Center; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by a Party on its Tract to governmental or quasi-governmental authorities or to public utilities.

ARTICLE III
CONSTRUCTION

3.1 General Requirements.

(A) Each Party agrees that all construction activities performed by it within the Center shall be performed in compliance with all applicable laws, rules, regulations, orders, and ordinances of the city, county, state, and federal government, or any department or agency thereof. Each Party further agrees that its construction activities shall not:

(i) cause any 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 Center;

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

(iv) cause any building located on another Tract to be in violation of any law, rule, regulation, order or ordinance authorized by any city, county, state, federal government, or any department or agency thereof.

(B) Each Party agrees to defend, indemnify and hold harmless each other Party from all claims, losses, liabilities, actions, proceedings and costs (including reasonable attorneys' fees and costs of suit), including liens, and any accident, injury or loss or damage whatsoever occurring to any Person or to the property of any Person 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 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 unless covered by the release set forth in 5.3(B).

(C) In connection with any construction, reconstruction, repair or maintenance on its Tract, each Party reserves the right to create a temporary staging and/or storage area in the Common Area or in the Building Area on its Tract at such location as will not unreasonably interfere with access between such Tract and the other areas of the Center. 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 restore the affected Common Area to a condition equal to or better than that existing prior to commencement of such work.

(D) To the extent, but only to the extent necessary, each Party hereby grants and conveys to each other Party and to its respective contractors, materialmen and laborers a temporary license for access and passage 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 periods when actual construction and/or maintenance is being performed and provided further that the use of such license shall not interfere with the use and operation of the business on the grantor's Tract or the Common Area by others.

Prior to exercising the rights granted herein, the grantee shall first provide the grantor with a written statement establishing the need for such license, and shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by 5.3(A) hereof. Any Party availing itself of the temporary license 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 Common Area 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 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 of the Center shall be initially constructed as shown on the Site Plan, provided, however, 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 typical curbing and other forms of traffic control or permitted staging and/or storage 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 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 Agreement:

(A) The lighting system shall be designed to produce a minimum maintained lighting intensity measured at grade at all points in the Common Area of 2.00 foot candle; provided however, that the extreme edge of the parking or drive areas may have not less than a minimum maintained lighting intensity measured at grade of 1.0 foot candle, and provided further that the drive

E 1248273 8 2000 P 1816

areas immediately in front of the entrance to any building shall have not less than a minimum maintained lighting intensity measured at grade of 5.0 foot candles.

(B) Common Utility Lines that are placed underground shall be at depths designated by consultants approved by the Parties. If surface water retention and/or detention areas are located outside of the general parking lots, such areas shall be fenced or otherwise secured to impede public access thereto.

(C) The parking area on the DHC Tract and on the PRI Tract shall contain sufficient ground level, parking spaces in order to comply with the following minimum requirements:

(i) five (5.0) parking spaces for each one thousand (1,000) square feet of Floor Area;

(ii) if a business use contains a drive-up unit (such as 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 Restaurant, then five (5) additional parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use;

In the event of a condemnation of part of a Tract or sale or transfer in lieu thereof that reduces the number of usable parking spaces below that which is required herein, the Party whose Tract is so affected shall use its reasonable, 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 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 upon 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 requirement is satisfied.

(D) No Party shall make changes to the improved Common Area on its Tract without the approval of each other Party, such approval not to be unreasonably withheld or delayed, 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 change, modification or alteration in its portion of the Common Area, including the installation of convenience facilities such as mailboxes, public telephones and benches, provided that:

(i) the accessibility of such Common Area for pedestrian and vehicular traffic (as it relates to the remainder of the Center) is not unreasonably restricted or hindered;

(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 3.2(C), as well as all governmental rules, regulations, and/or ordinances relating to parking requirements, but

without reliance on parking spaces that may be available on another Tract;

E 1248273 8 2000 P 1818

(iii) no governmental rule, ordinance or regulation shall be violated as a result of such action, and such action shall not result in any other Party being in violation of any governmental rule, ordinance or regulation;

(iv) no reduction shall be made in the access points between the Common Area and the public streets;

(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 other Party copies of the plans therefor, and provided further that such work shall not occur between October 1st and the following January 31st;

The provisions of this paragraph (D) do not apply to any changes, modifications or alterations of Common Area located within Building Areas which result from or arise out of the construction, expansion or maintenance of buildings.

