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**GRANT OF RECIPROCAL EASEMENTS, DECLARATION
OF COVENANTS RUNNING WITH
THE LAND AND DEVELOPMENT AGREEMENT**

by and between

MERVYN'S, a California corporation

and

**SOUTH TOWNE INVESTORS LIMITED PARTNERSHIP,
an Illinois limited partnership**

dated

October 21, 1993

EX6781FG0765

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EXHIBITS

- Exhibit A - Site Plan
- Exhibit B - Description of Parcels
- Exhibit C - Barricade Criteria
- Exhibit D - Scope of Work
- Exhibit E - (Intentionally omitted)
- Exhibit F - Sign Criteria
- Exhibit G - Pylon Sign Criteria
- Exhibit H - Common Area Work Plans
- Exhibit I - Mall Expansion Work Plans

**GRANT OF RECIPROCAL EASEMENTS, DECLARATION OF COVENANTS RUNNING WITH
THE LAND AND DEVELOPMENT AGREEMENT**

THIS GRANT OF RECIPROCAL EASEMENTS, DECLARATION OF COVENANTS RUNNING WITH THE LAND AND DEVELOPMENT AGREEMENT (the "Agreement") is made, and entered into this ___ day of October, 1993, by and between MERVYN'S, a California corporation ("Mervyn's"), and SOUTH TOWNE INVESTORS LIMITED PARTNERSHIP, an Illinois limited partnership ("Developer").

RECITALS:

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties:

A. Mervyn's is the owner of that certain parcel of real property located in the City of Sandy, County of Salt Lake, State of Utah, designated as the Mervyn's Parcel on the site plan attached hereto as Exhibit A (the "Site Plan"). Such Parcel shall hereinafter be referred to as the "Mervyn's Parcel" and is more particularly described in Exhibit B hereto.

B. Developer is the owner of that certain parcel of real property located in the City of Sandy, County of Salt Lake, State of Utah, designated as the Developer Parcel on the Site Plan. Such Parcel shall hereinafter be referred to as the "Developer Parcel" and is more particularly described in Exhibit B hereto.

C. The Parties intend to develop their respective Parcels in conjunction with each other as integral parts of the Shopping Center, as generally shown on the Site Plan, pursuant to a common development plan, with portions of the Common Area to be located and maintained on each Parcel. Developer desires to undertake the overall development of the Common Area Work of the Shopping Center pursuant to the development plan. The Parties intend to operate their respective Parcels in conjunction with each other as integral parts of the Shopping Center as generally shown on the Site Plan.

D. To effectuate the common development, use and operation of the Shopping Center, the Parties desire to enter into certain covenants and agreements as part of a general plan for beneficial use of the Parcels and to grant each to the other certain reciprocal easements in, to, over and across the Common Area to be located on the Parcels.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other valuable consideration, the Parties agree as follows:

1. Definitions.

1.1. Defined Terms. Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term.

1.2. Accounting Period. Each calendar year during the term of this Agreement commencing January 1, except that the first Account Period for Mervyn's shall commence on the date Mervyn's opens its store for business to the public and end on December 31 of the year in which such date falls, and if this Agreement terminates pursuant to any provision hereof on a date other than December 31, the last Accounting Period shall end on such termination date.

1.3. Allocable Share Agreement. Each supplementary agreement entered into between Developer and each other Owning Major pursuant to this Agreement, which contains certain provisions regarding certain obligations under this Agreement as between each Owning Major and Developer, including, without limitation, payments by such Owning Major of its Proportionate Share of Common Area Maintenance Costs. The provisions of each Allocable Share Agreement are incorporated into this Agreement by reference as if set forth in full and constitute covenants running with the land as specified by Article 15 as between the Developer Parcel and the Parcel of each other Owning Major.

1.4. Allowed Gross Floor Area. The maximum Gross Floor Area allowed to be contained within the boundaries of any Building Area (or Future Building Area) on any Parcel in the Shopping Center as specified in Section 3.3.

1.5. Appropriation. The taking of or damage to the Shopping Center, any building or improvement therein, or any portion thereof, or any Parcel therein, by reason of any exercise of the power of eminent domain or exercise of the police power, whether by a condemnation proceeding or otherwise, or resulting from a requisitioning by military or other public authority for any purpose arising out of a temporary emergency or other temporary circumstance, or on account of any inverse condemnation which results by reason of action of any public authority or other entity, including without limitation, any acts or actions of any environmental protection agency or the laws, ordinances, rules or regulations applicable thereto, as evidenced by final judgment of a court of competent jurisdiction so determining, or any transfer of all or any part of the Shopping Center, any building or improvement therein, or any portion thereof, or any Parcel, in avoidance of an exercise of the power of eminent domain or the police power.

1.6. Barricade Criteria. Those certain criteria for the enclosing, barricading or fencing of shop space in the buildings on the Mall Building Areas which are not leased and occupied, or during periods of construction, reconstruction or remodeling, set forth on Exhibit C attached hereto and made a part hereof. Such criteria shall not be modified or change without the prior written approval of Mervyn's, which approval shall not be unreasonably withheld, except that no such modifications or changes shall apply to shop space fronting onto Mervyn's Court without the prior written consent of Mervyn's, which approval may be withheld in Mervyn's sole and arbitrary discretion.

1.7. Building Area. Those areas shown on the Site Plan to be utilized for construction of buildings and improvements intended for commercial or other Shopping Center related use by the Parties and other Occupants, together with appurtenant truck loading or delivery docks or areas, truck tunnels, ramps and wells. Any enlargement of or addition to a Building Area, either by development of and construction of buildings and improvements on Future Building Areas or as additional buildings and improvements allowed hereunder, shall be included in the definition of Building Area for purposes of this Agreement.

1.8. Common Area: All areas of the Shopping Center (other than Gross Floor Area contained within buildings located on Building Areas, and related building canopies, support columns, pilasters, overhangs and footings and appurtenant building truck loading or delivery docks or areas, truck tunnels, ramps and wells) encompassing without limitation all those facilities within or upon the Parcels for the non-exclusive use of Parties, Occupants and Users in common, including but not limited to, Parking Areas, service areas, driveways, areas of ingress and egress, sidewalk and other pedestrian ways, perimeter sidewalks adjacent and contiguous to buildings located on Building Areas, areas containing buildings or structures used in connection with the maintenance of the Common Area, roadways, delivery areas, landscaped areas (including planters and areas located between perimeter sidewalks and buildings or next to exterior building walls), areas containing signs or structures advertising the common name given for the Shopping Center, together with the signs and structures constructed thereon, common corridors, public restrooms and comfort stations accessible from pedestrian passageways not within the leased space of any Occupant, the Mall, and all Future Building Areas so long as used as Common Area. Any enlargement of or addition to the Common Area as provided herein shall be included in the definition of Common Area for purposes of this Agreement.

1.9. Common Area Maintenance Costs. The total of all monies paid out during an Accounting Period by the Party maintaining the Common Area under Article 5 for reasonable costs and expenses actually incurred for the operation, maintenance and repair of the Common Area in fulfillment of the requirements of Article 5 ("Common Area Maintenance"), together with a fee (the "Maintenance Fee") equal to five percent (5%) of the total of all such costs and expenses except (i) the amount of all taxes, assessments and other governmental charges, levies or fees, (ii) all Common Area insurance costs, (iii) all Common Area utility charges, (iv) all expenditures in the nature of capital expenditures in excess of an aggregate amount of \$10,000.00 for each such capital expenditure, and (v) fees paid to third parties employed to maintain the Common Area under Section 5.4. The Maintenance Fee is intended to include all administrative, accounting, audit, overhead, legal and other similar expenses and no other administrative, accounting, audit, overhead, legal or other similar expenses shall be included in Common Area Maintenance Costs under this Agreement; provided, however, that if the Party maintaining the Common Area under Article 5 causes all, or substantially all, of the operation, maintenance and repair of the Common Area to be performed by a Person other than such Party pursuant to Section 5.3, then the Maintenance Fee shall not be included in Common Area Maintenance Costs. For purposes of the determination of the Maintenance Fee, a "capital expenditure" shall be determined in accordance with generally accepted accounting principles and shall aggregate the costs and expenses incurred or paid in connection with any work in the Common Area which, as a general business practice, is considered as one project, job or category of expenditure. Without limiting the generality of the foregoing, Common Area Maintenance Costs include:

(A) Rental Charges. All rental charges for or the cost of acquisition of maintenance equipment (including reasonable financing charges);

(B) Supervision. All costs of policing, supervision and traffic direction control and regulation of the Parking Area;

(C) Insurance. All premiums for public liability insurance or any fire and extended coverage insurance carried on the Common Area;

(D) Taxes. All personal property taxes levied or assessed on Common Area improvements or, if levied or assessed together with improvements located on areas of the Developer Parcel in addition to the Common Area, the portion of such personal property taxes reasonably allocated by Developer to Common Area improvements;

(E) Trash Removal. All costs of cleaning, collection, storage and removal of rubbish, dirt and debris;

(F) Landscaping. All costs of landscaping maintenance and supplies;

(G) Utilities. All charges for utilities services, together with all costs of maintenance of lighting fixtures; and

(H) Finance Charges. All debt service and carrying costs for capital improvements or purchases which are financed.

Notwithstanding anything to the contrary herein contained, Common Area Maintenance Costs shall not include:

(1) Late Charges. Any late charges incurred in connection with financing for capital improvements or purchases;

(2) Real Property Taxes. Real estate taxes or assessments on any portion of the Common Area;

(3) Other Costs. Any other costs and expenses which are specifically excluded from Common Area Maintenance Costs pursuant to this Agreement; and

(4) Administrative and Overhead. Administrative, accounting, audit, overhead, legal and all other similar expenses of the Party maintaining the Common Area under Article 5, including, without limitation, wages or salaries paid to management or supervisory personnel.

Common Area Maintenance Costs shall be determined in accordance with generally accepted accounting principles consistently applied, except that Common Area Maintenance Costs shall not include depreciation or amortization for any item or capital expenditure, unless such item or capital expenditure was not paid for through financing obtained for such purpose or directly by the Parties when incurred, in which case depreciation or amortization shall be included, but only at straight-line rates over reasonable periods of time related to the actual useful life of the item. The amount realized on any item utilized in Common Area Maintenance disposed of by the Party maintaining the Common Area shall be credited against Common Area Maintenance Costs incurred by such Party in the Accounting Period in which such item is disposed of.

1.10. Court: That portion of the Mall adjacent to the Mall entrance of each Owning Major located on its Parcel, shown on the Site Plan and identified as the Court of such Owning Major. Reference to the "Mervyn's Court" shall refer to the Court adjacent to the Building Area on the Mervyn's Parcel shown on the Site Plan and identified as "Mervyn's Court".

1.11. Future Building Area: Those areas shown on the Site Plan where additional buildings and improvements may be located at some future time pursuant to this Agreement. When a Future Building Area is improved with a building, it shall automatically become a Building Area. Prior to such improvement, any portion of each Future Building Area not developed and used as Common Area shall be maintained by and at the expense of the Party owning or occupying the Parcel upon which such Future Building Area is located, and no portion of such cost and expense shall be included in Common Area Maintenance Costs.

1.12. Gross Floor Area. The total floor area contained within the boundaries of the exterior surface of exterior walls of any building located on any Building Area, including mezzanines used for retail sales purposes and all stories of any multiple story building, but excluding the Mall (except selling areas within the Mall, such as retail kiosks which shall be included in Gross Floor Area), any mezzanine storage space, mezzanine office space or mezzanines for mechanical equipment in the interior of any building, truck tunnels, truck ramps and wells, loading docks, areas for trade loading and unloading (to the extent such facilities lie outside exterior building lines), utility and/or mechanical equipment vaults, rooms, penthouses or areas (including without limitation any rooftop areas and vaults, whether located partially or wholly outside of such exterior walls), building canopies, pilasters and overhangs, and recessed openings of buildings, service corridors and up to 10,000 square feet of Floor Area for community rooms, other public facilities and Mall offices. Whenever and during any period in which a building or other improvement on a Parcel is rebuilt, repaired, replaced or razed for any reason whatsoever, the Gross Floor Area of such building shall be deemed to be the same as the Gross Floor Area of such building immediately prior to such period. Within thirty (30) days after completion of initial construction on the Building Area located on any Parcel, and any such rebuilding, repair, replacement or razing, and any other reconstruction, remodeling or improvement of any building on a Party's Parcel, such Party shall cause its architect to certify to the other Party the number of square feet of Gross Floor Area on its Parcel, which shall thereafter constitute the Gross Floor Area for such Parcel for all purposes under this Agreement, until effected by subsequent construction, rebuilding, repair, replacement, razing, reconstruction, remodeling or improvement.

1.13. Major. Any Owning Major and any one or more of ZCMI, Penney, The May Department Stores Co., Federated Department Stores Inc., Carter Hawley Hale Stores Inc., Mercantile, Dayton Hudson Corporation, Dillard Department Stores Inc., R.H. Macy & Company, Nordstrom's, Sears, Roebuck & Co., Carson Pirie Scott & Co., P.A. Bergner & Co., Saks Fifth Avenue, Montgomery Ward & Company or The Neiman-Marcus Group who is then occupying retail department or specialty store facilities within the Shopping Center containing at least 60,000 square feet of Gross Floor Area devoted solely to the business of such Owning Major or Occupant.

1.14. Mall. The enclosed portion of the Common Area consisting of enclosed sidewalks, pedestrian passageways, landscaped areas, common corridors and core areas contained within the buildings located on the Building Areas including, without limitation, any Building Areas used for such purpose.

1.15. Mall Building Areas: The Existing Mall Building Area shown on the Site Plan.

1.16. Mall Future Building Area: The Phase II Future Mall Building Area and Phase III Future Mall Building Area as shown on the Site Plan, which shall be used for the development and construction of additional Mall and Mall Building Area buildings and improvements pursuant to the provisions of this Agreement. When a Mall Future Building Area is improved with a building, it shall automatically become a Mall Building Area.

1.17. Occupant. Each Party and any Person or Persons from time to time entitled to the use and occupancy of any portion of the Gross Floor Area in the Shopping Center under this Agreement or any lease, license or concession agreement, or other instrument or arrangement under which the Occupant acquires its right to such use and occupancy.

1.18. Outparcel. Any one of those outparcels shown on the Site Plan and identified as Outparcels 1 through 7.

1.19. Owning Major. Morvyn's or its successor in interest as a Party hereunder determined in accordance with Article 12 hereof.

1.20. Parcels. The Morvyn's Parcel and the Developer Parcel. Reference to a "Parcel" shall mean any or all of the Parcels, as the context may require. Any lot or parcel of real property comprising a portion of any Parcel created by and as shown on a duly approved and recorded parcel, subdivision or other map effecting a division of such Parcel shall be included within such Parcel for purposes of this Agreement, and in the event the ownership of or interest in any such lots and/or parcels then comprising a Parcel is vested in more than one Person, the rights of such Persons as a Party to this Agreement shall be governed by the provisions of Article 12.

1.21. Parking Area. That portion of the Common Area used for parking of motor vehicles, including without limitation, incidental and interior roadways, walkways, curbs and landscaping within the areas used for such parking, together with all improvements and parking structures which at

any time are erected thereon. Any enlargement of or addition to the Parking Area pursuant to this Agreement shall be included in the definition of Parking Area for purposes of this Agreement.

1.22. Parking Ratio. The ratio of parking spaces to Gross Floor Area required to be maintained in the Parking Area of the Shopping Center and on each Parcel pursuant to Section 7.1.

1.23. Party. Developer and each Owning Major, or its respective successors in interest as a Party with respect to its Parcel, determined by the provisions of Article 12 as of the time in question, as shown on the Official Records of the County of the State where the Shopping Center is located.

1.24. Penney. J.C. Penney Company, Inc., or its permitted replacement as provided in Section 3.14(c).

1.25. Person or Persons. Individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals, or any other form of business or legal entity.

1.26. Proportionate Share. Whenever a Party is required to pay its Proportionate Share hereunder, that Proportionate Share shall be calculated (i) in the case of each Owning Major, if specified in such Owning Major's Allocable Share Agreement, then as so specified, and (ii) in the case of each Owning Major, if not specified in such Owning Major's Allocable Share Agreement, and with respect to Developer, then in the ratio that the total square feet of Allowed Gross Floor Area contained within the Party's Parcel bears to the total square feet of Allowed Gross Floor Area contained on all Parcels.

1.27. Scope of Work. The Scope of Work attached hereto as Exhibit D, which sets forth the criteria for the development and construction of the Common Area Work and the Mall Expansion Work.

1.28. Shopping Center. The Parcels as shown on the Site Plan, including Building Areas, Future Building Areas and Common Area. "Phase II" of the Shopping Center shall refer to and mean that portion of the Shopping Center identified on the Site Plan as "Phase II."

1.29. Users. All Persons granted permission to utilize the Common Area, including without limitation, Occupants, employees and service people, licensees, invitees, customers, owners, contractors, agents, lessees, sublessees, tenants and concessionaires.

1.30. Western Region of the United States. The States of Utah, Idaho and Colorado.

1.31. ZCMI. Zion's Cooperative Mercantile Institution, or its permitted replacement as provided in Section 3.14(c).

1.32. Scope of Work. Certain other terms, defined in the Scope of Work, shall have the meaning set forth therein for each such term.

1.33. Certain Other Terms. Certain other terms shall have the meaning set forth for each such term in this Agreement.

2. Grant of Reciprocal Easements.

2.1. Grant of Easements by Parties. Each Party grants to the other Parties easements over, across, in, under and through (i) the Common Area of its Parcel appurtenant to and for the benefit of the other Parcels, for the uses and purposes set forth in Section 2.2 and (ii) the Building Areas and Future Building Areas of its Parcel appurtenant to and for the benefit of the other Parcels, for the uses and purposes set forth in Section 2.3, and (iii) in each case for the duration specified in each instance in Section 2.4. Each easement granted herein shall in each instance be (A) appurtenant to and for the benefit of the Parcel owned by the grantee of such easement, and (B) nonexclusive for use in common with the grantor, the grantees and all Users and Occupants, solely for the purpose of developing and operating the Parcels as the Shopping Center pursuant to a common plan of beneficial use.

2.2. Common Area Easements. The Common Area on each Parcel shall be used only for the following purposes related to the businesses and activities conducted in the Shopping Center:

(a) Parking. Parking of motor vehicles in Parking Areas.

(b) Ingress and Egress. Ingress and egress by any Users and any motor

vehicles of such Users to and from any portion of the Common Area, and User access to and from the public streets adjacent to the Common Area.

(c) Utilities. Installation, maintenance and operation of utility lines and related facilities and services for the Common Area, Building Area or Future Building Areas, together with and including, without limitation, vaults, manholes, meters, transformers, pipelines, valves, hydrants, sprinkler controls, conduits, sewage facilities, and all related facilities, all of which shall whenever and wherever reasonably feasible be located below the surface of the Common Area, or the surface of any other above ground improvements located thereon; provided, however, that in any event, (i) all of the foregoing permitted utilities and installations, which are located above the surface of the Common Area, shall be placed to the extent reasonably practicable so as not to interfere with, restrict, or impede other uses of Common Area provided for herein; and (ii) no such utilities and installations, which must be located above the surface of the Common Area, shall be placed upon Mervyn's Primary Parking Area without the prior written consent of Mervyn's, which consent may be withheld in Mervyn's sole and absolute discretion.

(d) Pedestrian Traffic. Pedestrian traffic by Users between business establishments in the Building Areas, between the Building Areas and Common Area, and for Shopping Center pedestrian access to and from the public streets adjacent to the Common Area.

(e) Comfort and Convenience. Minor comfort and convenience facilities for Users, such as mailboxes, public telephones, and benches, as each Party may from time to time deem appropriate to construct or permit to be constructed on its Parcel; provided, however, that no such minor convenience facilities shall be installed on any Parcel so as to unreasonably and materially interfere with, restrict or impede other uses of the Common Area provided for herein, and provided further than no such minor comfort and convenience facilities shall be located in Mervyn's Primary Parking Area or in the Mervyn's Court without the prior written consent of Mervyn's, which consent may be withheld in Mervyn's sole and absolute discretion.

(f) Temporary Construction Activity. Construction, maintenance, repair, replacement, rearrangement and remodeling permitted under this Agreement of buildings and improvements within Building Areas, Future Building Areas and Common Area. All such work shall be conducted in the most expeditious manner reasonably possible to minimize interference with use of the Common Area, shall be diligently prosecuted to completion, and shall otherwise be performed in compliance with the provisions of Section 2.7. In connection with work of construction performed within Building Areas or Future Building Areas, incidental encroachment upon Common Area may occur as a result of the use of ladders, scaffolding, store-front barricades and similar facilities resulting in temporary obstruction of portions of the Common Area, all of which are permitted hereunder so long as their use is kept within reasonable requirements of construction work expeditiously pursued. Common Area may be utilized (i) for ingress and egress of vehicles transporting construction materials and equipment and persons employed in connection with any work provided for herein, and (ii) temporary storage of materials and vehicles being utilized in connection with such construction in areas designated and approved by the Developer and, if located north of 'Mervyn's Site Line' as shown on the Site Plan, Mervyn's (which approval, at any time Mervyn's is open for business in the Shopping Center, may be withheld in Mervyn's sole and absolute discretion), subject to all of the other terms of this Agreement.

(g) Service and Delivery Vehicles. Ingress, egress, and temporary parking of delivery and service vehicles traveling to and from the Building Areas, or any portion thereof, and the public streets adjacent to the Shopping Center, for the delivery of goods, wares, merchandise, furniture, fixtures, supplies and equipment, and the rendition of services to any Occupant.

(h) Doors and Exits. The opening onto the Common Area of doors and other exits of buildings located in the Building Areas contiguous to the Common Area.

(i) Foundations, Footings. Installation, repair, replacement and maintenance of building foundations and footings extending from any portion of the Building Area of any Parcel, over, onto, under and into the Common Area; provided, however, that building foundations and footings shall not extend beyond a lateral distance of five feet (5') from the Building Area limit line upon which the building is located.

(j) Encroachments. Minor encroachments of building overhangs, canopies and support columns, awns and signs, and pilasters and other building columns or pillars extending from a Building Area over, into and onto the Common Area; provided, however, that no such encroachment may in any event extend beyond the vertical plane of the outside edge of a sidewalk in the Common

Area adjoining the Building Area perimeter, and shall not unreasonably restrict the visibility of any building constructed in the Building Area located on any other Parcel. No Party shall have the right to complain that any such encroachment unreasonably restricts the visibility of any building unless such building is located on the Parcel of such Party.

(k) Fire and Service Corridors. Installation and maintenance of fire and service corridors within the Mall leading from adjacent Building Areas to the Parking Area, which are required from time to time by applicable building, fire and safety codes.

(l) Repairs, Maintenance and Replacement. Ingress, egress and access over, along, and under each Party's Parcel (other than Gross Floor Area contained in buildings) for the purpose of effectuating any necessary repairs, maintenance or replacements in connection with the exercise of the common non-exclusive easements and other rights granted under this Agreement with respect to each Parcel, as permitted under this Agreement.

2.3. Building Area and Future Building Area Easements. The Building Areas and Future Building Areas on each Parcel shall be subject to the following uses for the benefit of the other Parcels:

(a) Foundations and Footings. Installation, repair, replacement and maintenance of building foundations and footings required in connection with construction of improvements in the Building Area or Common Area on the Parcels; provided, that any such installation, repair, replacement or maintenance by a Party on another Party's Parcel shall not materially interfere with improvements on such other Party's Parcel; provided, further, that any such installation, repair, replacement or maintenance by a Party on another Party's Parcel shall not materially increase the cost of operation or maintenance of the improvements on such other Party's Parcel, unless the Party performing such installation, repair, replacement or maintenance agrees in writing, in a form reasonably acceptable to such other Party, to reimburse such other Party for such increased costs; and provided, further, that such foundations and footings shall not extend beyond a lateral distance of five feet (5') from the Building Area limit line upon which the building is constructed or from the improvements located in the Common Area.

(b) Encroachments. Minor encroachments of building overhangs, support columns, canopies and eaves, but only if (i) approved in writing by the Party owning or occupying the burdened Parcel and (ii) such minor encroachment upon the Building Area of another Party's Parcel does not materially interfere with improvements on such other Party's Parcel.

(c) Utility Connections. Connection to or with utility installations; provided, however, that (i) no such use shall be utilized or allowed in a manner which unreasonably burdens the affected Parcel, results in interference with the improvements thereon, inconveniences unreasonably the Users or Occupants thereof, or adversely affects the fire insurance rating standard of the building on the affected Parcel; and (ii) no common utilities facilities may be located on or under the Building Area or Future Building Area of any Parcel without the consent of the Party owning or occupying the affected Parcel, which consent may be withheld in such Party's sole and absolute discretion.

(d) Abutment to Mall. The abutment of the exterior wall of any improvement located on Building Areas to the Mall or to buildings located on adjacent Building Areas; provided, however, that no seismic or other loading by Developer on the buildings and improvements located on the Building Area of any Owning Major's Parcel or by an Owning Major on the buildings or improvements constituting the Mall or the buildings located on the Developer's Parcel shall be permitted or allowed; and provided, further, that if an Owning Major is operating its store building located in the Building Area on its Parcel, a building facade of such store shall be located by such Owning Major so as to provide a store entrance on each Mall level.

2.4. Duration and Termination of Easements.

(a) Parking, Etc. The easements created under Sections 2.2(a), (v) and (f) shall automatically terminate and be extinguished upon the expiration or prior termination of this Agreement pursuant to Section 16.2 as to all portions of the Common Area except that the easement appurtenant to and for the benefit of the Mervyn's Parcel over, across and through the portion of the Common Area identified as "Mervyn's Primary Parking Area" on the Site Plan and more particularly described on Exhibit B hereto shall be perpetual, except that after expiration or prior termination of this Agreement under Section 16.2, such non-exclusive easement shall be limited solely to the purpose of providing parking legally required for the then lawful use of the Mervyn's Parcel over Mervyn's Primary Parking Area and neither Mervyn's nor Developer shall grant any Person any rights to use of Mervyn's Primary Parking Area other than non-exclusive rights to Occupants and Developer must continue to obtain Mervyn's approval

to the same extent and in the same manner as provided in this Agreement for any action by Developer with respect to, or activities by Developer on, Mervyn's Primary Parking Area for which Developer prior to such expiration or termination was required to obtain Mervyn's approval under this Agreement. Following expiration or prior termination of this Agreement and subject to a reallocation of responsibility as provided in Section 2.5, maintenance and repair of Mervyn's Primary Parking Area shall be the obligation of the Party owning or occupying the Mervyn's Parcel, provided, however, that if Mervyn's Primary Parking Area is used by any other Party or any User or Occupant holding under such Party, then the cost of maintaining and repairing such easement shall be fairly allocated among Mervyn's and such other Party based upon the use then being made of Mervyn's Primary Parking Area.

(b) Doors, Etc. The easements created under Sections 2.2(h), (i) and (j) and Sections 2.3 (a) and (b) shall remain in existence after the termination of this Agreement under Section 16.2 only so long as the building or other improvements benefited by such easements remain in existence and such easements shall terminate on the removal, razing or destruction of such building or improvement and its non-replacement within two (2) years after such removal, razing or destruction.

(c) Mall Easements. The easements created under Section 2.2(k) and Section 2.3(d) shall remain in existence after the termination of this Agreement under Section 16.2 hereof only so long as (i) the Building or other improvements benefitted by such easements remain in existence or (ii) the Mall remains in existence, and such easements shall terminate on the removal, razing or destruction of such Building or Improvements or the Mall, as the case may be, and the non-replacement of either within two (2) years after such removal, razing or destruction.

(d) Utilities. Subject to the provisions of Section 2.6 regarding abandonment and termination, the easements created under Section 2.2(c) and Section 2.3(c) shall be perpetual, except that after expiration or prior termination of this Agreement under Section 16.2, each such easement shall be limited solely to the purpose of providing reasonably necessary utility connections to the benefitted Parcel over the burdened Parcel and provided that any new utility service that may be installed pursuant to such easements shall be installed in the same location as the existing utility service or in such other location specified or approved by the owner of the burdened Parcel. Following expiration or prior termination of this Agreement and subject to a reallocation of responsibility as provided in Section 2.5, maintenance and repair of any of the easements created under Section 2.2(c) and Section 2.3(c) shall be the obligation of the Party or Parties owning the Parcel(s) benefitted by such easement, provided that if such easement also serves the burdened Parcel, then the cost of maintaining and repairing such easement shall be fairly allocated among the Party or Parties owning the benefitted Parcel(s) and the Party owning the burdened Parcel based upon the use then being made of such easement.

(e) Ingress, Etc. Subject to the provisions of Section 2.6 regarding abandonment and termination, the easements created under Sections 2.2(b), (d), (g) and (i) shall automatically terminate and be extinguished upon the expiration or prior termination of this Agreement pursuant to Section 16.2 as to all portions of the Common Area except that the easements appurtenant to and for the benefit of the Mervyn's Parcel over, across and through Mervyn's Primary Parking Area shall be perpetual, except that after expiration or prior termination of this Agreement under Section 16.2, each such easement shall be limited solely to the purpose of providing reasonably necessary access to the Mervyn's Parcel over Mervyn's Primary Parking Area from adjacent public streets.

2.5. Relocation of Access and Utility Easements. At any time during or after the term of this Agreement, the Party owning or occupying the Parcel burdened by any of the easements created under Sections 2.2(c) and 2.3(c), and at any time following expiration or prior termination of this Agreement under Section 16.2, the Party owning or occupying the Parcel burdened by any of the easements created under Sections 2.2(b), (d) and (g), shall have the right to relocate on its Parcel any such easements and the improvements with respect thereto, provided that such relocation is performed only after thirty (30) days written notice of such Party's intention so to relocate given to the Party owning or occupying the benefitted Parcel, and such relocation: (i) will not unreasonably interfere with or diminish the enjoyment of the easement by the Party owning or occupying the benefitted Parcel; (ii) will not reduce or unreasonably impair the usefulness or function of any of such easement; and (iii) is performed without cost or expense to the Party owning or occupying the Parcel benefitted by such easement. Notwithstanding any such relocation, maintenance and operation of any easements so relocated shall continue to be the obligation of the Party owning or occupying the Parcel benefitted by such easement unless there is any material increase in maintenance or operations costs resulting from such relocation, in which event the Party effecting such relocation shall bear such excess. Notwithstanding termination or expiration of this Agreement under Section 16.2, the provisions of Section 2.7(a)-(f) shall remain in effect and govern maintenance, repair, relocation and construction with respect

to the easements created under Sections 2.2(b), (c), (d), (g) and (l) and Section 2.2(c), until termination of each easement under Section 2.6.

2.6. Termination of Certain Easements.

(a) Cause of Termination. To the extent the easements granted pursuant to Section 2.2(b), (c), (d), (g) and (l) and Section 2.3(c) are perpetual pursuant to Sections 2.4(d) or 2.4(e), such easements shall terminate only as provided in this Section 2.6. After the expiration or prior termination of this Agreement under Section 16.2, any or all of such easements shall terminate with respect to the Parcels benefited and burdened thereby if the use thereof for the benefit of a Parcel is abandoned for a period of two (2) years.

(b) Procedure to Establish Conclusive Evidence of Termination. Abandonment and termination of an easement hereunder shall be conclusively established for the benefit of any Parcel burdened by such easement, if:

(i) Notice. The then record owner of the fee of the Parcel burdened with any such easement gives written notice, duly verified and acknowledged, by United States certified or registered mail, return receipt requested, to both the then record owner of the fee of the Parcel benefited by such easement at the address given for mailing tax statements in the Office of the Tax Collector of the County in which the Shopping Center is located, the then record owner, if any, of any leasehold interest in such benefited Parcel at the address given for mailing notices in the recorded instrument giving record notice of such leasehold interest (but only if such recorded instrument gives an address for mailing notices for such record owner of a leasehold interest) and the then mortgagee or beneficiary under any recorded mortgage or deed of trust encumbering such benefited Parcel at the address given for mailing notices in the recorded mortgage or deed of trust which notice (A) states that such easement has been abandoned by virtue of nonuse of such easement for a two (2) year period, (B) identifies by name and address the record owner of the Parcel burdened by such easement giving the notice; (C) describes both the Parcel benefited and the Parcel burdened by such easement; and (D) identifies the record owner of the fee of the benefited Parcel, the record owner of any leasehold interest therein and the mortgagee or beneficiary under any recorded mortgage or deed of trust; and

(ii) Recording. Concurrently therewith the record owner of the fee interest of the burdened Parcel records in the Office of the Recorder of the County where the Shopping Center is located such notice of abandonment, together with a certificate verifying that such notice has been served on the then record owner of the Parcel benefited by such easement, the then record owner, if any, of the leasehold interest in such benefited Parcel and the mortgagee or beneficiary under any recorded mortgage or deed of trust as provided in subsection (i) above; and

(iii) Response. Any record owner of the fee of the benefited Parcel, any record owner of a leasehold interest in such Parcel or the mortgagee or beneficiary under any recorded mortgage or deed of trust encumbering such Parcel, within sixty (60) days after receipt of the notice referred to in subsection (i) above, fails to serve by mail, in the manner provided in subsection (i) above, upon the then record owner of the Parcel burdened by such easement at the address set forth for such record owner specified in clause (B) of subsection (i) above, and concurrently therewith record in the Office of the Recorder of the County where the Shopping Center is located, an affidavit which (A) identifies the name and address of the Person giving the affidavit and the basis upon which such Person claims to have the requisite record interest in the benefited Parcel; (B) states the use of the easement which has been made within such two (2) year period which forms the basis of the claim of non-abandonment; (C) identifies the record owners of the fee of the burdened and benefited Parcels; and (D) describes both the Parcel benefited and the Parcel burdened by the easement.

Failure of any Person having the requisite record interest in the Parcel benefited by the abandoned easement to serve and record the affidavit called for by subsection (iii) above within the sixty (60) day period therein specified shall create a conclusive presumption, binding upon all Persons owning any interest in either the Parcel benefited or the Parcel burdened by the easement, that such easement is abandoned and terminated. Any Person at any time acquiring an interest in any Parcel after the notice referred to in subsection (i) above has been served by mail and placed of record in accordance with subsection (ii) above shall be entitled to rely absolutely on such failure as conclusive evidence that such easement has been abandoned and terminated. The service and recording of the affidavit called for by subsection (iii) above within the sixty (60) day period therein specified by any Person having the requisite record interest in the Parcel benefited by the easement thought to be abandoned shall create a conclusive presumption, binding upon all Persons owning any interest in either the Parcel benefited or the Parcel burdened by the easement, that such easement was not abandoned through the date of such

service and recording.

2.7. Construction and Installation.

(a) Construction Work Generally. All construction, alteration or repair work, undertaken by any Party upon any Parcel pursuant to any easement granted herein, or permitted by any other provision of this Agreement, shall be accomplished in the most expeditious, diligent and speedy manner possible. The Party undertaking such work shall take all necessary measures to minimize any disruption or inconvenience caused by such work to the other Occupants or Users of the affected Parcel, and shall make adequate provisions for the safety and convenience of all Occupants and Users of the affected Parcel. Such work shall be accomplished by the Party undertaking it in such manner as to minimize any damage or adverse affect which might be caused by such work to the other Parties, the affected Parcel or the Occupants and Users thereof, and cause as little disruption of and interference with use of the Common Area and other Building Areas as possible. Dust, noise and other effects of such work shall be controlled by the Party undertaking the work using the best accepted methods customarily utilized in order to control such deleterious effects associated with construction projects in a populated or developed area. The Party undertaking such work shall repair at its own cost and expense any and all damage caused by such work and shall restore the affected portion of the Parcel upon which such work is performed to a condition equal to or better than the condition existing prior to beginning such work. All such work shall be undertaken only after giving the other Parties thirty (30) days prior written notice of the work to be undertaken, the scope, nature and extent of the work, the duration of the work, and the area in which the work is to be performed. Such notice shall include any plans or specifications for the work which is to be accomplished on the affected Parcel.

(b) Utility Connections. Any work performed by a Party to connect to, repair, relocate, maintain or install any storm drain, utility line, sewer, water line, gas line, telephone conduits or any other public utility service shall be performed so as to minimize interference with the provision of such services to any other Party, Occupant or other Party's Parcel. No Party shall interfere with any such public utilities and services if such interference would disrupt the orderly development and operation of the businesses conducted by any other Party or Occupant on any other Parcels unless, in the notice provided pursuant to subsection (a) hereof, the nature and duration of any such interference is described and an offer is made to each other affected Party notified to permit that Party to require that such work be carried on at such times as would minimize or prevent the disruption of the orderly development and operation of any business conducted on the other Party's Parcel. The Party performing such work shall bear the cost of any overtime or other additional expense necessitated by such request. Any work of installation, alteration, replacement or repair of utility installations which requires interference with the paving in the Parking Area or driveways in the Common Area shall be undertaken with particular care so as to minimize the impact upon traffic circulation within the Common Area and access of all Users to the various business establishments in the Shopping Center.

(c) Plans and Law. All construction work undertaken by any Party pursuant to this Agreement shall comply with any plans and specifications therefor approved under this Agreement, the requirements of all applicable governmental authorities, public bodies and other entities (such as public utilities) having jurisdiction and all applicable laws, ordinances, rules and regulations of such authorities, including, without limitation, zoning laws and building codes. Each Party shall also secure all licenses and permits from governmental agencies, public bodies and other entities (such as public utilities) necessary for any construction undertaken by it.

(d) Timing Restriction On Construction. No construction activity, including storage of construction equipment or materials, shall be conducted or permitted in the Common Area during the period from October 1 through December 31 of any calendar year, unless such construction activity is conducted only within an enclosed area without obstruction of any part of the Parking Area, driveways, walkways or accesses serving the then existing buildings and improvements at the Shopping Center, or unless such construction activity is required in connection with emergency repairs or as a result of a casualty.

(e) Emergency Work. Notwithstanding any other notice provision contained in this Section 2.7., in the event of emergency conditions, any Party may undertake the necessary construction work to remedy the emergency condition, provided that the Party undertaking such work does so in good faith, gives notice thereof to the other Parties upon the occurrence of the emergency condition or as soon thereafter as possible, and otherwise conforms to the applicable provisions of this Section 2.7.

(f) Fencing Off Construction. Each Occupant, at its own cost and expense shall

fence off or cause to be fenced off any development, construction, repair, alteration or remodeling work performed by the Occupant on any Parcel. Fencing shall be of such height and of a construction sufficient to protect existing facilities in the Shopping Center from dust, debris and other inconveniences occasioned by such work, and to protect Users from safety hazards resulting from such work, and shall be constructed of materials which are architecturally compatible and harmonious with the exterior elevations of existing Shopping Center facilities. No signs or advertising material shall be placed upon the fence without the prior written approval of the Parties (which approval shall not be unreasonably withheld) and each fence shall, if applicable, be painted with a color or colors harmonious with the colors of the balance of the Shopping Center buildings.

2.8. Utility Easements. The Parties shall cooperate with one another and permit installation of any necessary utility and service lines, sanitary or storm water drainage sewers, water lines, telephone conduits or lines, and all other public utilities jointly and mutually to serve the Parcels, Building Areas and Future Building Areas as contemplated by the easements granted under this Article 2. Any such utilities shall not be located under any Building Area or Future Building Area, shall be constructed so as to minimize any interference with the overall development and operation of each Parcel by the Parties, shall be installed in such location as may be approved by the Party upon whose Parcel such utilities are being installed (which approval shall not be unreasonably withheld) and shall otherwise conform to the applicable requirements of this Article 2. All such utilities for the respective uses of the Building Areas on each Parcel and the Mall shall be separately metered or separately assessed. All utilities servicing the Common Area (other than the Mall) on each Parcel shall be separately metered.

2.9. Maintenance of Utility Facilities. Subject to the provisions of Section 2.5, all separate utility facilities installed by any Party pursuant to the easements granted under this Article 2 designed to serve exclusively the Building Area on such Party's Parcel shall be installed, maintained, repaired and removed by such Party without cost or expense to any other Parties; provided, however, that if any other Party connects into or utilizes such separate utility facilities pursuant to any easement granted under this Article 2, then each Party connecting into or utilizing such separate utility facilities shall be responsible for installation, maintenance, repair and removal in connection with its utilization of such separate utility facilities. Subject to Section 2.5, all other installation, maintenance, repair and removal of utility facilities shall be undertaken by the Party maintaining the Common Area pursuant to Article 5 hereof.

2.10. Indemnification By Parties. Each Party shall indemnify, defend and hold the other Parties harmless of and from any and all loss, cost, damage, injury or expense (including without limitation reasonable attorneys' fees) arising by reason of injury to or death of Persons, damage to property or buildings or other improvements, or claims made against the other Parties or claims of lien for work or labor performed, materials or supplies furnished arising out of or in connection with use by the indemnifying Party of the easements granted hereunder or the exercise by such Party of the rights granted to it in this Agreement or attributable to the performance of any construction, alteration or repair work undertaken by a Party upon any Parcel pursuant to any easement granted herein. Any Party may contest any lien or claim of lien asserted against such Party or the Parcel affected by such Party's use of any of the easements or rights granted hereunder or the exercise by such Party of the rights granted to it in this Agreement; provided, however, that such Party shall pay and fully discharge any claim of lien within five (5) days after entry of final judgment adverse to such Party in any action to enforce or foreclose the same, which judgment shall be deemed final when it can be enforced by execution or judicial sale and no such judgment shall be considered final for the purposes hereof during the pendency of a stay of execution in connection with an appeal. If any Party contests any claim of lien, such Party shall, as a condition to such Party's right so to contest, procure and record a bond of a responsible corporate surety in such amount as may be required to release the lien from the Parcel of any other Party upon which such lien has been imposed; provided, however, that any Party given the right to self-insure under Section 8.11 hereof shall not be required to procure and record such bond, unless such claim interferes with any proposed sale, financing, refinancing, or other transaction affecting another Party's Parcel which such other Party has either commenced or is about to commence, in which case, upon the written request of such other Party, the contesting Party shall either (i) record a bond of a responsible corporate surety of such kind and in such amount as may be required to release the lien from the affected Parcel or (ii) provide such indemnities as may be required to induce the title insurance company insuring the affected Parcel with respect to the proposed transaction to issue its policy of title insurance not showing the lien claim as an exception to title to the Parcel.

3. Covenants Regarding Shopping Center Use and Operation.

3.1. Commercial Purpose.

- (a) The Shopping Center shall be used only for retail and commercial uses

consistent with a first-class shopping center.

(b) The Parcel of any Owning Major, including, without limitation, the Mervyn's Parcel, shall be restricted to retail purposes consistent with the operation of a first class regional enclosed shopping center and for no other purpose, provided that the Developer Parcel is then being operated in such manner.

3.2. Uniform General Plan for Shopping Center. Any building erected in any Future Building Area or Outparcel, any remodeling or reconstruction work undertaken on any existing buildings in the Building Area and any alteration or addition to the Common Area, shall at all times be of first quality construction and architectural design. The Parties intend by this Agreement to create a uniform general plan for the Shopping Center. Any development or construction in the Future Building Area, remodeling or reconstruction of any building in the Building Area, or alteration or addition to the Common Area, shall at all times conform to the original design concepts of the Shopping Center so that the exterior of all such buildings, including, without limitation, exterior elevations and color thereof, and all such other improvements will be architecturally and aesthetically compatible and harmonious with the other buildings and improvements in the Shopping Center. Notwithstanding anything in the foregoing to the contrary, no development, construction, remodeling, reconstruction, alteration or addition on any Outparcel is required to be architecturally and aesthetically compatible and harmonious with the other buildings and improvements in the Shopping Center.

3.3. Building Area and Height Limitations.

(a) Building Area Limit Lines. Buildings shall only be placed or constructed within the Building Area or Future Building Area limit lines on each Parcel as shown on the Site Plan. In no event shall any building or structures be erected by any Party within the Common Area, except as specifically permitted by this Agreement.

(b) Allowed Gross Floor Area. For purposes of this Agreement, the Allowed Gross Floor Area of each Building Area and Future Building Area shall be as follows:

<u>Building Area</u>	<u>Allowed Gross Floor Area</u>	
PHASE I		
DEPARTMENT STORE ZCMI	192,000	
DEPARTMENT STORE JCPENNEY	100,237	
MALL SHOP SPACE	<u>194,000</u>	
SUBTOTAL	<u>476,237</u>	
PHASE II		
DEPARTMENT STORE MERVYNS	85,000	
MALL SHOP SPACE	<u>40,000</u>	
SUBTOTAL	<u>125,000</u>	
 <u>Future Building Area</u>		
PHASE III		
DEPARTMENT STORE #4	120,000	
DEPARTMENT STORE #5	190,000	
MALL SHOP SPACE	<u>40,000</u>	
SUBTOTAL	<u>350,000</u>	
OUTPARCELS		
FUTURE RETAIL	OUTPARCEL #1A	See Notes "A" and "B"
FUTURE RETAIL	OUTPARCEL #1B	See Notes "A" and "B"
FUTURE RETAIL	OUTPARCEL #2	See
FUTURE RETAIL	OUTPARCEL #3	
PIER 1 IMPORTS	OUTPARCEL #4	
FUTURE RETAIL and VILLAGE INN	OUTPARCEL #5	Note
FUTURE RETAIL and PONDEROSA	OUTPARCEL #6	
CINEPLEX ODEON	OUTPARCEL #7	"A"

Note "A": The Allowed Gross Floor Area for an Outparcel shall be determined by the proposed use and the number of required parking spaces applicable to such Outparcel, determined as provided in Section 7.1, but shall in no event be less than the Gross Floor Area of any building presently located on such Outparcel.

Note "B": Developer may use all or any portion of Outparcel #1A to provide additional parking spaces for the use of Outparcel #1B, in which event (i) any such additional parking spaces shall be deemed located on Outparcel #1B and used to determine the Allowed Gross Floor Area on Outparcel #1B and whether the number of required parking spaces on Outparcel #1B satisfies the parking requirements of Section 7.1, and (ii) the Allowed Gross Floor Area for Outparcel #1A will be reduced to take into account the reduced number of parking spaces remaining available to satisfy the parking requirements of Section 7.1 applicable to Outparcel #1A. In no event, however, will the borrowing of parking area from Outparcel #1A for the benefit of Outparcel #1B be construed to permit Developer to develop or construct any building on Outparcel #1B outside of the Permissible Building Area Limit Line for Outparcel #1B as shown on the Site Plan.

Unless and until changed pursuant to Articles 7 and/or 9, no building developed and constructed on any Building Area or Future Building Area shall contain more than the number of square feet of Allowed Gross Floor Area hereinabove specified for such Building Area or Future Building Area.

(c) Height Limits. No building developed and constructed on the following Building Areas and Future Building Areas shall exceed the following heights and number of stories:

<u>Building Area</u>	<u>Maximum Height</u>	<u>Maximum Stories</u>	
PHASE I (EXISTING)			
DEPARTMENT STORE ZCMI	46'-0"	TWO	
DEPARTMENT STORE JCPENNEY	24'-6"	TWO	
MALL SHOP SPACE	41'-0"	TWO	
PHASE II			
DEPARTMENT STORE MERVYNS	44'-0"	TWO	
MALL SHOP SPACE	41'-0"	TWO	
Future Building Area			
PHASE III			
DEPARTMENT STORE #4	41'-0"	TWO	
DEPARTMENT STORE #5	70'-0"	THREE	
MALL SHOP SPACE	41'-0"	TWO	
OUTPARCELS			
FUTURE RETAIL	OUTPARCEL #1A	35'-0"	ONE
FUTURE RETAIL	OUTPARCEL #1B	35'-0"	ONE
FUTURE RETAIL	OUTPARCEL #2	35'-0"	ONE
FUTURE RETAIL	OUTPARCEL #3	35'-0"	ONE
PIER I IMPORTS	OUTPARCEL #4	35'-0"	ONE
FUTURE RETAIL and VILLAGE INN	OUTPARCEL #5	35'-0"	ONE
FUTURE RETAIL and PONDEROSA	OUTPARCEL #6	35'-0"	ONE
CINEPLEX ODEON	OUTPARCEL #7	40'-0"	ONE

For purposes of the height limitation herein contained, the height of any building or other permanent improvement constructed shall be measured from the elevation of the finish grade of the pad for the Building Area to which the height limit applies as shown on the final grading plan for the Shopping Center to the top of the highest single portion of the building or other improvement measured, including without limitation, any parapet, mechanical equipment, sign or similar structure.

3.4. Remodeling and Replacement.

(a) Compliance. Buildings and Improvements located in any Building Area may be remodeled or replaced, buildings and Improvements may be developed in Future Building Areas and

alterations and additions may be made to Common Area, upon compliance with the provisions in Articles 7 and/or 9 concerning approval of plans; provided, however, that no such requirement for plan approval shall apply in the case of proposed repair or reconstruction of buildings or improvements which have been damaged or destroyed by fire, other casualty or Appropriation, or which have become worn out or obsolete, so long as such repair or reconstruction will not substantially alter the size, height, bulk and exterior appearance of the building or improvements as they existed prior to the event or condition requiring repair or reconstruction, and provided that notice of intent so to repair or reconstruct (together with a brief explanation of the cause and nature of the proposed work) is given by the Party proposing such work to the other Parties at least thirty (30) days prior to the commencement of any work thereon. All such work undertaken by any Party shall comply with the requirements of all applicable governmental authorities, public bodies and other entities (such as public utilities) having jurisdiction and all applicable laws, ordinances, rules and regulations of such authorities, including, without limitation, zoning laws and building codes. Each Party shall also secure all licenses and permits from governmental agencies, public bodies and other entities (such as public utilities) necessary for any construction undertaken by it.

(b) Injunction Against Nonconforming Improvements. Any work of construction or improvement undertaken on any Parcel shall be deemed to be in compliance with the provisions of Articles 7 and 9, in a manner conclusive for the benefit of any third Person who relies thereon in good faith, unless an action to enjoin performance of the work is commenced (with notice of pending action duly recorded) within sixty (60) days after commencement thereof or, in the case of a material change in work for which the plans have been approved under Articles 7 and/or 9, within sixty (60) days after the change becomes reasonably apparent. No such action shall protect a Party who contends that construction is proceeding in violation of the provisions hereof against a conclusive presumption of validity unless such action is filed in a timely manner in accordance with the provisions hereof and notice of pending action with respect thereto is duly recorded.

3.5. Building Upkeep and Maintenance. Each Party shall, without cost or expense to the other Parties, provide for appropriate upkeep and maintenance for the exterior of the buildings and improvements located in the Building Area of such Party's Parcel to ensure that the Shopping Center and each part thereof is maintained in a first class manner and retains at all times the appearance of a first class shopping center. Such upkeep and maintenance shall include, without limitation, appropriate measures to protect wood, stucco and concrete surfaces from weathering, deterioration and aging, and to protect from and immediately remove graffiti or other defacement from such surfaces. All painting to exterior surfaces (other than building and improvements located on any Outparcel) shall be with colors as may be appropriate to maintain the visual, architectural and aesthetic harmony and compatibility of the buildings of the Shopping Center. During any time that any of the shop space in the buildings on the Mall Building Areas is not leased and occupied, it shall be enclosed, barricaded or fenced with appropriate and tasteful enclosures in accordance with the Barricade Criteria.

3.6. Prohibited Operations and Nuisances.

(a) Nuisances. No Party shall use or permit the use of its Parcel, or any portion thereof (i) for the conduct of any offensive, noisy or dangerous trade, business, manufacturing activity or occupation, including, without limiting the generality of the foregoing, burning of trash, refuse or waste materials, (ii) for the maintenance of any nuisance or the conduct of any activity which violates public policy, (iii) subject to Section 3.6(d) in violation of any law, ordinance, rule or regulation of any governmental authority having jurisdiction over the Shopping Center or any portion thereof, (iv) except for Shopping Center promotions permitted under Sections 3.3(c) below, for any "sidewalk sales", sales outside the exterior walls of any building on any Building Area, display of merchandise in the Common Area or any similar use except in areas specifically approved for such purpose by Mervyn's in writing (which approval may be withheld in Mervyn's sole and absolute discretion), or (v) for any other unreasonable use of its Parcel not compatible with the operation of a first-class retail and commercial shopping center with a balanced and diversified grouping of retail stores, merchandise and services, well maintained in accordance with the standards of this Agreement, including, without limitation, Occupant advertising media which can be heard or experienced from the exterior of any building or other improvement from which it emanates, such as search lights, loud speakers, phonographs, radios or televisions.

(b) Prohibited Operations. No lots for the sale or rental of new or used motor vehicles; bargain/closout retailers in excess of 5,000 square feet, flea markets, or surplus stores; and adult bookstores, massage parlors or peep shows shall be permitted within any Building Area. The following uses shall not be located within or abutting Mervyn's Court: video games arcades, pet stores, fast food or restaurant uses, office uses and kiosks. Office uses, fast-food restaurant uses and restaurant uses in the Mall shops shall each not exceed 15% of the gross leasable area of the Mall shops. The

following uses shall not be permitted in the portions of the Shopping Center identified on the Site Plan as "Phase II": health spas, veterinary clinics, medical facilities, game rooms, video arcades, movie theater, service stations, educational and training institutions or libraries, and shall not exceed 10% of the gross leasable area of the Mall. Such uses may be located on the Outparcels without limitation as to the referenced percentage limitation. No kiosks or pushcarts shall be permitted within the portions of the Shopping Center identified on the Site Plan as "Phase II" except in the locations within Phase II shown on the Site Plan. No kiosk located in the Mall shall exceed 200 square feet in area or, ten (10) feet in height or, if such kiosks are of an open, see-through counter-top design, twelve and one-half (12 1/2) feet in height.

(c) Certain Promotions. Notwithstanding the provisions of subsection (a) hereof, Developer may conduct Shopping Center promotions within the Mall upon the terms and conditions herein specified. All promotions shall be conducted (i) in good taste, adhering to the standards of a first-class shopping center, (ii) so as not to interfere with the use of, access to, or the visibility of the entrances to the Mervyn's Building, and (iii) so as not to unreasonably impede or interfere with circulation of pedestrians within the Mall, the use by Users of the Mall, or ingress and egress to store entrances located within the Mall Building Areas. No Mall promotion shall be allowed within the Mervyn's Court.

(d) Contest of Laws. Each Party, without cost or expense to any other Party, shall promptly comply or cause compliance with all laws, ordinances, rules and regulations of any governmental authority having jurisdiction which may at any time be applicable to the buildings and improvements contained within the Building Area on its Parcel; provided, however, that each Party shall have the right to contest, by appropriate legal or administrative proceedings diligently conducted in good faith, the validity or application of any such law, ordinance rule or regulation and may delay compliance until a final decision has been rendered in such proceedings and appeal is no longer possible, unless such delay would render the Shopping Center, or any portion thereof, liable to forfeiture, involuntary sale or loss, or result in involuntary closing of any business conducted thereon, or subject any other Party or Occupant to civil or criminal liability, in which case the affected Party shall immediately take such steps as may be necessary to prevent any of the foregoing, including posting bonds or security or complying with such law, ordinance, rule or regulation. If compliance with any such law, ordinance, rule or regulation would prevent the Party to whose Parcel such law applies from performing any of its obligations under this Agreement, and such Party does not contest the applicability or validity of such law, ordinance, rule or regulation, any other Party may contest the same at such Party's expense in accordance with the procedures and subject to the limitations hereinabove set forth, and during the pendency of such contest, the Party whose Parcel is affected shall delay compliance in accordance with the provisions contained hereinabove. Each non-contesting Party shall cooperate to the fullest extent necessary with any contesting Party in any proceeding undertaken pursuant to this Section 3.6(d), including execution of necessary documents or consents to such contest, provided that all costs and expenses incurred with respect to such cooperation shall be paid by the contesting Party and provided, further, that a Party or its Parcel shall not thereby incur any civil or criminal liability. Notwithstanding anything to the contrary herein contained, this Section 3.6(d) shall not apply to any tax contest or Appropriation which are subject to Articles 6 or 10.

(e) Certain Definitions. As used herein, (i) "fast-food restaurant use" means a so-called "fast-food" or "take-out" restaurant, any other facility producing, preparing, serving or dispensing any prepared food products primarily for off-premises consumption or any restaurant or other facility having pedestrian walk-up or vehicular drive-up or drive-thru facilities for dispensing any prepared food products for off-premises consumption; (ii) "restaurant use" means a so-called "sit-down" restaurant or any other facility serving or dispensing prepared food products primarily for on-premises consumption and not encompassed within the term "fast food restaurant use"; and (iii) "training or educational use" includes, without limitation, beauty schools, barber colleges, reading rooms, places of instruction, or any other operation catering primarily to students or trainees rather than to customers, but excludes employee training by Parties or Occupants incidental to the conduct of their businesses within the Shopping Center.

3.7. Employee Parking and Deliveries. Developer may with the consent of Mervyn's (which consent shall not be unreasonably withheld), from time to time, establish (i) reasonable, uniform, non-discriminatory employee parking regulations, and (ii) reasonable, uniform, non-discriminatory regulations with respect to delivery, service and Shopping Center use-related vehicles, times of delivery and places of delivery. Such regulations shall apply to the entire Shopping Center in order to ensure that the maximum number of convenient parking spaces in the Parking Area are available for use by Users who are customers of the Shopping Center. Developer shall enforce the regulations promulgated hereunder against all Occupants of the Shopping Center (other than Occupants existing on the date of this Agreement whose leases do not contain or permit Developer to promulgate such regulations) in a

reasonable and nondiscriminatory manner as part of Developer's obligation to operate and maintain the Common Area under Article 5.

3.8. Rules and Regulations.

(a) Promulgation. Developer may, from time to time, adopt reasonable rules and regulations pertaining to the use of all Common Areas by Occupants and Users; provided, however, that all such rules and regulations and other matters affecting Occupants and Users shall apply equally and without discrimination. No such rules and regulations shall be applicable to Mervyn's without Mervyn's consent. Developer shall enforce the rules and regulations adopted hereunder (to the extent the same are applicable to Mervyn's) against all Occupants of the Shopping Center (other than Occupants existing on the date of this Agreement whose leases do not contain or permit Developer to promulgate such regulations) in a reasonable and nondiscriminatory manner, as part of Developer's obligation to operate and maintain the Common Area under Article 5, provided, however, that in so enforcing such rules and regulations, Developer shall not be obligated to appeal any adverse ruling by a court of competent jurisdiction, nor shall Developer have the obligation to terminate any lease based upon any such violation or failure to comply.

(b) Parking Area Levies. No Occupant shall impose or attempt to impose any charge, service fee or exact any other consideration in exchange for the right of a User to enter or depart from or park a motor vehicle in the Shopping Center or Parking Area in connection with use of the Common Area for purposes contemplated herein unless such charges are lawfully ordered by appropriate governmental authority having jurisdiction over the Shopping Center. If the governmental authority requires that such charges be collected directly from Users for the privilege of using the Shopping Center and/or Parking Area, then Developer shall collect such charges and shall credit the amount received from Users, less collection expenses and amounts required to be paid to the governmental authority, against Common Area Maintenance Costs.

3.9. No Walls, Fences or Barriers. Subject to the provisions contained in Article 2 concerning construction activities and Section 8.10 concerning clear areas, no walls, fences or barriers of any sort or kind shall be constructed or erected in the Shopping Center, or any portion thereof, by any Party which shall prevent or impair the use or exercise of any of the rights of easements granted herein, or the free access and movement of Occupants and Users, including without limitation pedestrians and vehicular traffic, between the various Parcels as contemplated by this Agreement; provided, however, reasonable traffic control signs and devices, directional barriers and parking stops, as may be necessary to guide and control the orderly flow of traffic, may be installed so long as access driveways to the Parking Area and the Shopping Center are not closed or blocked and the traffic circulation pattern of the Common Area, as shown on the Site Plan, is not changed or affected in any way. Notwithstanding anything to the contrary in the foregoing, Developer shall at all times have the right (but not the obligation) to (i) close temporarily all or any portion of the Common Areas to the minimum extent as may be reasonably necessary for the purpose of making repairs or alterations; and (ii) upon at least thirty (30) days prior written notice to Mervyn's, close all or any portion of the Shopping Center and in connection therewith, seal off all entrances to the Shopping Center or any portion thereof to such extent as may, in the sole opinion of Developer, be necessary to prevent a dedication thereof or the accrual of any rights to any person or to the public thereon.

3.10. Signs and Shopping Center Name.

(a) Signs. No monument or pylon signs shall be located in the Shopping Center except in the areas designated for the location of such signs on the Site Plan. Excluding all signs in existence on the date of this Agreement (and any replacements or updating of such signs, provided such replacements or updates remain in the areas designated for the locations of such signs on the Site Plan and include only the names of Majors), no such signs shall be erected without the prior written approval of the Owning Majors as to size and appearance, including, without limitation, style, priority and arrangement of names, wording, and height. All signs within the Shopping Center (other than customary signs and/or logos of each Owning Major or other Major) shall conform to the Sign Criteria set forth in Exhibit F hereto. Deviations from the Sign Criteria shall be permitted only with the prior written consent of Developer and each Owning Major. The customary and usual signs and/or logos used from time to time by Mervyn's and, with the consent of Developer, each other Major (including any replacements or changes therein) shall at all times be allowed on its building in the Shopping Center, and a sign of the type, size and design shown on Exhibit G attached hereto identifying Mervyn's and, with the consent of Developer, each other Major (including replacements or changes therein) shall at all times be allowed on the two department store pylon signs in the Shopping Center reserved for department stores as shown on the Site Plan (Mervyn's and each such other Major entitled to have their signs on such pylons to have

the same sign areas), and without any further approval from any Party; provided, however, that all such signs and/or logos shall comply in all respects with the requirements of all applicable governmental authorities, public bodies and other entities having jurisdiction and all applicable laws, ordinances, rules and regulations of such authorities, including, without limitation, zoning laws, building codes and local sign ordinances and Mervyn's and each such other Major shall also secure all licenses, permits and approvals from governmental agencies, public bodies and other entities necessary for the construction, installations or display of any such signs and/or logos.

(b) Shopping Center Name. Unless and until changed with the prior written consent of Mervyn's (which approval may be withheld in Mervyn's sole and absolute discretion), the Shopping Center shall be operated and maintained under the name of SOUTH TOWNE CENTER. Mervyn's right of approval for the Shopping Center name shall apply to each name change proposed for the Shopping Center.

3.11. Lighting. Lighting for the Common Area (other than lighting necessary for Shopping Center security) shall remain on each day commencing at least one-half (1/2) hour before darkness and thereafter until the earlier of (i) at least one (1) hour after all Majors have closed for business, or (ii) 11:00 p.m., unless otherwise restricted by any applicable law, rule, statute or ordinance then in effect, in which event the standard prescribed by such restrictions shall be adhered to while in effect. Lighting representing twenty-five percent (25%) of full intensity of the Common Area lighting system, uniformly distributed throughout the Common Area, shall remain on each day during hours of darkness for security purposes, unless the Owning Majors consent to a lesser amount of lighting in writing, or unless otherwise restricted by any applicable law, rule, statute or ordinance then in effect, in which event the standard prescribed by such restrictions shall be adhered to while in effect. If "special" lighting (other than lighting necessary for Shopping Center security) is required or if regular lighting is required for a time later than the foregoing by any Party or Occupant of the Shopping Center, then the electricity to service such lighting requirements shall be separately metered and all expenses thereof shall be shared and paid by such Party and Occupant(s) who require the special service in proportion to the Gross Floor Areas of such Party or Occupant(s). If such separate metering is not reasonably feasible, then the cost of such special lighting shall be determined on a prorated basis in accordance with the special usage and all such pro-rated expenses shall be shared and paid by such Party and Occupant(s) who require the special service in proportion to the Gross Floor Areas of such Party or Occupant(s).

3.12. Treatment of Improvements for Building Code Purposes. All buildings located on the Building Areas adjacent and contiguous to the Mall (i) shall be constructed so that the exterior walls of such buildings are considered as standard fire walls in the judgment of the fire insurance rating authority having jurisdiction, so as to allow the buildings owned or occupied by the Developer or any other Owning Major to be rated as separate units for fire insurance purposes without deficiency charge because of the existence of adjacent or exposing structures, (ii) shall be fully sprinklered with an automatic fire sprinkler system, constructed and maintained in such manner that the buildings on Building Areas adjacent and contiguous to the Mall qualify for the fully-sprinklered fire insurance rate standards of the Industrial Risk Insurers (I.R.I.) or compatible successor agency, and (iii) in any event, shall comply with all applicable requirements of the Uniform Building Code (the "UBC") of the City (or County) in which the Shopping Center is located in effect as of the effective date of this Agreement. In the event that at any time after initial construction any of the buildings on Building Areas adjacent and contiguous to the Mall are rebuilt, replaced, remodeled or improved, then such rebuilding, replacement, remodeling or improvement shall be undertaken (A) in conformance with the then applicable requirements of the City (or County) in which the Shopping Center is located (including any current version of the UBC) for treatment under the UBC for unlimited area and any construction type and (B) in such a manner as will not adversely affect the fire insurance rating of any building owned by Developer or any Owning Major. In the event of any conflict between the UBC in effect as of the effective date of this Agreement and any future requirement of such City (or County), that conflict shall be resolved and requirements imposed on the Party rebuilding, replacing, remodeling or improving its building in accordance with applicable standards under the UBC then in effect for non-conforming, pre-existing uses in conjunction with new construction.

3.13 [INTENTIONALLY OMITTED]

3.14. Mervyn's Operating Agreements.

(a) Operating Agreement. Subject to the provisions of Article 8 and Sections 10.3 and 10.6, and this Section 3.14, Mervyn's, for the benefit of Developer, shall cause to be opened in the Building Area of the Mervyn's Parcel a retail store containing not less than 83,000 square foot and not more than 60,000 square foot of Gross Floor Area on or before October 15, 1994, and shall cause

such store of the size originally constructed and opened to be operated for a continuous period of ten (10) years thereafter under the trade name 'Mervyn's' or such other trade name as Mervyn's may then be using for a majority of its retail stores in the Western Region of the United States.

(b) Conditions on Commencement of Obligation. Notwithstanding anything to the contrary contained in this Section 3.14, Mervyn's obligation to open its store for business is subject to the following: (i) Developer has completed the Common Area Work in accordance with the Development Schedule, including, without limitation, completion of the Pad Work on or before December 13, 1993 (as well as the other key dates in the Scope of Work), (ii) Developer has completed the Mall expansion Work (as hereinafter defined), (iii) sixty percent (60%) of the Gross Floor Area located in the Mall Building Areas has been leased to Occupants and such Occupants are ready to open for business therein on or before Mervyn's opening date; (iv) ZCMI and Penney shall be open for business in the Shopping Center; and (v) the Shopping Center contains enough parking spaces to meet the parking ratio set forth in Section 7.1, below. In the event that Mervyn's opening date is delayed due to Developer's failure to satisfy the foregoing conditions to Mervyn's opening, Mervyn's Opening Date shall be delayed by the actual delay in satisfying the Conditions set forth in subpart (i), (ii), (iv) and (v), above, or by the number of days by which the completion of the Common Area Work exceeded the key dates set forth in the Scope of Work, provided, however, that Mervyn's shall not be obligated to open its store for business between November 15 and February 15, or April 10 and June 30, or August 15 and September 30 of any year. In the event Mervyn's has not opened its store for business on or before October 15, 1996 solely because Mervyn's Opening Date has been delayed beyond October 15, 1996 as a result of Developer's failure to satisfy the conditions to Mervyn's opening set forth in Subsections 3.14 (b) (i) and (ii), Mervyn's shall have the option (the "Put Option") to require Developer to repurchase the Mervyn's Parcel at an repurchase price equal to \$1.00 plus those hard and soft costs incurred by Mervyn's in preparation for and construction of the Mervyn's Building. The Put Option shall be exercised only by written notice to Developer (the "Exercise Notice"); provided, however, that the Put Option shall expire and be of no further force and effect after (1) the opening by Mervyn's of its store for business, or (2) the satisfaction by Developer of the conditions to Mervyn's opening set forth in Subsections 3.14 (b) (i) and (ii).

In the event the Put Option is properly and timely exercised by Mervyn's, the purchase of Mervyn's fee simple interest in the Mervyn's Parcel, including all buildings and improvements thereon, shall be consummated by Developer and Mervyn's through an escrow established at a mutually acceptable title company within sixty (60) days after the Exercise Notice is received by Developer. The purchase price shall be payable by Developer to Mervyn's in cash. Title to Mervyn's fee simple interest in the Mervyn's Parcel, including all buildings and improvements thereon, shall be conveyed by Mervyn's to Developer by recordable grant deed and subject to all easements, restrictions, covenants, conditions, encumbrances, and liens of record, but free and clear of delinquent installments of taxes or assessments, mechanic or materialmen's liens, or any mortgages, deeds of trust, leases or other liens or encumbrances of any kind, provided Mervyn's may apply all or any part of the purchase price proceeds toward the discharge of such mortgages, deeds of trust, leases or other liens and encumbrances so long as the same are discharged by Mervyn's regardless of the sufficiency of the purchase price proceeds. Non-delinquent taxes and assessments shall be prorated as of the date the grant deed and assignment conveying Mervyn's fee simple interest in the Mervyn's Parcel, including all buildings and improvements thereon, is recorded. Developer and Mervyn's shall each bear fifty percent (50%) of the closing costs of the purchase and sale hereunder, including title insurance premiums, escrow fees and transfer and conveying taxes.

(c) Termination of Retail Operation During Mervyn's Operating Agreements. In the event that (i) ZCMI shall for a period in excess of 18 months cease to operate a retail store in its premises under the name "Z.C.M.I.", or under such other name as ZCMI may then be using for a majority of its retail stores in the State of Utah (subject to replacement as hereinafter provided), or (ii) Penney shall for a period in excess of 18 months cease to operate a retail store in its premises under the name consisting, or in which there appears, the word "Penney" or "JCPenney", or under the name under which the majority of its retail department stores are then being operated (subject to replacement as hereinafter provided), or (iii) less than sixty percent (60%) (sixty-five percent (65%) beginning one year after Mervyn's opening date) of the Gross Floor Area located in the Mall Building Areas shall be open for business and such condition shall have continued for a period of twelve (12) consecutive months, or (iv) the Shopping Center shall cease to contain enough parking spaces to meet the parking ratio set forth in Section 7.1, below, or (v) Developer elects to release Penney or ZCMI from the operating covenant contained in such tenant's lease, then and in any such event, the provisions of subsection (a) and the obligations of Mervyn's thereunder shall terminate and be of no further force and effect. If the failure of condition results from the cessation of business by ZCMI or Penney, Developer shall have eighteen (18) months to remedy such condition by either (i) causing ZCMI or Penney, as the case may be, to reopen in

accordance with its respective operating covenant or (ii) diligently pursuing a "Replacement Department Store" for such location and causing a "Replacement Department Store" to open for business within said eighteen (18) month period. A "Replacement Department Store" is a full-line, non-discount department store then operated under the same trade name in at least five (5) other stores in the Western Region of the United States by one of the following retail companies: May, Federated, Carter Hawley Hale, Mercantile, Dayton Hudson, Dillards, Macys, Nordstrom's, J. J. Jars, Carsons (Bergners), Saks and Neiman-Marcus.

(d) Temporary Cessation. A temporary cessation of business by Mervyn's, ZCMI, Penney or any tenant occupying any of the Gross Floor Area in the Mall Building Areas shall not be deemed a cessation of business for purposes of this Section 3.14 if such cessation:

(i) is occasioned by the making of repairs, alterations, or renovations due to damage or destruction of the premises where such cessation of business occurs; or

(ii) is caused by Excusable Delays as provided in Section 16.6; or

(iii) from any other cause, is not longer than four months in duration.

(e) No Other Covenant of Operation. Except as specifically provided in this Section 3.14 and subject to the provisions of Article 8, nothing contained in this Agreement shall be deemed to impose, either expressly, impliedly or constructively, upon Mervyn's an obligation to remain open and operating for any period or in accordance with any operating schedule. In addition, and notwithstanding anything to the contrary contained in Section 3.14, Mervyn's shall have the right, in its sole and absolute discretion, to control and operate its store in any manner deemed necessary or appropriate by Mervyn's, including, without limitation, with respect to the hours of business, the number and types of departments to be maintained, the particular contents, wares and merchandise offered for sale and services to be rendered, the methods and extent of merchandising, servicing and storage thereof and the space devoted to credit personnel and other functions. So long as Mervyn's covenant to operate contained in subsection (a) above shall continue, Mervyn's may operate its store under this Section 3.14 in whole or in part by licensees, tenants and/or concessionaires, so long as the operations of such licensees, tenants or concessionaires are a part of and will be viewed by the public as a part of Mervyn's retail store.

(f) Covenants Personal To Mervyn's. The covenant to operate contained in subsection (a) above shall constitute, in addition to covenants running with the land, personal covenants which shall be binding upon Mervyn's, notwithstanding any transfer of all or any portion of its Parcel which would otherwise relieve Mervyn's of its obligation as a Party under this Agreement; provided, however, that (i) if any Replacement Retailer succeeds to Mervyn's business in the Western Region of the United States as a result of reorganization, merger, consolidation or sale of stocks, or to a majority of the retail stores then operated by Mervyn's in the Western Region of the United States as a result of the sale of assets, or (ii) in the event any parent of Mervyn's or any other corporation which is a subsidiary of any parent of Mervyn's becomes a Party to this Agreement as a successor in interest to Mervyn's, and such Person, or such successor Party, shall assume the obligations of Mervyn's under subsection (a), then Mervyn's shall be released from its obligations thereunder in accordance with the provisions of Article 13. A "Replacement Retailer" shall mean one of the following retail companies: May, Federated, Carter Hawley Hale, Mercantile, Dayton Hudson (excluding Target), Dillards, Macys, Nordstrom's, Sears, Carsons (Bergners), Saks and Neiman-Marcus.

3.16. Developer's Operating Agreement.

(a) Operation of Mall Building Areas. So long as Mervyn's covenant to operate contained in subsection (a) above shall continue and, thereafter, so long as a retail store containing not less than 83,000 square feet of Gross Floor Area is open and operating in the Mervyn's Building, Developer shall operate the Shopping Center in a first-class manner, using its best efforts to cause tenant shop space in the Mall Building Areas to be leased to Occupants as a quality, balanced, diversified grouping of retail stores, offering merchandise and services appropriate to the geographical trade area within which the Shopping Center is located and Developer shall manage and operate the Shopping Center as a first-class regional shopping center to a standard of quality at least equal to that generally adhered to in other shopping centers with the same geographical area.

(b) Occupant Operating Hours. Developer shall cause the Occupants (excluding Occupants existing on the date of this Agreement) occupying at least eighty percent (80%)

of the Gross Floor Area within the Mall Building Areas demised to such Occupants to be open continuously for business during the same hours and days (on average) as the then open and operating Majors are open for business, including, without limitation, Sundays and holidays, and subject to any adjustments or changes made by the Majors in their respective hours or days of operation. Developer shall implement the foregoing conditions by appropriate provisions in leases to such Occupants in the Mall Building Areas.

(c) No Approval. The provisions of this Section 3.15 prescribe general criteria for the operation and management by Developer of the Mall Building Areas, and nothing herein contained shall be construed to give to any other Party the right to approve specific Occupants of the Mall Building Areas.

4. Shopping Center Development.

4.1. Development. The design, development and construction of the buildings and improvements in the Building Area located on Murvyn's Parcel and the design, development and construction of the Mall Expansion Work (as hereinafter defined) in the portion of the Shopping Center identified on the Site Plan as "Phase II" and the Common Area Work (as hereinafter defined) shall be undertaken pursuant to this Article 4 and the applicable requirements of this Agreement. Each Party shall be responsible for the obligations assigned to it under this Article 4 for such design, development and construction, as the case may be, of Shopping Center Improvements as set forth in this Article 4.

4.2. Certain Transfer Restrictions. During design, development and construction of the Shopping Center pursuant to this Article 4, the transfer restrictions with respect to the interest of each Party in its Parcel set forth in Article 12 shall apply.

4.3. Definitions.

(a) Defined Terms. Each reference in this Article 4 to any of the following terms shall have the meaning set forth below for each such term:

(b) Common Area Plans. The final plans and specifications for the Common Area Work, prepared or reviewed by the Project Architect described on Exhibit H attached hereto and made a part hereof, as the same may be amended from time to time in accordance with Section 4.5 below.

(c) Common Area Work. The work of overall development and construction of the Common Areas of the Shopping Center (excluding any expansion of the Mall), the Pad Work, and the Utility Work, and all necessary off-site improvements pursuant to the Common Area Plans.

(d) Completion Dates. Subject to the provisions of Section 4.9(e), the following Completion Dates shall apply to work performed under the various components of the Development Plan:

(i)	Pad Work Completion Date:	December 13, 1993
(ii)	Utility Work Completion Date:	May 23, 1994
(iii)	Common Area Completion Date:	July 18, 1994
(iv)	Mall Expansion Completion Date:	August 29, 1994
(v)	Murvyn's Opening Date:	October 15, 1994 (subject to delays as provided in Section 3.14(b))

For purposes of the foregoing Completion Dates, all work of construction to be performed by Developer shall be deemed fully and finally completed: (A) with respect to the Mall Expansion Work, the completion of the Mall Expansion Work on the portion of the Developer Parcel identified on the Site Plan as "Phase II" so that the new retail shop space created thereby and the Mall is ready for leasing and use and occupancy by Occupants and Users as herein provided; and (B) with respect to the Common Area, the full and final completion of the Common Area Work by Developer so that the Common Area and all related on- and off-site improvements are ready for use.

(e) Development Plan: The plans and specifications for the Mall Expansion Work and the Common Area Work.

(f) Mall Expansion: The expansion to the existing Mall and additional

building and improvements containing approximately 40,000 square feet of new shop area in the Mall Building Areas located on that portion of the Shopping Center identified on the Site Plan as "Phase II".

(g) Mall Expansion Work: The design and construction by Developer of the Mall Expansion pursuant to Section 4.4, below, and the coordination thereof with the design and construction of the Mervyn's Work by Mervyn's undertaken pursuant to Section 4.4, below.

(h) Mall Expansion Work Plans: The final plans and specifications for the Mall Expansion Work, prepared or reviewed by the Project Architect described on Exhibit I attached hereto and made a part hereof, as the same may be amended from time to time in accordance with Section 4.4, below.