3.3 Building Improvements.

(A) While it is acknowledged and agreed that no Party shall have an obligation to commence construction of any building on its Tract, the Parties hereby agree once construction has been commenced, such building shall be completed. If a Building Area

has a maximum Floor Area designation, such amount shall not be exceeded.

E 1248273 B 2000 P 1819

(B) No building or other structure (not including any light poles or free standing sign referred to in 5.2 hereof) shall exceed the following height restrictions:

- (i) DHC Tract - 25 feet
- (ii) PRI Tract - 28 feet

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 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.

ARTICLE IV
MAINTENANCE AND REPAIR

4.1 Utility Lines.

(A) Each Party shall maintain and repair, or cause to be maintained and repaired, in a good state of repair and safe condition, all Separate Utility Lines utilized by it regardless of where located. Any maintenance and repair of nondedicated utilities located on another Party's Tract shall be performed: after two (2) weeks' notice to the grantor (except in an emergency the work may be initiated with reasonable notice); after normal business hours whenever possible; and in such a manner as to cause as little disturbance in the use of the grantor's Tract as is practicable under the circumstances. Any Party performing or causing to be performed maintenance or repair work agrees: to promptly pay all costs and expenses associated therewith; to diligently complete such work as quickly as possible; and to promptly clean the area and restore the affected portion of the Common Area to a condition equal to or better than the condition which existed prior to the commencement of such work.

4.2 Common Area.

(A) Each Party shall maintain, or cause to be maintained, 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 retail developments of comparable size in the Salt Lake City area; notwithstanding the foregoing, however, the Common Area shall be operated and maintained in compliance with all applicable governmental laws, rules, regulations, orders and ordinances, 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. The 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, resealing and resurfacing. (For the purpose of this section, an overlay of the drives and parking areas shall be considered a maintenance item.)
- (ii) Debris and Refuse. Periodic removal of all papers, debris, filth, refuse, ice and snow (2" on surface), including regular 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) Non-Occupant Signs and Markers. Maintaining, cleaning, and replacing any appropriate directional, stop or handicapped parking signs; restripe parking lots and drive lanes as necessary to maintain parking space designation and traffic direction; and keep 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.

E 1248273 8 2000 P 1822

(v) Landscaping. Maintaining and replacing of all landscape plantings, trees and shrubs in an attractive and thriving condition, trimmed and weed free. Maintain and replace landscape planters, including those adjacent to exterior walls of buildings. Modify irrigation 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 of all sidewalks, including those adjacent and contiguous to buildings located within the Center. Sidewalks shall be steam cleaned and swept at appropriate intervals during such time as shall not interfere with the conduct of business or use of the Common Area.

Notwithstanding anything to the contrary, each Party shall maintain and repair, at its sole cost, in a clean, sightly and safe condition any exterior shipping/receiving dock area, any truck ramp or truck parking area, and any refuse, compactor or dumpster area located on its Tract.

(B) In the event any 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 that no Party shall be required to expend more than \$250,000 in excess of insurance proceeds which may be available (or which would have been available except for elections relating to deductibles or self-insurance for which 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 such sum. Except to the extent limited by 5.3(B) hereof, in the event such damage or destruction of Common Area is caused in whole or in part by another Party or 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 or damages.