(i) Mervyn's Architect: The Person designated by Mervyn's to prepare the Mervyn's Work Plans, observe construction thereof, and perform the other services required of Mervyn's Architect and provide the certifications referred to in this Article 4.

(j) Mervyn's Building: The new retail store building to be constructed on the Mervyn's Parcel containing not less than 83,000 square feet and not more than 88,000 square feet of Gross Floor Area, perimeter sidewalks (excluding curbs), truck facilities and any generator, transformer or other appurtenant facilities necessary to the operation of such store building.

(k) Mervyn's Work: The design and construction by Mervyn's of the Mervyn's Building pursuant to Section 4.7, below, and the coordination thereof with the design and construction of the Mall Expansion Work and Common Area Work by Developer undertaken pursuant to Sections 4.4 and 4.5, below.

(l) Mervyn's Work Plans: The final plans and specifications for Mervyn's Work to be prepared by Mervyn's Architect.

(m) Pad Work: Rough grading, necessary excavation and fill, compaction and general preparation of the building pad for the Building Area on the Mervyn's Parcel, pad excavation to the rough grade elevation provided by the Mervyn's Architect, and provision of temporary utilities, all in accordance with the provisions of the Scope of Work.

(n) Project Architect: Steven Warr Assoc., or its successor designated from time to time pursuant to Section 4.4 below, to prepare the Mall Expansion Work Plans and the Common Area Plans, observe construction, perform the other services required of the Project Architect and provide the certifications referred to in this Article 4.

(o) Scaled Elevations: Those certain scaled elevations prepared by the Project Architect consisting of Sheet AB entitled South Towne Center Phase Two Mall Expansion, last revised June 1, 1993, which elevations contain the exterior design concepts for the Mall Expansion to be constructed by Developer pursuant to this Agreement, including, without limitation, building entrances and exits, building heights, material selection, colors and signing, and a scaled foot print of each such building and improvement and perimeter sidewalks, loading facilities and other improvements.

(p) Utility Work: Provision of all necessary permanent utilities to the Building Areas located in that portion of the Shopping Center identified in the Site Plan as "Phase II", the Common Area and the Mervyn's Parcel in accordance with the provisions of the Scope of Work.

(r) Other Terms: Certain other terms shall have the meaning set forth for each such term in this Article 4.

4.4. Development of Building Area.

(a) Uniform and Harmonious Development.

(i) Architectural Style: The Site Plan designates Building Areas on each Parcel upon which each Party shall construct and develop buildings and related improvements as provided by this Agreement. All Building Area buildings and improvements (excluding Outparcels) shall conform to the original design concepts of the Shopping Center and the dimensions and requirements of the Scaled Elevations so that the exterior of all such buildings and improvements will be architecturally and aesthetically compatible and harmonious with the existing buildings and improvements in the Shopping Center and shall conform to the requirements of the Site Plan and this Agreement, pursuant

to the uniform general plan for the development and construction of buildings and improvements on the Parcels as set forth in this Agreement.

(ii) Certain Sidewalks, Landscaping and Loading Facilities. In addition to the construction of buildings and improvements within each Building Area, each Party shall, without cost or expense to the other Parties, develop and construct the perimeter sidewalks from the back of the curb to the exterior building face, and landscaping, if any, to be located directly adjacent to and contiguous with the exterior of each of the buildings to be located on the Building Areas of the Parcel of each Party (which sidewalks and landscaping are part of the Common Area) and the truck pit and loading docks for each of such buildings (other than excavation and pad preparation included in Pad Work). Developer shall develop and construct the curbs adjacent to sidewalks constructed by the Parties hereunder, pursuant to the provisions of Section 4.5 below.

(iii) Designation of Architects. Mervyn's shall, within ten (10) days after the date of this Agreement, retain at its sole cost and expense, Mervyn's Architect, who shall prepare Mervyn's Work Plans. Upon selection, Mervyn's shall promptly notify Developer in writing of its choice of architect. Developer and Mervyn's shall each have the right to terminate its architect at any time and replace such architect with another at its sole cost and expense, but each Party so doing shall promptly notify the other Party in writing of such replacement and its choice of new architect.

(b) Store Types and Gross Floor Areas.

(i) Mervyn's Building. At Mervyn's sole cost and expense, Mervyn's shall construct or cause to be constructed in the Building Area located on the Mervyn's Parcel the Mervyn's Building.

(ii) Developer Expansion. At Developer's sole cost and expense, Developer shall construct or cause to be constructed on Building Areas located on that portion of the Shopping Center identified on the Site Plan as "Phase II" of the Mall Expansion.

(c) Plans and Specifications.

(i) Mervyn's Scaled Elevations. Immediately after execution of this Agreement, Mervyn's shall, at its own expense, cause Mervyn's Architect to commence preparation of scaled elevations of sufficient detail to show the final Development Plan for the Building Area located on Mervyn's Parcel. Mervyn's shall cause such scaled elevations to be completed as soon as possible after the date of this Agreement, but in no event more than thirty (30) days after the date thereof, and shall submit such scaled elevations to Developer and the Project Architect at or before the expiration of such thirty (30) day time period for the purpose of acquainting Developer and the Project Architect with the contemplated design for the building or buildings which Mervyn's is required to construct hereunder. Such scaled elevations shall consist of (A) elevations which contain the exterior design concepts for the building or buildings which Mervyn's is required to construct hereunder, including, without limitation, building entrances and exits, building heights, material selection, colors, and signing, and (B) a scaled foot print of the building or buildings which such Party is required to construct hereunder and perimeter sidewalks, loading facilities and other improvements.

(ii) Mervyn's Final Plans and Specifications. After preparation of the scaled elevations under subsection (a) above, Mervyn's, at its own expense, shall cause final plans and specifications for the building or buildings which Mervyn's is required to construct hereunder to be prepared in conformance with Mervyn's scaled elevations and the requirements of the Site Plan and this Agreement. Mervyn's Work Plans shall be completed as soon as possible after the date of this Agreement, but in no event later than one hundred twenty (120) days after the date thereof. Mervyn's shall from time to time as necessary consult with Developer and the Project Architect in order to achieve final plans and specifications for the building or buildings which are to be constructed by Mervyn's pursuant to this Article 4 conforming with the requirements hereof.

(iii) Review by Project Architect of Scaled Elevations and Plans and Specifications. Upon completion by Mervyn's of its scaled elevations under Section 4.4(c)(i) above, and not later than fifteen (15) days following completion by Mervyn's of Mervyn's Work Plans for the Mervyn's Building, Mervyn's shall submit its scaled elevations and Mervyn's Work Plans to the Project Architect to enable the Project Architect to determine that the final exterior design (including, without limitation, building entrances and exits, building heights, materials and colors) and the location of Mervyn's Building conforms with the requirements of this Article 4. Within twenty (20) days after receipt of such scaled elevations or plans and specifications from Mervyn's, the Project Architect shall advise Mervyn's in writing

whether or not such scaled elevations or plans and specifications conform with the requirements of this Article 4. In the event the Project Architect determines that such scaled elevations or plans and specifications do not conform with the requirements of this Article 4, the Project Architect shall set forth in its notice in reasonable detail the basis and reasons for its determination (together with any recommendations for changes in Mervyn's scaled elevations or plans and specifications). In the event of any such determination of non-conformity by the Project Architect, Mervyn's shall promptly meet and confer with the Developer and the Project Architect in good faith with a view towards reaching agreement on scaled elevations or plans and specifications for Mervyn's Building which conform with the requirements of this Article 4; provided, however, that in the event of any failure to reach agreement with respect to such scaled elevations or plans and specifications, Mervyn's decision shall be final and conclusive and the Developer shall have no right of approval or disapproval regarding Mervyn's scaled elevations or plans and specifications.

(iv) Changes to Mervyn's Plans and Specifications. No material change shall be made in the final exterior design (including, without limitation, building entrances and exits, building heights, materials and colors) and the location of the Mervyn's Building once the Mervyn's Work Plans have been prepared hereunder, unless the plans and specifications for the work as so changed are first reviewed pursuant to the procedures set forth in Section 4.4(c).

(v) No Liability. No approval by Mervyn's of the Scaled Elevations or Mall Expansion Work Plans or review by the Developer or the Project Architect of Mervyn's scaled elevations and Mervyn's Work Plans shall constitute assumption of any responsibility by Mervyn's, the Developer or the Project Architect for the accuracy, sufficiency or propriety thereof or a representation or warranty that they call for the construction of economic improvements or improvements which comply with applicable laws, and the Developer as to the Scaled Elevations and Mall Expansion Work Plans, and Mervyn's as to Mervyn's scaled elevations or Mervyn's Work Plans shall be solely responsible therefor.

(d) Developer's Mall Expansion Work. In addition to the requirements set forth in Section 4.4(c), the Mall Expansion Work shall be undertaken by Developer in accordance with the provisions and within the time limits contained in this Section 4.4(d).

(i) Construction of Mall Expansion Work. Within forty-five (45) days after the execution of this Agreement, Developer shall commence and diligently pursue the Mall Expansion Work to completion by the Mall Expansion Completion Date in accordance with the provisions of Section 4.4(e). Developer shall provide coordination of such construction with Mervyn's and its contractors constructing the Mervyn's Building to ensure integration of the Mall Expansion and the Mervyn's Building as a functional part of the Shopping Center and so that the Mall store entrance of the Mervyn's Building shall be completed in a timely fashion to enable Mervyn's to open for business by the Mervyn's Opening Date.

(ii) Changes to Approved Plans and Specifications. No change shall be made in the Mall Expansion Work Plans without the prior written consent of Mervyn's. Any changes made by Developer to the Mall Expansion Work Plan shall be submitted to Mervyn's for review and approval, which approval shall be in Mervyn's sole and absolute discretion with respect to the Mervyn's Court and as to the balance of the Mall Expansion Work Plans shall be approved by Mervyn's if such plans and specifications are consistent with the design and materials of the existing Mall as remodeled and the Mall Expansion is located within the Building Area located on the portion of the Shopping Center identified on the Site Plan as "Phase II". In the event Mervyn's fails either to approve or disapprove any changes to the Mall Expansion Work Plans within thirty (30) days after submission to it of such changes, Mervyn's approval shall be deemed given as to such changes. In the event Mervyn's expressly disapproves any changes in the Mall Expansion Work Plans submitted to Developer, Mervyn's written notice of disapproval shall set forth Mervyn's reasons for disapproval with specificity, and Developer shall, if Developer still desires to make such changes to the Mall Expansion Work Plans, after receipt of such notice of disapproval, appropriately amend and modify such changes to the plans and specifications to reflect all modifications and corrections required by Mervyn's and shall resubmit such revised changes to Mervyn's, and the review and approval procedures set forth herein shall apply to all such resubmittals. If Mervyn's disapproves a change in the Mall Expansion Work Plans prepared by Developer and if there is disagreement with such conclusion, then within ten (10) days after a notice of disapproval has been given by Mervyn's, the Developer and Mervyn's shall promptly meet and confer with each other and the Architects in good faith, with a view toward reaching resolution of the objectionable feature or features of such changes.

(e) Construction of Improvements.

(i) Construction Standards. Upon preparation of the Mervyn's Work Plans, Mervyn's shall construct or cause to be constructed Mervyn's Building as set forth in the Mervyn's Plans. Developer shall undertake construction of the Mall Expansion Work and Mervyn's shall undertake construction of the Mervyn's Building without cost or expense to any other Party. Such construction shall be performed in a first-class workmanlike manner using first quality materials. Development and construction of the buildings and improvements shall be promptly and diligently undertaken and prosecuted to completion. Each Party shall secure all licenses and permits necessary for construction of its buildings and improvements, and shall comply with the requirements of all applicable authorities having jurisdiction, and all applicable laws, regulations, ordinances and rules, including without limitation, zoning laws and building codes, in the construction of its building and improvements.

(ii) Completion. The Parties shall cause all the buildings and improvements in each Building Area developed and constructed by the Parties under this Section 4.4 to be fully and finally completed and, in the case of Mervyn's, open for business no later than the Mervyn's Opening Date (as such date may be delayed pursuant to the provisions of Section 3.14(b), above) and, in the case of Developer, no later than the Mall Expansion Completion Date.

(f) Certain Building Encroachments. If by reason of construction errors, the building of any Party constructed under this Section 4.4 is not constructed precisely within such Party's Parcel as evidenced by a certified "as built" survey, then upon request of any affected Party, (A) the Party upon whose Parcel such building encroaches shall, if applicable, acknowledge in recordable form that, pursuant to this Agreement, an easement for such encroachment exists over that part of its Parcel encroached upon, which easement shall exist only so long as such building encroaches upon such Parcel, or (B) the Party whose building encroaches and the Party upon whose Parcel such building encroaches may, if they so agree, realign their respective Parcel boundaries to reflect the encroachment and correct such Parcel descriptions by an appropriate exchange of land, and this Agreement shall be deemed amended to reflect the new descriptions of such Parties' Parcels. Nothing herein contained shall diminish or waive any rights of a Party resulting from another Party's failure to construct its building within its Parcel or the Building Area limit lines on its Parcel, nor shall this Section 4.4(g) relieve or excuse a Party from exercising all due diligence properly to construct its building within its Parcel and the Building Area located on its Parcel.

4.5. Development and Construction of Common Area.

(a) Developer's Obligations.

(i) Common Area Development. Developer shall undertake development and construction of the Common Area Work in accordance with the provisions contained in this Section 4.5. Developer's obligations hereunder shall not include the development and construction of the perimeter sidewalks (except for perimeter sidewalk curbs which are Developer's obligation in accordance with the Scope of Work), landscaping, loading docks and ramps for which Mervyn's is responsible pursuant to Section 4.4(a)(ii). The Mall Expansion shall be constructed by Developer pursuant to the provisions for the Mall Expansion Work contained in Section 4.4 and not as part of the Common Area Work.

(ii) Review and Consultation By Project Architect. The Project Architect shall attend meetings of, advise and consult with the Parties in connection with the Common Area Plans and construction of the Common Area Work. Without limiting the generality of the foregoing, the Project Architect shall attend all meetings between the Parties called under this Section 4.5 for the purpose of commenting upon or resolving any dispute with respect to the Common Area Plans. Notwithstanding the foregoing, no act or advice of the Project Architect shall relieve Developer of any of its obligations for design and construction of the Common Area Work under this Section 4.5. If any Common Area Plans for any on or off-site improvements required by any governmental agency, service or assessment district or utility as part of the Common Area Work are to be designed or prepared by employees or agents of such governmental agency, district or utility, then the Project Architect shall review such portion of the Common Area Plans as part of its duties as the Project Architect.

(iii) Governmental Requirements. Developer shall comply with the requirements of all governmental agencies, public bodies and other entities (such as public utilities) having jurisdiction over or servicing the Shopping Center and with all applicable governmental laws, ordinances, rules, orders and regulations in the design and construction of the Common Area Work under this Section 4.5. If there are alternative means of complying with any such governmental or other requirements, Developer shall not pursue or commit to any particular alternative unless the same shall have been first approved in writing by Mervyn's, which approval shall not be unreasonably withheld. In particular, but without limiting the generality of the foregoing, Developer shall timely apply for and procure all necessary permits,

variances, easements and approvals, post bonds and construct improvements pursuant to subdivision agreements and related undertakings, obligations, conditions and other covenants imposed by governmental agencies, public bodies or utilities and other entities having jurisdiction over or servicing the Shopping Center pursuant to applicable laws, statutes and ordinances, in order that Developer may timely commence and complete construction of the Common Area Work under this Section 4.5.

(c) Approval of Changes to Common Area Plan.

(i) Approval. No change shall be made in the Common Area Plans, unless the Common Area Plans for the work as so changed are first approved in writing by Mervyn's. Any changes made by Developer to the Common Area Plans shall be submitted to Mervyn's for review and approval, which approval shall be in Mervyn's sole and absolute discretion with respect to the changes to parking layout, landscaping and improvements in Mervyn's Primary Parking Area and as to the balance of the Common Area Plans Mervyn's approval shall not be unreasonably withheld. Mervyn's shall either approve or disapprove the proposed changes to the Common Area Plans as soon as possible and in any event within thirty (30) days after the receipt thereof from Developer. In the event Mervyn's fails either to approve or disapprove any changes to the Common Area Plans within thirty (30) days after submission to it of such changes, Mervyn's approval shall be deemed given as to such changes. In the event Mervyn's expressly disapproves any changes to the Common Area Plans, Mervyn's written notice of disapproval shall set forth Mervyn's reasons for disapproval with specificity, and Developer shall, if Developer still desires to make such changes to the Common Area Plans, after receipt of such notice of disapproval, appropriately amend and modify such plans and specifications to reflect all changes, modifications and corrections required by Mervyn's and shall resubmit such revised changes to the Common Area Plans to Mervyn's, and the review and approval procedures set forth herein shall apply to all such resubmittals. Mervyn's shall not arbitrarily or unreasonably withhold approval of Common Area Plans or changes therein which otherwise conform to the requirements of this Section 4.5. If Mervyn's disapproves a change in the Common Area Plans prepared by Developer and if there is disagreement with such conclusion, then within ten (10) days after a notice of disapproval has been given by Mervyn's, the Developer and Mervyn's shall promptly meet and confer with each other and the Architects in good faith, with a view toward reaching resolution of the objectionable feature or features of such changes.

(ii) No Liability. No approval of the Common Area Plans by Mervyn's shall constitute the assumption of any responsibility by that Mervyn's for their accuracy, sufficiency or propriety, or a representation or warranty that the Common Area Plans call for the construction of economic improvements or improvements which comply with applicable laws, and Developer shall be solely responsible therefor.

(d) Construction of Common Area.

(i) General Contractor. Developer shall contract for and supervise the lien-free completion of the Common Area Work in accordance with the Common Area Plans as provided by this Section 4.5(d).

(ii) Contract for Work. The contract (the "Common Area Contract") entered into by Developer with the general contractor pursuant to subsection (i) shall generally, among other things, contain appropriate provisions:

(A) Liens. Protecting the Parties against liens and encumbrances upon their respective Parcels;

(B) Laws, Etc. For compliance with all applicable laws and regulations, indemnification and appropriate public liability, Worker's Compensation and property damage insurance;

(C) Completion. For completion

(aa) of the Pad Work by the Pad Work Completion Date;

(bb) of the Utility Work by the Utility Work Completion Date; and

(cc) of the remainder of the Common Area Work by the Common Area Completion Date; and

(D) Change Order. Appropriate provisions for change orders so that no change orders shall be made or authorized in the construction of any Common Area Work without the prior written consent of Mervyn's as specified in Section 4.5(c)(i).

Developer shall timely secure, or cause the general contractor timely to secure, all licenses, permits, bonds, easements and agreements necessary for the development and construction of the Common Area Work and shall timely comply, or cause the general contractor timely to comply, with the requirements of all applicable authorities or entities having jurisdiction over or servicing the Shopping Center and with all applicable laws, regulations, ordinances and rules, including, without limitation, environmental and zoning laws, subdivision laws, and building codes in the construction of the Common Area Work under the Common Area Plans. Mervyn's shall be a third party beneficiary to the Common Area Contract which shall so provide, and Mervyn's shall be entitled to performance of all the provisions thereof inuring to its benefit. Notwithstanding the foregoing, Developer shall be solely responsible for the construction of the Common Area Work as herein provided and shall not be relieved or released for any reason, including default of any general contractor under a Common Area Contract, from the obligation to use due diligence, to take all necessary measures in good faith to perform its obligations with respect to construction of the Common Area Work as contemplated by this Section 4.5.

(ii) Completion. Developer shall cause the Common Area Work to be fully and finally completed and ready for use by the Pad Work Completion Date with respect to the Pad Work, the Utility Work Completion Date with respect to the Utility Work and the Common Area Completion Date with respect to the remainder of Common Area Work.

(e) Payment of Costs and Expenses of Common Area Plans and Common Area Work.

(i) Payment of Common Area Work Costs. The entire cost (including costs incurred prior to the date hereof) of the design and preparation of the Site Plan, Scaled Elevations and the Common Area Plans and the development and execution of the Common Area Work (including, without limitation, architectural and engineering fees thereby incurred, governmental and utility district fees or other charges, bond premiums and the cost of any off-site improvements required by any local governmental agency, service or assessment district or utility which are designed and/or constructed by employees or agents of such local governmental agencies, district or utility and which is required to be reimbursed by Developer to the agency or district) shall be timely paid by Developer.

(ii) Reimbursement by Mervyn's of Common Area Work Costs. Mervyn's shall reimburse Developer for the costs and expenses incurred by Developer pursuant to this Paragraph 4.4 in the amount and in the manner specified Mervyn's Allocable Share Agreement.

4.6. General Construction Requirements.

(a) Coordination of Efforts.

(i) Party Cooperation. In the event that Mervyn's selects a different general contractor for the execution of the construction of the Mervyn's Building than the general contractor selected to execute the Common Area Work, Mervyn's shall permit the contractor performing the Common Area Work access to its Parcel to perform the Common Area Work. Each Party shall permit the contractor of each other Party access to its Parcel if reasonably necessary for such other Party's contractor to perform the construction of improvements by such other Party on its Parcel. The Parties shall generally cooperate in all work performed under this Article 4 to the end that each Completion Date shall be achieved by the Party responsible therefor under this Article 4, and to the end that the Shopping Center shall be harmoniously developed as a unified, integrated shopping center pursuant to the Development Plans. Each Party shall perform its construction so as not to cause any unreasonable increase in the cost of construction incurred by any other Party or unreasonably interfere with any construction performed by any other Party.

(ii) Developer Coordination. Developer shall be responsible for coordination of the services of the Project Architect and the work of any general contractor or contractors constructing the Common Area Work and Mall Expansion Work and the contractor employed by Mervyn's for construction of the Mervyn's Building under Section 4.4. In the event of any dispute between such contractors, or any of them, Developer shall immediately notify Mervyn's in order timely to resolve any such dispute and avoid any delay in progress of the work under Sections 4.4 and 4.5. Developer specifically acknowledges the right of Mervyn's in common with Developer pursuant to the non-exclusive

right to use the portion of the Shopping Center lying within the "C-Line" shown on the Site Plan for performance of the Mervyn's Work under this Article 4 and shall specifically make necessary plans, arrangements and scheduling in order to protect the right of Developer and Mervyn's to use such portion of the Shopping Center for performance of their work under Section 4.4 and 4.5.

(b) Progress, Progress Reports and Schedule.

(i) Progress Schedule. Developer has completed a schedule for performance of the Common Area Work and the Mall Expansion Work (the "Progress Schedule"), showing performance and completion of the Common Area Work and Mall Expansion Work as provided by this Article 4, without payment of premiums for labor or materials, including without limitation, when each phase of the Common Area Work and Mall Expansion Work shall be commenced and completed in accordance with the Completion Dates specified in this Article 4. Mervyn's shall cause its contractor to complete a schedule for preparation of Mervyn's Work and performance of Mervyn's Work (the "Mervyn's Progress Schedule"), showing preparation of Mervyn's Work Plans and performance and completion of Mervyn's Work as provided by this Article 4, without payment of premiums for labor or materials, including without limitation, the dates when the Mervyn's Work Plans and Mervyn's Work shall be completed hereunder. Each Progress Schedule shall also show the dates upon which various public approvals and necessary utility arrangements, including easements and rights of ways necessary in connection with development of such Work shall be obtained by the responsible Party. Each Party shall deliver to the other Party its Progress Schedule promptly after it has been prepared hereunder. The Parties shall thereupon consult and advise in order to coordinate each Progress Schedule so that preparation of the Mervyn's Plans and construction of the Work pursuant thereto under this Article 4 shall be coordinated and timely performed in order that the scheduled Completion Dates will be achieved by the Parties.

(ii) Changes in Progress Schedule. If any change occurs in the Progress Schedule by reason of delay or otherwise, Developer shall prepare a revised Progress Schedule and submit it to Mervyn's within ten (10) days after the Developer first has knowledge of the delay. In the event Developer falls behind the Progress Schedule or fails to progress timely towards completion of the Common Area Work or the Mall Expansion Work, or either of them, for any reason other than a delay permitted under this Article 4, Mervyn's, without prejudice to any other right or remedy it may have under this Agreement shall have the right to require Developer, without cost or expense to Mervyn's, to take such steps as may be necessary to improve progress to come into compliance with the Progress Schedule, including, without limitation, overtime work and additional days of work. Each Party shall keep the Progress Schedule current with respect to changes caused by delays permitted hereunder.

(iii) Weekly Progress Reports. Commencing on the first day of the week after the commencement of construction of the Common Area Work or the Mall Expansion Work, and weekly thereafter until completion thereof, Developer shall prepare and submit to Mervyn's a report summarizing in detail the activities of Developer, the Project Architect and the general contractor or contractors performing the Common Area Work and the Mall Expansion Work, during the preceding week in connection with the prosecution of the Common Area Work and Mall Expansion Work, including, without limitation, the progress thereon, the status of all necessary governmental approvals and public utility easements and approvals required in connection therewith the status and degree of completion of the Common Area Work, and/or the Mall Expansion Work, and any anticipated delays under the Progress Schedule foreseeable or known to Developer.

(c) Liens. Developer shall keep each Parcel free from any and all liens arising out of any work performed, materials furnished to or obligations incurred by Developer in connection with preparation of the Common Area Plans or Mall Expansion Work Plans or performance of the Common Area Work or Mall Expansion Work. If Developer desires to contest any claim of lien, Developer shall not be required to pay such claim or record a bond of a responsible corporate surety in such amount as may be required to release the lien from such Parcel unless such Parcel shall be in imminent danger of loss as a result of foreclosure of such lien. Developer shall indemnify, defend and hold Mervyn's harmless from and against all liability, loss, damage, costs and all other expenses (including, without limitation, reasonable attorneys' fees) arising out of claims of lien for work performed or materials or supplies furnished in connection with the design, development or construction of the Common Area Work, the Mall Expansion Work or any other aspect of development of the Shopping Center by Developer hereunder. Mervyn's shall keep each Parcel free from any and all liens arising out of any work performed, materials furnished to or obligations incurred by Mervyn's in connection with preparation of the Mervyn's Work Plans or performance of the Mervyn's Work. If Mervyn's desires to contest any claim of lien, Mervyn's shall not be required to pay such claim or record a bond of a responsible corporate surety in such amount as may be required to release the lien from such Parcel unless such Parcel shall be in imminent danger of loss as a result of foreclosure of such lien. Mervyn's shall indemnify, defend

and hold Developer harmless from and against all liability, loss, damage, costs and all other expenses (including, without limitation, reasonable attorneys' fees) arising out of claims of lien for work performed or materials or supplies furnished in connection with the design, development or construction of the Mervyn's Work Plans, the Mervyn's Work or any other aspect of development of the Mervyn's Parcel by Mervyn's hereunder. In the event either Developer or Mervyn's desires or is required to obtain current title insurance covering its Parcel or any part thereof, whether such title insurance insures the interest of Developer or Mervyn's, a purchaser or prospective purchaser of such Party's Parcel or any part thereof or any present or future mortgagee of such Party's Parcel or any part thereof, the other Party shall, at such Party's sole cost and expense, take all action as may be required to induce the title insurance company issuing such title insurance to insure over any title exception relating to or arising out of work performed or materials or supplies furnished to or obligations incurred by such other Party.

4.7. Rights Upon Default.

(a) Excusable Delay. If a Party fails to Complete any element of its Work on or before a Completion Date required to be met hereunder and the failure to Complete is due to a delay permitted under Section 16.6, then there shall be no liability for such delay and the time for Completion shall be extended for the period of any such delay.

(b) Party's Fault. If either Party fails to Complete any element of its Work on or before a Completion Date to be met hereunder and the failure to Complete is not due to a delay permitted under Section 16.6, then the other Party shall have the rights and remedies specified in Article 11 of this Agreement.

(c) Other Party's Fault. If a Party fails to Complete any element of this Work on or before a Completion Date required to be met hereunder and the failure to Complete is due to failure on the part of the other Party to perform any obligation required of it hereunder, then that Party shall be liable to such other Party for the damages caused by that Party's breach, in addition to any other rights and remedies specified in Article 11 of this Agreement.

(d) Cessation of Work. No claim of default on the part of a Party made by any other Party shall give any Party the right to order a halt in or cessation of any work of construction to be performed by such Party pursuant to this Article 4, nor shall any Party be thereby relieved of its obligation of diligence or cooperation with respect to completion of such construction, unless cessation of such construction is absolutely necessary in order to resolve a dispute concerning a proposed change or an allegation that the work of construction is not proceeding in accordance with an approved Development Plan. Each Party acknowledges that the paramount concern in connection with the development and construction required pursuant to this Article 4 is the obligation of each Party to proceed with all due diligence to bring about completion of its buildings and improvements and the Common Area Work and Mall Expansion Work by the applicable Completion Dates, so that each Party can open for business with all work completed in the most efficient manner. No Party shall threaten to stop construction or threaten to withhold any approval required in connection with the diligent prosecution of any work of construction under this Agreement as a condition to obtaining any concession from any other Party.

(e) Additional Remedy of Mervyn's. If, pursuant to Section 4.7(b)(ii), above, Mervyn's is entitled to and requires Developer to take such steps as may be necessary to improve progress to come into compliance with the Progress Schedule and Developer fails to take such necessary steps, and if, following a further notice from Mervyn's of such failure, Developer shall not within fifteen (15) days following such further notice use all due diligence to correct such failure, then Mervyn's shall have the right, but not the obligation, to complete for the account of and at the expense of Developer such portion of the Common Area Work within Mervyn's Primary Parking Area.

4.8. Miscellaneous.

(a) Warranties and Representations of Developer. Developer warrants and represents to Mervyn's that (i) Developer has obtained all necessary public and private approvals (including, without limitation, subdivision, zoning and other land use approvals; and third party consents required by covenants and restrictions affecting the Shopping Center) to permit the development, use and operation of a Shopping Center and the Mervyn's Parcel in the manner contemplated by this Agreement (other than any building permits or other governmental approval required in connection with the construction of the Mervyn's Building and excluding Mervyn's operation of the Mervyn's Building), (ii) Developer or its principals have the financial capacity to complete and/or the ability to make capital calls to fully fund the design, construction and development of the Common Area Work and the Mall

Expansion Work as contemplated by this Article 4, (iii) Developer has not received notice of any violation of any applicable laws, ordinances, rules and regulations of any governmental authority having jurisdiction in connection with the development, use and operation of the Shopping Center as contemplated by this Agreement and (iv) Developer has not received notice of any governmental inquiry with respect to hazardous materials on the Developer's Parcel or the Mervyn's Parcel and that Developer does not have actual knowledge of any environmental conditions except as set forth in the Phase I and II reports already provided to Mervyn's and supplemental reports previously completed by Developer's consultant at the request of Mervyn's, if any. Developer agrees to indemnify and hold Mervyn's harmless from all loss, damage, costs or expenses, including but not limited to reasonable attorneys' fees in the event that any warranty or representation set forth in this Section 4.8(a) proves incorrect or inaccurate in any material respect.

(b) Construction is Separate "Works of Improvement". For all purposes under the provisions of the mechanic's lien laws of the State in which the Shopping Center is located, construction undertaken by Mervyn's with respect to Mervyn's Work and by Developer with respect to the Mall Expansion Work and the Common Area Work, shall be deemed to be separate, distinct works of improvement.

(c) Communication. Immediately upon execution of this Agreement, each Party shall appoint a Person or Persons who shall coordinate on each Party's behalf all communications between each Party under this Article 4. Each such Person shall be specifically designated in writing to each other Party. No such Person designated hereunder shall be replaced or changed except upon prior written notice to the other Party in accordance with this Section 4.8(d). Each Party shall insure, through each Person appointed hereunder, that all communications required or necessary in connection with the performance of the obligations of each Party under this Article 4 is given or made in a timely fashion in order to expedite timely performance of the obligations of each Party hereunder in accordance with all the terms and conditions of this Article 4.

(d) Excusable Delays. Whenever performance is required of any Party hereunder, that 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, or damage to work in progress by reason of fire or other casualty or cause beyond the reasonable control of a Party (financial inability, imprudent management or negligence excepted) then the time for performance as herein specified shall be appropriately extended by the amount of delay actually so caused.

(e) Indemnity and Insurance.

(i) Indemnity. Each Party, with respect to its work to be performed hereunder, shall indemnify, defend and hold each other Party, and its agents, employees, officers and directors, harmless from any and all loss, damages, liability, costs or expenses, including but not limited to reasonable attorneys' fees, reasonable investigative and discovery costs, court costs and all other sums which each other Party, its agents, employees, officers and directors may pay or become obligated to pay on account of any demand or claim, or assertion of liability, or any claim or action founded thereon arising or alleged to have arisen out of any act or omission of the Indemnifying Party, its agents, employees, licensees, invitees or contractors, whether such claim or action is for damages, injury to Person or property (including the property of the Indemnified Party), or death of any Person, except claims resulting from the negligence or willful act or omission of an Indemnified Party, or any Occupant of such Party's Parcel, or the agents, employees, officers or directors of such Indemnified Party, wherever the same may occur.

(ii) Insurance. With respect to the work to be performed by each Party hereunder, and at all times until such work is complete, each of the Parties shall, at its own expense, maintain or cause to be maintained in full force and effect, a policy or policies of public liability and fire and extended coverage insurance (including Builder's Risk) as provided in and in accordance with the terms and conditions specified in Article B of this Agreement, and shall also maintain or cause to be maintained Worker's Compensation insurance with respect to its employees, with coverage in at least the minimum amounts specified by law.

(f) Time. Time is of the essence of this Article 4 and each and every provision hereof.

5. Common Area Maintenance and Operation.

5.1. Operation and Maintenance By Developer. Subject to and in accordance with this Article 5, Developer shall operate and maintain the Common Area, including but not limited to the Mall, Parking Area, roads, sidewalks, landscaping, drainage, public utilities and lighting facilities. Developer shall ensure that the Common Area is maintained and operated in a first-class condition. Except to the extent prohibited or otherwise required by law, all Common Area Improvements repaired or replaced by Developer under this Article 5 shall be repaired or replaced with materials, apparatus and facilities of quality at least equal to the quality of the materials, apparatus and facilities repaired or replaced and so as to maintain the architectural and aesthetic harmony and integration of the Shopping Center as a whole. Developer's obligation to maintain and operate the Common Area shall include but not be limited to the following:

(a) Paved Areas: Surfaces. Maintaining all paved surfaces and curbs of the Common Area in a smooth and evenly covered condition, which maintenance work shall include without limitation, cleaning, sweeping, repairing and resurfacing of the Parking Area, and curbs, using surfacing material of a quality equal or superior to the original surfacing material. Maintaining the surface of the Mall in a smooth and evenly covered condition with the type of surfacing material of a quality equal or superior to the material originally installed thereon.

(b) Debris and Refuse. Removal of all papers, debris, filth, refuse, snow and ice from and sweeping the paved surfaces of the Common Area and washing or thorough sweeping the surface of the Mall to the extent necessary to keep the Common Area in a first-class, clean and orderly condition; provided, however, that each Party shall install, operate and properly maintain, or cause to be so installed, operated and maintained, on its Parcel, without cost or expense to the other Parties and so as not to be visible to the general public shopping at the Shopping Center, sufficient trash compactors, ballers and enclosed trash bins, for use in connection with storage of all trash, refuse and waste materials of the Occupants of such Party's Parcel and each Party shall take, or cause to be taken, all necessary measures to keep the Parcels free from all debris and rubbish caused by or emanating from such facilities, and no amount of the cost therefor shall be included in Common Area Maintenance Costs. All sweeping shall be at appropriate intervals and appropriate times and shall not unreasonably interfere with the use by Mervyn's or its Users of the Common Area pursuant to the rights granted under this Agreement.

(c) Signals and Markers. Placing, keeping in repair, replacing and repainting any appropriate directional signs, markers and lines.

(d) Parking Area Lighting. Operating, keeping in repair, cleaning and replacing when necessary such Common Area lighting facilities as may be reasonably required, including all lighting necessary or appropriate for Common Area security and exterior lights attached to buildings located on Building Areas which are intended to illuminate the Common Area. If such lighting is not separately metered from the other lighting servicing such Building Area, the cost thereof shall be prorated and charged as Common Area Maintenance Costs based on the proportion of use devoted to illumination of Common Area as herein specified.

(e) Landscaped Areas. Cleaning and maintaining all landscaped areas, including landscaping and planters adjacent to exterior walls of buildings or within the Mall, repairing automatic sprinkler systems or water lines in the Common Area, weeding, pruning, fertilizing or making replacement of shrubs and other landscaping as necessary; provided, however, that if any Occupant requires or installs "special" landscaping other than that normal and consistent with the landscaping requirements of the remainder of the Shopping Center, the maintenance and cost thereof shall be borne solely by such Occupant without cost or expense to the other Parties and shall not be included in Common Area Maintenance Costs.

(f) Utilities. Maintaining, cleaning and repairing any and all common storm drains, utility lines, sewers and other utility systems and services located in the Common Area which are necessary for the operation of the Common Area and the Building Area, and any buildings and improvements therein within the Shopping Center.

(g) Obstructions. Keeping the Common Area free from obstructions not required or permitted hereunder, specifically (but without limitation) keeping the Common Area free from any obstructions caused by sale or display of merchandise outside the exterior walls of buildings within the Building Areas, except in areas within the Shopping Center specifically designated on the Site Plan for such purposes or as otherwise provided pursuant to Section 3.0(c).

(h) Shopping Center Pylon Signs. Maintaining and repairing any and all

monument or pylon signs in the Common Area which advertise the Shopping Center by its name and maintaining all signs (other than those of the Majors or Occupants) within the Mall in a clean and orderly condition, including relamping and repairing as may be required. The entire cost of installing, maintaining and operating (including power) any portion of such signs which advertise the presence of the business of Occupant (including, but not limited to Mervyn's), together with a proportionate share of the cost of maintenance of the sign structure, shall be borne by such Occupant (including Mervyn's) if any portion of such signs advertise the presence or business of Mervyn's) without cost or expense to the other Parties, and shall not be included in the Common Area Maintenance Costs. If any utility for the operation of such signs is not separately metered, the cost of such utilities shall be appropriately apportioned and charged to Common Area Maintenance Costs or to the Occupant based on use of the sign as herein specified.

(f) Rest Areas. Maintaining and keeping in a sanitary condition public restrooms, if any, and other common use facilities.

(j) Rental of Space. Rental of space outside the boundaries of the Shopping Center as reasonably needed for use of storage and/or maintenance of equipment, supplies and other items used in connection with maintenance and operation of the Common Area.

(k) Sidewalks. Cleaning (including washing and/or steam cleaning), maintenance and repair of all sidewalks, including perimeter sidewalks adjacent and contiguous to buildings located on Building Areas, and those situated on the perimeter or outside the boundaries of the Shopping Center. Sidewalks shall be cleaned at appropriate intervals during such time as shall not unreasonably interfere with the use by Mervyn's or its Users of the Common Areas pursuant to the rights granted under this Agreement.

(l) Governmental Requirements. Complying with all applicable requirements of governmental agencies pertaining to the Common Area and not directly attributable to the specific business, use or activities of Mervyn's in the Mervyn's Building, or any other Occupant or User of the Shopping Center, including without limitation any alterations or additions required to be made to, or safety appliances and devices required to be maintained in or about the Common Area under any laws, ordinances, rules, regulations or orders now or hereafter adopted, enacted or made and applicable to the Common Area.

(m) Supervision. Provision of security and other personnel to ensure adequate supervision within the Common Area.

(n) Traffic. Provision of traffic control at entrances and exits to the Shopping Center as conditions reasonably require in order to maintain orderly and proper traffic flow and ingress and egress to the Shopping Center.

(o) Structures. Cleaning and maintaining the structure of the Mall and the roof, skylights, wall surfaces, doors and other appurtenances to the Mall.

(p) Lighting, Heating, Ventilation and Access. Adequately lighting the Mall in accordance with the Scope of Work, cleaning lighting fixtures within the Mall and relamping and rebalasting as needed, maintaining and operating adequate heating, ventilating, air-conditioning, cooling and fire sprinkler systems within the Mall in accordance with the Scope of Work, maintaining adequate access, ingress and egress to the Mall and maintaining, repairing and keeping all the foregoing in good order, condition and repair, so that at all times the same shall operate within the standards of a first-class enclosed mall as part of a first class regional shopping center. Developer's obligations hereunder shall include the obligation to light, ventilate, heat and cool the Mall commencing at least one-half hour before any Owning Major opens its store for business until at least one-half hour after each Owning Major closes its store for business and to keep all entrances to the Mall open during such hours, unless to do so is contrary to any law, rule, statute or ordinance then in effect, in which event the standard proscribed by such restrictions shall be adhered to while in effect.

(q) Other Duties. Performance of other duties required pursuant to any provision of this Agreement which obligates Developer to perform duties as part of Developer's obligations for operation and maintenance of the Common Area under this Article 5.

5.2. Third Party Contracts for Operation and Maintenance. Developer may contract with a third Person or Persons to provide for performance of all or part of the duties and obligations of Developer under Sections 5.1 and 5.2; provided, however, that Developer shall remain responsible and

liable for the maintenance of the Common Area in the Shopping Center in the manner provided in this Article 5, and for the performance of such third Person or Persons; and provided, further, that any such contract shall be in writing and shall contain at least the following provisions:

(i) Developer Liability. Each such third Person shall agree to look only to Developer for payment or performance of any other terms of the contract, including any cancellation fee or damages arising as a result of Mervyn's exercise of its right pursuant to Section 5.5, below, and Developer shall indemnify, defend and hold harmless Mervyn's and its agents, employees and representatives, from any and all claims, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees) arising from or in connection with any claims made by such third Person against Mervyn's as a result of Mervyn's exercise of its rights pursuant to Section 5.5, below; and

(ii) No Agency. Each such third Person shall acknowledge and agree that Developer is not an agent for the other Parties and, to the extent permitted by law, shall agree not to assert any lien rights such third Person may have against any Parcel owned by a Party, other than the Developer.

5.4. Cost of Operation and Maintenance of Common Area. All Common Area Maintenance Costs incurred by Developer under this Agreement shall be paid directly by Developer. All Common Area Maintenance Costs shall be borne by Developer without cost or expense to Mervyn's, except to the extent and in the manner provided in and in accordance with provisions contained in Mervyn's Allocable Share Agreement.

5.5. Rights of Owning Parties.

(a) Assumption of Certain Operation and Maintenance Duties. In the event, in Mervyn's reasonable judgment, Developer has failed to maintain the Common Area in such Mervyn's Primary Parking Area as shown on the Site Plan in the manner required by this Article 5, then, upon thirty (30) days prior written notice to Developer (and provided that during such thirty (30) day period or, if such failure cannot be cured within such 30 day period, such additional time as may be necessary to cure such deficiency, provided Developer commences the cure within such 30 day period and thereafter diligently prosecutes such cure to completion, Developer fails to rectify, to Mervyn's reasonable satisfaction, the deficiencies in maintenance), Mervyn's shall have the right (but not the obligation) to assume such portion of the duties of Developer pursuant to Section 5.1 with respect to the Common Area on Mervyn's Primary Parking Area, as specified in Mervyn's written notice to Developer. Mervyn's work shall be performed to the standards required of Developer hereunder. Mervyn's notice shall specify with particularity the failures of performance that cause it to give the notice provided for herein. Notwithstanding the above, in all events Developer shall perform the security function, maintain any control over public utilities serving the Common Area, and maintain any required insurance for the Common Area. Upon assuming any duties of the Developer pursuant to this Section 5.5(a), Mervyn's shall so notify Developer in writing, which notice shall specify which of the duties imposed by Section 5.1 Mervyn's is assuming with respect to the Common Area located in Mervyn's Primary Parking Area. Upon delivery of such notice to Developer, Mervyn's shall be responsible for the duties specified in its notice, and Developer shall remain responsible for all duties not assumed by Mervyn's.

(b) Assumption of Responsibility. If Mervyn's assumes responsibility pursuant to Section 5.5(a) above, the applicable provisions of this Article 5 shall apply to Mervyn's in the same manner as they would otherwise apply to Developer (other than the provisions of this Section 5.5), and to the extent of Mervyn's assumption of obligations, Developer shall assume the applicable rights and obligations of a Party other than Developer under this Article 5 (other than the right to assume maintenance and operation of Common Area under this Section 5.5). The assumption of responsibility by Mervyn's pursuant to Section 5.5(a) shall not cause Mervyn's to become liable for the acts or omissions of Developer prior to the effective date of assumption for the duties assumed, or relieve Developer of its responsibility or liability for such acts or omissions, if any. Developer and Mervyn's shall cooperate and assist each other in the maintenance and operation of the Common Area in order to maintain the entirety of the Common Area in first-class condition and repair in accordance with the provisions of this Article 5.

(c) Transfer of Records and Equipment. Upon assumption by Mervyn's of maintenance and operation duties under this Section 5.5, Developer shall provide any and all information and documentation to effectuate the transfer of responsibility hereunder. Developer shall also permit Mervyn's to use any and all equipment and machinery used by Developer in connection with the operation and maintenance of the Common Area hereunder, provided that Mervyn's pays its proportionate share of the cost of acquisition, operation and maintenance of such equipment and

machinery.

(d) Retransfer of Maintenance Duties. Mervyn's may at any time by written notice to Developer require Developer to reassume all or a portion of the responsibility for the maintenance and operation previously assumed by Mervyn's. Such reassumption of responsibility by Developer shall be effective thirty (30) days after the giving of notice thereof (which notice shall describe the responsibilities to be reassumed) and Mervyn's shall provide all necessary information and documentation to effectuate the transfer of responsibility back to Developer. Developer shall thereupon reassume responsibility for the duties described in Mervyn's notice.

(e) No Waiver Standard of Satisfaction. The assumption of or retransfer to Developer by Mervyn's of the responsibility for operation and maintenance of Mervyn's Primary Parking Area in accordance with the provisions of this Section 5.5 shall not constitute a waiver of any future right to reassume or retransfer such responsibility, and the rights of Mervyn's under this Section 5.5 may be invoked and reinvoked from time to time and at any time without limitation.

5.6. No Release on Assumption. No assumption of the operation and maintenance of any portion of the Common Area by Mervyn's under this Article 5 shall: (i) obligate Mervyn's to pay any cost or expense in respect of such management, operation or maintenance except to the extent it is otherwise obligated hereunder; (ii) relieve Mervyn's of its obligation to pay its Share of Common Area Maintenance Costs it is otherwise obligated to pay hereunder or under Mervyn's Allocable Share Agreement; (iii) relieve Developer of its obligation to pay all costs and expenses for the management, operation and maintenance of the Common Area hereunder not paid by Mervyn's; or (iv) relieve Developer of the obligation to keep, perform and observe any of the other terms, covenants or conditions of this Agreement to be kept and performed by Developer, other than those relating to Common Area maintenance and operation assumed by Mervyn's under Section 5.5.

5.7. Damage or Destruction To Common Area Other Than Mall.

(a) Repair of Damage. In the event of any damage or destruction to the Common Area (specifically excluding the Mall) during the term of this Agreement from any cause (whether or not covered under insurance required to be carried by any Party under this Agreement), Developer shall, promptly after the occurrence of the event of damage or destruction, restore, repair or rebuild such damage or destroyed Common Area to a condition equal to or better than the conditions existing prior to the event of damage or destruction, to the same general appearance as existed immediately prior to such damage or destruction and in accordance with the applicable standards of this Agreement for an Integrated Shopping Center pursuant to a uniform general plan. Unless such work is carried out pursuant to the original plans and specifications for the Common Area or pursuant to plans and specifications which indicate that the Common Area damaged or destroyed will be restored to substantially its pre-existing condition, any plans or specifications for such work of repair and restoration shall be subject to the prior written approval of Mervyn's pursuant to the standards and procedures of Article 7. Developer shall undertake such work in a manner which will cause as little disruption of and interference with the use of the remainder of the Common Area and Building Areas as reasonably possible. Developer shall use all due diligence to complete restoration and repair of the Common Area hereunder as expeditiously as possible after receipt of the proceeds of such insurance, if any, so that the same may be available for use and operating as part of the Shopping Center with as little delay and as little disruption as circumstances will permit.

(b) Payment of Costs. Any insurance proceeds paid to any Party on account of such damage or destruction, and not attributable to damage or destruction of any building in the Shopping Center owned or occupied by such Party, shall be made available to Developer for use in reconstruction and repair of the Common Area hereunder. In the event that such amounts are insufficient to cover the cost of the work hereunder, the Parties shall each bear their respective Proportionate Share of the costs which exceed such amounts. The amount of any available insurance proceeds and each Party's Proportionate Share of any excess amount shall be made available by the Parties to Developer on a progress payments basis during the work of repair and restoration of the Common Area hereunder.

6. Property Taxes.

6.1. Payment of Property Taxes. Each Party shall pay or cause to be paid directly when due all real property taxes and other special taxes and assessments which may be levied or assessed against their respective Parcels (including without limitation, any tax or assessment attributable to any interest created by this Agreement), and any and all real property taxes and other special taxes and assessments levied or assessed against that portion of the Common Area lying within each Party's

respective Parcel. Notwithstanding the foregoing, however, Mervyn's shall have no responsibility for payment of, and Developer shall pay, special improvement or betterment assessments levied during the Term of this Agreement against the Mervyn's Parcel, where such assessments are levied pursuant to proceedings commenced or undertaken by Developer or others in order to finance or cause construction of on-site or off-site improvements for the Shopping Center, or for improvements which solely benefit Developer and Occupants (other than Mervyn's or anyone holding by, through or under Mervyn's).

6.2. Election To Pay In Installments. If, by law, any tax and/or assessment may be paid in installments at the option of the taxpayer, the Party responsible for paying the tax or assessment may exercise the option to pay the same in installments as they may become due from time to time.

6.3. Contest Of Property Taxes. Each Party may contest (or allow to be contested) in good faith any real property tax or other special tax or assessment levied upon its respective Parcel. Any such contested tax or assessment shall be paid, however, prior to the time when the affected Parcel can be subjected to sale under any applicable law pursuant to a proceeding which may result in impairment of the rights created hereunder or terminate any provision hereof as applied to any Parcel.

7. Common Area: Parking Ratio: Alteration.

7.1. Parking Ratio. Developer shall maintain at all times in and upon the Parking Area of the Shopping Center (excluding Outparcels) not less than four and 75/100 (4.75) parking spaces (for standard size American automobiles, as distinct from compact) for each one thousand (1,000) square feet of Gross Floor Area within the Shopping Center (excluding the Outparcels). There shall be maintained at all times in and upon the Parking Area on each Outparcel not less than the following number of parking spaces (for standard size American automobiles, as distinct from compacts) for each one thousand (1,000) square feet of Gross Floor Area within such Outparcel: (i) Retail Uses: 4.75, (ii) Restaurant Uses: 10.0 and (iii) Office Uses: 2.0. So long as a theatre is located in the Outparcel identified as "Outparcel 7" on the Site Plan, Outparcel 7 shall contain not less than 521 parking spaces for such theatre use.

7.2. Changes in Common Area. No change in the Common Area (other than Common Area located on any Building Area) shall be made except upon compliance with this Article 7. No change which (i) reduces the number of parking spaces therein below the number of parking spaces required pursuant to Section 7.1, (ii) changes in any manner the parking stall orientation and layout (other than parking stall orientation and layout located on any Outparcel), (iii) alters or modifies access points identified on the Site Plan as "Access Point 1 through Access Point 6" or (iv) alters or modifies the ring road, Mervyn's Primary Parking Area, Building Areas or Future Building Areas, or the "Mervyn's Site Line", all as shown on the Site Plan, or Mervyn's Court, shall be made without Mervyn's prior written consent which consent may be withheld in Mervyn's sole and absolute discretion. No other change may be made in the Common Area (other than Common Area located on any Building Area) without the prior written approval of Mervyn's, which approval shall not be unreasonably withheld or delayed.

7.3. Procedure for Common Area Changes. Prior to making any change in the Common Area (other than Common Area located on any Building Area), Developer shall submit to Mervyn's a written description in reasonable detail of the proposed change, including a revised Site Plan and/or preliminary plans and specifications showing such change in detail and the resulting configuration of the Common Area in the Shopping Center. Mervyn's shall in writing either approve or disapprove and make recommendations for change in the plans so submitted within thirty (30) days after receipt thereof. Any disapproval and recommendation for change shall specify with particularity the reason therefor and justify the disapproval or recommendation by reference to the criteria set forth in this Article 7. Any plan so submitted and not disapproved by Mervyn's within such thirty (30) day period shall be deemed approved. In the event Mervyn's disapproves and makes recommendations for change, Developer and Mervyn's shall mutually consult in good faith to establish a final plan for the proposed work. After approval of preliminary plans and specifications, Developer shall submit final plans and specifications (prepared in conformance with the preliminary plans and specifications) for approval pursuant to the procedures set forth above. Except as specified in Section 7.2, no Party shall arbitrarily or unreasonably withhold approval of any plan or recommend changes in a plan which otherwise conforms to the criteria specified in this Article 7. No approval of any plan by Mervyn's shall constitute assumption of responsibility by Mervyn's for the accuracy, sufficiency or propriety of the plan or a representation or warranty that the plan calls for construction of economic improvements or improvements which comply with law. No material change shall be made on any work of construction once the plans therefor have been approved as provided in this Article 7, unless the plan for the work as so changed is first approved by the Parties as entitled as provided herein.

7.4. Criteria for Common Area Changes.

(a) Harmonious Development. Any change, alteration or addition to the Common Area approved hereunder shall at all times be of first quality construction and architectural design and shall conform to the uniform general plan for the Shopping Center created by the Parties pursuant to this Agreement. Any change, alteration or addition to the Common Area (other than Common Area located on any Outparcel) shall at all times conform to the design concepts of the Shopping Center so that all such improvements shall be architecturally and aesthetically compatible and harmonious with the other buildings and improvements in the Shopping Center.

(b) Additional Criteria Regarding Approval of Common Area Changes. If any plan submitted for approval under this Article 7 would result in a reduction in the number of automobile parking spaces on the affected Parcel or Parcels below the number of parking spaces required pursuant to Section 7.1 in the absence of construction of additional Parking Area, then Developer shall make appropriate provision for additional Parking Area or other substitute parking in accordance with the criteria contained herein. Mervyn's shall not be required to approve for any reason any plan under this Article 7 which calls for alteration of or addition to Common Area, or construction of additional Parking Area, or requires construction of additional Parking Area in order to maintain the Parking Ratio, or to provide substitute parking, unless Mervyn's is satisfied in its sole discretion that the altered or additional Common Area, Parking Area or other substitute parking: (i) provides for Common Area facilities or parking facilities functionally equivalent to or better than the Common Area and/or Parking Area as they exist prior to construction of the proposed improvements; and (ii) is consistent with the uniform general plan for the Shopping Center and architecturally and aesthetically compatible and harmonious with the other Common Area and buildings in the Shopping Center. In addition to the foregoing requirements (i) and (ii) Mervyn's may disapprove any plan which proposes construction of altered or additional Common Area or Parking Area if the location or design of the altered or additional Common Area and/or Parking Area will obstruct the view of any building upon the Mervyn's Parcel, interfere with access to any such building from any Common Area or other Parcel, interfere with the ingress and egress of motor vehicles to, and pedestrian traffic on, any Common Area. Any such alterations or additional Common Area and/or Parking Area shall be designed functionally to integrate with the then existing buildings and improvements, including, without limitation, stores and other facilities, of the Shopping Center.

8. Indemnification, Insurance and Damage and Destruction.

8.1. Common Area Indemnity. Developer shall indemnify, defend and hold Mervyn's harmless from and against any and all claims, expenses, liabilities, loss, damage and costs, including reasonable attorneys' fees, and any actions or proceedings in connection therewith, incurred in connection with, arising from, due to or as a result of the death of any Person or any accident, injury, loss or damage, caused by reason of any negligence or willful misconduct of Developer, its agents, servants or employees, to any Person or property as shall occur in or about the Common Area located in the Shopping Center, except (i) for such claims released under Section 8.13 hereof, but only to the extent of such release, and (ii) claims resulting from the negligence or willful act or omission of the Mervyn's or any Occupant of any portion of the Mervyn's Parcel, or the agents, servants or employees Mervyn's or such Occupants, wherever the same may occur.

8.2. Building Area and Future Building Area Indemnity. Each Party shall indemnify, defend and hold the other Parties harmless from and against any and all claims, expenses, liabilities, loss, damage and costs, including reasonable attorneys' fees, and any actions or proceedings in connection therewith, incurred in connection with, arising from, due to or as a result of the death of any Person or any accident, injury, loss or damage, however caused, to any Person or property as shall occur in or about the Building Areas or Future Building Areas located on each Party's Parcel, or caused by the negligence or willful act or omission of such Party or any Occupant of any such Party's Parcel, or the agents, servants or employees of such Party or Occupant, wherever the same may occur, except (i) for such claims released under Section 8.14 hereof, but only to the extent of such release, and (ii) claims resulting from the negligence or willful act or omission of the indemnified Party or any Occupant of any such Party's Parcel, or the agents, servants or employees of such indemnified Party, wherever the same may occur.

8.3. Public Liability Insurance. Each Party shall at all times during the term of this Agreement hereof maintain or cause to be maintained comprehensive public liability insurance covering the Building Areas and Future Building Areas located on such Party's Parcel, and Developer shall at all times during the term hereof maintain or cause to be maintained comprehensive public liability insurance covering the Common Area, which insurance insures against the risks of bodily injury, property damage and personal injury liability with respect to the Building Area located on each Parcel or the Common

Area, with a limit not less than \$5,000,000.00 per occurrence, coverage to be in a comprehensive general liability form with at least the following endorsements: (i) deleting any employee exclusion on personal injury coverage; (ii) including employees as additional insureds; (iii) providing for blanket contractual liability coverage (including, without limitation, for the indemnity obligations contained in Section 8.1 and 8.2); broad form property damage coverage, and products completed operations, owner's protective and personal injury coverage; (iv) deleting any liquor liability exclusions; and (v) providing for coverage of employers automobile non-ownership liability. Each policy of insurance maintained by a Party hereunder shall name the other Parties as additional insureds. All such insurance shall be primary and noncontributory; shall provide for severability of interests; shall provide that an act or omission of one of the insureds or additional named insureds which would void or otherwise reduce coverage shall not reduce or void or otherwise reduce coverages to the insured or other additional named insureds as the case may be; and shall afford coverage for all claims based on acts, omissions, injury and damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

8.4. Fire Insurance. Mervyn's shall carry on all buildings located in the Building Areas upon the Mervyn's Parcel, and Developer shall carry on the buildings and improvements constituting the Common Area or located in the Mall Building Areas insurance providing against loss or damage by fire and such other risks as are now or hereafter may be, included in an extended coverage endorsement in common use for commercial structures, including vandalism, malicious mischief and sprinkler leakage, collapse, water damage and falling objects but excluding, without limitation, earthquake and flood coverage, and Builder's Risk Insurance for all construction performed by or on behalf of such Party with coverage in an amount of not less than ninety percent (90%) of the full replacement cost thereof (excluding foundations or excavations). The loss, if any, covered by such insurance shall be paid to the respective Party, unless payment of all or a portion of said insurance is required to be made to a mortgagee, deed of trust beneficiary or leaseback lessor, as its interest may appear. Each Party shall have the right and power to adjust and settle any loss with its insurer.

8.5A. Developer Reconstruction In The Event of Insured Casualty. In the event of any damage to or destruction of any building in the Building Area of the Developer Parcel or the Common Area from any cause for which insurance is required to be maintained under this Section 8.4, Developer shall, subject to the provisions of Section 3.4, repair any such damage or destruction and reconstruct the building, Mall and/or Common Area in accordance with (i) the concept of an integrated Shopping Center, and (ii) the provisions of Article 3 and Section 8.7 and Article 9 of this Agreement. Notwithstanding the foregoing, however, in the event that such damage or destruction occurs at any time after the time specified in Section 8.6(a) or after expiration of the Operating Covenant, Developer's obligation to repair such damage or destruction shall be subject to the following terms and conditions:

(a) In the event that the cost of restoration and repair of such damage or destruction is less than One Million Dollars (\$1,000,000.00), then Developer shall, at its own cost and expense and with all due diligence, restore, repair and rebuild the buildings, improvements, Mall or Common Area so damaged or destroyed in accordance with the applicable requirements of this Agreement;

(b) If the cost of the restoration, repair or rebuilding of such damage or destruction occurring during time period herein specified exceeds One Million Dollars (\$1,000,000.00), Developer shall, promptly following the event of damage or destruction request in writing that Mervyn's and, if their respective operating covenant have less than ten (10) years remaining, ZCMI and Penney continue to operate their stores pursuant to an Operating Covenant substantially in the form of Section 3.14, in the case of Mervyn's, or in the form of their previous operating covenants, in the case of ZCMI and Penney, for at least ten (10) years from earlier of (i) the date of completion by Developer of restoration and repair of the damage or destruction or (ii) from a date not more than eighteen (18) months after the date of the event of damage or destruction. If, within sixty (60) days after making such request, Mervyn's and ZCMI or Mervyn's and Penney give Developer written assurance that they will operate for such ten (10) year period in a form so requested (and in recordable form if requested by Developer) Developer shall thereupon at its own cost and expense and with all due diligence, restore, repair and rebuild the damaged or destroyed buildings, improvements, and/or Mall located between the Mervyn's Reconstruction Line and the ZCMI Reconstruction Line identified on the Site Plan (other than the building occupied by Penney), together with the Common Area, if both Mervyn's and ZCMI give Developer such written assurance, and between the Mervyn's Reconstruction Line and the Penney Reconstruction Line identified on the Site Plan, together with the Common Area, if both Mervyn's and Penney give Developer such written assurances, in accordance with the applicable requirements of this Agreement; and

(c) In all events, Developer shall, at its own cost and expense, restore and repair any portion of the Common Area located in Mervyn's Primary Parking Area so damaged or

destroyed.

If required to rebuild herein, the proceeds of all insurance shall be used to the extent necessary by Developer in payment for the restoration and reconstruction of the building, Mall and/or Common Area. Developer shall commence restoration and reconstruction as herein provided as soon as possible after receipt of the proceeds from insurance therefor and shall use all due diligence to repair or reconstruct within a reasonable period of time thereafter.

8.5B. Developer Reconstruction in The Event of Uninsured Casualty. Subject to the provisions of Article 10 hereof with respect to an Appropriation, in the event of any damage or destruction to all or any portion of any buildings or other improvement contained within the Mall Building Areas or Mall Future Building Areas, or to the Mall, or any portion thereof, which damage or destruction is not covered by insurance required to be carried by Developer hereunder, Developer shall repair such damage or destruction upon the following terms and conditions:

(a) **Damage During Operating Covenant.** If such damage or destruction occurs at any time when Mervyn's is then operating its store in the Shopping Center with at least three (3) years remaining on its covenant so to operate under Section 3.14 (hereinafter referred to as the "Operating Covenant"), Developer shall, at its own cost and expense and with all due diligence, restore, repair and rebuild the buildings, improvements, Mall or Common Area so damaged or destroyed, in accordance with the applicable requirements of this Agreement.

(b) **Damage or Destruction After Expiration of Operating Covenants.** In the event that such damage or destruction occurs after the time specified in Section 8.5B(a) hereof, or after expiration of the Operating Covenant and the cost of restoration and repair of such damage or destruction is less than One Million Dollars (\$1,000,000.00), then Developer shall, at its own cost and expense and with all due diligence, restore, repair and rebuild the buildings, improvements, Mall or Common Area so damaged or destroyed in accordance with the applicable requirements of this Agreement. If the cost of the restoration, repair or rebuilding of such damage or destruction occurring during time period herein specified exceeds One Million Dollars (\$1,000,000.00), Developer shall, promptly following the event of damage or destruction request in writing that Mervyn's and, if their respective operating covenant have less than ten (10) years remaining, ZCMI and Penney continue to operate their stores pursuant to an Operating Covenant substantially in the form of Section 3.14, in the case of Mervyn's, or in the form of their previous operating covenants, in the case of ZCMI and Penney, for at least ten (10) years from earlier of (i) the date of completion by Developer of restoration and repair of the damage or destruction or (ii) from a date not more than eighteen (18) months after the date of the event of damage or destruction. If, within sixty (60) days after making such request, Mervyn's and ZCMI or Mervyn's and Penney give Developer written assurance that they will operate for such ten (10) year period in a form so requested (and in recordable form if requested by Developer) Developer shall thereupon at its own cost and expense and with all due diligence, restore, repair and rebuild the damaged or destroyed buildings, improvements, and/or Mall located between the Mervyn's Reconstruction Line and the ZCMI Reconstruction Line identified on the Site Plan (other than the building occupied by Penney), together with the Common Area, if both Mervyn's and ZCMI give Developer such written assurance, and between the Mervyn's Reconstruction Line and the Penney Reconstruction Line identified on the Site Plan, together with the Common Area, if both Mervyn's and Penney give Developer such written assurances, in accordance with the applicable requirements of this Agreement. Notwithstanding the foregoing, Developer shall in all events, at its own cost and expenses, restore and repair any portion of the Common Area located in Mervyn's Primary Parking Area so damaged or destroyed.

8.6. Damage or Destruction to Mervyn's Building. Subject to the provisions of Article 10 with respect to an Appropriation, in the event of any damage or destruction to all or any portion of the building or other improvements contained within the Building Area on the Mervyn's Parcel, or any portion thereof, whether or not covered by insurance required to be carried by Mervyn's hereunder, Mervyn's shall repair such damage or destruction upon the following terms and conditions:

(a) **Damage During Operation Covenant.** If such damage or destruction occurs when more than three (3) years remain on the Mervyn's Operating Covenant, or Mervyn's Operating Covenant is then extended or to be extended as provided in Section 8.5A(b) or 8.5B(b), above, then Mervyn's shall, at its own cost and expense and with all due diligence, restore, repair and rebuild the buildings and improvements so damaged or destroyed in accordance with the applicable requirements of this Agreement.

(b) **Damage or Destruction After Expiration of Operating Covenants.** If such

damage or destruction occurs at any time after the time specified in Section 8.6(a), or after expiration of Mervyn's Operating Covenant, Mervyn's shall have the right to either restore, rebuild and reconstruct its building and improvements at its own cost and expense with all due diligence in accordance with the applicable requirements contained in this Agreement and any such buildings or improvements shall have the same store entrance locations on the Mall as existed before the event of damage or destruction, or raze the whole or any part of the buildings and improvements within its Building Area.

(c) Gross Floor Area. Any buildings and improvements reconstructed hereunder shall, if reconstructed during the Operating Covenant, contain at least the same number of square feet of Gross Floor Area contained therein prior to the event of damage or destruction and shall have the same store entrance locations on the Mall as existed before the event of damage or destruction.

(d) Mervyn's Reconstruction. In the event of any damage or destruction which Mervyn's is required or has elected to restore, repair, rebuild or reconstruct pursuant to this Section 8.6, Mervyn's shall, subject to the provisions of Section 3.4, repair any such damage or destruction and reconstruct its buildings or improvements in accordance with (i) the concept of an integrated Shopping Center, and (ii) the provisions of Article 3 and Section 8.7 and Article 9 of this Agreement. If required to rebuild herein, the proceeds of all insurance shall be used to the extent necessary by Mervyn's in payment for the restoration and reconstruction and Mervyn's shall commence restoration and reconstruction as herein provided as soon as possible after receipt of the proceeds from insurance therefor and shall use all due diligence to repair or reconstruct within a reasonable period of time thereafter.

8.7. General Obligations On Rebuilding. Whenever a Party is required under this Article 8 to rebuild, replace or repair any building or other improvement damaged or destroyed from any cause whatsoever, the work of such rebuilding, replacement or repair shall be completed with all due diligence and as soon as possible after the event of damage or destruction occurs. The work of rebuilding, replacement or repair shall be undertaken by the Party in accordance with all the terms of this Agreement, including Sections 3.2 and 3.4 and Articles 7 and 9 concerning approval of plans. Such Party shall prosecute completion of the improvements as expeditiously as possible after receipt of the proceeds of insurance, if any, and/or the satisfaction of any other conditions precedent to its obligation to restore so that the same may be open for business and operating as part of the Shopping Center with as little delay and disruption as circumstances will permit. Notwithstanding anything to the contrary contained in this Agreement, no requirement for consent of any Party to any plan or proposal for any construction work in the Shopping Center shall apply in the case of reconstruction of buildings or improvements that have been damaged or destroyed by fire or other casualty or that have become worn out or obsolete, so long as any such reconstruction is within the same Building Area and will not substantially alter the design, size, height, bulk, and exterior appearance of the improvements as they existed prior to the event or condition requiring reconstruction; provided that notice of intent so to reconstruct or construct is given by the Party undertaking such construction to the other Parties in each case where the other Parties would otherwise have the right to consent or notice under this Agreement at least thirty (30) days prior to the commencement of any work thereon.

8.8. Obligations When Party Need Not Rebuild.

(a) Obligation to Raze and Convert. In the event of any damage or destruction to any building or improvement located on the Building Area of any Party's Parcel, which damage or destruction such Party is not obligated to repair under this Agreement, such Party shall, at its sole cost and expense, either (i) repair, restore, or rebuild the same with due diligence in accordance with the applicable requirements of this Agreement, or (ii) raze and demolish such building or improvement (or such part thereof that has been damaged or destroyed), clear the affected area of all debris and thereafter comply with the applicable requirements of Section 8.9 with respect to clear areas. In the event any Party razes its improvements hereunder, any common facilities employed for the support of adjacent structures shall be kept intact and maintained at the sole cost and expense of the Party razing its improvements.

If Mervyn's is not required and is electing not to restore, repair or rebuild the buildings and improvements located on its Building Area, Mervyn's shall, at its sole cost and expense upon razing its buildings and improvements, cause the portion of the Mall where its store has been removed to be secured and enclosed so as not to permit the escape of air, using materials for such enclosure which shall be architecturally compatible and harmonious with the other adjacent finishes of the Mall. Any enclosure of the Mall by Mervyn's hereunder shall be made in accordance with plans and specifications approved by Developer.

(c) Mall Entrance. If Developer is not required and is electing not to restore, repair or rebuild the buildings and improvements located on its Building Area, Developer shall, at its sole cost and expense upon razing its buildings and improvements, cause the portion of the Mervyn's Store where its Mall Entrance has been removed to be secured and enclosed so as not to permit the escape of air, using materials for such enclosure which shall be architecturally compatible and harmonious with the other adjacent finishes of Mervyn's Store. Any enclosure of the Mervyn's Store by Developer hereunder shall be made in accordance with plans and specifications approved by Mervyn's.

8.9. Clear Areas. In the event that at any time during the term of this Agreement, there are Building Areas or Future Building Areas upon which no building or Common Area has been constructed, or from which existing buildings have been razed and not replaced, the Party owning or occupying each such Building Area or Future Building Area shall maintain such Building Area or Future Building Area in a safe, neat and attractive condition, free of weeds and debris, and take necessary and appropriate measures to prevent and control the emanation of dust and dirt from such Building Area or Future Building Area, which may include use of gravel, grass, ground cover or the sealing of the ground surface. In the event that construction of a building or other improvement is not commenced on such Building Area or Future Building Area within one (1) year after the date of completion of construction of the Common Area, the Party owning or occupying such Building Area or Future Building Area shall plant ground cover thereon compatible and harmonious with the Shopping Center landscaping, and maintain the same until construction of buildings or other improvement on such Building Area or Future Building Area is commenced. Upon request of any other Party, the Party owning or occupying such Building Area or Future Building Area shall fence the same off, using such material as may be architecturally compatible and harmonious to the exterior elevations of the remaining Shopping Center Improvements. Such fence shall be erected within sixty (60) days after such request and shall be maintained and remain standing until the commencement or completion of construction of a building in the Building Area or Future Building Area in accordance with this Agreement. No signs or advertising material shall be placed upon the fence without the prior written approval of Developer. All costs associated with the requirements of this Section 8.9 shall be borne by the Party owning or occupying the affected Building Area or Future Building Area and shall not be included as Common Area Maintenance Costs under Article 5.

8.10. Self-Insurance. All or any portion or policies of the insurance required to be maintained by Mervyn's hereunder may be maintained either in whole or in part under a plan of self-insurance or may include "deductibles" of any size or amount; provided, however, that Mervyn's shall be entitled to utilize such self-insurance only for such periods as Mervyn's (or its parent's, if such parent provides such self-insurance for Mervyn's) net worth as shown on its most recently published, audited financial statements exceeds One Hundred Million Dollars (\$100,000,000.00).

8.11. Blanket Coverage. Any policy required to be maintained by a Party hereunder may be maintained under a so-called "blanket policy" insuring other parties and other locations so long as the amount of insurance required to be provided hereunder is not thereby diminished.

8.12. Other Insurance Requirements. Any policy of insurance required to be carried by a Party under this Article 8 shall provide that such policy may not be cancelled or the coverage thereunder reduced to a level less than that required to be maintained under this Agreement without at least thirty (30) days prior written notice to the other Parties. Each Party shall furnish to the other Parties on or before the effective date of any policy of insurance required to be carried under this Article 8, a certificate thereof stating that such insurance is in full force and effect, that the premiums therefor have been paid, that the other Parties have been designated as named or additional insureds where required and evidencing that such insurance may not be cancelled or the coverage thereunder materially reduced to a level less than that required to be maintained under this Agreement without at least thirty (30) days prior written notice to the other Parties. Thereafter, a certificate evidencing the above shall be furnished from time to time as reasonably requested by any Party.

8.13. Waiver of Subrogation. Each Party for itself, and, to the extent it is legally possible for it to do so and without affecting the fire and extended coverage insurance required to be maintained by any Party hereunder, on behalf of its insurer, hereby releases and waives any right to recover against the other Parties from any liability for (i) any loss or damage to property, including without limitation the property of any Party, Occupant or User located upon or in the Shopping Center; (ii) any loss or damage to buildings or other improvements in the Shopping Center or the contents thereof; (iii) any other direct or indirect loss or damage caused by fire or other risks, which loss or damage is covered by the insurance required to be carried hereunder by such Party or is otherwise insured; or (iv) claims arising by reason of any of the foregoing, to the extent that such damages and/or claims under (i) through (iv) are covered (and only to the extent of such coverage) by insurance actually carried by each Party (or

if a Party is self insured, to the extent any such claim would have been covered by insurance otherwise required to be carried by such Party hereunder), Irrespective of any negligence on the part of such other Party or Parties which may have contributed to such loss or damage. Developer shall use its reasonable efforts to cause any lease, license, concession or other agreement entered into between Developer and an Occupant of the Developer after the effective date of this Agreement to contain a provision releasing and waiving rights of recovery against the Parties to the same extent as the release and waiver contained in this Section 8.13 and, if such waiver and release is contained in any such agreement with an Occupant, then the waiver and release by each Party under this Section 8.13 shall extend to and benefit such Occupant. The provisions of this Section 8.13 are intended to restrict each Party (as permitted by law) to recovery for loss or damage against insurance carriers to the extent of such coverage, and waive fully, and for the benefit of each other Party, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. Each Party shall to the extent such insurance endorsement is lawfully available, obtain or cause to be obtained, for the benefit of the other Parties a waiver of any such right of subrogation which the insurer of such Party may acquire against the other Party by virtue of the payment of any such loss covered by such insurance.

9. Future Building Area And Other Construction.

9.1. Additional Buildings.

(a) Development. Subject to the provisions contained in this Agreement (including, without limitation, the number of parking spaces required pursuant to Section 7.1 and the general construction requirements set forth in Section 2.7), each Party may (i) develop and construct within any Future Building Area on its Parcel additional buildings and improvements, and (ii) remodel and reconstruct existing buildings and improvements located in the Building Area on its Parcel and Developer may remodel and reconstruct or make alterations in or additions to the Mall, and, in addition, develop, construct, remodel and reconstruct a parking lot in the area designated on the Site Plan as the "Permissible Parking Deck Area."

(b) Approval of Plan. Prior to the commencement of any such development, construction, remodeling or reconstruction (including any alteration to or remodeling of any portion of the Mall Building Areas, other than the interior of Occupant stores or store fronts or facades of such stores), the Party proposing such work shall submit to the Owing Majors for review and approval scaled elevations and a scaled exterior foot print, including, without limitation, exterior design concepts, material selection, color and signing for the exterior surfaces of the affected building or other improvement. Each Owing Major's review and approval shall be limited to building exteriors and such Owing Major's Court (other than Occupant store fronts or facades), which approval may be withheld in such Owing Major's sole and absolute discretion. The Owing Majors shall either approve or disapprove and make recommendations for change in the plans so submitted by notice in writing given within thirty (30) days after receipt thereof. Any disapproval and recommendation for change shall specify with particularity the reason therefor and justify the disapproval or recommendation by reference to the criteria set forth in this Agreement. Upon any such disapproval or recommendation for change, the Party proposing such work and the Owing Majors shall mutually consult to establish a final plan for the proposed work. No Owing Major shall arbitrarily or unreasonably withhold approval of the plan or recommend changes in a plan which otherwise conforms with the requirements of this Agreement. No approval of any plan by any Owing Major shall constitute assumption of responsibility by such Owing Major for the accuracy, sufficiency or propriety of the plan or a representation or warranty that the plan calls for construction of economic improvements or improvements which comply with applicable laws. No material change shall be made in any plans approved hereunder or work of construction hereunder unless the plan for the work as so changed is first approved by the Owing Majors as herein provided. Common Area changes are governed by Section 7.3.

(c) Construction of Improvements/Construction Standards. Any such development, construction, remodeling or reconstruction shall be undertaken by any Party without cost or expense to any other Party. Such development, construction, remodeling or reconstruction shall be performed in a first-class workmanlike manner using first quality materials, and, upon commencement of the work and subject to any delays permitted under Section 10.0 shall be promptly and diligently undertaken and prosecuted to completion or, if such development, construction, remodeling or reconstruction is abandoned by any Party prior to completion, such Party shall comply with the obligation of Section 8.0 hereof. Each Party shall secure all licenses and permits necessary for such construction, remodeling or reconstruction and shall comply with the requirements of all applicable authorities having jurisdiction, and all applicable laws, regulations, ordinances and rules, including without limitation, zoning laws and building codes, in the construction of its building and improvements.

the Common Area on the Parcel of any Party shall terminate this Agreement without the written consent of all the Parties. As used herein, "reduce the efficiency of the Parking Area of the Shopping Center or on any Parcel" includes the closure of driveways or other access points to the Shopping Center significantly affecting or burdening egress and ingress to the Shopping Center, the rearrangement of the Parking Area to a configuration which burdens ingress and egress or internal circulation, or any other similar circumstance which significantly impinges on or hinders ingress and egress to the Shopping Center from adjoining streets, or the internal circulation pattern of the Parking Area in a manner detrimental to reasonable traffic flow in accordance with sound traffic engineering standards.