4.3 Building Improvements and Outside Sales Area.

(A) After completion of construction, each Party covenants and agrees to maintain and keep the exterior portion of the building improvements located on its Tract in first-class condition and state of repair, in compliance with all governmental laws, rules, regulations, orders, and ordinances exercising jurisdiction thereover, and in compliance with the provisions of this OEA. Each Party further agrees to store all trash and

garbage 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. **E 1248273 8 2000 F 1824**

(B) In the event any of the building improvements are damaged by fire or other casualty (whether insured or not), the Party upon whose Tract such building improvements are located shall, subject to governmental regulations and/or insurance adjustment delays, immediately remove the debris resulting from such event and provide a slighty barrier, and within a reasonable time thereafter shall either (i) repair or restore the building improvements so damaged to a complete unit, such repair or restoration to be performed in accordance with all provisions of this OEA, or (ii) erect other building improvements 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 improvements and restore the cleared area to a hard surface condition, a landscaped condition, or a level unimproved 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 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 it elects.

ARTICLE V
OPERATION OF THE CENTER

5.1 Uses.

(A) No part of the Center shall be used for other than retail sales, offices, Restaurants or other commercial purposes. A gas station, car wash and convenience grocery store are all permitted uses under this OEA.

(B) No use shall be permitted in the Center which is inconsistent with the operation of a first-class retail shopping center. 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 Center; provided, however, that the foregoing restriction regarding obnoxious odors shall not be construed to limit or apply to typical operations of a gas station, car wash or convenience grocery store;

(ii) Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation;

(iii) Any "second hand" store or "surplus" store;

(iv) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);

(v) Any dumping, disposing, incineration, or reduction of garbage (exclusive of 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 retail shopping districts in the metropolitan area where the Center is located;

(viii) Any automobile, truck, trailer or recreational vehicles sales, leasing, display or body shop repair operation or any truck stop;

(ix) Any bowling alley or skating rink;

(x) Any movie theater or live performance theater;

(xi) Any living quarters, sleeping apartments, or lodging rooms;

(xii) Any veterinary hospital or animal raising facilities (except that this prohibition shall not prohibit pet shops);

(xiii) Any mortuary or funeral home;

(xiv) Any establishment selling or exhibiting pornographic materials or drug-related paraphernalia;

(xv) Any bar, tavern, restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds thirty percent (30%) of the aggregate gross revenues of such business together with all other businesses operated by the same Party on the Tract concerned;

(xvi) Any health spa, fitness center or workout facility;

(xvii) Any flea market, amusement or video arcade, pool or billiard hall, or dance hall;

(xviii) Any gambling facility or operation, including but not limited to: off-tract or sports betting parlor; table games such as black-jack or poker; slot machines, video poker/black-jack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities, or charitable gambling activities, so long as such governmental

and/or charitable 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 Center, except in the ordinary course of its usual business operations conducted thereon which may include, without limitation, the sale and dispensing of gasoline, diesel or other fuels, and other operations typical of a gas station or car wash, and any such use shall at all times be in compliance with all Environmental Laws. Each Party shall indemnify, protect, defend and hold harmless the other Parties from and against all claims, suits, actions, demands, costs, damages and losses of any kind, including but not limited to costs of investigation, litigation and remedial response, arising out of 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 paragraph (C), the term (i) "Hazardous Materials" shall mean: petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law, and (ii) "Environmental Laws" shall mean: 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 but the same shall not pertain to items located adjacent to the north wall of the building on the PRI Tract.

(E) Except to the extent required by law, no Permittee shall be charged for the right to use the Common Area; 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 Parties an imposition required by law.

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

(G) 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 Center or on any Tract.

5.2 Occupant Signs.

No freestanding sign shall be permitted on either Tract unless constructed in areas designated on the Site Plan (or as subsequently designated by written consent of the Parties, such consent not to be unreasonably withheld or delayed), and only one such sign may be located in each designated area. The designation of a freestanding sign location on a Tract shall in no way

oblige the benefiting Party(ies) to construct such freestanding sign. However, if a freestanding sign is constructed, the benefiting Party(ies) shall be responsible for the sign's operation and maintenance on a first-class basis, and each Party having a sign panel thereon shall maintain such panel at its expense. This OEA does not contain a limitation on the height of any freestanding sign, which height shall be subject only to municipal approval. Notwithstanding the above, PRI may place a freestanding sign on the PRI Tract in the location designated on the Site Plan if PRI can obtain the necessary governmental approvals and such approval and sign in no way affect the ability of DHC to obtain the necessary governmental approvals regarding the height, location, size or any other element of one sign advertising the Target store or the shopping center located to the East of the PRI Tract. One monument sign advertising the business located on the PRI Tract may be placed on the Northeast corner or along the northerly or easterly line of the PRI Tract by the owner of the PRI Tract. In no event will any sign advertising the shopping center located to the East of the PRI Tract be placed on the PRI Tract.