10.3. Certain Termination Rights. In the event that (i) an Appropriation results in a taking of more than fifteen percent (15%) of the Gross Floor Area of the building contained within the Building Area on Mervyn's Parcel and it is not possible utilizing remaining available Building Area to restore the Gross Floor Area so taken so that the Gross Floor Area within the Mervyn's Building Area equals at least eighty-five percent (85%) of that existing prior to the Appropriation, or (ii) an appropriation of Parking Area reduces the Parking Ratio for the Shopping Center (excluding Outparcels) more than twenty percent (20%) below the level specified in Section 7.1, the number of parking spaces located north of the "Mervyn's Site Line" identified on the Site Plan below 400 parking spaces, or the efficiency of the Parking Area as specified in Section 10.2 by more than twenty percent (20%) and the Parties are unable to agree on replacement Parking Area under Section 10.2 within three hundred sixty (360) days after the date of the Appropriation, then Mervyn's shall have the right to terminate its Operating Covenant as to its Parcel upon not less than one hundred eighty (180) days prior written notice to Developer. Upon request of Mervyn's, Developer shall sign and exchange an instrument, in recordable form, evidencing the termination of Mervyn's Operating Covenant pursuant to this Section 10.3.

10.4. Interests Affected. Nothing contained in this Article 10 shall entitle any Party to share in any award made to any other Party whose Parcel is taken, other than as provided in Section 10.2 and, to the extent an award is made, for the interests of each Party created by this Agreement in the Parcel taken. In the event of the Appropriation of any Parcel, or portion thereof, this Agreement and the terms, covenants, conditions, easements and restrictions herein contained shall terminate with respect to such Parcel, or portion thereof, so taken upon the taking of possession thereof under such Appropriation.

11. Rights Upon Default.

11.1. Right to Cure. In the event any Party or Occupant defaults in the performance of any of the obligations of this Agreement and which default continues uncured for a period of thirty (30) days after written notice from a Non-Defaulting Party, unless the default is of a nature which cannot be cured within thirty (30) days, in which case the defaulting Party fails to promptly commence such cure within such thirty (30) days and thereafter diligently proceed to complete the same in not more than one hundred eighty (180) days after such notice, each Party shall have the right to exercise any rights or remedies available at law or in equity against the defaulting Party including the right to recover damages for any such default. Each party shall also have the right to prosecute any proceedings at law or in equity against any other Party attempting to violate or default upon any of the provisions contained in this Agreement, in order to prevent such Party from violating or defaulting upon the provisions of this Agreement. The remedies available under this Section 11.1 shall include, by way of illustration but not limitation, ex parte applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default, and actions for specific performance of this Agreement. Any notice hereunder shall specify with particularity the nature of the default claimed and shall set forth in detail the action which the Party giving such notice proposes to take in order to cure the claimed default.

To effectuate the cure of any default by Developer in the performance of its obligations under this Agreement with respect to Mervyn's Primary Parking Area or Mervyn's Court, Mervyn's shall have the right to enter upon the Developer Parcel (but not any buildings contained within any Building Area of such Parcel) to perform any necessary work or furnish any necessary materials or services to cure such defaults.

11.2. Waiver and Remedies Cumulative. No waiver by any Party of any default under this Agreement 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 of any default under any provision of this Agreement 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 Agreement. All of the remedies permitted or available to a Party under this Agreement 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.

11.3. Estoppel Certificate. Any Party may, at any time and from time to time, in connection with the sale or transfer of the Party's Parcel, or in connection with the financing or refinancing of the Party's Parcel by mortgage, deed of trust or sale-leaseback made in good faith and for value, deliver written notice to the other Parties requesting such Parties to certify in writing that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified, either orally or in writing, and if so amended, identifying the amendments, and (iii) to such Party's knowledge, the requesting Party is not in default in the performance of its obligations under this Agreement, or, if in default, to describe therein the nature and amount of any and all defaults. Each Party receiving such request shall execute and return such certificate within thirty (30) days following the receipt thereof. Failure by a Party to so execute and return such certificate within the specified period shall be deemed an admission on such Party's part that the Party requesting the certificate is current and not in default in the performance of such Party's obligations under this Agreement. The statements contained in the certificate are not affirmative covenants or warranties, and the person giving the certificate will not be liable to the addressee on account of any information contained therein, notwithstanding the omission for any reason to disclose correct and/or relevant information, but the certifying party shall be estopped from asserting any claim or defense against the addressee to the extent such claim or defense is based upon facts known to the certifier contrary to those contained in the certificate, and the addressee has acted in reliance upon the certificate without knowledge of facts to the contrary.

12. Transfers of Interest, Rights, Powers and Obligations.

12.1. Limitations on Transfer or Assignment. In no event shall the rights, powers and obligations conferred upon a Party pursuant to this Agreement be at any time transferred or assigned by any such Party except through a transfer of its interest in its Parcel, or any portion thereof, and then only to the extent and in the manner hereinafter provided.

12.2. Transfer of Entire Interest. In the event of the transfer, conveyance or termination of the whole of the interest of a Party in its Parcel (or any leasehold interest in its Parcel other than occupancy leases) without retaining any beneficial interest therein, other than as beneficiary under the terms of a deed of trust or mortgage or without simultaneously acquiring a new interest by way of leasehold, life estate, or any other similar interest, then the rights and powers conferred upon and the obligations under this Agreement of the transferring Party shall be transferred and assigned with its interest, or termination thereof.

12.3. Retention of Interest. In the event that (i) the whole of the interest of a Party in its Parcel is transferred or conveyed, but a new interest is created in the transferring Party simultaneously with the conveyance of its previous interest, by way of leasehold, life estate, or any other similar interest, or (ii) the transferring Party shall convey its interest in its Parcel, or a portion thereof, by deed of trust, mortgage or other security instrument as security for any obligation or indebtedness of such Party, then none of the rights and powers conferred upon or obligations under this Agreement of the transferring Party shall be transferred or assigned with the transfer or conveyance of its interest, but all of the rights and powers conferred upon and obligations under this Agreement of the transferring Party shall remain in such Party so long as such Party retains, under clause (i) above, the new interest in and to its Parcel (other than as beneficiary under the terms of a deed of trust or mortgage), or so long as such Party remains, under clause (ii) above, the beneficial owner of its Parcel. Upon the termination of the new interest created in the transferring Party as specified in this Section 12.3, rights and powers conferred upon, or the obligations of such Party shall vest in accordance with Section 12.2 or 12.4, hereof, whichever is applicable, as if the new interest created in such Party had never existed, subject only to the provisions of Article 13 of this Agreement.

12.4. Multiple Ownership

(a) Delegation Upon the transfer of fee simple title to any portion of the Developer Parcel to a Person and, upon the approval of the existing Parties, in their sole and absolute discretion, to the addition of such Person as an Owning Major under this Agreement (an "Additional Party Transfer"), such portion of the Developer Parcel shall be deemed a separate Parcel hereunder and shall no longer be deemed a part of the Developer Parcel and Developer shall be released from all further obligations under this Agreement with respect to such Parcel arising thereafter. In the event that a Party

transfers or conveys its interest in its Parcel, or any portion of its Parcel or interest in its Parcel, in such manner as to vest ownership of the Parcel or a portion thereof or interest therein in more than one Person (other than an Additional Party Transfer), then the Persons owning all of such interest in such Parcel shall be jointly considered a single Party and such Persons shall designate one of their number to act on behalf of all such Persons in the performance of the provisions of this Agreement. Any such designation shall be in writing, duly executed, verified and acknowledged by each such Person, shall be served upon all the other Parties in accordance with the notice provisions of Section 12.4 of this Agreement, shall contain a certificate that a copy thereof has been so served, and shall be recorded in the Office of the Recorder of the County of the State in which the Shopping Center is located.

(b) Effect of Designation. In the absence of such written designation, the acts of the Party whose interest is so divided with respect to the performance of the provisions of this Agreement shall be binding upon all of the Persons owning any interest in such Parcel, until such time as the written designation is properly served and recorded as provided by this Section 12.4, and whether or not such Party retains any interest in the Parcel or Parcels in question. The exercise or performance of any rights, powers or obligations of a Party under this Agreement by the Person designated to represent such Party shall be binding upon all Persons having an interest or right in such Parcel and/or upon all Persons having an interest in such Party. So long as such designation remains in effect, all Persons having an interest or right in the Parcel and/or all Persons having an interest or right in such Party shall act only through such Person designated hereunder and the other Parties shall have the right to deal exclusively with and rely solely upon the acts or omissions of such Person in the performance or provisions of this Agreement.

(c) Removal of Designated Person. Any Person designated hereunder may be removed by the Persons so designating, in accordance with any procedure agreed to between them, provided that written notice of such removal and designation of a new Person to act as the Party on behalf of all such Persons under this Agreement is given and made in the manner specified in this Section 12.4, and in the absence of any such written notice and designation, the previous designation shall continue in effect and the acts of the Person previously designated with respect to the performance of the provisions of this Agreement shall be binding upon all such Persons until such time as the written notice and designation is properly served as provided by this Section 12.4.

(d) Designation of Person By Other Parties. Notwithstanding anything to the contrary herein contained, if: (i) at any time after a Person has been designated to act on behalf of a Party hereunder, such Person is removed or dies, becomes incapacitated or is dissolved and no new Person is designated to act on behalf of such Party pursuant to Section 12.4(c) above, or (ii) if a Person has not been designated hereunder within thirty (30) days after any other Party receives notice of any change in ownership of any portion of a Parcel which would give rise to the requirement for designation under this Section 12.4 or (iii) if the designation of a Person to act on behalf of a Party earlier than the expiration of such thirty (30) day period is reasonably necessary to enable or entitle any other party to comply with any of its obligations under this Agreement, or to take any other action which may be necessary or permitted to carry out the purposes of this Agreement, then in any such event, the other Parties acting jointly or, may designate a Person to act as the Party on behalf of all such Persons comprising such Party under this Agreement, which designation shall be made and given in accordance with the applicable provisions of this Section 12.4. Such designation made hereunder shall remain in full force and effect until the Persons comprising such Party make a new designation pursuant to the provisions of this Section 12.4.

(e) Status of Designated Person. Any Person designated pursuant to the provisions of this Section 12.4 shall be the agent of each of its principals, hereby irrevocably appointed for such purpose, and upon whom service of any process, writ, summons, order or other mandate of any nature of any court in any action, suit or proceeding arising out of this Agreement may be made, and service upon such designated Person shall constitute due and proper service of any such matter upon each of its principals, provided a copy of such matter is also mailed to such principals at the principal's last address known to the sender.

(f) Obligation of Other Persons Comprising Party. Notwithstanding anything to the contrary herein contained, the designation of a Person to act on behalf of Persons as a Party under this Section 12.4 shall not for any purpose relieve any such Persons from the obligations or liabilities created by or arising from this Agreement.

12.5. Certain Additional Limitations on Transfer of Assignment. Notwithstanding anything to the contrary contained in this Agreement, and until termination pursuant to Section 12.8(b) below, no Party may transfer any of its interest in its Parcel, or assign or transfer any of the rights, powers and

obligations conferred or imposed upon such Party pursuant to this Agreement, except through a transfer of its interest in its Parcel in such manner that such Party remains a Party (or member of a Party) pursuant to the provisions of Sections 12.2 or 12.4, and then only to the extent and in the manner hereinafter provided and except that the transfer by Developer of the Developer Parcel to any institutional mortgagee or beneficiary under a mortgage or deed of trust encumbering the Developer Parcel shall not require the consent of any Party.

(a) Consent Required. Any such conveyance, transfer or assignment shall be subject to the prior written consent of the other Parties. Any request for consent hereunder shall specify the nature of the transfer, conveyance or assignment to be effected, the identity of any transferee or assignee, and the nature of any interest which is to be retained by the transferring Party. The other Party shall either approve or disapprove the transfer, conveyance or assignment within twenty (20) days after the date of receipt by such Party of such request for approval.

(b) Termination on Transfer Restrictions. The provisions of this Section 12.5 imposing limitations on the transferability of the interest of a Party in its Parcel shall terminate (i) with respect to Mervyn's, upon full and final completion and the opening for business of its store constructed on its Parcel as provided in Section 3.14(a) of this Agreement, and (ii) with respect to Developer, (A) upon completion of the Mall Expansion so that such space is ready for leasing, use and occupancy by Occupants as provided in Section 4.4 of this Agreement, and (B) the full and final completion of the Common Area Work by Developer so that the Common Area is ready for use. Each Party acknowledges that the obligations of the Scope of Work are personal covenants of each of the signatories hereto and no such signatory shall be released from such obligations upon or by any transfer by such signatory of any interest in its Parcel.

13. Release Upon Sale of Interest.

13.1. Sale by Any Party. Except as otherwise provided in this Agreement, upon the assignment, conveyance, sale or other transfer by any Party of its entire right, title and interest in its Parcel, that Party shall be released from the obligations of this Agreement as a Party arising subsequent to the effective date of such sale or transfer (other than those obligations arising from any default by such Party in the performance of any provision of this Agreement prior to such sale or transfer, including payment of any amounts which may then be due and owing under this Agreement) provided that such Party shall have given notice to all other Parties of such transfer and delivered the assumption statement required by Section 13.4.

13.2. Sale by Party Maintaining Common Area. In addition to the provisions of Section 13.1, upon transfer by the Party maintaining the Common Area under Article 5 of this Agreement of its entire right, title and interest in its Parcel, such Party shall be released from the obligations of this Agreement only if it has delivered to each other Party a final closing statement detailing the costs and expenses incurred for the operation and maintenance of the Common Area as of the effective date of the transfer of its right, title and interest in its Parcel. Any amounts due such Party pursuant to the provisions of this Agreement at the time of such transfer shall be paid in accordance with the provisions of this Agreement at the times herein specified, but the amounts due shall be appropriately prorated or otherwise broken down so that those amounts due for costs and expenses paid by such Party shall be paid to such Party, and those amounts due for costs paid by any successor to such Party shall be paid to that successor.

13.3. Liability of Transferor. In no event shall any transferee of any Party be liable for any default under this Agreement of the transferring Party which occurred prior to the effective date of the transfer of any right, title and interest in the affected Parcel to the transferee.

13.4. Assumption Statement. Concurrently with the transfer of any right, title and interest in any Parcel by any Party so that the transferee becomes a Party or member of a Party pursuant to Article 12, the transferee shall execute and deliver to the other Parties a written statement in which: (i) the name and address of the transferee shall be disclosed; and (ii) the transferee shall acknowledge its obligation to be bound by this Agreement and perform all obligations hereunder in accordance with the provisions of this Agreement. Failure to deliver such written statement shall not affect the running of any covenants herein with the land as provided by Section 15.1, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement, but such failure shall prevent the release of the transferring Party under Section 13.1 until such written statement is actually delivered.

14. Effect of Death Upon Purchasers and Mortgagees.

Proceeds, or (ii) a joint order executed by Mervyn's and all Parcel Mortgagees or (b) place the Net Proceeds at the disposal of a court of competent jurisdiction and petition the court to interplead the Mervyn's and all Parcel Mortgagees for the purpose of adjudicating who is entitled to the Net Proceeds.

(ii) Parcel Mortgagee. "Parcel Mortgagee" shall mean the secured Party under a Parcel Mortgage regardless of the type of interest created in such secured Party by the Parcel Mortgage.

15. Covenants and Recordation.

15.1. Covenants Run With the Land. All of the provisions, agreements, rights, powers, covenants, conditions and obligations contained in this Agreement shall be binding upon the Parties, their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other Persons acquiring any Parcel, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties, and their respective heirs, successors (by merger, consolidation or otherwise) and assigns as Parties determined under Article 12. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law. It is expressly acknowledged that each covenant to do or refrain from doing some act on each Parcel hereunder (i) is for the benefit of each other Parcel and is a burden upon each other Parcel, (ii) runs with each Parcel, and (iii) shall be binding upon each Party and each successive owner during its ownership of each Parcel, or any portion thereof, and each Person having any interest therein derived in any manner through any owner of any Parcel, or any portion thereof, and shall benefit each Party and its Parcel and each other Person becoming a Party (or member of a Party) as specified in Article 12 and its interest in its Parcel.

15.2. Recordation. This Agreement shall become effective and binding upon the Parties in accordance with the provisions of this Article 15 upon recordation of this Agreement in the office of the County Recorder of the County in which the Shopping Center is located. Recordation shall be effected by Developer. All costs of recordation shall be borne equally by the Parties. Upon recordation of this Agreement, Developer shall distribute to each other Party a certified copy of the recorded Agreement.

16. Miscellaneous.

16.1. Negation of Partnership. None of the terms or provisions of this Agreement 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. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any Person who is not a Party, unless expressly otherwise provided.

16.2. Termination and Amendment. Except as otherwise specified in Section 16.3, this Agreement may be cancelled, changed, modified or amended in whole or in part only by written and recorded instrument executed by all of the Parties; provided, however, that this Agreement may not be cancelled or terminated without the consent of the mortgagee or beneficiary, if any, under any recorded mortgage or deed of trust encumbering any Parcel and that no such change, modification, or amendment shall be binding upon any such mortgagee or beneficiary without such mortgagee's or beneficiary's prior written consent. Notwithstanding any other provision of this Agreement to the contrary, all the provisions hereof (other than certain easements as set forth in Article 2, which shall terminate as therein provided) shall terminate upon the 80th anniversary date of the recordation hereof.

16.3. Approvals. Unless otherwise herein provided, whenever approval, consent or satisfaction (herein collectively referred to as an "approval") is required of any Party pursuant to this Agreement (or any Exhibit hereto), shall not be unreasonably withheld. Unless provision is made for a specific time period, approval shall be deemed given within thirty (30) days after receipt of the written request for approval, and if a Party shall neither approve nor disapprove within such thirty (30) day period, or other time period as may be specified in this Agreement or Exhibit hereto for approval, that Party shall then be deemed to have given its approval. If a Party shall disapprove, the reasons therefor shall be stated in reasonable detail in writing. Approval by a Party to or of any act or request by any other Party shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

16.4. First Class. The term "first class" when used in this Agreement in connection with the development, maintenance, operation or condition of the Shopping Center, or any portion thereof, shall refer to a comparative standard of quality judged in accordance with other similar well maintained shopping centers within the same geographical location as the Shopping Center.

16.5. 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 Parcel, or portion thereof, to the general public, for the general public or for any public use or purpose whatsoever, it being the intention and understanding of the Parties that this Agreement be strictly limited to and for the purposes herein expressed for the development, maintenance and operation of a private shopping center on private property solely for the benefit of the Parties. Pursuant to the provision of this Section 16.5, and notwithstanding any other provision to the contrary herein contained, any Party shall have the right to prevent or prohibit the use of its Parcel, or any portion thereof, including Common Area and buildings and improvements located thereon, and Mervyn's shall have the right to prevent or prohibit the use of Mervyn's Primary Parking Area, by any Person, including Users, for any purpose inimical to the operation of an integrated first class private shopping center for retail and commercial purposes as contemplated by this Agreement.

16.6. Excusable Delays. Whenever performance is required of any Party hereunder, that 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, or damage to work in progress by reason of fire or other casualty or cause beyond the reasonable control of a Party (financial inability, imprudent management or negligence excepted), then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused.

16.7. Severability. Invalidation of any of the provisions contained in this Agreement, 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 or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

16.8. Exhibits. The Exhibits listed in the Table of Contents to which reference is made herein are deemed incorporated into this Agreement in their entirety by reference thereto.

16.9. Notices.

(a) Procedure. Any notice to any Party shall be in writing and given by delivering the same to such Party in person or by sending the same by registered or certified mail, return receipt requested, with postage prepaid, to the Party's mailing address. The respective mailing addresses of the Parties are, until changed as hereinafter provided, the following:

Developer: c/o Equity Properties and Development Company
Two North Riverside Plaza, Suite 1000
Chicago, Illinois 60606

Attention: Accounting Department

and

Equity Properties and Development Company
Two North Riverside Plaza, Suite 1000
Chicago, Illinois 60606

Attention: General Counsel

Mervyn's: 22301 Foothill Boulevard (M02Q)
Hayward, California 94541
Attention: Legal/Real Estate Supervisor

Any Party may change its mailing address at any time by giving written notice of such change to the other Parties in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given, received, made or communicated on

the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

(b) Form and Effect of Notice. Every notice (other than the giving or withholding of consent, approval or satisfaction under this Agreement, but including requests therefor) given to a Party or other Person shall comply with the following requirements. Each such notice shall state: (i) the Article, Section or Exhibit (or provision or Paragraph thereof) of this Agreement pursuant to which the notice is given; (ii) the period of time within which the recipient of the notice must respond or if no response is required, a statement to that effect; and (iii) if applicable, that the failure to respond to the notice within the stated time period shall be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice. Each request for consent or approval shall contain reasonably sufficient data or documentation to enable the recipient to make an informed decision. In no event shall notice be deemed given nor shall a Party's approval of, consent to, or satisfaction with, the subject matter of a notice be deemed given by such Party's failure to object or respond thereto if such notice did not fully comply with the requirements of this Section 16.9. No waiver of this Section 16.9(b) shall be inferred or implied from any act (including conditional approvals, if any) of a Party, unless such waiver shall be in writing, specifying the nature and extent of the waiver.

16.10. Entire Agreement. This written Agreement and the Exhibits hereto (and an Allocable Share Agreement as between each Owning Major and Developer) contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Agreement and Exhibits hereto, and such Allocable Share Agreement. The provisions of this Agreement, the Exhibits hereto and such Allocable Share Agreement shall be construed as a whole according to their common meaning and not strictly for or against any Party.

16.11. Captions. The captions preceding the text of each Article, Section, subsection and the Table of Contents hereof and Paragraphs of Exhibits, are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

16.12. References. All references herein to a given Article, Section or subsection refer to the Article, Section or subsection of this Agreement, and all references to a Paragraph of subparagraph of an Exhibit hereto refer to the Paragraph or subparagraph of such Exhibit.

16.13. Minimization of Damages. In all situations arising out of this Agreement and Exhibits hereto, all Parties shall attempt to avoid and minimize the damages resulting from the conduct of any other Party. Each Party shall take all necessary measures to effectuate the provisions of this Agreement and Exhibits hereto.

16.14. Litigation Expenses.

(a) Payment to Prevailing Party. If any Party shall bring an action or proceeding (including, without limitation, any cross-complaint, counterclaim or third party claim) against any other Party by reason of the breach or alleged violation of any covenant, term or obligation hereof, or for the enforcement of any provision hereof, or to interpret, or otherwise arising out of this Agreement, the prevailing Party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment.

(b) Attorneys' Fees In Third Party Litigation. If any Party is required to initiate or defend any action or proceeding with a third party (including, without limitation, any cross-complaint, counterclaim or third party claim) because of any other Party's breach of or failure to enforce this Agreement, or otherwise arising out of this Agreement, and such Party is the prevailing party in such action or proceeding, then such Party shall be entitled to reasonable attorneys' fees from such other Party.

(c) Scope of Fees. Attorneys' fees under this Section 16.14 shall include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

16.15. Signature Pages. For convenience, the signatures of each of the Parties may be executed and acknowledged on separate pages which when attached to this Agreement shall constitute this as one complete Agreement.

16.16. Time. Time is of the essence of this Agreement and each and every provision hereof.

17. Developer's Right To Purchase.

17.1. Right To Purchase. Developer shall have the right to purchase the Mervyn's Parcel in accordance with the procedures set forth in this Section 17 if:

(a) Excluding a temporary cessation described in Section 3.14(d), above, Mervyn's ceases to operate or cause to be operated a retail store containing at least 40,000 square feet of Gross Floor Area within the Mervyn's Building for a substantially continuous period of eighteen (18) months, or twenty-four (24) months so long as Mervyn's has in good faith unconditionally and irrevocably sold the Mervyn's Parcel or executed an unconditional and irrevocable lease of at least 40,000 square feet of Gross Floor Area of the Mervyn's Building to an entity described in Section 17.1(c)(i) or (ii), below, and such transferee or lessee is obligated to open prior to the expiration of such twenty-four (24) month period;

(b) Mervyn's proposes to sell or transfer the Mervyn's Parcel or, after a Leaseback Arrangement, its interest on the Mervyn's Parcel, or to lease or, after a Leaseback Arrangement, sublease all or substantially all of the Mervyn's Building, to any person, firm or entity which will utilize at least 40,000 square feet of Gross Floor Area of the Mervyn's Parcel for use other than the conduct of a first-class, general merchandise retail store;

(c) Mervyn's proposes to sell or transfer the Mervyn's Parcel or, after a Leaseback Arrangement, its interest in the Mervyn's Parcel, or to lease all or substantially all of the Mervyn's Building, to any person, firm or entity which will utilize at least 40,000 square feet of Gross Floor Area of the Mervyn's Parcel for the conduct of a first-class, general merchandise retail store, provided that Developer shall not have such right if the proposed assignment is to (i) a Replacement Retailer (excluding Target) or (ii) an entity which will, including its operations in the Mervyn's Building, be conducting first class, general merchandise retail store operations at twelve (12) or more sites in the Western Region of the United States,

provided that (1) Developer is not in default under this Agreement beyond the expiration of any applicable grace or cure periods, and (2) Developer is then operating the Shopping Center consistent with the operation of a first-class shopping center. Notwithstanding anything in the foregoing to the contrary, (x) in the event of a Leaseback Arrangement (as defined in Section 14.3(b)(i), above), the Leaseback Arrangement shall not give rise to Developer's right to purchase under Sections 17.1(b) or 17.1(c) until three hundred and sixty-five (365) days after the earlier of (i) Mervyn's exclusive right to possession of at least 40,000 square feet of Gross Floor Area of the Mervyn's Parcel under that lease is terminated, or (ii) the lease is modified to terminate Mervyn's exclusive right to possession of at least 40,000 square feet of Gross Floor Area of the Mervyn's Parcel or (y) in the event of a Parcel Mortgage (as defined in Section 14.3(b)(i), above), the Parcel Mortgage shall not give rise to Developer's right to purchase under Sections 17.1 (b) or 17.1 (c) until three hundred and sixty-five (365) days after the earlier of (i) foreclosure of such Parcel Mortgage or exercise by the holder of the Parcel Mortgage of any power of sale thereunder (or deed in lieu thereof), or (ii) such holder terminates Mervyn's exclusive right to possession of at least 40,000 square feet of Gross Floor Area of the Mervyn's Parcel; provided, however, that Developer shall not be entitled to exercise its right to purchase under (x) or (y) if the lessor under the Leaseback Arrangement or the Parcel Mortgage shall sell or transfer the Mervyn's Parcel during such three hundred sixty-five day period to an entity described in Section 17.1(c)(i) or (ii) which will utilize at least 40,000 square feet of Gross Floor Area of the Mervyn's Parcel for the conduct of a first-class, general merchandise retail store.

17.2. Notice to Developer. Upon the happening of any of the foregoing occurrences, Mervyn's shall give written notice to Developer including in such notice a description with all pertinent details. The notice (other than a notice concerning a proposed assignment described in Section 17.1(c)(i) or (ii), above) shall constitute an offer to Developer to sell Mervyn's fee title interest in the Mervyn's Parcel, including all building and improvements thereon, upon the terms and conditions hereinafter specified. The occurrence of the event described in Section 17.1 without Mervyn's giving notice to Developer as required by this Section 17.2, shall also be deemed to constitute an offer to Developer to sell Mervyn's fee simple interest in the Mervyn's Parcel, including all building and improvements thereon, on the terms and conditions hereinafter specified. Developer shall have the right to accept such offer by written notice given to Mervyn's prior to expiration of a period of thirty (30) days after receipt of such notice. To be effective, Developer's acceptance shall be unconditional and state Developer's acceptance of Mervyn's offer to sell Mervyn's fee simple interest in the Mervyn's Parcel,

including all buildings and improvements thereon, upon the terms and conditions specified in this Article 17.

17.3. Determination of Purchase Price. If Developer accepts Mervyn's offer to purchase Mervyn's fee simple interest in the Mervyn's Parcel, including all buildings and improvements thereon, such acceptance shall create a binding contract between Developer and Mervyn's for the purchase and sale of Mervyn's fee simple interest in the Mervyn's Parcel, including all buildings and improvements thereon, upon the terms and conditions set forth in and for a price to be determined as follows. If Developer is exercising its right to purchase pursuant to Section 17.1(a), the purchase price shall be determined and paid in accordance with the provisions of Section 17.4, below. If Developer is exercising its right to purchase pursuant to Section 17.1(b) or Section 17.1(c), the purchase price shall be the price offered Mervyn's by Mervyn's proposed transferee or lessee so long as such purchase price is a bona fide arm's-length offer. In the case of a lease subject to this Article 17, the "purchase price" shall be deemed to be the rental offered by the proposed lessee, payable over the term of such lease and on the terms and conditions of such lease. If the contemplated transaction is not a bona fide arm's length transaction, then the purchase price shall be that computed pursuant to Paragraph 17.4.

17.4.(a) Determination of Purchase Price. Upon acceptance of Mervyn's offer by Developer, the purchase price for Mervyn's fee simple interest in the Mervyn's Parcel, including all buildings and improvements thereon, shall be the highest of (i) the fair market value as agreed upon by the parties, or as determined by appraisal, made as hereinafter provided, (the "Appraisal"); (ii) the total of the outstanding principal balance (excluding applicable prepayment penalties, if any) on all indebtedness of Mervyn's secured by any mortgage or deed of trust covering solely Mervyn's fee simple interest in the Mervyn's Parcel, including all buildings and improvements thereon, or, if such indebtedness is secured by more than such property, the portion of such indebtedness Allocated to the Mervyn's Parcel; or (iii) the unamortized book value of the improvements constructed by Mervyn's or the Mervyn's Parcel. In no event shall the amount described in subpart (ii) of the preceding sentence include any prepayment penalty of premium or release penalty or premium payable by Mervyn's in connection with such indebtedness. The fair market value shall be determined as follows: Within twenty (20) days after the date of Acceptance Notice, each party shall deliver to the other party its written estimate of the purchase price to be paid pursuant to the terms hereof. If the parties are unable to agree on the purchase price within ten (10) days thereafter, they shall select an MAI appraiser to determine which of the prices proposed by the parties most closely approximates the appraiser's opinion of value. If the parties are unable to agree upon an appraiser within thirty (30) days after they exchange their estimates of fair market value, either party may apply to the then Chief Judge of the United States District Court having jurisdiction over the County of Salt Lake, Utah, acting in his personal, private capacity to appoint the third appraiser and neither party shall raise any question as to such Judge's full power and jurisdiction to entertain the application and make the appointment. The appraiser chosen by the parties or, if they are not able to agree, by the District Judge shall select from the price proposed by each of the parties the value that most closely approximates the appraiser's opinion of value and said value shall be the fair market value for purposes of consummating the purchase. The value so determined shall be final and binding upon the parties, absent fraud or gross error and it shall be determined within sixty (60) days after appointment of the appraiser. The party whose opinion of value is not chosen by the appraisal as the fair market value shall pay the costs of the appraisal and all other costs of determining fair market value. For the purpose of subsection (ii) above, "Allocated" means a good faith allocation by the loan parties in an arms-length transaction at the time loan was made and, if at the time of the determination of the purchase price the Mervyn's Building has been damaged or destroyed and Mervyn's has not repaired or restored the same, all insurance proceeds and/or self-insurance proceeds will be deemed to have been applied to reduce the outstanding principal balance of the indebtedness or portion of the indebtedness Allocated to the Mervyn's Parcel.

(b) Replacement of Appraiser Qualification. Upon failure, refusal or inability of an appraiser to act, his successor shall be appointed in the same manner as the appraiser was originally appointed hereunder. Each appraiser designated or selected hereunder shall be qualified as a real estate appraiser familiar with retail commercial buildings in the geographic area in which the Building is located, who has had at least five (5) years of experience and who would qualify as an expert witness over objection to give opinion testimony addressed to the issue in a court of competent jurisdiction.

(c) Consummation of Purchase. The purchase of Mervyn's fee simple interest in the Mervyn's Parcel, including all buildings and improvements thereon, shall be consummated by Developer and Mervyn's through an escrow established at a mutually acceptable title company within sixty (60) days after completion of the Appraisal hereunder. The purchase price shall be payable by Developer to Mervyn's in cash, unless otherwise agreed by Mervyn's. Title to Mervyn's fee simple interest in the Mervyn's Parcel, including all buildings and improvements thereon, shall be conveyed by Mervyn's to

Developer by recordable grant deed and subject to all easements, restrictions, covenants, conditions, encumbrances, and liens of record, but free and clear of delinquent installments of taxes or assessments, mechanic or materialmen's liens, or any mortgages, deeds of trust, leases or other liens or encumbrances of any kind, provided Mervyn's may apply all or any part of the purchase price proceeds toward the discharge of such mortgages, deeds of trust, leases or other liens and encumbrances so long as the same are discharged by Mervyn's regardless of the sufficiency of the purchase price proceeds. Non-delinquent taxes and assessments shall be prorated as of the date the grant deed and assignment conveying Mervyn's fee simple interest in the Mervyn's Parcel, including all buildings and improvements thereon, is recorded. Developer and Mervyn's shall each bear fifty percent (50%) of the closing costs of the purchase and sale hereunder, including title insurance premiums, escrow fees and transfer and conveyancing taxes.

17.5. Failure To Exercise Purchase Right. Developer's right of purchase provided in this Article 17 shall be in addition to and not in substitution for any other rights of Developer under this Agreement and any failure on the part of Developer to exercise a right of purchase hereunder shall be without prejudice to Developer's right of purchase with respect to subsequent transactions of the same or different character as described in Article 17.

18. Merchant's Association. Each Owning Major agrees to join and remain a member of the Merchants' Association for the period of time specified in its Allocable Share Agreement on the conditions that such Owning Major's sole contribution to the dues, assessments and programs of said Merchants' Association shall be the amount specified in its Allocable Share Agreement. Developer shall have the right and option to employ or cause to be employed the Marketing Director and other personnel of the Merchants' Association, and to provide or cause to be provided promotional services, which, in Developer's judgment, are desirable to administer the Merchants' Association and promote the activities of the Shopping Center. All such personnel shall be under the exclusive control and supervision of Developer, and each Owning Major hereby authorized the Merchants' Association to reimburse Developer for providing such personnel and any other costs incurred by Developer in assisting the Merchants' Association or providing services thereto. Developer may establish a Marketing Fund in lieu of a Merchants' Association, and the contribution by each Owning Major to such marketing Fund shall be in the same manner and amounts as for the proposed Merchants' Association. Upon Developer's establishment of a Marketing Fund, the Merchants' Association shall be dissolved and any funds remaining in the Merchants' Association shall be turned over to Developer. The amounts collected by Developer in connection with the Marketing Funds shall be used by Developer to pay all costs and expenses associated with the formulation and carrying out of ongoing programs for the promotion of the Shopping Center, which programs may include, without limitation, the following (but which shall not be deemed a representation as to the actual provision of such program): special events, shows, displays, signs, marquees, decor, seasonal events, institutional advertising for the Shopping Center, and the distribution of promotional literature designed to attract customers. In addition, Developer may use the Marketing Fund dues to defray the cost of administration of the Marketing Fund, including, without limitation, the salary and related costs and benefits of a director and related administrative personnel, and rent allocable to any management office within the Shopping Center devoted to use by such personnel.

Developer reserves the right and option, at any time and from time to time, to alternately establish either a Marketing Fund or a Merchants' Association. Upon the establishment of either a Marketing Fund or a Merchants' Association, each Owning Major will comply with all of its obligations with respect thereto as set forth in this Article 18.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

AUTHORIZED SIGNATURE OF MERVYN'S TO GRANT RECIPROCAL EASEMENTS,
DECLARATION OF COVENANTS
RUNNING WITH THE LAND AND DEVELOPMENT AGREEMENT

'Mervyn's'

MERVYN'S, a California corporation

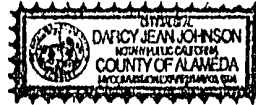
By [Signature]

STATE OF California)
) ss
COUNTY OF Alameda)

On this 19th day of October, 1993, before, Darcy Jean Johnson,
a Notary Public in and for said State, personally appeared Ronald A. Hill, personally known to me (or
proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument
as a Vice President on behalf of the corporation therein named and acknowledged to me that the
corporation executed it pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Darcy Jean Johnson
Notary Public



SEAL

AUTHORIZED SIGNATURE OF DEVELOPER
TO GRANT OF RECIPROCAL EASEMENTS,
DECLARATION OF COVENANTS
RUNNING WITH THE LAND AND DEVELOPMENT AGREEMENT:

'DEVELOPER'

SOUTH TOWNE INVESTORS LIMITED PARTNERSHIP, an Illinois limited partnership

By: ZELL/MERRILL LYNCH REAL ESTATE OPPORTUNITY PARTNERS LIMITED PARTNERSHIP, an Illinois limited partnership, by its general partner:

By: ZML Partners Limited Partnership, an Illinois limited partnership, by its general partner:

By: ZM INVESTORS LIMITED PARTNERSHIP, an Illinois limited partnership, General Partner, by its general partner:

By: ZM, INC., an Illinois corporation, General Partner

By: *Julie Z. Casabian*
Its Vice President

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Before me, *Patricia M. Maggioncalda* a Notary Public in and for said County, in the State aforesaid, on this day personally appeared *Julie Z. Casabian*, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be the Vice President of ZM, Inc., an Illinois corporation, the general partner of ZM Investors Limited Partnership, an Illinois limited partnership, the general partner of ZML Partners Limited Partnership, an Illinois limited partnership, the general partner of Zell/Merrill Lynch Real Estate Opportunity Partners Limited Partnership, the general partner of South Towne Investors Limited Partnership, and acknowledged to me that he executed and delivered said instrument as his free and voluntary act, for the purposes and consideration therein expressed, and as the act of said corporation pursuant to its by-laws or a resolution of its board of directors as partner of ZM Investors Limited Partnership, in ZM Investors Limited Partnership's capacity as general partner, and on behalf of, ZML Partners Limited Partnership, in ZML Partners Limited Partnership's capacity as general partner, and on behalf of, Zell/Merrill Lynch Real Estate Opportunity Partners Limited Partnership in Zell/Merrill Lynch Real Estate Opportunity Partners Limited Partnership's capacity as general partner of South Towne Investors Limited Partnership.

GIVEN under my hand and Notarial Seal this *11* day of *Oct*, 1993.

Patricia M. Maggioncalda
Notary Public

My Commission Expires:

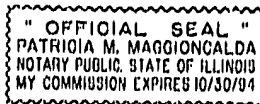


EXHIBIT "A"

SITE PLAN
MERVYN'S
SOUTH TOWNE CENTER

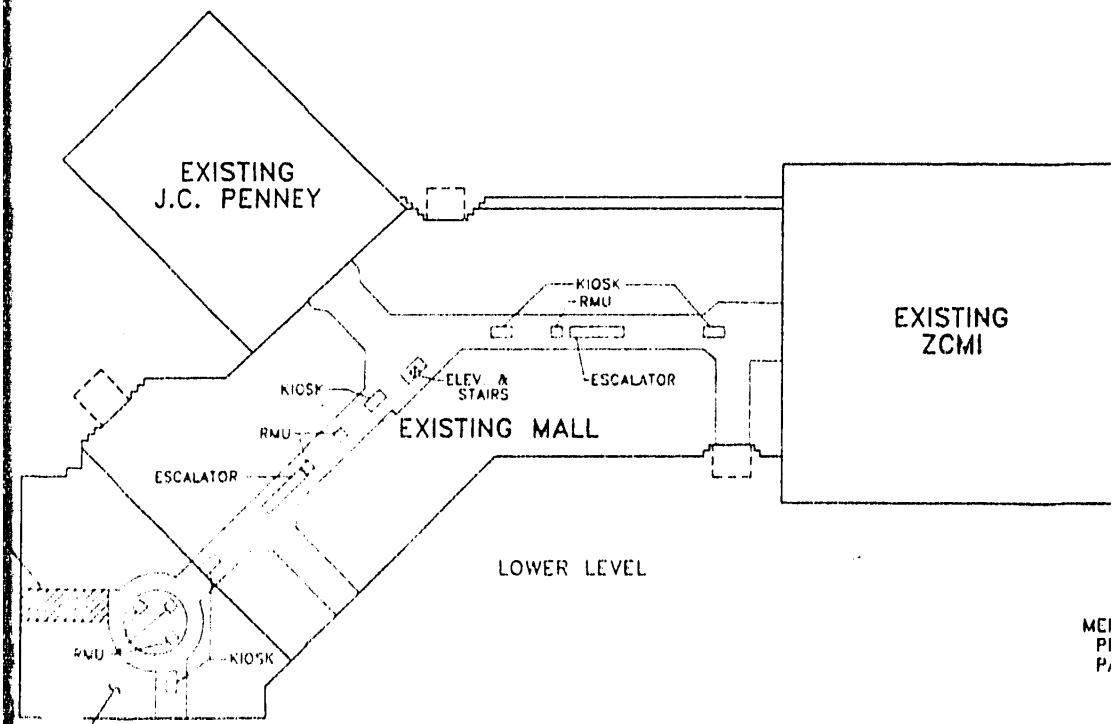
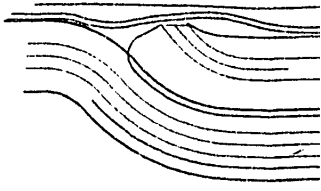
PARKING STALL TABULATION

PARKING AREA	TOTAL STALLS
A	167
B	375
C	210
D	261
E	218
F	459
G	155
H	252
I	289
J	41
K	60
L	141
M	160
N	890
O	524
P	385
Q	521
R	302
TOTAL	5390

MERVYN'S COURT

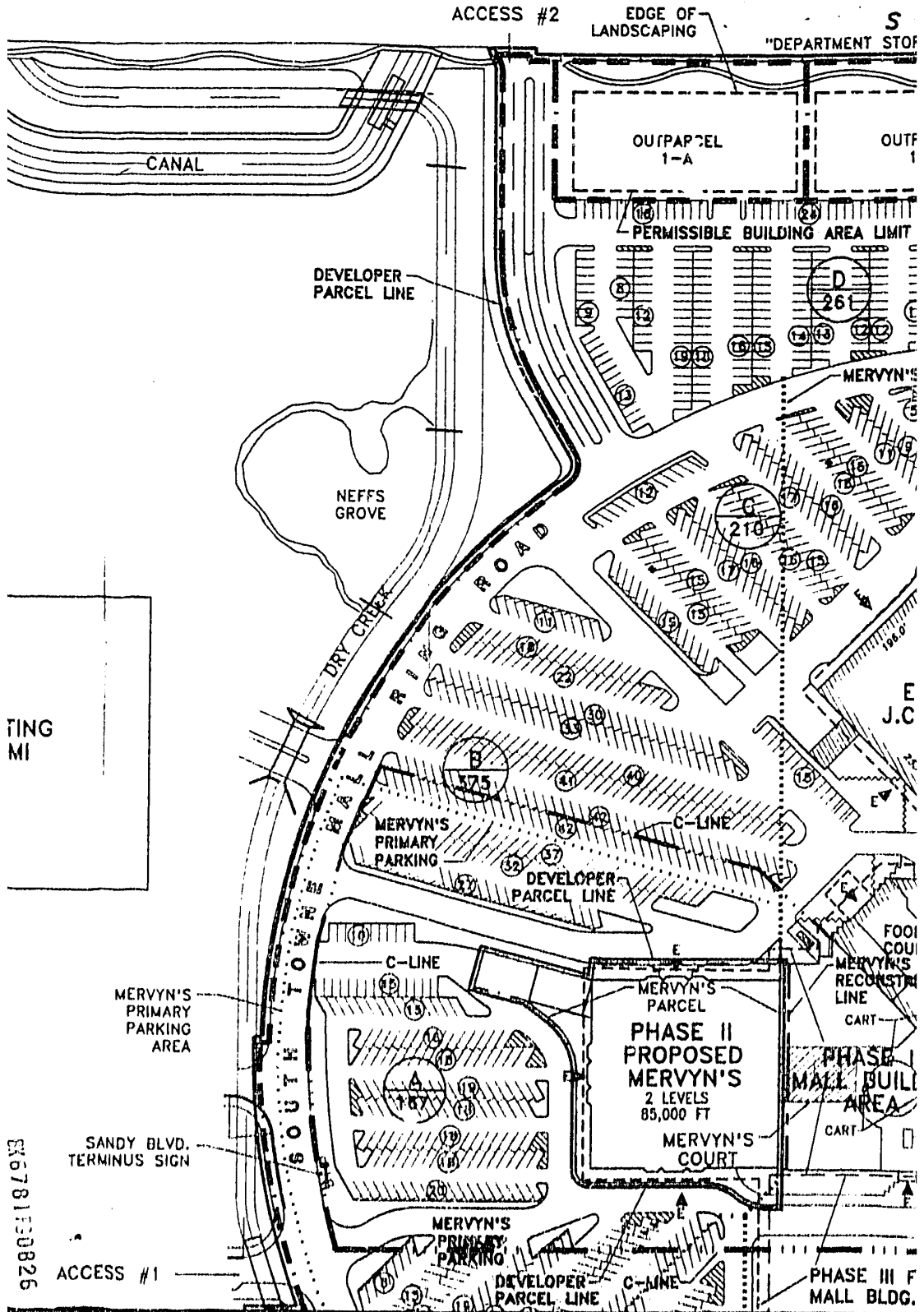
PHASE II MALL BUILDING AREA

EX6781E30825



BUILDING
EX6781F30825

MEI
PI
P,
SANDY
TERMINUS
EX6781F30826
ACCESS



TING MI

EX 6781 PG 0826

ACCESS #1

ACCESS #2

EDGE OF LANDSCAPING

"DEPARTMENT STOP"

CANAL

DEVELOPER PARCEL LINE

OUTPARCEL 1-A

OUTP

PERMISSIBLE BUILDING AREA LIMIT

MERVYN'S

NEFFS GROVE

DRY CREEK

MERVYN'S PRIMARY PARKING

DEVELOPER PARKING

MERVYN'S PRIMARY PARKING AREA

SANDY BLVD. TERMINUS SIGN

SOUTH TOWER MALL RIG ROAD

MERVYN'S PRIMARY PARKING

DEVELOPER PARKING

MERVYN'S PARCEL

PHASE II PROPOSED MERVYN'S 2 LEVELS 85,000 FT

MERVYN'S COURT

FOOT COUNTR MERVYN'S RECONSTR LINE CART

PHASE I MALL BUILD AREA CART

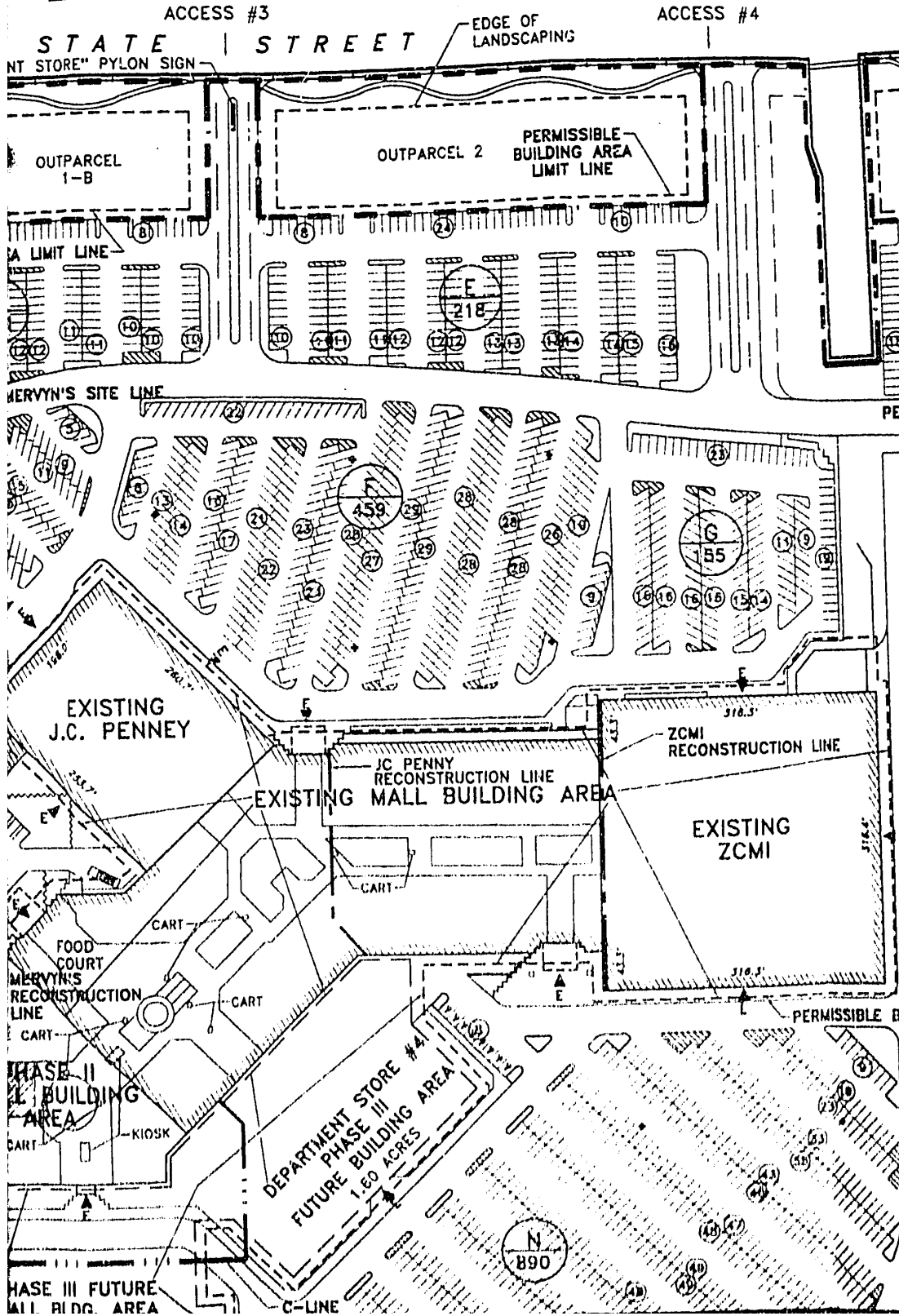
MERVYN'S PRIMARY PARKING

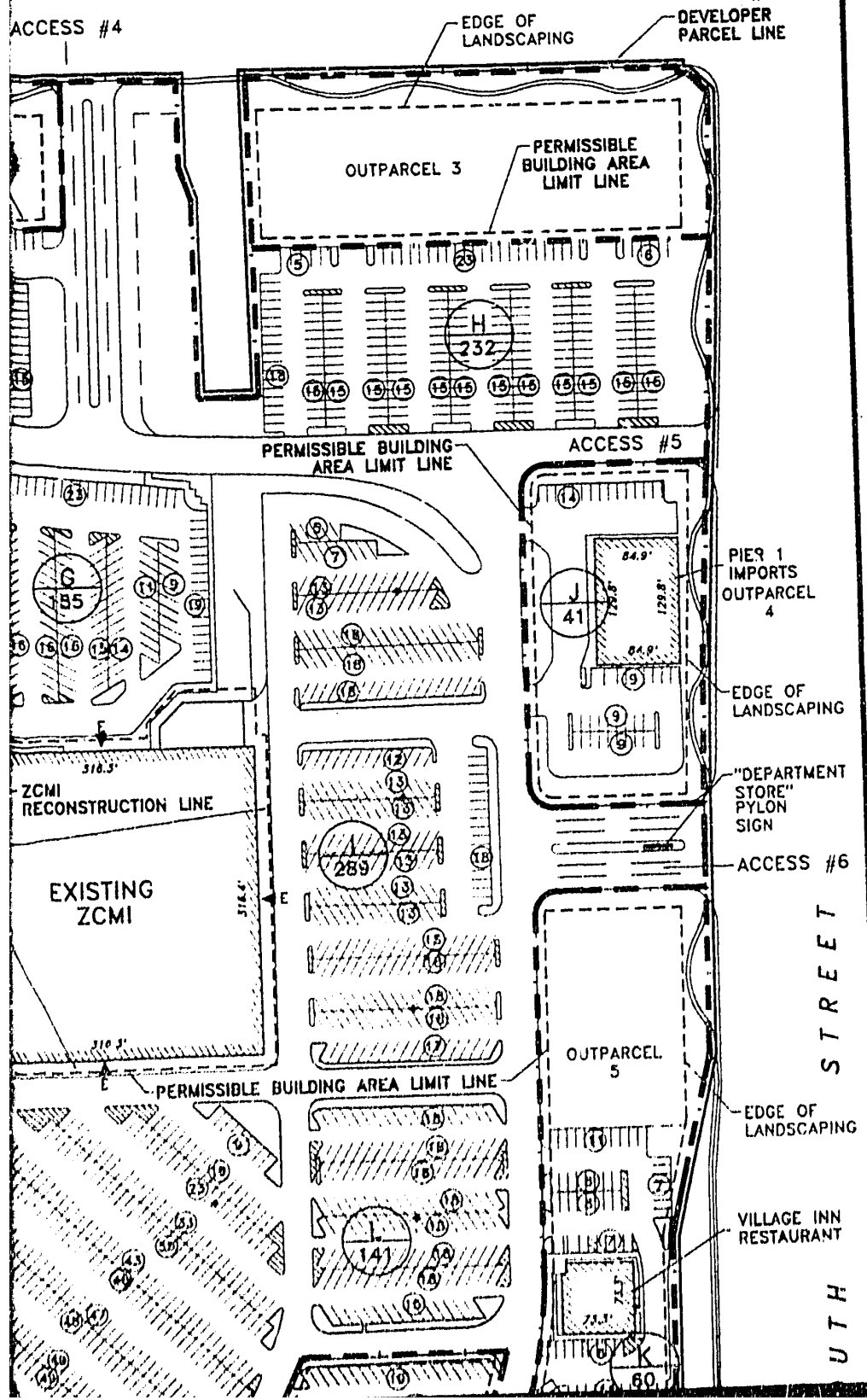
DEVELOPER PARKING

PHASE III F MALL BLDG.

0827

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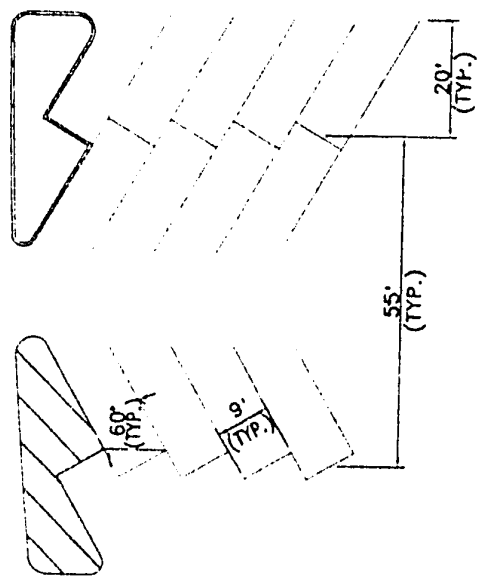
PARKING STALL SUMMARY

	ALLOWED GROSS
PHASE I (EXISTING)	
DEPARTMENT STORE (ZCMI)	192,000
DEPARTMENT STORE (J.C.PENNEY)	100,237
MALL SHOPS	184,000
SUBTOTAL	476,237
PHASE II (FUTURE)	
DEPARTMENT STORE (MERYVNS)	85,000
MALL SHOPS	40,000
SUBTOTAL	125,000
PHASE III (FUTURE)	
FUTURE DEPARTMENT STORE #4	120,000
FUTURE DEPARTMENT STORE #5	190,000
MALL SHOPS	40,000
SUBTOTAL	230,000
EXISTING OUTPARCELS	
PIER 1	10,000
PONDEROSA	6,600
VILLAGE INN	5,338
EXISTING CINEPLEX THEATERS	36,000
SUBTOTAL	67,048
GRAND TOTAL	998,664
SUMMARY (SHOPPING CENTER EXCLUDING OUTPARCELS)	
TOTAL BUILDING AREA (PHASE I & II)	601,237
PARKING REQUIRED @ 4.75 SPACES PER 1000 SF (PHASE I & II)	2,856
TOTAL PARKING PROVIDED	4,638
PARKING EXCESS	1,752

EX678120830

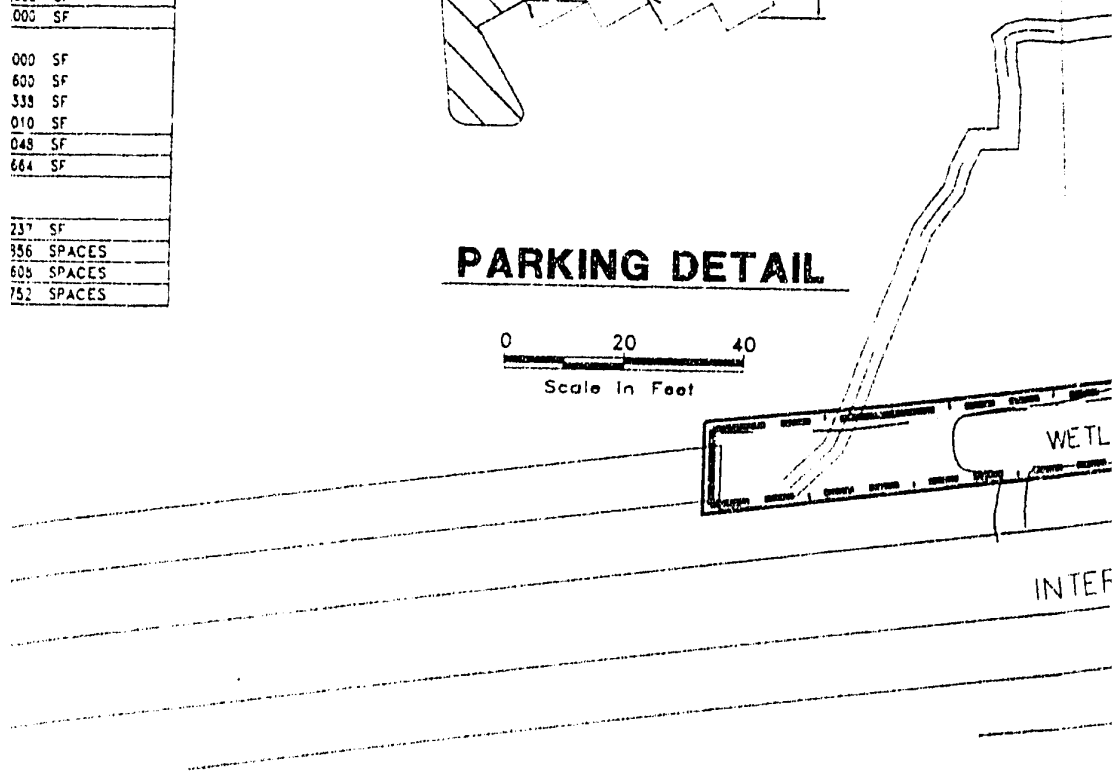
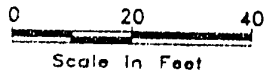
DEVE
PARC

LOSS FLOOR AREA	
.000	SF
1,237	SF
.000	SF
237	SF
.000	SF
.000	SF
.000	SF
.000	SF
.000	SF
.000	SF
.000	SF
000	SF
600	SF
338	SF
010	SF
048	SF
664	SF
237	SF
336	SPACES
605	SPACES
752	SPACES



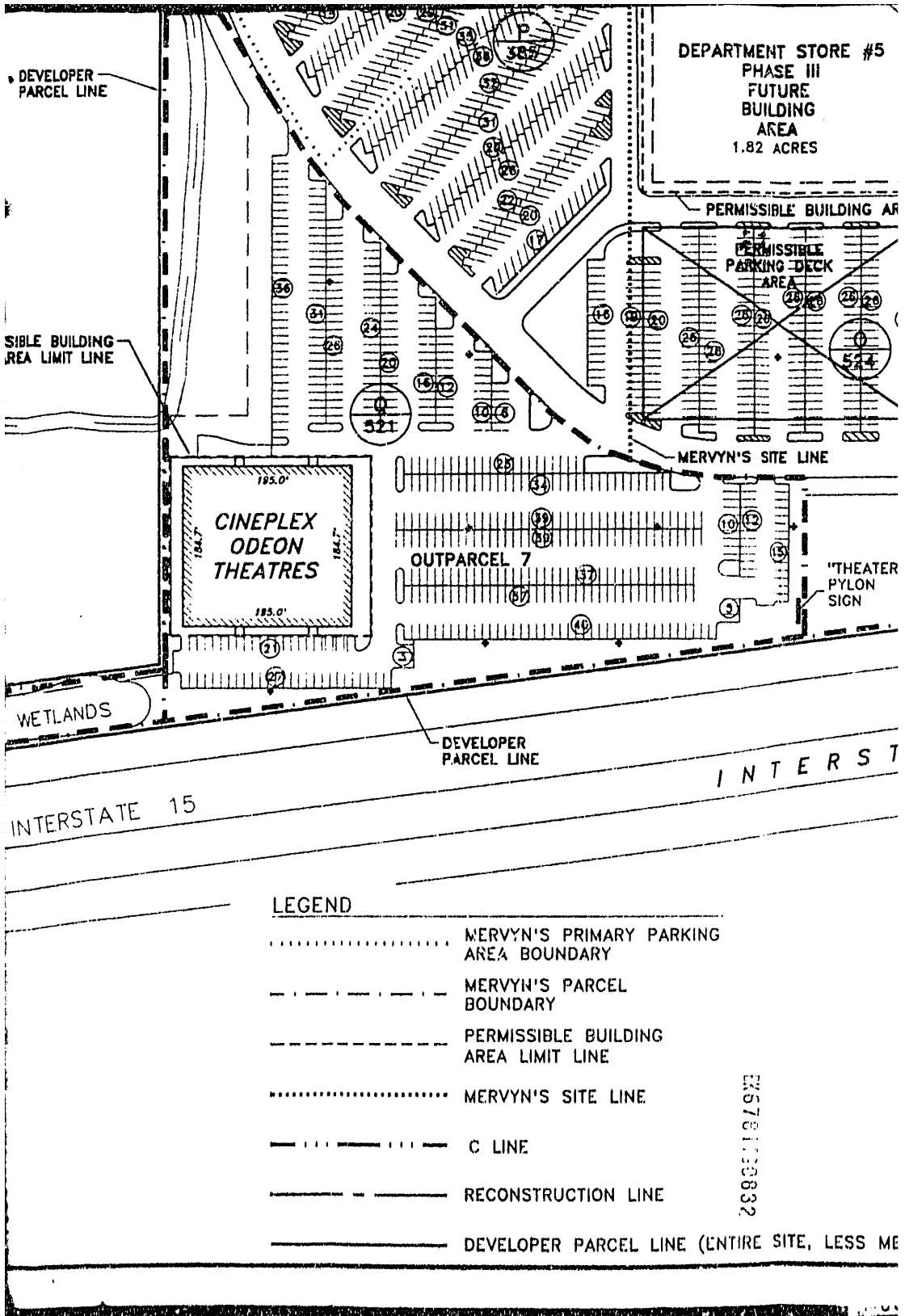
PERMISSIBLE E
AREA LI

PARKING DETAIL



NOTE:
THIS DRAWING IS BASED ON THE A.L.T.A. SURVEY PREPARED
FOR THE MERVYN'S EXPANSION, SHEET 1 OF 3, DATED 9/21/93.

EX678150831



DEVELOPER
PARCEL LINE

DEPARTMENT STORE #5
PHASE III
FUTURE
BUILDING
AREA
1.82 ACRES

PERMISSIBLE BUILDING
AREA LIMIT LINE

PERMISSIBLE BUILDING AREA

PERMISSIBLE
PARKING DECK
AREA

185.0'
184.7'
184.7'
185.0'
**CINEPLEX
ODEON
THEATRES**

OUTPARCEL 7

MERVYN'S SITE LINE

THEATER
PYLON
SIGN

WETLANDS

DEVELOPER
PARCEL LINE

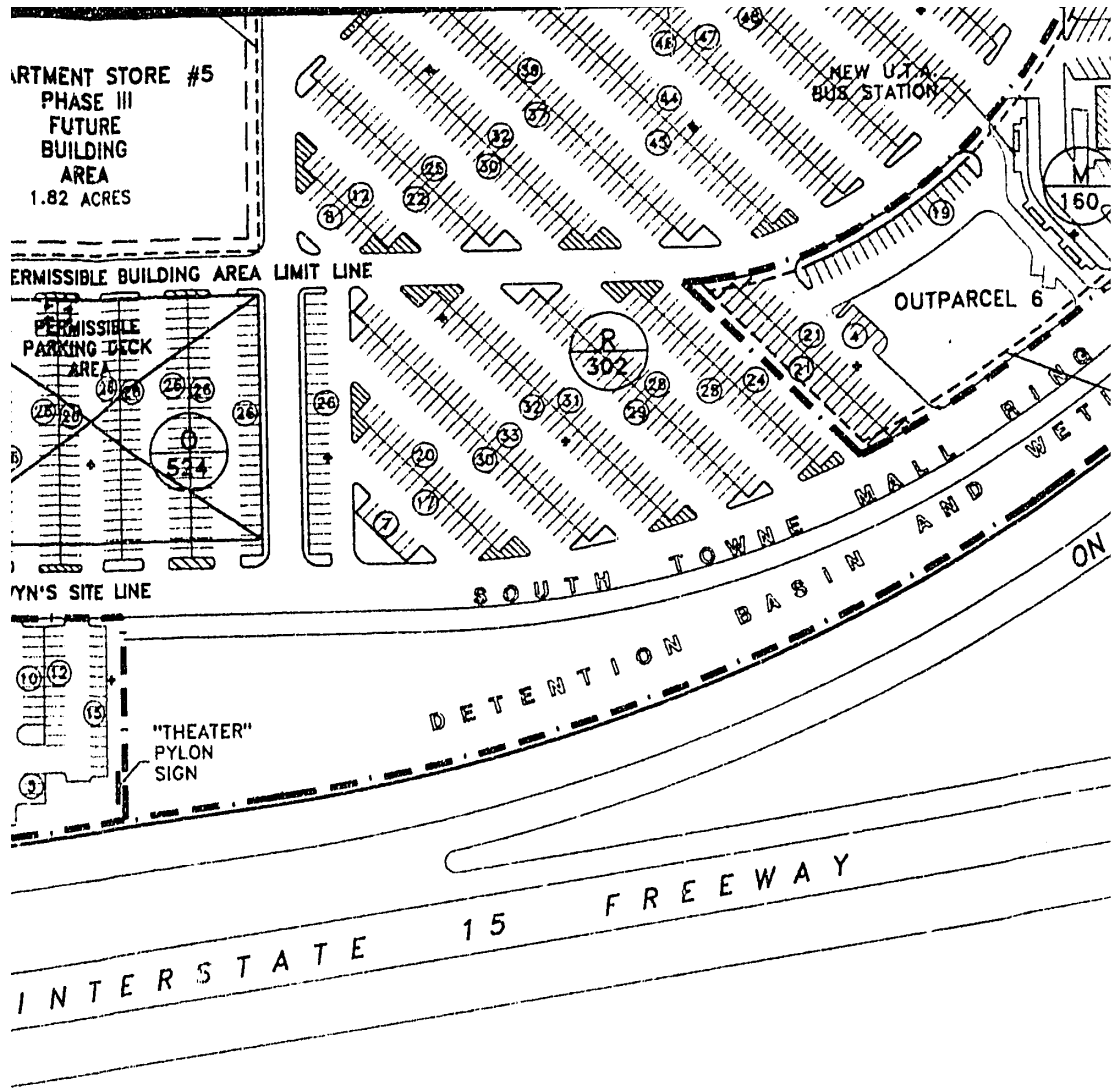
INTERSTATE 15

INTERST

LEGEND

- MERVYN'S PRIMARY PARKING AREA BOUNDARY
- MERVYN'S PARCEL BOUNDARY
- PERMISSIBLE BUILDING AREA LIMIT LINE
- MERVYN'S SITE LINE
- C LINE
- RECONSTRUCTION LINE
- DEVELOPER PARCEL LINE (ENTIRE SITE, LESS ME

2678138832



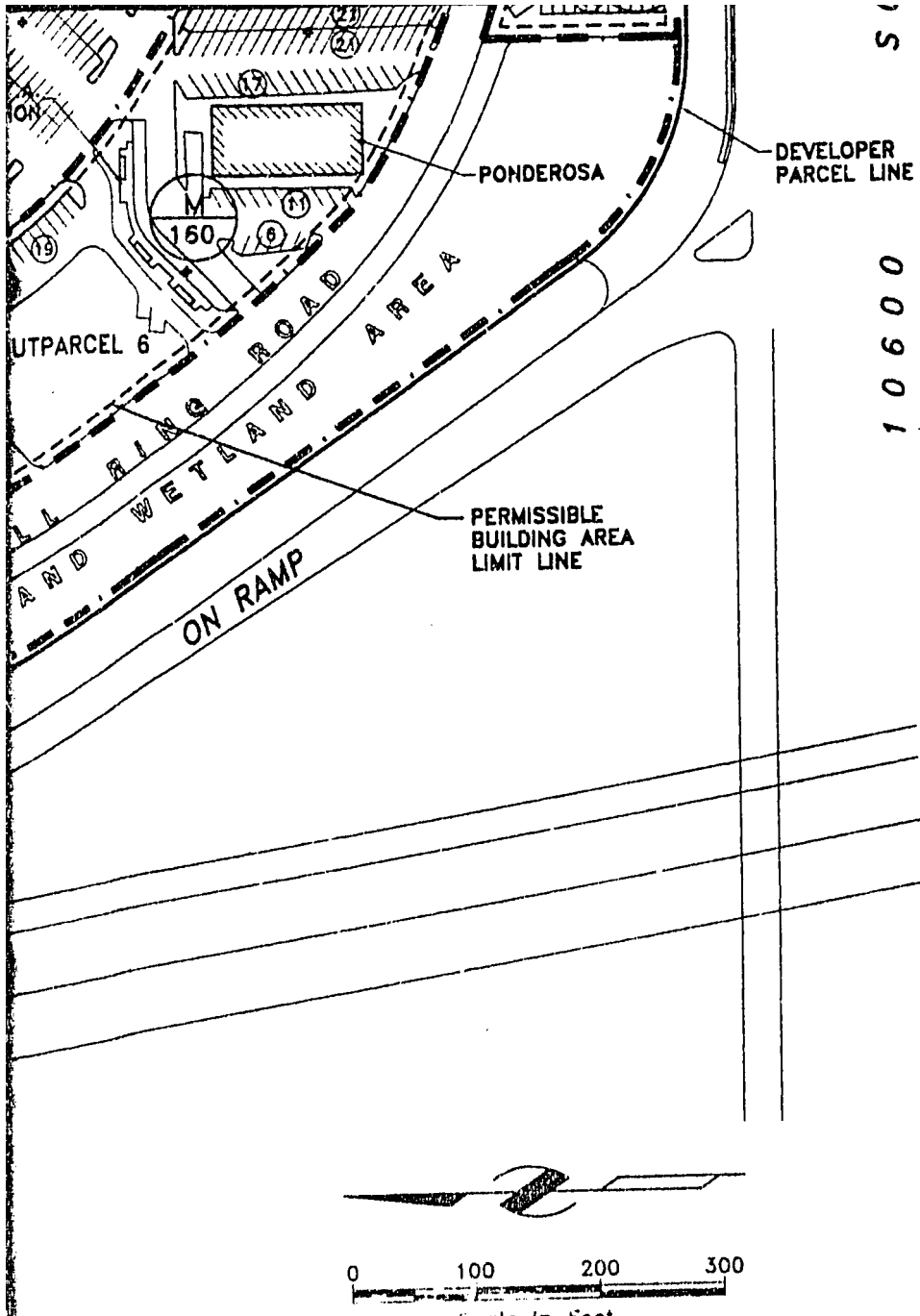
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BK6781PG0832

(ENTIRE SITE, LESS MERVYN'S PARCEL.)

Rev.	By	Date	Remarks
I	JP	9/30/93	RECON. LINE PENNYS, ZCMI, MERVYN'S/C-LINE
H	JP	9/29/93	DEVELOPER PARCEL CLARIFICATION
G	JP	9/28/93	LINE NOTATIONS, ARROWS & DEVELOP. PARCEL
F	JP	9/24/93	OUTPARCEL & PARKING STALL SUMMARY
E	JP	9/22/93	CHANGE OUTPARCEL DESIGNATIONS
D	JP	9/21/93	MERVYN'S PARCEL CHANGES
C	JP	9/18/93	SUMMARY UPDATE
B	JP	9/9/93	MERVYN'S PARCEL CHANGES
A	CAD	7/22/93	CHANGED TO MERVYN'S EXHIBIT A

BK6781PG0833



15
10600

EQUITY PROPERTIES	
SOUTH TOWNE CENTER UPPER & LOWER LEVEL	
MERVYN'S EXHIBIT A	
ZCMI, MERVYN'S/C-LINE PARCEL CLARIFICATION ROWS & DEVELOP. PARCEL PARKING STALL SUMMARY PARCEL DESIGNATIONS PARCEL CHANGES SURVEY UPDATE PARCEL CHANGES MERVYN'S EXHIBIT A	<div style="text-align: center;"> <p>BINGHAM ENGINEERING SALT LAKE CITY - (801) 632-2820</p> </div> <div style="font-size: small;"> Design: <u>NIJ</u> Drawn: <u>IM</u> Checked: <u>CAU</u> Reviewed: <u>ADP</u> </div>
Remarks	Date SEPT. 1003 Proj. # 1711-011 Shl 1 of 1

EM6781730834

160833

EXHIBIT "B"
DESCRIPTION OF PARCELS
SOUTH TOWNE CENTER

EM6781F30835

EXHIBIT B TO REA

DEVELOPER PARCEL BOUNDARY DESCRIPTION SCHEDULE "A" (PARCEL 3)

Beginning at a point on the West line of State Street (51.0 feet from monument line) North 89°50'56" East 41.33 feet from the Northeast corner of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian (Basis of bearing being South 00°01'50" East along the State Street monument line between the monuments opposite the Northeast corner and the East quarter corner of said Section 13); thence along the West street line South 00°01'50" East 583.17 feet and South 00°50'43" East 70.31 feet to a point 50.0 feet from the monument line; thence along said West street line South 00°01'50" East 89.93 feet; thence South 89°58'10" West 6.5 feet; thence South 00°01'50" East 1,242.98 feet to the North line of A.P. Stevens property, recorded as Entry No. 1619249 on Page 97 in Book 1556 of Deeds in the Salt Lake County Recorder's Office; thence along said property line, South 89°30'10" West 89.53 feet, South 70°00'10" West 35.00 feet, South 89°05'10" East 204.06 feet, South 00°01'50" East 63.87 feet and North 89°01'10" East 326.50 feet; thence along the new right-of-way South 00°01'50" East 444.47 feet; thence South 89°58'10" West 6.50 feet; thence South 00°01'43" East 10.82 feet to the North line of Parcel "A" as shown on the survey map by Robert R. Goff dated August 24, 1985 for Goff Enterprises, Draper, Utah; thence South 45°11'14" West 28.40 feet; thence along the North line of said Parcel "A" for the next four courses; North 89°35' West 5.42 feet to a point of tangency with a 7,619 foot radius curve, the center of which bears North 00°25' East and along said curve to the right, through a central angle of 02°51'49" a distance of 380.34 feet to a point of reverse curve with a radius of 7,735.00 feet, the center of which bears South 03°16'49" West, and along said curve to the left through a central angle of 02°51'49" a distance of 386.59 feet, and North 89°35' West, for a distance of 215.84 feet; thence North 76°40'15" West 153.77 feet to an iron rod shown on the C.J. Schuchert survey for Engineering Consortium, SLC; thence North 76°58'27" West 37.64 feet to a point that is 120 feet perpendicularly distance Northerly from the surveyed State Road Commission (SRC) Engineer's Centerline Station 9+05.86 of State Highway Project 15-7, said point being the end of the non-access line of said project; thence along the highway right-of-way and non-access line of said project the next 5 courses (bearings rotated to agree with basis of bearing); North 89°35' West 198.00 feet to a point of tangency with a 205.63 foot radius curve (SRC = 206.59) the center of which bears North 00°25' East, and along said curve to the right, through a central angle of 58°26'36" a distance of 209.75 (SRC = 210.15) and continuing North 34°54'34" West 420.27 feet to a point on the arc of a 1,740.85 foot radius curve, the center of which bears North 57°49'06" East, said point being 65 feet perpendicularly distant Northeasterly from Engineer's Station 57+61.83 for the centerline of ramp "C" of said highway project, and continuing Northwesterly along said curve to the right, through a central angle of 24°10'17" a distance of 734.41 feet to a point 65 feet radially distant Northeasterly from Engineer's Station 50+00 for ramp "C" (said point also being 145 feet radially distant Northeasterly from I-15 centerline station 970+00), and continuing North 07°18'09" West 1,353.04 feet to a point on the North line of said Section 13 (North 89°49'53" West 2,198.92 feet from the Northeast corner of said Section 13); thence South 89°49'53" East 63.36 feet to a point on the arc of a 34,179.5 foot radius curve, the center of which bears North 84°14'35.33" East, thence Southeasterly along said curve to the left, through a central angle of 00°15'12.33" a distance of 151.18 feet to a point that is 198.0 feet radially distant Northwesterly from I-15 centerline station 958+00; thence South 07°18'09" East 307.23 feet; thence parallel with the North line of said Section 13, South 89°49'53" East 760.73 feet to a

EM6781790835

fence line; thence along said fence line, North 440.75 feet and North 00°14'12" East 266.87 feet to the Southerly bank of a concrete ditch; thence along said ditch bank South 88°15'44" East 285.02 feet; South 88°11'28" East 304.00 feet; South 87°44'56" East 234.00 feet; and South 87°52'13" East 210.75 feet to the Southeasterly bank of said concrete ditch; thence along said Southeasterly ditch bank North 45°12'49" East 459.53 feet to the West line of State Street (51.00 feet from the monument line); thence along said street line South 00°07'35" East 544.89 feet to the point of beginning, contains 115.08 acres ±.