5.3 Insurance.

Each Party (as to its Tract only) shall maintain or cause to be maintained in full force and effect Commercial General Liability Insurance with a combined single limit of liability of not less than Two Million Dollars (\$2,000,000.00) in Constant Dollars for bodily or personal injury or death, and for property damage, arising out of any one occurrence; the other Parties shall be "additional insureds" under such policy.

Each Party ("Indemnitor") covenants and agrees to defend, protect, indemnify and hold harmless each other Party ("Indemnitee") from and against all claims, including any action or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorney's fees and cost of suit) arising from or as a result of the injury to or death of any Person, or damage to the property of any Person located on the Tract owned by each Indemnitor, except for claims caused by the negligence or willful act or omission of such Indemnitees, its licensees, concessionaires, agents, servants, or employees, or the agents, servants, or employees of any licensee or concessionaire thereof.

(A) Prior to commencing any construction activities within the Center, each Party 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 set forth below:

(i) Workers' Compensation - statutory limits

(ii) Employers' Liability - \$500,000

(iii) Comprehensive General/Commercial General Liability and Business Auto Liability as follows:

(a) Bodily Injury - \$300,000 per occurrence

(b) Property Damage - \$300,000 per occurrence

- (c) Independent Contractors Liability; same coverage as set forth in (a) and (b) above;
- (d) Products/Completed Operations Coverage which shall be kept in effect for two (2) years after completion of work;
- (e) "XCU" Hazard Endorsement, if applicable;
- (f) "Broad Form" Property Damage Endorsement;
- (g) "Personal Injury" Endorsements;
- (h) "Blanket Contractual Liability" Endorsement.

If the construction activity involves the use of another Party's Tract, then the owner of such Tract shall be an additional insured and such insurance shall provide that the same shall not be canceled, or reduced in amount or coverage below the requirements of this OEA, without at least thirty (30) days prior written notice to the named insureds and each additional insured. If such insurance is canceled or expires then the constructing Party shall immediately stop all work on or use of the other Party's Tract until either the required insurance is reinstated or replacement insurance obtained.

(B) 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, casualty insurance with "extended" or "all-risk" coverage, in the amount of 100% of full

replacement cost thereof (excluding footings, foundations or excavations).

E 1248273 8 2000 P 1833

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 the Releasing Party's Tract, which loss or damage is of the type covered by the insurance required to be maintained under 5.3(B), irrespective either of any negligence on the part of the Released Party which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried, including any deductible or self insurance reserve. Each Party agrees to use its reasonable efforts to obtain, if needed, appropriate endorsements to its policies of insurance with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release hereinabove given. Each Party ("Indemnitor") covenants and agrees to indemnify, defend and hold harmless each other Party ("Indemnitee") from and against all claims asserted by or through any Permittees of the Indemnitor's Tract for any loss or damage to the property of such Permittee located upon the respective Indemnitor's Tract, which loss or damage is of the type generally covered by the insurance required to be maintained under 5.3(A), irrespective of any negligence on the part of the Indemnitee which may have contributed to or caused such loss.

(C) All insurance required by 5.3 shall be procured from companies licensed in the state where the Center is located and shall be rated by Best's Insurance Reports not less than A/X. All

insurance may be provided under (i) an individual policy covering this location, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Party, (iii) a plan of self-insurance, provided that any Party so self-insuring notifies the other Parties of its intent to self-insure and such Party has \$10,000,000 in Constant Dollars or more of net current assets, or (iv) 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 5.3, 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 agrees to furnish to any Party requesting the same, a certificate(s) of insurance evidencing that the insurance required to be carried by such Person is in full force and effect.

Except for self-insurance, the insurance required above shall include the following provisions:

- (i) shall provide that the policy may not be canceled or reduced in amount or coverage below the requirements of this OEA, 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 of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other named insureds; and

(iv) shall provide for contractual liability coverage with respect to the indemnity obligation set forth herein.

5.4 Liens. In the event any mechanic's lien is filed 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 filed 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 and further agrees to indemnify, defend, and hold harmless the other Party and its Tract against liabilities, losses, damages, costs or expenses (including reasonable attorneys' fees and cost of suit) on account of such claim of lien. Upon request of the Party whose Tract is subject to such lien, the Party permitting or causing such lien to be filed 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 a Party permitting or causing such lien 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

E 1248273 8 2000 P 1834

the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien.

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 written notice following the due date, or

(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 (the Non-Defaulting Party") specifying the nature of the default claimed.

(B) With respect to any default under Section (A)-(ii) above, any Non-Defaulting Party shall have the right, 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 the 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 of receipt of demand, together with reasonable documentation supporting the expenditures made.

(C) Costs and expenses accruing and/or assessed pursuant to Section 6.1-(B) above shall constitute a lien against the Defaulting Party's Tract. The 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 Center is located, by the Party making the claim. The claim of lien shall include the following:

(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 curing 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; and

(vi) A statement that the lien is claimed pursuant to the provisions of this OEA, reciting the date, book and page 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, suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the law of the State in which the Center is located.

Any such lien shall be subject and subordinate to (a) any mortgage, deed of trust or similar instrument affecting the Defaulting Party's Tract at the time said notice of lien is filed; (b) this OEA and all of its provisions; (c) each (recorded or unrecorded) utility easement, right-of-way or similar interest affecting the Defaulting Party's Tract at the time said notice of lien is filed; (d) the interests of the tenant or lessee under each lease, rental agreement or similar instrument (whether recorded or unrecorded) affecting the Defaulting Party's Tract or

interests in the Defaulting Party's Tract which is in effect at the time said notice of lien is filed; and (e) the lien for general taxes and other governmental assessments, but shall be prior and superior to any and all other interests or estates (whether recorded or unrecorded at the time said notice of lien is filed) in or respecting the Defaulting Party's Tract.

(D) 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 or more written waivers or any default under any provision of this OEA shall not be deemed to be a waiver of any subsequent default in the performance or the same provision or any other term or provision contained in this OEA.

(E) 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 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 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 within five (5) days of the due date, such delinquent Party shall pay interest on such amount from the due date to and including the date such payment is received by the Person entitled thereto, at the lesser of:

(i) The highest rate permitted by law to be paid on such type of obligation by the Person obligated to make such payment or the Person to whom such payment is due, whichever is less; or

(ii) 3% per annum in excess of the prime rate from time to time publicly announced by Zion's First National Bank, Salt Lake City or its successor.

6.3 Estoppel Certificate.

Each Party agrees that upon written request (which shall not be more frequent than three (3) times during any calendar year) of any other Party, it will issue to such Person, or its prospective

mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge that as of such date:

(i) whether it knows of any default under this OEA by the requesting Person, and if there are known defaults, specifying the nature thereof;

(ii) whether this OEA has been assigned, modified or amended in any way by it and if so, then stating the nature thereof; and

(iii) whether this OEA is in full force and effect;

Such statement shall act as a waiver of any claim by the Person furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. The issuance of an estoppel certificate shall in no event subject the Person furnishing it to any liability for the negligent or inadvertent failure of such Person to disclose correct and/or relevant information.