Less the property contained within the Salt Lake Canal according to deeds or an unwritten prescriptive easement 33 feet each side of the center of said canal, whichever is greater. Contains 2.73 acres ±.

Also less the property conveyed to Sandy City by deed recorded June 6, 1986 as Entry No. 4257245 in Book 5775 at Page 2179 of Official Records. (See exception #23 on sheet 2 of 2).

Also less the property for the future Sandy Boulevard right-of-way; a parcel of land in the Northeast quarter (NE 1/4) of Section 13, and the Southeast quarter (SE 1/4) of Section 12, Township 3 South, Range 1 West, Salt Lake Base and Meridian, being more particularly described as follows: Beginning at a point which is North 89°49'53" West 1,027.21 feet along the section line from the Northeast corner of said Section 13, and running thence South 0°00'36" West 460.01 feet to a point on the arc of a 768.00 foot radius curve (bearing to center is South 00°53'56" West); thence Southwesterly along the arc of said curve (the chord of which bears South 79°43'14" West 297.78 feet) a distance of 299.68 feet, having a central angle of 22°21'25"; thence along a bearing of North 499.79 feet; thence North 00°14'12" East 266.87 feet; thence South 88°15'41" East 285.02 feet; thence South 88°11'28" East 7.13 feet; thence South 00°00'36" West 24.65 feet to the point of beginning. Contains 4.87 acres, more or less.

Also less the property for the proposed community parcel; a parcel of land in the Northeast quarter (NE 1/4) of Section 13, and the Southeast quarter (SE 1/4) of Section 12, Township 3 South, Range 1 West, Salt Lake Base and Meridian, being more particularly described as follows: Beginning at a point on the West line of State Street (51.0 feet from monument line) North 89°50'56" East 41.33 feet from the Northeast corner of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian (basis of bearing being South 00°01'50" East along the State Street monument line between the monuments opposite the Northeast corner and the East quarter corner of said Section 13); thence along said West street line South 00°01'50" East 60.26 feet; thence South 89°58'10" West 227.00 feet; thence South 00°01'50" East 290.00 feet; thence South 89°58'10" West 414.00 feet; thence South 32°09'34" West 93.56 feet; thence South 89°58'10" West 378.00 feet to a point on the East line of the proposed Sandy Boulevard right-of-way; thence along said East line North 00°00'36" East 677.54 feet to a point on the Southerly bank of a concrete ditch; thence along said ditch bank South 88°11'28" East 296.87 feet; and South 87°44'56" East 234.00 feet; and South 87°52'13" East 210.75 feet to the Southeasterly bank of said concrete ditch; thence along said Southeasterly ditch bank North 45°12'49" East 459.53 feet to the West line of State Street (51.0 feet from the monument line); thence along said street line South 00°07'35" East 544.89 feet to the point of beginning. Contains 14.69 acres, more or less.

EM678150837

Also less and excepting the Mervyn's store, Parcel 1.

9/23/93
JDP/na
1711-011

EM678150838

MERVYN'S STORE PARCEL 1 DESCRIPTION

A parcel of land in the Northeast Quarter of Section 13, Township 3 South, Range 1 West, Salt Lake Base & Meridian, being more particularly described as follows:

Beginning at a point 926.18 feet West and 700.84 feet South from the Northeast Corner of said Section 13 (basis of bearing being South 00°01'50" East along the State Street monument line between the monuments opposite the Northeast Corner and the East Quarter Corner of said Section 13), said point being on a 315.48 foot radius curve to the right (radius point bears North 76°12'01" West) and running thence Southwesterly 6.61 feet along the arc of said curve through a central angle of 01°12'01" to a point of tangency; thence South 15°00'00" West 113.39 feet; thence South 83°05'00" East 19.20 feet to a point on a 147.50 foot radius curve to the left (radius point bears South 83°05'00" East); thence Southerly 17.73 feet along the arc of said curve through a central angle of 06°53'25" to a point of tangency; thence South 00°01'35" West 184.00 feet; thence South 89°59'52" West 263.49 feet; thence North 00°01'35" East 10.30 feet to the point of curvature with a 49.50 foot radius curve to the right; thence Northeasterly 35.99 feet along the arc of said curve through a central angle of 41°39'23" to a point of reverse curvature with a 50.50 foot radius curve to the left; thence Northeasterly 36.72 feet along the arc of said curve through a central angle of 41°39'23" to a point of tangency; thence North 00°01'35" East 128.85 feet to the point of curvature with a 14.50 foot radius curve to the right; thence Northeasterly 22.78 feet along the arc of said curve through a central angle of 90°00'00" to a point of tangency; thence South 89°58'25" East 103.56 feet to the point of curvature with a 75.50 foot radius curve to the left; thence Northeasterly 69.60 feet along the arc of said curve through a central angle of 52°48'57" to a point of tangency; thence North 37°12'38" East 32.85 feet; thence North 15°00'00" East 56.14 feet; thence South 75°00'00" East 39.93 feet to the point of beginning.

Containing 1.344 acres.

09/16/93,
Rev. 09/21/93
JDP/na
1711-011

EM6781250839

MERVYN'S PRIMARY PARKING, PARCEL 2 DESCRIPTION

A parcel of land in the Northeast Quarter of Section 13, Township 3 South, Range 1 West, Salt Lake Base & Meridian, being more particularly described as follows:

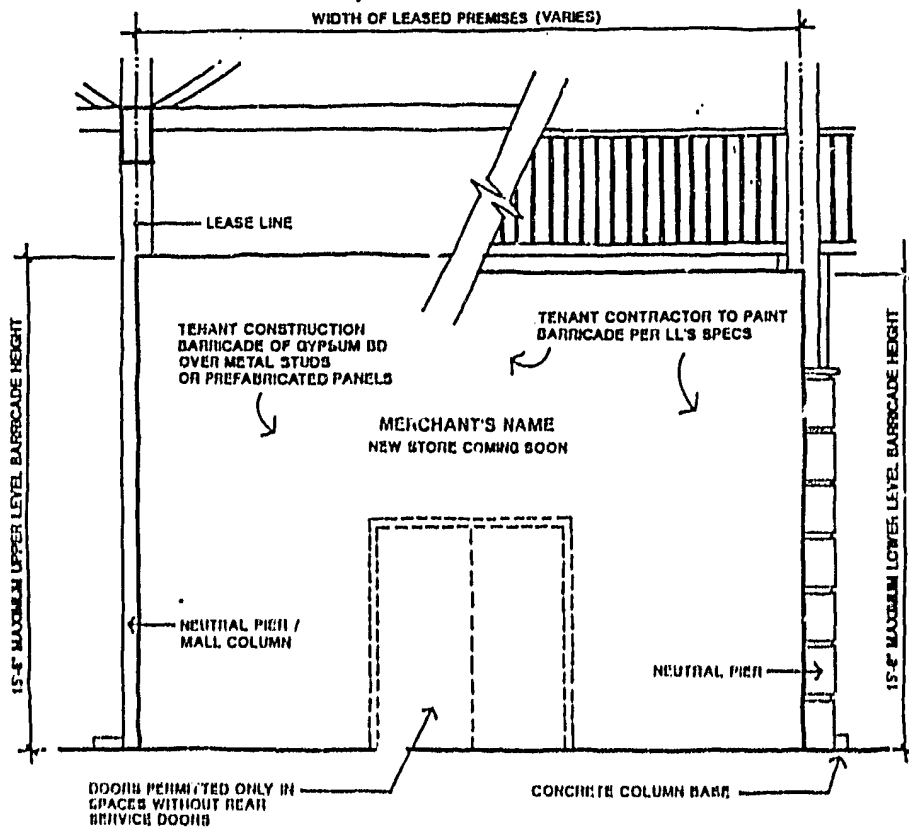
Beginning at a point 1506.28 feet West and 627.79 feet South from the Northeast Corner of said Section 13 (basis of bearing being South 00°01'50" East along the State Street monument line between the monuments opposite the Northeast Corner and the East Quarter Corner of said Section 13), said point being on the Northerly line of the South Towne Mall Ring Road at a point on a 758.00 foot radius curve to the right (radius point bears South 38°01'35" East); and running thence Northeasterly 215.26 feet along the arc of said curve through a central angle of 16°16'15" (chord bears North 60°06'32" East 214.53 feet); thence North 10.75 feet to the southerly line of the future Sandy Boulevard right of way, said point being on a 768.00 foot radius curve to the right (radius point bears South 21°27'29" East); thence Northeasterly 299.68 feet along the arc of said curve through a central angle of 22°21'25" (chord bears North 79°43'14" East 297.78 feet); thence South 00°00'36" West 9.99 feet to said northerly line of the South Towne Mall Ring Road, said point being on a 758.00 foot radius curve to the right (radius point bears South 00°54'37" West); thence Southeasterly 300.10 feet along the arc of said curve through a central angle of 22°41'04" (chord bears South 77°44'52" East 298.14 feet); thence South 15°51'56" West 509.94 feet; thence South 89°59'52" West 63.92 feet to a point on Mervyn's Parcel 1; thence running along said parcel North 00°01'35" East 184.00 feet to the point of curvature with a 147.50 foot radius curve to the right; thence Northeasterly 17.73 feet along the arc of said curve through a central angle of 06°53'25"; thence North 83°05'00" West 19.20 feet; thence North 15°00'00" East 113.39 feet to a point of curvature with a 315.48 foot radius curve to the left; thence Northeasterly 6.61 feet along the arc of said curve through a central angle of 01°12'01"; thence North 75°00'00" West 39.93 feet; thence South 15°00'00" West 56.14 feet; thence South 37°12'38" West 32.85 feet to the point of curvature with a 75.50 foot radius curve to the right; thence Southwesterly 69.60 feet along the arc of said curve through a central angle of 52°48'57" to a point of tangency; thence North 89°58'25" West 103.56 feet to a point of curvature with a 14.50 foot radius curve to the left; thence Southwesterly 22.78 feet along the arc of said curve through a central angle of 90°00'00" to a point of tangency; thence South 00°01'35" West 128.85 feet to a point of curvature with a 50.50 foot radius curve to the right; thence Southwesterly 36.72 feet along the arc of said curve through a central angle of 41°39'23" to a point of reverse curvature with a 49.50 foot radius curve to the left; thence Southwesterly 6.15 feet along the arc of said curve through a central angle of 07°07'19"; thence leaving said Mervyn's parcel North 44°58'25" West 324.58 feet; thence North 45°01'35" East 29.75 feet; thence North 44°58'25" West 147.00 feet to the point of beginning. Containing 5.563 acres.

9/21/93
JDP/na
1711-011

EX6761F30840

EXHIBIT "C"

**BARRICADE CRITERIA
MERVYN'S
SOUTH TOWNE CENTER**



EX678130841

EXHIBIT "D"

SCOPE OF WORK
MERVYN'S
SOUTH TOWNE CENTER

02/18/93
02/24/93
04/06/93
07/16/93

INTRODUCTION

This Scope of Work document was drafted with the intent that it be used in a transaction involving a Grant of Reciprocal Easements and Declaration of Covenants Running With the Land, and Development Agreement (R.E.A.).

I. REQUIRED PLANS, SCHEDULES & EXHIBITS

In accordance with the schedules indicated below, the Developer shall furnish to Mervyn's, for its approval, three blueline copies plus a reproducible sepia copy of each required document and all revisions thereof. The drawings should be prepared at a scale of at least one (1) inch equals 40 feet, contain a graphic scale and be drawn on 22" X 36" paper. All required drawings are to be drawn at the same scale. All documents listed below shall be prepared by licensed professionals in a manner consistent with the highest standards of their field.

- A. Topographic Survey: As soon as possible, but no later than 45 days prior to closing, the Developer shall furnish to Mervyn's a Topographic Survey of the Mervyn's Tract site as it currently exists. This survey shall conform to the following:
1. The Topographic Survey shall be made by a registered surveyor and shall bear his seal, signature, date of survey, address and telephone number.
 2. The Topographic Survey shall be drawn at a scale no smaller than 1" = 40' and shall include a compass point.

3. Show and label all existing Shopping Center site improvements over the complete tract. Include all property lines and total square footage area.
4. Establish a bench mark (outside of the property lines) that will not be destroyed. Do not use assumed data. Give the Datum of Elevations.
5. Show all existing utilities and utility easements including, but not limited to, gas lines, water lines, sewer lines, telephone or telegraph lines, cable television lines and electric lines, noting their sizes and capacities.
6. Show the invert elevations of all inlets and outlets on all sanitary, storm or combination sewers. Label all sewers as to type and indicate sewer material (concrete, brick, tile, etc.) and direction of sewer flow. Check the inverts of city, county or district underground work against the bench mark. Do not assume that government data on such items is correct.
7. Show all adjoining sidewalks and curbs on both sides of all adjacent streets and alleys. Indicate topographic elevation shots at the top of curb, back of sidewalk, gutter flow lines and at the crown of the street. Include elevations of all manhole rims.
8. Show all adjacent streets and other off-site improvements within 100' of the Shopping Center. Show right-of-way dedications required by governmental agencies.
9. Show all topographic elevations on a 50' X 50' grid system. Show contours at one foot intervals, where practical to do so.
10. Show and label all encroachments, conflicts or protrusions apparent on, or adjacent to, the property such as drainage ditches, poles, guys, wells, springs, trees, fences, signs, buildings, curbs, retaining walls or other property or right-of-way encumbrances.
11. Show the location and description of adjacent buildings, including wall construction, if within 30 feet of the property lines.
12. If there are any conditions in the immediate area surrounding the Shopping Center that will affect the development of the property, provide sufficient information to clarify these conditions. Consult with the Common Area Architect and Mervyn's Site Development Administrator concerning all such conditions. Include zoning

information on all immediately adjacent areas (i.e. residential, retail, industrial, commercial).

B. Site Plan Exhibit: As soon as possible, but no later than 30 days prior to closing, the Developer shall furnish a Site Plan of the Shopping Center as it is proposed. This Site Plan shall be the basis for the development of the Common Area Work Plans as outlined in Section LH. of this Scope of Work. The following information shall be shown on this plan:

1. Exhibit Designation: Usually Exhibit "B", with the date and latest revision dates.
2. Scale: Show the graphic scale, preferably 1" = 100'.
3. Compass Point: Show true north and, if applicable, plan north.
4. Base Reference: Show from whose survey, site plan or plot plan the exhibit was prepared and the date of that document.
5. Building Area: Show and label all those areas on the Site Plan to be utilized for construction of buildings and improvements intended for the Shopping Center, together with appurtenant loading docks, truck tunnels, canopies, ramps, wells, garden areas and T.B.A.'s. Designations for each such Building Area should be as set forth in the R.E.A.
6. Future Building Area: Show and label all Future Building Areas (those areas where additional buildings and improvements may be located at some future time). Designations for each such Future Building Area should be as set forth in the R.E.A.
7. Allowed Gross Floor Area: Provide a table showing the maximum Gross Floor Area allowed to be contained within the boundaries of any Building Area or Future Building Area. Square footage listed within this table shall be as computed using the Floor Area definition set forth in the R.E.A. (usually not the same as the U.B.C. definition.)
8. Parking Areas: Show a composite parking layout for the entire Parking Area and Parking Structure, if any, including but not limited to; the number of parking stalls per parking bay and per parcel, sidewalks, extent of paving, striping, curbs, berms, retaining walls (if any), and traffic control devices.
9. Parking Detail: Show a dimensioned detail of all typical parking bays and parking stalls used throughout the project.

10. Signs: Show the locations of all existing and proposed monument and/or pylon signs.
 11. Common Area: Show all areas of the Shopping Center intended for the non-exclusive use by all Parties including, but not limited to; parking areas, service areas, driveways, areas of ingress and egress, enclosed mall courts, sidewalk and other pedestrian ways, Perimeter Sidewalks adjacent and contiguous to buildings located on Building Areas, areas containing buildings or structures used in connection with the maintenance of the Common Area, roadways, delivery areas, landscaped areas (including planters and areas located between Perimeter Sidewalks and buildings or next to exterior building walls), areas containing structures advertising the common name given to the Shopping Center together with the structures constructed thereon, common corridors, public restrooms and comfort stations accessible from pedestrian passageways.
 12. Parcel Lines: Indicate the existing and/or proposed property lines for the various parcels comprising the Shopping Center.
 13. Shopping Center Data Summary: Show in a table form: The Allowed Gross Floor Area of all Majors and tenant shops, Future Building Areas, parking spaces required, parking spaces provided and the Parking Ratio (the number of spaces provided per 1000 S.F. of Allowed Gross Floor Area.) Also show totals of these items.
 14. Shopping Center: Show the square footage of all areas bounded by property lines for the entire Shopping Center, for each individual parcel, and for all exclusions, such as outparcels or land to be dedicated.
 15. Building Area Limit Lines: Indicate, graphically, the outermost limits of the Building Areas in which the various Parties' buildings are to be constructed.
- C. Title Survey: As soon as possible, but no later than 30 days prior to closing, the Developer shall furnish a Title Survey of the entire Shopping Center. This Title Survey shall conform to the following:
1. The Title Survey shall be made by a registered surveyor and shall bear his seal, signature, date of survey, address and telephone number.

2. In applicable states, the Title Survey is to meet the minimum requirements to qualify it as an ALTA (American Land Title Association) survey for the purposes of issuing an ALTA Title Insurance Policy.
3. The Title Survey must be certified to Mervyn's and its title insurer. A Surveyor's Certificate similar to the one shown in Appendix 1, must appear on the Title Survey.
4. The Title Survey shall be drawn at a scale no smaller than 1" = 100' and shall include a compass point.
5. Include on the Title Survey the city, town, county and state in which the property is located, the recorded plat name, block and lot numbers, tax map block and lot numbers and a complete metes and bounds legal description for both the Mervyn's Parcel and the Shopping Center. Show a tie dimension to at least one street intersection, section corner or permanent reference point for each parcel's description.
6. Establish a basis of bearings (outside of the property lines) that will not be destroyed. Do not use assumed data.
7. Indicate property lines, showing bearings, distances and angles, both measured and recorded. For curves, give a complete description including the delta angles, arc lengths, radius and tangent bearings. Indicate all property corners and/or monuments found or set.
8. Show the square footage bounded by the property lines and the square footage of all exclusions, such as land to be dedicated.
9. Show all existing easements of record and note the book and page recording reference.
10. Show all existing site improvements and describe briefly.
11. Show all adjoining sidewalks, curbs, streets, alleys and any other off-site improvements. Show existing right-of-way widths as well as any right-of-way dedications required by governmental agencies.
12. Show and label all encroachments, conflicts or protrusions apparent on or adjacent to the property such as drainage ditches, poles, guys, wells, springs, trees, fences, signs, buildings, curbs, retaining walls or other property or right-of-way encumbrances.

E. Boundary and Parcel Survey: As soon as possible, but no later than 30 days prior to closing, the Developer shall furnish a Boundary and Parcel Survey of any new or proposed Parcels or Tracts comprising the entire proposed Shopping Center development. This Boundary & Parcel Survey shall conform to the following:

1. The Boundary & Parcel Survey shall be made by a registered surveyor and shall bear his seal, signature, date of survey, address and telephone number.
2. The Boundary & Parcel Survey shall be drawn at a scale no smaller than 1" = 50' and shall include a compass point.
3. Include on the Boundary & Parcel Survey the city, town, county and state in which the property is located, the recorded plat name, block and lot numbers, tax map block and lot numbers and a complete metes and bounds legal description encompassing the entire Shopping Center. Indicate separate legal descriptions for all existing and/or proposed parcels therein, with a tie dimension to at least one street intersection, section corner or permanent reference point (that point being the same as used on the Title Survey).
4. Establish a basis of bearings (outside of the property lines) that will not be destroyed. Do not use assumed data.
5. Indicate property lines, showing bearings, distances (to an accuracy of 1/100 of a foot) and angles, both measured and recorded. For curves, give a complete description including delta angles, arc lengths, radius and tangent bearings. Indicate all property corners and/or monuments found or set.
6. Show all easements, existing and/or proposed, and note recording references.
7. Show the square footage bounded by the property lines and the square footage of all exclusions, such as out parcels or land to be dedicated.

F. Shopping Center Development Schedule: During the initial negotiations Mervyn's will establish the following listed key dates:

1. Mervyn's Pad Work Completion Date, which includes temporary utility completion: December 13, 1993
2. Site Utility Work Completion Date: May 23, 1994
3. Common Area Work Completion Date: July 18, 1994
4. Building Area Completion Date: August 29, 1994

5. Mervyn's Opening Date: October, 1994

As soon as possible thereafter, but no later than 45 days prior to the start of the Common Area Work, the Developer shall furnish Mervyn's with a Shopping Center Development Schedule accommodating the aforementioned key dates. The Developer is to update this Shopping Center Development Schedule on a monthly basis before construction begins and weekly after construction commences. Copies of the Shopping Center Development Schedule are to be submitted to Mervyn's.

G. Scaled Elevations Exhibit: Scaled building elevations have been reviewed and approved by Mervyn's and the City's Planning Commission. The developer shall instruct the project architect to prepare a scaled elevation exhibit to be attached to the REA.

H. Common Area Work Plans: Upon completion of the Common Area Work Plans, and prior to soliciting bids for the Common Area Work, the Developer shall furnish Mervyn's with said documents along with the proposed construction contract. These Common Area Work Plans shall be prepared in accordance with the plans outlined in section LB. Any deviations that exist between the Common Area Work Plans and the Site Plan Exhibit shall be brought to the attention of Mervyn's and shall remain disapproved until changed and/or approved in writing by Mervyn's. Such approval shall not be reasonably withheld. The Common Area Work Plans will include, but not be limited to, the following:

1. Horizontal Control Plan: Indicate the site configuration and horizontal control showing the dimensions and locations of all buildings, curbs, roadways and parking areas planned within the Shopping Center. Pinpoint the location of the four exterior corners of the Mervyn's building.
2. Grading and Drainage Plan: Show existing and proposed contours drawn at one (1) foot intervals (where practical to do so), the location of all catch basins and drainage structures, and finish floor and building pad elevations for all buildings. Include elevations for truck dock and ramp, top of curbs, catch basin rims, flow lines, and limits of drainage and retention areas planned within the Shopping Center
3. Utility Plan: Reference the location, size and type of materials for storm drainage, sanitary sewers, water, natural gas, electrical distribution, telephone and cable television. Locate the nearest point to which all Shopping Center site utilities will connect.
4. Parking and Paving Plan: The parking and paving plan shall

conform to the criteria of the existing parking lot improvements as shown on the Site Plan Exhibit (as outlined in Section I.B.) detailing all curbs, retaining walls, berms, striping, signalization, traffic and directional signing, light standards and other parking lot obstructions. Show areas for heavy traffic paving, light traffic paving, and concrete aprons for loading areas. The civil engineer shall provide the soils engineer with project traffic indices for pavement design purposes. Include a site statistics summary on this plan, showing land area, total building square footage and the total number of parking stalls within the Shopping Center.

5. Site Lighting Plan: Indicate photogrammetric curves, details of the base, pole and luminaire assembly and any other information needed to evaluate the lighting plan. Existing supplemental lighting, i.e. adjacent street and security lights, if used to meet the requirements of section IV.G.5. b, shall be shown.
6. Landscaping and Irrigation Plan: The Developer shall cause to be prepared separate landscape and irrigation plans at such scale so as to adequately show sufficient detail. All planted areas within the Shopping Center shall be automatically irrigated. The Developer shall provide Mervyn's with an irrigation water point of connection off of the Common Area irrigation system (typically 2"); and points of connection (typically 3) to the Common Area automatic controller. All points of connection, including valve wiring, shall be provided to within five (5) feet of Mervyn's building. Refer to Section IV. K for landscape and irrigation design criteria.
7. Control Signs and Pavement Striping Plan: Show the type (e.g., STOP, YIELD, NO PARKING, special directional, Handicapped Parking Signs, Handicapped Parking Stall symbols, etc.) and location of all signs and lane lines. Stop signs and painted stop bars must be placed at all intersections of on-site circulation roads with public streets. All signs shall be SKOTCHLITE (or equivalent) reflectorized material and both signs and pavement striping shall conform to local government standards. Developer shall insure that the curbs around the perimeter of Mervyn's or next to a fire lane will be painted with exterior flat red latex paint.
8. Specifications: Written specifications detailing all technical requirements shall be in accordance with the Construction Specifications Institute (CSI) format. Specifications shall summarize all pertinent site documents and include special and general conditions, contract form, insurance requirements, bid format and soils report.

I. **Miscellaneous Requirements:** As soon as possible, but no later than 30 days prior to closing, the Developer shall assist Mervyn's in providing Mervyn's with "Will-Serve Letters" and other appropriate documentation to verify that the Shopping Center and Mervyn's Parcel will be served by all necessary utilities and other services, including, but not limited to, fire and police protection. Provide the name and telephone number of the responsible representatives of all pertinent agencies and utilities, as well as specific utility capacities and reserves. The Developer is also responsible for advising Mervyn's if there are any area fees or other assessments or dedications required in connection with the development of the Shopping Center property or Mervyn's parcel.

J. **As-Built Survey:** Within 30 days after the placement of all Shopping Center improvements and the recordation of all utility easements, Mervyn's shall request and the Developer shall furnish an As Built Survey of the Shopping Center improvements. This Survey shall conform to the following:

1. The survey shall be made by a registered surveyor and shall bear his seal, signature, date of survey, address and telephone number.
2. Be drawn on a reproducible copy of the Boundary and Parcel Survey detailed in Section I.E. above or on a reproducible copy of an aerial survey.
3. Indicate all utility easements and lines on the Shopping Center Site.
4. In applicable states, the As Built Survey is to meet the minimum requirements to qualify it as an ALTA (American Land Title Association) survey for the purposes of issuing an ALTA Title Insurance Policy.
5. Show any encroachments that may exist among the Shopping Center parcels.

K. **Insurance and Registration:** At least 30 days prior to commencement of Common Area Work construction, Developer shall provide Mervyn's with the following documents:

1. Certificates of Insurance
 - a. The Developer's policies of public liability, fire, extended coverage insurance (including Builder's Risk) and Worker's Compensation Insurance. The public liability policy shall name

Mervyn's as an additional insured.

b. The Developer's consultants' policies of public liability and professional liability.

2. The Developer's consultants' certificates of professional registration.

II. REQUIRED SITE ENVIRONMENTAL ASSESSMENT

As soon as possible, but no later than 45 days prior to closing, the Developer shall provide Mervyn's with a complete Environmental Assessment of the Shopping Center including the proposed Mervyn's site. The purpose of this Environmental Assessment is to effectively screen the land for any significant existing risks of contamination by toxic or hazardous substances, as defined by Federal, State & local codes, laws and ordinances. This Environmental Assessment shall be performed by a qualified environmental engineer, licensed in the State of Utah, and, at a minimum, conform to the following requirements:

A. PHASE ONE:

1. **HISTORICAL REVIEW:** This review should address the following requirements as a minimum:
 - a. Review historical aerial photographs, USGS maps, etc., for details of the site's use and any features that might be a suspect source of surficial or subsurface contamination.
 - b. Review title records of the past 100 years to determine past uses of the site.
 - c. Review all available site "As Built Drawings".
 - d. Review building and operating permit records for any past or present buildings which may indicate environmental risk.
 - e. Interview current or past owners, lessees, adjacent property owners, users, etc.
 - f. Review all available existing foundation/environmental/soils reports.
 - g. Review disclosure statement describing known uses of hazardous and toxic materials on this site.

h. Contact local, county, state and federal agencies for:

- (1) Reported spills**
 - (2) Permits for land use, waste discharge and/or air emissions**
 - (3) Permit violations**
 - (4) Well logs or ground water test results**
 - (5) Any past or present landfills, waste treatment or industrial facilities either on, adjacent or near the site.**
 - (6) Copies of all past, present or pending environmental applications or permits issued by federal, state and local agencies.**
 - (7) Copies of all compliance schedules, consent orders, judgments, waivers or variances related to compliance with any environmental program.**
 - (8) History of any fines or citations for violation of any environmental requirement.**
 - (9) Spill history or spill prevention control/counter-measure plans.**
- i. Prepare a list of any and all chemicals or hazardous substances that may have been used or manufactured on this site.**
- j. Prepare a chronology of the various buildings and other structures that may have been on this site in the past based on available records from the local building or planning departments having jurisdiction over this site.**
- k. Inventory and map the locations of any past or present underground tanks, piping, treatment/disposal sites, retention/holding ponds, landfills, etc.**
- l. Request written data and title documents concerning the adjacent areas within 2000' of the Mervyn's parcel. Sources for written data and information relating to properties within 2000' of the Mervyn's parcel may include:**

- (1) Local Fire Department
- (2) City and County Planning Department
- (3) County Health Department
- (4) State Health Department and Regional Water Quality Control Board
- (5) Local Water and Sanitation Districts.
- (6) Local Railroad Company (spills/train accidents)
- (7) Air Quality Management District
- (8) E.P.A. and all other appropriate regulatory agency records.
- (9) Bureau of Mines & Wells.
- (10) USGS (maps for any radioactivity or radon belts)

2. **SITE RECONNAISSANCE:** After all available information has been reviewed, a detailed on site reconnaissance is to be conducted.

- a. Visit the site and look for evidence of potential contamination. Potential areas of concern may include:
 - (1) Drum storage areas.
 - (2) Chemical usage or storage areas.
 - (3) Areas of discolored ground surfaces or areas of vegetative stress.
 - (4) Current site improvements.
 - (5) Areas where trash is, or was, disposed of.
 - (6) Areas indicating uneven settlement.
 - (7) Storm drains, wells, sewers and manholes.
 - (8) Areas of runoff or seepage from adjacent property.
 - (9) Areas of concern noted from blueprints and aerial

photographs.

(10) Areas adjacent to railroad spurs.

(11) Areas in which underground tanks, abandoned pipes, or mechanical equipment may have been located.

(12) Areas where overhead poles and transformers may be located.

b. Inspect any existing structures that may be suspected of containing asbestos.

c. Photograph current site conditions

3. **REPORT PREPARATION:** Upon completion of the Historical Review and Site Reconnaissance, the Developer shall provide Mervyn's with a copy of the environmental engineers' written report detailing the findings and setting forth at least the following specific environmental information:

a. Provide conclusions based on the Historical Review & Site Reconnaissance and qualify the risk of contamination of this site.

b. Should the site be suspected of contamination, propose specific recommendations for further testing. Develop a sampling program and scope of work for a secondary investigation of the site that fulfills the "due diligence" requirements of any Federal, State or local governing or regulatory body.

c. Should the site be found to be contaminated, prepare specific remedial action plans to clean up the site along with a cost analysis for this work. Provide a clean up schedule delineating the time frame associated with a thorough clean up of the site.

III. REQUIRED SOILS REPORT

The Developer has furnished a geotechnical report by Bingham Engineering dated November, 1992. This report includes the following:

A. **Visual Description:** Describe the Shopping Center site as to existing and past conditions, noting in particular any unique or unusual features which might affect any proposed construction.

B. **Soils Investigation & Evaluation:** Perform soil borings and record soil

strata details. Borings should go deeply enough to properly evaluate the makeup and bearing capabilities of the soils and to fully penetrate any soils unsuitable for bearing. Any ground water encountered should also be noted and tested if required by the environmental engineer. Also, if fills are present, trenching or other appropriate exploratory procedures should be employed to properly ascertain the nature and extent of the fills. After researching the site history and chain of title (to be provided by the Developer's title company under Section I. C. and as part of the Historical Review delineated in Section II.A.1.b. of this Scope of Work) and as the soils engineer and environmental engineer each recommend, samples shall be taken and submitted to an independent soils lab for physical/structural properties analysis and, if recommended by the environmental engineer, toxic chemical analysis. To the extent allowed by applicable law, results shall be confidential between the contractual parties. At least five (5) borings were taken within the Mervyn's building Pad Area (typically, one at each extreme corner and one in the center) and an adequate number within the proposed Parking Areas. Upon completion of the aforementioned testing, Developer shall provide Mervyn's with a written soils report and, in accordance with Section II above, a written environmental assessment report detailing the findings of the engineers, setting forth at least the following specific engineering and/or environmental information:

1. Atterberg limit tests for each soil type encountered.
2. Allowable bearing pressures under footings for dead load, dead plus live load and dead plus lateral loads. The typical loads for Mervyn's two-story building are: Exterior wall footing 4500 pounds per lineal foot dead load; 7500 pounds per lineal foot dead plus live load. Interior columns 200 kips dead plus live load.
3. Friction value for lateral load - soil to footing.
4. Friction value for drilled caissons for uplift.
5. Equivalent fluid pressure to be used for retaining wall design.
6. Allowable passive resistance of soil - for lateral loads on drilled caissons and footings.
7. Evaluation of the suitability of on-site material for engineered fill.
8. Comment on effect of expansive soil and recommend footing depth to minimize effect of expansive soil. When material has a plastic index greater than twenty, swell tests must be performed.

9. Recommendation for slab construction including thickness, reinforcing, moisture barrier and capillary break.
 10. Recommendations on the need for geological and/or seismic investigations of the site or surrounding area.
 11. Recommendations on the need for additional boring samples based on the consistency of the boring data previously obtained.
 12. Comment on the adverse effects of landscape irrigation water and rain water in the planter areas on the pavement section and building foundation. Discuss any mitigation measures recommended to minimize these effects upon pavement design life and/or building foundations.
 13. If the site is located within Seismic Zone 4, as defined in the UBC, provide a seismic hazard study that includes base acceleration during earthquakes.
 14. Soil Investigation and Toxic Materials Evaluation: A description of the soils investigation performed and a statement indicating that the soils investigation has been performed to the standards set forth herein.
- C. Pavement Design: Provide a recommendation for the design of pavement sections for a 20 year life span using the various traffic indices provided by the civil engineer. Specifically address any measures necessary to ensure a 20 year design life such as deepened curbs at planter areas, etc.
- D. Foundation Investigation Recommendations and Evaluations:
1. Grading and Earthwork. Describe recommended procedures relating to:
 - a. Stripping.
 - b. Excavations.
 - c. Fills (import and on-site material).
 - d. Suitability of on-site top soil material for landscaping.
 - e. Grading operations.
 - f. Compaction.
 - g. Stockpiling on-site materials.
 2. Footings/Foundations:

- a. Describe suitable foundation systems and attendant requirements.
 - b. Describe advantages and disadvantages of any logical and/or feasible alternative systems.
 - c. Bearing values.
 - d. Setting depths.
 - e. Soil preparation.
 - f. Anticipated settlement or movement (in inches). The maximum differential movement shall be 1/2 inch.
 - g. Foundation drainage system, if required.
3. Non-structural Slab on Grade. Describe recommended procedures relating to:
- a. Soil preparation.
 - b. Slab reinforcement.
 - c. Slab underlayment with particular attention to capillary breaks or moisture problems.
 - d. Anticipated settlement or movement (in inches). The maximum differential movement shall be 1/2 inch.
 - e. Underslab drainage system, if required.
4. Retaining Walls. Design requirements/parameters for:
- a. Equivalent fluid pressure.
 - b. Backfills.
 - c. Drainage.
 - d. Provide design requirements/parameters based on capabilities of soil to support these structures.
5. Light pole bases or similar pole structures: Provide design requirements/parameters based on capabilities of soil to support these structures.

IV. REQUIRED TECHNICAL DESIGN CRITERIA FOR THE SHOPPING CENTER

- A. Grading and Soils: The Developer shall adhere to the following requirements which apply to the grading of the Shopping Center:
- 1. All grading plans shall show contours pursuant to the requirements of Paragraph I.H.2. and these contours shall be shown with the existing (shown as a dashed line) and final (shown as a solid line) elevation. Whether existing or proposed, all buildings, improvements, roads and highways, including those adjacent to the Shopping Center, shall be shown in their true location.

- a. Mervyn's building will be accessible by grade level parking only. Steps and stairs are not permitted. All water shall be sheet drained away from Mervyn's building doors.
 - b. All parking and other vehicular access areas shall be graded to avoid ponding water, with slopes no less than 1.5% and no more than 4.0%, except that entrance magazines and access drives with no adjacent parking may have a maximum slope of 6.0%.
 - c. Only retaining walls and embankments that cause breaks in grade as shown on the site plan and required to accommodate Mervyn's truck dock shall be permitted.
 - d. Surface drainage swales will not be allowed without prior approval of Mervyn's. Such swales, if approved by Mervyn's, shall have a grade of not less than 0.5% and no more than 3.5% and shall be constructed of concrete.
 - e. Mervyn's truck dock and ramp shall be designed so that a forty (40) foot trailer can set adjacent to the loading dock without exceeding a positive or negative 6.0% slope. (This can be a combination of slopes.) The maximum transition slope out of the truck ramp is 10%.
 - f. The cut and fill on the Shopping Center site should be balanced, if practical. Sources for acquisition of fill material, as well as locations for cut material, must be identified.
2. Mervyn's Pad Area shall be defined as that area extending five (5) feet beyond the proposed Mervyn's building walls and truck dock and ramp area or to the back of curb whichever is further.
- a. The Developer shall be responsible for preparing Mervyn's Pad Area subgrades to within plus or minus one-tenth of a foot as set by Mervyn's Architect. Mervyn's subgrades are typically 8"-10" below finish floor elevation. Mervyn's contractor shall be responsible for the excavation of Mervyn's truck ramp and pit. As described in the soils report densifying the loose sandy soils should occur as follows:
 - 1. Excavate to within one (1) foot of groundwater (excavation to about nine (9) feet deep). Bottom of excavation should extend five (5) feet beyond the edge of Mervyn's footings.

2. Compact the bottom of the excavation with a very large smooth vibratory roller.
 3. Backfill the excavation with the same soils that were removed, compacting properly.
- b. As part of the pad preparation work by the Developer, all existing underground utility lines that run through Mervyn's pad area shall be relocated around the perimeter of Mervyn's pad area. All abandoned utility lines within Mervyn's pad area shall be removed unless their existing placement is approved by the soils engineer and Mervyn's. If the abandoned lines are allowed to remain in place, they shall be completely filled and grouted as recommended by the soils engineer in order to avoid future collapse of the lines.
 - c. Mervyn's Pad Area soil, as well as all other building pad soils, shall have a minimum bearing capacity of 2500 pounds per square foot. Earth stabilization and/or replacement shall be performed as necessary to meet this minimum requirement. The Developer shall be responsible to densify or otherwise stabilize the loose sandy layer under Mervyn's pad area to minimize the potential for liquefaction.
 - d. During the preparation of the Mervyn's Pad Area, the Developer shall, at his expense, have an independent professional soils engineering test laboratory monitor and certify the preparation of the Mervyn's Pad Area. The greater of three in-place compaction tests per work day or one in-place compaction test per 5,000 square feet of pad area, must be completed.
 - e. Ten (10) days prior to the established Mervyn's Building Pad Completion date, the Developer shall provide Mervyn's with:
 - (1) A soils engineer's written certification that all Mervyn's pad work was completed in accordance with the approved plans and specifications. This report shall include the results of all tests performed during the pad preparation phase and any tests performed prior to Mervyn's acceptance.
 - (2) A surveyor's written elevation certification stating that the Mervyn's Pad Area is at the prescribed elevation within the stated tolerance of plus or minus one-tenth of a foot. This certification shall be based on elevation shots taken on a 50

foot grid minimum including pad perimeter and corners.