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 via facsimile so long as the original copy is also sent via (i) or (ii) above on the same day. The initial addresses of the Parties shall be:

DHC: Dayton Hudson Corporation
Target Stores-Real Estate
Attn: Property Administration
33 S. Sixth Street
Minneapolis, MN 55402
Fax: (612) 370-6008

PRI: Property Reserve, Inc.
10 East South Temple, Suite 400
Salt Lake City, Utah 84133-1101
FAX: (801) 240-5881

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. Unless provision is made for a specific time period, each response to a request for an approval or consent shall be given by the Person to whom directed within thirty (30) days of receipt. Each disapproval shall be in writing and, subject to (A) above, the reasons 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.

6.6 Condemnation. In the event any portion of the Center shall be condemned, the award shall be paid to the Party owning the land or the improvement taken, except that (i) if the taking includes improvements belonging to more than one Party, such as

Utility Lines or 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 grantee 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 land or the improvement taken, then the owner of such other property interest shall have the right to seek an award for the taking thereof.

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 real estate described herein and inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns who become Parties hereunder.

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 Exhibits 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 signatories, and such signatories are fully informed with respect thereto; no such

signatory 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.

E 1248273 8 2000 P 1844

(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, terms or matter.

(C) The captions preceding the text of each article and section 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 Parties and shall be effective only when recorded in the county and state where the Center is located. No consent to the 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. Each Party may consider, approve or disapprove 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 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 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 Person hereunder, such Person 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 Person, 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 Person from the prompt payment of any monies required by this OEA.

6.12 Mitigation of Damages. In all situations arising out of this OEA, all Parties shall attempt to avoid and mitigate the damages resulting from the conduct of any other Party. Each Party hereto 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 deed of trust

made in good faith and for value as to any part of the 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.

6.16 Limitation of Liability.

Except as specifically provided below, there shall be absolutely no corporate or personal liability of persons, firms, corporations or entities who constitute a Party hereto, including, but not limited to, officers, directors, employees or agents of a party hereto with respect to any of the terms, covenants, conditions, and provisions of this OEA. In the event of default by a Defaulting Party hereunder (as defined in Section 6.1) any Non-Defaulting Party (as defined in Section 6.1 hereof) who seeks recovery from a Defaulting Party hereto shall look solely to the interest of such Defaulting Party, its successors and assigns, in the Center for the satisfaction of each and every remedy of the Non-Defaulting Party; provided, however, the foregoing shall not in any way impair, limit or prejudice the right of any Party;

(i) to pursue equitable relief in connection with any terms, covenants or condition of this OEA, including a proceeding for temporary restraining order, preliminary injunction, permanent injunction or specific performance; and

(ii) to recover from another Party all losses suffered, liabilities incurred or costs imposed arising out of or in connection with, or on account of, such Party not funding its self insurance obligations which were assumed pursuant to 5.3(B) above.

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, 2050, and shall be automatically renewed for consecutive twenty-five (25) year periods thereafter unless terminated by an instrument executed by all Parties and the holders of each first position mortgage or deed of trust on each Tract which is recorded in the official records of the Davis County Recorder; 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 force and effect as provided therein. Upon 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.

E 1248273 8 2000 P 1849

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

E 1248273 B 2000 P 1850

PROPERTY RESERVE, INC.

("PRI")

By Wayne G. Janzen 

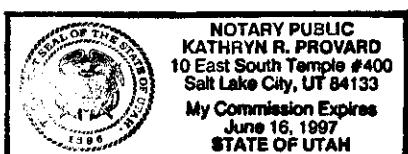
Name Wayne G. Facer

Title Vice President

STATE OF UTAH

COUNTY OF *Salt Lake*)
) ss.
)

On this 13th day of May 1996, before me, a Notary Public within and for said County, personally appeared Wayne D. Jaeger and _____ to me personally known, being first by me duly sworn, did say that ~~they~~ he ~~are~~ is respectively the Vice President and _____ of Property Reserve, Inc. and that said instrument was signed on behalf of said corporation by authority of its Board of Directors and Wayne D. Jaeger and _____ acknowledged said instrument to be the free act and deed of said corporation.