- (3) A contractor and surveyor certification with an as built diagrammatic survey of the permanent utility stub out locations and elevations.
 - f. Mervyn's Pad Area shall not be completed more than 45 days prior to Mervyn's established Pad Completion date. If this is not possible, then the pad is to be overbuilt, sloped to drain, and then regraded and recompactd by the Developer just prior to the Pad Completion date.
3. Landscaping slopes and berms shall be set to preserve the integrity of the slopes as determined by an independent soils engineer. However, in no case may the slope of a landscaping berm exceed 3 to 1 in turf areas or 2 to 1 in ground cover and shrub areas.
 4. Top soil excavated during the grading of the Shopping Center shall be stockpiled and made available for use during the final landscaping operations (including landscaping inside Perimeter Sidewalks around Mervyn's building, as long as the stockpiled soils are found agronomically suitable for landscaping use by an independent soils analysis lab). Other excavated soil material shall be stockpiled and made available for use as backfill if required, if the soils report indicates it is suitable for this use.
 5. All material, including native and fill, within 3 feet of any building surface, including foundation concrete, shall be nonexpansive with a plasticity index of 12 or less. The material shall also have sufficient cohesion to stand vertically for 3 feet. No oversize material or lumps greater than 6" in diameter will be allowed and not more than 15% of the material shall be greater than 2 1/2" diameter. For irrigation backfill requirements refer to Section IV. K, of this Scope of Work.
 6. All outlots or Future Building Areas shall be rough graded and planted with grass seed. These areas are to be maintained in this condition until such time as they are to be developed as additional Building Area.
- B. Construction Road and Staging Area: The Developer shall provide a temporary driveable surface construction road no less than 24 feet in width. This construction road shall connect to an existing ringroad of the Shopping Center and be maintained by the Developer in good condition throughout the construction process of the Common Area and the Mervyn's building. The Developer shall also provide a staging area, with a

driveable surface, exclusively for Mervyn's contractors, workers, materials storage, trailers, sheds and vehicle parking. This staging area shall be 100 ft. by 200 ft. with a minimum area of 20,000 square feet. The construction road and staging areas shall be completed no later than two (2) weeks before the Mervyn's Pad Completion Date.

C. Temporary Utilities: No later than the Pad Work Completion Date, the Developer shall provide the following temporary utility services to a point not more than 25 feet from Mervyn's building pad, at a location approved by Mervyn's. Mervyn's shall pay, or cause its contractors to pay, on the basis of metered use, for the operating costs of said temporary utility services:

1. Storm Drainage: Temporary ditches or other means, as necessary, to divert surface storm water runoff from building pads and staging areas. These temporary drainage facilities shall be maintained by the Developer until the permanent storm sewers have been completed and made operational.
2. Water: As a minimum service, a two (2) inch line at a pressure suitable for use without the need for pumping.
3. Electricity: Service at 208 volts, with a minimum of 400 amps, three-phase-four wire, terminating in a weatherproof and rainproof fused disconnect switch.
4. Telephone: The Developer shall coordinate with the local telephone company to assure access to Mervyn's building pad and staging areas for telephone service availability. Typically five (5) lines shall be made available for temporary service.

D. Temporary Signs: The Developer shall prepare and erect a temporary sign, or signs, which shall indicate Mervyn's name in a prominent position. The layout, design, size and location of such signs shall be coordinated with and approved by Mervyn's.

E. Permanent Utilities: The Developer shall provide the following operable permanent utility services to a point approximately, but no farther than, five (5) feet from Mervyn's exterior building wall, which point shall be specified by Mervyn's per the construction documents and supplied to the Developer by Mervyn's at an elevation and at a specific point of entry selected by Mervyn's. The Developer shall provide all the necessary preliminary coordination with the various utility companies to assure that adequate service will be provided to the Shopping Center. These operable permanent utilities shall be furnished by the Utility Work Completion

Date, in accordance with the following requirements:

1. **Underground Utilities:** All new proposed utilities shall be constructed below the ground level of the Shopping Center. Based on Mervyn's review of the general conditions, Mervyn's reserves the right to require the Developer to remove or relocate any on-site or adjacent existing overhead utilities. In the event Mervyn's so deems it necessary to place these existing overhead utilities underground, then the cost associated with such work shall be included in the Developer's overall Common Area Work budget.
2. **Domestic Water:** Provide lines, water meter(s), water meter box(es) and backflow preventers, of the size and in the quantity specified by Mervyn's and required by the supplying utility company. Domestic water shall be provided at a pressure suitable for use without the need for pumping. Mervyn's typical requirement is for a 2 inch water service with a 1 1/2 inch water meter at 80 gallons per minute.
3. **Sanitary Sewer:** Provide laterals at such locations and elevations in sizes (6 inch diameter minimum pipe) as may be required by Mervyn's.
4. **Storm Drainage:** The storm drainage system shall be a closed conduit system and shall include lateral connections for building roof drainage, truck dock drainage, all pertinent inlet and outlet structures, rip-rap and bank protection, with an overall design based on hydraulic analysis, including ponding and flooding probabilities within the Shopping Center, prepared by a registered civil engineer which shall be submitted to Mervyn's for review and approval.

As a minimum, conduit capacity shall be sized to eliminate ponding during a twenty-five (25) year storm with a thirty (30) minute time of concentration. A minimum of eighteen (18) inches freeboard shall be maintained between building floor elevation and the water surface resulting from a 100 year frequency storm. Surface drainage swales may be allowed in areas not used by customers, with Mervyn's prior review and approval.

5. **Inverts:** Storm sewer and sanitary sewer line(s) shall have inverts sufficiently deep (but in no event deeper than 8 feet below Mervyn's floor slab elevation) so as to receive all building overflow by gravity flow to approved engineering standards including, if reasonably possible, yard drains in any truck dock wells located no more than five and one-half (5-1/2) feet below floor slab grade. Pumping systems shall be used only with the consent of Mervyn's.

6. **Electrical Service:** The Developer shall provide a primary electrical distribution system including conduits and cables and an exclusive transformer and pad located at a point and in a manner mutually acceptable to Mervyn's and the utility company providing the primary electrical services. Typical electrical requirements are: 800 KVA connected and 400 KW demand for a one story; 900 KVA connected and 450 KW demand for a two story; largest motor, 30 H.P.; service, 1200 ampere for a one story and 1600 ampere for a two story, 480 Y 277 Volt, 3 phase, 4 wire. The Developer shall request the utility company to provide a demand pulse meter (for interface with Mervyn's energy management system).
 7. **Natural Gas:** Provide as a minimum, at the point of entry, one service connection from a source and in a supply of sufficient capacity (typically, 3300 cubic feet per hour) as may be specified by Mervyn's.
 8. **Telephone:** Provide duct, conduit and manhole structures of the sizes and in the quantity required by Mervyn's and the telephone company furnishing the telephone service, terminating at the point of entry. Typically, Mervyn's requires a 4-inch service conduit (88 station lines with 1 PBX console and 200 pair service cables).
 9. **Utility Connection Points:** As to the Mervyn's Store, actual connections with "stubbed out" utilities at points of connection will be made by Mervyn's contractor. Permits for these connections will be obtained by Mervyn's. Permit fees for such building connections will be Mervyn's responsibility unless the fees are a contribution to the cost of public system improvements or extensions, in which event the fees will be the Developer's responsibility as part of the Common Area Work. All permanent utilities required hereunder shall be available by the Site Utilities Completion Date.
- F. **Fire Protection System:** All fire protection systems in the Shopping Center shall be designed to meet all applicable governmental requirements; all requirements determined by Mervyn's insurance carrier (Industrial Risk Insurers), whenever it is more restrictive; and the requirements of the Agreement.
1. Subject to the foregoing requirements, two-way fire hydrants shall be located on 300 foot maximum intervals, or as required by the local fire marshal, public health and safety offices, or Industrial Risk Insurers, whichever is more restrictive. All parts of Mervyn's building shall be accessible by fire hydrant hose.

2. The Developer shall provide and install underground water mains and a fire service line (minimum 8-inch diameter) of sufficient flow and pressure to adequately supply Mervyn's with both fire protection and domestic demands simultaneously without booster pumps or reservoirs. Mervyn's requires, as a minimum, that its sprinkler system provide .18 gpm per square foot over the hydraulically most remote 3,000 square feet. If the Mervyn's store is required to have a water curtain, additional pressure and flows will be required to provide a minimum discharge of 3 gpm per lineal foot up to and including the hydraulically most remote 11 sprinklers. Pressure and flows should also anticipate roof sprinkler demand and 500 gpm for inside and outside hose streams, added at the base of the riser. If adequate flow and pressure cannot be obtained through conventional means, the Developer shall provide booster pumps and/or reservoirs acceptable to Mervyn's and Industrial Risk Insurers.
 3. The Developer shall provide any fire department pumper connections, fire hydrants, meters, valves or vaults required by local or state ordinance or by Industrial Risk Insurers. These shall be made easily accessible. A 3/4-inch conduit shall be stubbed for meters or valves to Mervyn's.
 4. As part of the review of Common Area Plans by Mervyn's, the Developer shall submit a copy of the Common Area Plans to Industrial Risk Insurers. These plans shall meet the requirements of Industrial Risk Insurers. The cost of any revisions needed to meet these requirements will be borne by the Parties as a Common Area work cost.
 5. The site design and layout of buildings shall insure that the Mervyn's building qualifies as an Unlimited Building Area, as such term is defined under the Uniform Building Code. Also the site design and layout shall maintain Mervyn's classification as a highly protected risk according to Mervyn's insurance carrier, Industrial Risk Insurers.
- G. **Parking Area:** The Developer shall provide an open Parking Area that meets the following minimum design standards:
1. **Parking Bay Module:** The width of an aisle, plus the depth of a parking stall on each side, measured perpendicular to the aisle, shall be a minimum of:
 - a. 65 feet for 90 degree parking.
 - b. 55 feet for 60 degree parking; 1-way aisles.

- c. 60 feet for 60 degree parking; 2-way aisles.
2. **Parking Stalls:** The perpendicular width between center lines or between midpoints of parallel lines of adjacent stall striping shall be a minimum of nine (9) feet.
3. **Handicap:** The Parking Area design shall include facilities for the physically handicapped in accordance with the American Standards Association publication A117.1-1980 or applicable state standards and regulations, whichever is most stringent. Special stalls shall be provided near curb ramps for physically handicapped drivers as required by code, but no less than 1% of the total stalls.
4. **Stall Striping:** The Developer shall prepare, or cause the Common Area Architect to prepare, a drawing showing the typical parking stall and island striping configuration, which shall be subject to the review and approval of Mervyn's. Parking stalls shall be separated by using parallel white lines, four (4) inches in width, so that the distance between the edges of the inner lines is eight (8) feet eight (8) inches.
5. **Lighting:** Minimum design standards are as follows:
- a. The Developer shall prepare and submit plans showing the location and height of all light poles, fixtures, type of fixture shielding (if any), circuiting and details of the complete lighting arrangement and equipment.
- b. Illumination as measured at pavement shall be:
- (1) 0.50 foot candles minimum maintained (including the sidewalk at Mervyn's exterior building wall);
 - (2) One and one-half (1-1/2) foot candles average maintained, measured at grade.
 - (3) 1.0 foot candles minimum maintained on entry drives.
- c. Twenty five percent (25%) of the overall lighting shall be designated as security lighting (i.e., remains on from dusk to dawn). The security lighting layout and pattern shall be subject to the review and approval of Mervyn's.
- d. Selection of fixture types shall be subject to the review and approval of Mervyn's prior to design and circuiting. Mercury vapor fixtures shall not be used.

- e. The Developer shall install a seven-day time switch to control all parking area lighting wired to a common house panel. All security lighting shall be placed on photo-cell switching.
- f. The control of the parking area lights shall be subject to the review and approval of Mervyn's.
- g. The finish on the light poles shall be a durable weather resistant, non-rusting finish.

H. Paving

1. With respect to the parking area and roadway surfacing: Pavement design shall be based on a "Design Period" of twenty (20) years for the traffic indices specified by the civil engineer. All pavement design shall be subject to the review and approval of Mervyn's and shall conform to the recommendations of the soils engineer. Consideration must be given to heavier use in main drives, ring roads and service areas.
2. With respect to the sidewalks and curbs:
 - a. The Developer shall provide and install all curbs, including Mervyn's perimeter curbs. The Developer and Mervyn's shall each provide and install, at their own sole cost, their respective Perimeter Sidewalks.
 - b. All sidewalks and curbs shall be constructed of concrete and shall have a minimum slope of 1.5% and a maximum slope of 3.5% away from the building. All sidewalks and curbs shall be a minimum of four (4) inches thick, with a rough nonskid texture as approved by the Common Area Architect, over a suitable granular base. A salt finish is not acceptable.
 - c. Entrance and access roads and other areas requiring positive drainage, shall have six (6) inch curbs with 18 inch gutters; however, when drainage is not a factor, a straight curb without a gutter, six (6) inches above the finished paving shall be permitted. Parking lot islands and landscape enclosures shall be vertical barrier type curbs and all integral type curbs and gutters and vertical barrier type curbs shall be concrete. Extruded asphalt or concrete curbing may not be used.
 - d. The Developer shall insure that the curbs at all non-parking areas be painted red with an exterior flat red latex paint, receive

a trowel finish and be designated "No Parking" by a contrasting paint color.

- I. **Traffic Signals:** Existing traffic signals are operational and shall remain in their present location as shown on the site plan.
- J. **Retaining Walls and Embankments:** Retaining walls, rockeries, and embankments will not be allowed without Mervyn's prior written consent. Where retaining structures are required and have been approved by Mervyn's, the minimum requirements shall be as follows:
 1. The Developer shall stockpile, on the Shopping Center site, sufficient suitable fill material to completely backfill the area behind the retaining wall up to subgrade. Fill material shall be tested by an independent soils engineer and certified as completely suitable for backfill and compaction.
 2. The Developer shall design and construct all retaining walls in the Shopping Center in accordance with the recommendations of the soils report detailed in Part III of this Scope of Work.
 3. The type, quality and finish of all retaining walls in the Shopping Center shall be coordinated with nearby building exteriors.
 4. Retaining walls which are necessary for, and part of, Mervyn's depressed dock facilities will be designed and constructed by the Developer, and Mervyn's will pay its prorata share of the retaining wall (approximately sixty (60) feet in length). Screen walls for all joint loading areas will be provided by the Developer.
- K. **Landscape and Irrigation Design Criteria:**
 1. **Irrigation**
 - a. All planted areas within the Shopping Center shall be automatically irrigated.
 - b. The Developer shall provide Mervyn's with an irrigation water point of connection off of the common area irrigation system (typically 2"); and points of connection (typically 3) to the Common Area automatic controller. All points of connection, including valve wiring, shall be provided to within five (5) feet of Mervyn's building.
 - c. The irrigation plan shall be prepared by a licensed (if required by applicable governing agency) irrigation designer.

d. The irrigation plan shall include:

- (1) Available static water pressure and source of information.
- (2) Design water pressure.
- (3) A legend indicating symbols used, manufacturer and model number, pattern, radius, p.s.i., GPM, and other important information (refer to attached).
- (4) Point of connection(s) (P.O.C.) to main.
- (5) Water demand (GPM), valve size, and program sequence for each valve.
- (6) Show all sleeves under paving - minimum 24" below surface in drives and parking area, other areas minimum 18" below surface and shall be 2 x the diameter of pipe, schedule 40 F.V.C., provide 1" scheduled 40 P.V.C. wire sieve.

e. Design of the irrigation system shall be such that in no event shall the velocities in any pipe exceed five feet per second.

f. Irrigation heads adjacent to pedestrian traffic shall be on swing joints, flexible risers or shall be positive retracting pop-ups.

g. Overspray onto walks and walls shall be minimized.

h. Low trajectory heads shall be used if the area is commonly subjected to windy conditions.

i. Low gallonage heads shall be used if soil conditions and/or slope conditions would cause unnecessary runoff.

j. Provide installation details of irrigation equipment used, including but not limited to all heads, automatic controller, backflow preventer, and all valves.

k. Backfill shall be granular approved fill with no debris, clods, or rocks larger than 2 inches.

2. Landscape

a. Line-of-sight corridors to Mervyn's entrances and signs from major access points shall be preserved.

b. Plants indigenous or naturalized to the area shall be used.

c. The planting plan shall be prepared by a registered professional

landscape architect.

d. The planting plan shall include:

- (1) Plant names - common and botanical with variety.
- (2) Plant size - caliper or container size with height and spread of foliage requirements.
- (3) Plant spacing - triangular or random.
- (4) Plant staking and/or guying requirements, if any.
- (5) Plant installation details.
- (6) If turf is used, will it be sod or seed?
- (7) Soil preparation procedures and additives - shall be based on recommendations by a qualified soils analysis lab.

3. The Developer shall prepare an irrigation legend and a plant list for submission, review and approval by Mervyn's as part of the Common Area Plans.

L. **General:** The Developer shall, in addition to the specific requirements called for above, design and construct all on-site and off-site improvements, buildings and structures to conform to applicable federal, state and municipal governmental requirements, including, but not by way of limitation, local zoning and highway ordinances, fire and building codes, regional planning directives and regulations pertaining to health, safety and environmental protection. In the event that any governmental agency places any restrictions or imposes any conditions relative to compliance before occupancy permits can be issued for Mervyn's or the Shopping Center, Developer, upon receiving such notice of restriction or condition, shall immediately notify Mervyn's of such fact.

V. MALL BUILDING DESIGN REQUIREMENTS

In addition to the foregoing requirements, the following items shall apply to the Mall and the buildings on Building Areas adjacent thereto.

- A. Mervyn's shall have the right to review and approve all interior and exterior plans for the Mall, including without limitation, ornamental structures, landscaping, finishes, lighting, seating arrangements and the design of its Court.
- B. The Developer shall install continuous combination seismic/expansion joints between the Mall buildings and Mervyn's building. Plans for all such joints, including structural information, shall be subject to review and approval by Mervyn's.
- C. The temperature in the Mall shall be maintained at 75 degrees dry bulb and 50% relative humidity during the cooling cycle, and 70 degrees dry bulb during the heating cycle with outside temperature and humidity as recommended in the latest applicable local climate data published by A.S.H.R.A.E.
- D. The Developer and each Major shall design and maintain their respective heating, ventilating and air conditioning systems so as to minimize the interchange of air between each respective Major's building and the Mall during normal operations.

VI. PARKING STRUCTURE DESIGN REQUIREMENTS

The following items shall apply to any parking structures and any buildings on Building Areas immediately adjacent thereto:

- A. Mervyn's shall have the right to review and approve all interior and exterior plans for any parking structures, including without limitation, the design standards and layout, finishes, ramps, signage, landscaping, lighting (including security lighting), automatic fire sprinkler plans, if applicable, and traffic engineering studies pursuant to the provisions of this Scope of Work.
- B. The Developer shall install combination seismic and expansion joints between the parking structure, bridges and pedestrian bridges, and the connection between each Major's building. All plans for such joints shall include structural information and sufficient detail to be reviewed and approved by the affected Major.

APPENDIX I

SURVEYOR'S CERTIFICATE

I do hereby certify to _____ TITLE COMPANY, and MERVYN'S, a California Corporation, that the plat of survey shown hereon was made on the ground by me or under my supervision, on the _____ day of _____, 19____, of the property legally described hereon and is a true, correct and accurate representation of the property as determined by the survey; that the size, location and type of buildings and improvements are as shown, all improvements being within the boundaries of the property and within the setback and/or building lines as shown; that there are no discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, protrusions, overlapping of improvements, creeks, ponds, flood hazard boundary or flood-prone areas, drainage ditches, power lines, rights-of-way, setback and/or building lines, easements or roadways, except as clearly shown hereon; and that said property has access to and from a dedicated roadway as shown hereon.

SURVEYOR

By: _____

Date: _____

Reg. Surveyor No. _____
(With Seal Affixed to the Survey)

STATE OF: _____

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C. Lighting levels:

1. The lower levels, or covered levels, of all parking structures or garages, shall be lighted to maintain ten-foot candles average illumination at floor level, with a uniformity not to exceed four-to-one average to minimum and ten-to-one minimum to maximum. Luminaires shall be of low glare and low brightness to eliminate eye and sight discomfort. Selection of fixture types shall be subject to the review and approval of the Majors prior to design and circuiting.
 2. The top level, or open air levels of any parking structure shall be lighted in accordance with the design standards outlined in Section IV G 5 of this Scope of Work
 3. All accent lighting, stairwell lighting, elevator lighting, or escalator lighting, shall additionally be subject to the review and approval of the Majors.
- D. All parking structures, regardless of construction type, shall have a minimum clearance of ten feet zero inches from the lowest projection, or bottom of beam, to the driving surface.
- E. The ceiling surface of the parking structure shall be constructed of a light colored concrete, with a minimum reflectance of 30%. The walls and driving surfaces shall be constructed of a material whose minimum reflectance shall be 10%.
- F. If the parking structure is within 60 feet of the Mervyn's building, or any of the adjacent shop buildings in the mall, the parking structure shall have a completely automatic fire sprinkler system.

EXHIBIT E TO REA
INTENTIONALLY DELETED

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EXHIBIT "F"

SIGN CRITERIA MERVYN'S SOUTH TOWNE CENTER

This criteria has been established for the purpose of assuring an outstanding Tenant signage program. Conformance will be strictly enforced and non-conforming, uninteresting, or inappropriate signs will be rejected.

The design of all merchant storefront identification signs, including style and placement of lettering, size, color, materials, and methods of illumination shall be subject to the prior written approval of Landlord.

1.1 DESIGN CRITERIA - STOREFRONT SIGNS

- A. All signage should be internally illuminated. Sign letters may be exposed neon, or lighted with lamps or tubes concealed entirely within the depth of the letter with opaque metal sides and translucent acrylic plastic faces. Brightness of signs is subject to approval by Landlord and must comply with all applicable building and electric codes. Surface brightness of all translucent material shall be consistent in all letters and components of the sign. Light leaks will not be permitted. For special cases, additional signage may be applied directly to the storefront windows and not internally illuminated if the graphics, colorings and brightness are an integral part of the store appearance.
- B. Tenant signs and storefronts shall be designed in a manner that is not only imaginative but of a high graphic quality. Designs which depart from traditional methods and placement are encouraged. In addition, Tenant signs must be compatible with and distinguished from adjacent and nearby storefronts. In certain instances, due to location specific design considerations, it is possible that so called "standard" graphics may be unacceptable.
- C. Signs shall be designed as an integral part of the storefront with letter size and location appropriately scaled and proportioned to the overall storefront design. Continuous, undifferentiated horizontal sign bands extending the width of the storefront will not be permitted.
- D. Several types and variations of signs are appropriate. The following are suggested effective sign types in which options may exist:
1. Metal letters back-lit to produce a halo effect with warm white light (3200-K-3600-K) neon illumination.
 2. Internally illuminated individual channel letters with opaque metal sides and matte finish acrylic plastic faces illuminated within by 3700-K-3500-K neon.
 3. Letters and/or logo designs incorporated into doors or storefront glazing.
 4. Self-illuminated plaque, fabricated of carved or painted wood or enameled or polished metal, and mounted on storefront. Letters may be carved, routed-out, cut through or applied dimensionally in either wood or metal. Plaque shape and letters must be approved by the Landlord.
 5. Exposed neon tubes forming letters and/or logo elements. All exposed neon signs must be equipped with a dimmer.
 6. Edge lit, sandblasted glass.
 7. Gold leaf or silkscreen on front of back-lit glass.

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E. The following are prohibited:

1. Signs of box or cabinet type construction in which the background as well as the letters are illuminated.
2. Signs utilizing animated components.
3. Signs utilizing moving or flashing lights.
4. Signs utilizing exposed raceways, ballast boxes or transformers.
5. Sign manufacturer's names, stamps, or decals subject to Code requirements.
6. Signs utilizing luminous-vacuum formed type plastic letters.
7. Signs utilizing unedged or uncapped plastic letters or letters with no returns and exposed fastenings.
8. Signs utilizing painted or non-illuminated letters for the primary storefront trade name.
9. Signs utilizing unedged or uncapped plastic letters or letters with no returns and exposed fastenings.
10. Paper, cardboard or styrofoam signs, stickers or decals hung around, on, or behind storefronts.
11. Unedged or uncapped plastic letters without returns.
12. Exposed fastenings.

F. No advertising placards, decals, banners, pennants, names, insignias, trademarks or other such descriptive material shall be affixed or maintained upon the glass and/or supports of the display windows and doors, unless specifically approved in writing by Landlord. Storefront signs that are designed to function as a directory of services and products available within the Leased Premises are encouraged. Such signage may be installed directly on the storefront display windows or doors but is subject to prior review and approval by Landlord.

G. Signs shall conform to the following requirements:

1. The overall length of the sign graphics shall not exceed 70% of the width of the storefront.
2. Unless otherwise specifically approved in writing by Landlord, sign(s) shall conform to the following maximum height requirements:

- a) Storefronts up to 35':
 - If all uniform capital letters: 18"
 - If upper and lower case letters: 18" capital and 14" body
- b) Storefronts over 35': Size will be considered on an individual basis.

Sign design must be different from adjacent and nearby stores.

1.2 DESIGN CRITERIA - BLADE SIGNS

Tenant spaces that occur within ZONE B (Lower Level Storefronts) must install a blade sign in addition to Tenant's primary storefront sign. All Tenant Improvements are subject to Landlord's approval and Tenant blade signs shall conform to Sections 3.1A - 3.1C, Sections 3.4 - 3.6, as well as the following special criteria. Tenant shall be responsible for the design, fabrication and installation of blade signage, at Tenant's expense.

- A. Blade sign design, location and materials are subject to the review and approval of Landlord.**

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- B. Blade signs must be three-dimensional volumes with graphics on both sides with a wall mounted bracket for support.
- C. Except as otherwise expressly authorized or required in writing by Landlord, blade sign support brackets shall be mounted to the surface of existing neutral piers. Sign bracket mounting details shall be included in plan submittal for review and approval by Landlord.
- D. The maximum blade sign size is six (6) square feet (approximately 2' x 3'). The bottom edge of each blade sign shall not be located below 8'-0" A.F.F.
- E. At least fifty percent (50%) of the area of each blade sign shall incorporate a three-dimensional representation of the store logo or symbol; the remaining area may be used for store name.
- F. Blade signs must be illuminated. Acceptable sources of illumination include the following:
1. Adjustable incandescent lights on pendant arms integrated into blade sign design.
 2. Internal lamps or tubes concealed entirely within the depth of the blade sign.
 3. Neon.
- Brightness of blade signs is subject to approval by Landlord and must comply with all applicable Building and Electric codes.
- G. Acceptable materials for Tenant blade signs include the following:
1. Carved or routed wood with multi-colored paint finish. Any lettering on carved wood signs must be surface attached and constructed of contrasting material.
 2. Combinations of wrought iron, shop painted metal, chrome and brass.
 3. Combinations of glass or plexiglas and neon.
 4. Any other material or combination of materials proposed by Tenant and reviewed and approved by Landlord.
- H. Any damages to neutral pier construction or finishes caused by Tenant sign installation shall be repaired, to the satisfaction of Landlord, by Tenant at Tenant's expense.

1.3 LOCATION OF SIGNS

- A. Tenant shall be required to install one (1) illuminated sign as a part of each storefront elevation facing on the enclosed Common Area. The maximum projection of the sign(s) from the Storefront Lease Line shall be six inches (6") for portions 8'-0" above finished floor.
- B. Tenants with storefronts that occur on the Mall Lower Level (ZONE D) shall be required to install one (1) illuminated blade sign in Landlord designated location in addition to the required primary storefront sign.
- C. Unless otherwise specified by the terms of this Lease, no Tenant signs will be permitted on any part of the exterior of the Shopping Center.

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- D. Tenants may be permitted to install more than one (1) sign per storefront elevation at Landlord's sole discretion upon review and approval of Tenant storefront drawings.

1.4 SIGN CONSTRUCTION REQUIREMENTS

- A. All permits for sign(s) and their installation shall be obtained by the Tenant or Tenant's representative.
- B. All signs shall be constructed and installed at Tenant's expense.
- C. All letters shall be fabricated using full-welded construction.
- D. Location of all openings for conduit sleeves and supports in sign panels of building walls shall be indicated by the sign contractor on drawings submitted to the Landlord for review and approval. Sign Contractor shall install same in accordance with the approved drawings.
- E. Sign Contractor shall repair any damage caused by its work.
- F. Sign installation shall be coordinated with the Local Mall Management prior to commencement of any work by the Tenant's sign contractor. Tenant's sign contractor shall submit to Mall Management a copy of the sign permit and required insurance certificate(s) prior to commencement of work.
- G. All electrical signs shall bear the U.L. label and must comply with all national and local building and electrical codes.
- H. All conduit, raceways, crossovers, wiring, ballast boxes, transformers and other equipment necessary for sign connection shall be concealed.
- I. Channeled letters, bolts, fastenings and clips shall be of enameling iron with porcelain enamel finish; stainless steel, polished brass or copper; or carbon bearing steel with painted finish. Color or material of channel letter returns must compliment storefront finishes. No duranodic bronze returns will be allowed. No black iron material will be allowed.
- J. Sign content shall be limited to Tenant's trade name only. Tenant's customary signature or logo, hallmark, insignia, or other trade identification may be permitted at Landlord's sole discretion.
- K. No sign maker's labels or other identification will be permitted on the exposed surface of signs, except those required by local ordinance which shall be placed in an inconspicuous location.
- L. Any penetrations of the building structure required for sign installation shall be neatly sealed in a watertight manner. Threaded rods or anchor bolts shall be used to mount sign letters which are not flush with the background panel. Angle clips attached to letter sides will not be permitted.
- M. Simplicity and restraint in material selection is important; however, material selection, method of application, and construction details should be consistent with all other storefront design criteria.
- N. Landlord shall not be responsible for the cost of signs fabricated or installed which do not conform to the Signage and Graphics Criteria or sign which do not receive prior written approval from Landlord.
- O. Tenant shall be fully responsible for work performed by Tenant's Sign Contractor.

1.5 SIGNAGE DRAWING SUBMISSION REQUIREMENTS

Tenant shall submit for approval one (1) complete set of sign shop drawings to Landlord and three (3) sets of prints to Landlord prior to sign fabrication. In addition to detailed sign drawings such submission must include:

- A. Elevation of the storefront showing design, location, size and layout of sign drawn to scale indicating

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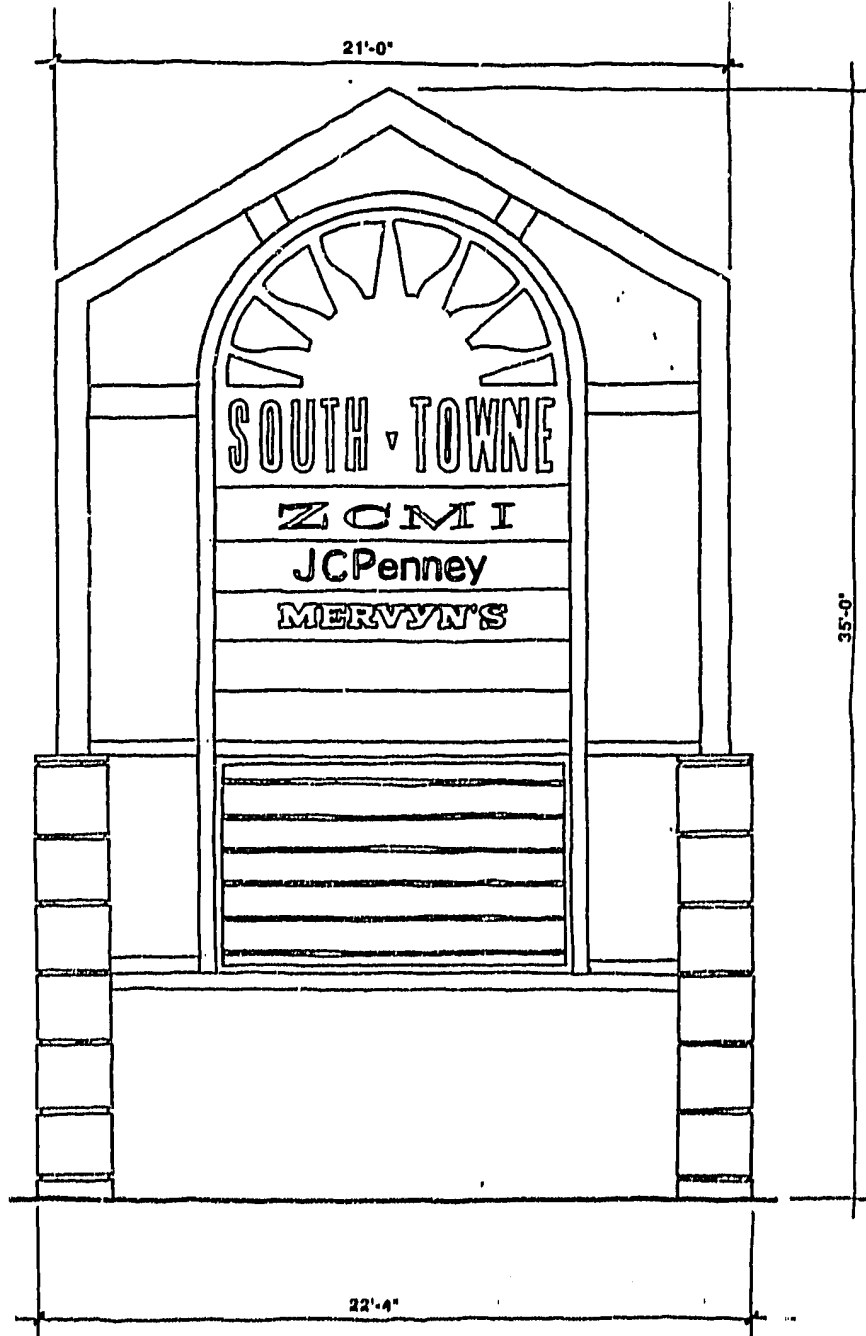
dimensions and attachment devices. Sign and storefront connection details should also be shown.

- B. Sample board showing colors and materials including fascia, letter faces, returns, caps, etc.
- C. Section through letter and sign panel showing the dimensioned projection of the face of the letter and sign panel from the storefront fascia.

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EXHIBIT "G"

**PYLON SIGN CRITERIA
MERVYN'S
SOUTH TOWNE CENTER**



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EXHIBIT "H"

**COMMON AREA WORK PLANS
MERVYN'S
SOUTH TOWNE CENTER**

**(PREPARED BY BINGHAM ENGINEERING OF SALT LAKE CITY, UTAH
IN MARCH 1993)**

<u>SHEET</u>	<u>COVER SHEET</u>	<u>DATE</u>	<u>REVISION DATE</u>
1-1	GENERAL NOTES & APPROVALS	4/12/93	
1-2	EXISTING CONDITIONS / DEMOLITION PLAN	4/09/93	
1-3	FOUNDATION PREPARATION - PLAN VIEW	4/12/93	
1-4	FOUNDATION PREPARATION - SECTIONS	4/08/93	
1-5	FOUNDATION PREPARATION - SECTIONS	4/12/93	
1-6	STOCKPILE / STAGING AREA	4/09/93	
1-7	DRAINAGE / GRADING PLAN	4/13/93	
1-8	PARKING LOT DIMENSIONING PLAN	4/12/93	
1-9	UTILITIES PLAN	4/13/93	6/07/93
1-10	WATER PLAN & PROFILE	4/12/93	
1-11	LOWERING OF EXIST. WATER LINE PLAN	4/12/93	
1-12	SEWER PLAN & PROFILE	4/02/93	7/19/93
1-13	STORM DRAINAGE PLAN & PROFILE	4/13/93	
1-14	STORM DRAINAGE PLAN & PROFILE	4/13/93	
1-15	IRRIGATION LINE PLAN & PROFILE	4/09/93	
1-16	ACCESS ROAD & MERVYN'S EAST ENTRANCE	4/11/93	
1-17	PAVEMENT / CURB & GUTTER DETAILS	4/11/93	
1-18	UTILITY DETAILS	3/--/93	
1-19	RETAINING WALL PLAN & ELEVATION 1	4/14/93	
1-20	RETAINING WALL PLAN & ELEVATION 2	4/14/93	
1-21	RETAINING WALL SECTIONS	4/14/93	
1-22	RETAINING WALL DETAILS	4/13/93	

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EXHIBIT #1

**MALL EXPANSION WORK PLANS
MERVYN'S
SOUTH TOWNE CENTER**

**(PREPARED BY STEVEN WARR AND ASSOCIATES ARCHITECTS OF
SALT LAKE CITY, UTAH ON 2/19/93 AND REVISED ON JUNE 1, 1993)**

0	TITLE SHEET SYMBOLS, VICINITY MAP & INDEX
C-1	SITE PLAN
C-2	LOWER & UPPER LEVEL DEMOLITION PLANS
A-1	LOWER LEVEL FLOOR PLAN
A-2	UPPER LEVEL FLOOR PLAN
A-3	LOWER LEVEL FLOOR FINISHES PLAN
A-4	UPPER LEVEL FLOOR FINISHES PLAN
A-5	LOWER LEVEL REFLECTED CEILING PLAN
A-6	UPPER LEVEL REFLECTED CEILING PLAN
A-7	ROOF PLAN
A-8	BUILDING ELEVATIONS
A-9	BUILDING SECTIONS
A-10	BUILDING SECTIONS
A-11	WALL SECTIONS
A-12	WALL SECTIONS
A-13	DETAILS
A-14	DETAILS
A-15	DETAILS
A-16	DOOR SCHEDULE AND DETAILS
A-17	WINDOW DETAILS & ELEVATIONS
A-18	FINISH SCHEDULE
A-19	LARGE SCALE STAIR PLANS & SECTIONS
A-20	LARGE SCALE STAIR PLANS & SECTIONS & DETAILS
A-21	INTERIOR ELEVATIONS
A-22	CENTER COURT LOWER LEVEL PLAN & STAIR DRAWINGS
A-23	CENTER COURT UPPER LEVEL PLAN & ELEVATOR DRAWINGS
A-24	ELEVATOR DETAILS & STAIR SECTIONS
A-25	EXPANSION JOINT DETAILS
A-26	FOUNDATION PLAN & DETAILS
S-1	TYPICAL DETAILS & GENERAL NOTES
S-2	FOOTING & FOUNDATION PLAN
S-3	UPPER FLOOR FRAMING PLAN
S-4	ROOF FRAMING PLAN
S-5	FRAME ELEVATIONS & DETAILS
S-6	DETAILS
S-7	DETAILS
S-8	DETAILS
S-9	DETAILS

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P-1 LOWER LEVEL PLUMBING PLAN
P-2 UPPER LEVEL PLUMBING PLAN
P-3 LARGE SCALE PLUMBING PLANS
P-4 PLUMBING SCHEDULES & DETAILS

M-1 LOWER LEVEL MECHANICAL PLAN
M-2 UPPER LEVEL MECHANICAL PLAN
M-3 ROOF PLAN
M-4 MECHANICAL SCHEDULES & DETAILS

E-0 SCHEDULES & DETAILS
E-1 LOWER LEVEL LIGHTING PLAN
E-2 LOWER LEVEL POWER PLAN
E-3 UPPER LEVEL LIGHTING PLAN
E-4 UPPER LEVEL POWER PLAN
E-5 POWER RISER DIAGRAM
E-6 RISERS & DETAILS
E-7 SCHEDULES

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