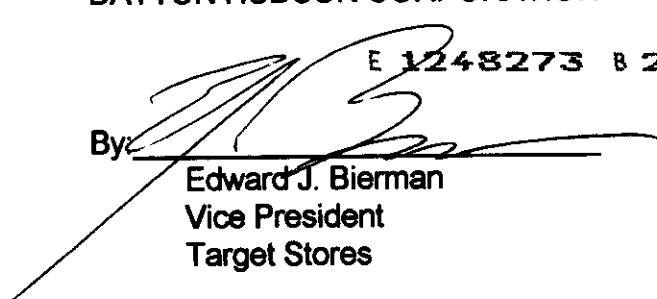
Kathryn L. Trouard

Notary Public

My commission expires: 6/16/97

DAYTON HUDSON CORPORATION

E 1248273 B 2000 P 1851

By: 

Edward J. Bierman
Vice President
Target Stores

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

On this 10th day of May, 1996, before me, a Notary Public within and for said County, personally appeared Edward J. Bierman, to me personally known, who, being first by me duly sworn, did say that he is the Vice President of Target Stores, a division of Dayton Hudson Corporation, and a duly-authorized signatory of said corporation, and that the foregoing instrument was signed by him on behalf of said corporation by authority of its Board of Directors and Edward J. Bierman acknowledged said instrument to be the free act and deed of said corporation.


Notary Public

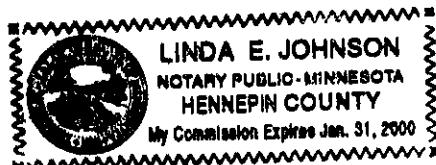


EXHIBIT A

E 1248273 S 2000 P 1852

LOTS 10 AND 11 OF CENTERVILLE MARKETPLACE SUBDIVISION RECORDED 24TH
DAY OF APRIL, 1995 IN BOOK 1867 OF OFFICIAL RECORDS DAVIS COUNTY, UTAH,
PAGE 32.

02-161-0010 4001

EXHIBIT B

Legal Description

E 1248273 S 2000 P 1853

A PART OF THE SOUTHWEST ONE-QUARTER OF SECTION 7, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE SALT LAKE BASE AND MERIDIAN, COUNTY OF DAVIS, STATE OF UTAH MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF PARISH LANE AND THE EAST-LINE OF THE UTAH STATE ROAD COMMISSION RIGHT-OF-WAY, SAID POINT BEING NORTH 00 DEGREES 05 MINUTES 33 SECONDS WEST, 2414.21 FEET ALONG THE SECTION LINE AND NORTH 89 DEGREES 54 MINUTES 27 SECONDS EAST A DISTANCE OF 824.13 FEET FROM THE SOUTHWEST CORNER OF SAID SOUTHWEST ONE-QUARTER OF SECTION 7; THENCE SOUTHERLY, ALONG SAID RIGHT-OF-WAY LINE THE NEXT TWO (2) COURSES: 1) SOUTH 00 DEGREES 05 MINUTES 58 SECONDS EAST, A DISTANCE OF 51.32 FEET; 2) ALONG THE ARC OF A CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 07 DEGREES 25 MINUTES 13 SECONDS, AN ARC DISTANCE OF 111.19 FEET, A RADIUS OF 858.51 FEET AND A CHORD BEARING OF SOUTH 03 DEGREES 36 MINUTES 39 SECONDS WEST, WITH A DISTANCE OF 111.11; THENCE DEPARTING SAID EAST-LINE AND RUNNING SOUTH 77 DEGREES 26 MINUTES 24 SECONDS EAST, A DISTANCE OF 257.76 FEET; THENCE NORTH 00 DEGREES 06 MINUTES 15 SECONDS WEST, A DISTANCE OF 218.68 FEET; THENCE SOUTH 89 DEGREES 54 MINUTES 41 SECONDS WEST, A DISTANCE OF 244.29 FEET TO THE POINT OF BEGINNING. CONTAINING 46985.78 SQUARE FEET OR 1.08 ACRES, MORE OR LESS.

02-026-0067

EXHIBIT X

1248273 B 2000 F 1854

CENTERVILLE MARKETPLACE

