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OPERATION AND EASEMENT AGREEMENT

BETWEEN

DAYTON HUDSON CORPORATION

AND

**EQUITY PROPERTIES AND DEVELOPMENT LIMITED PARTNERSHIP, D/B/A
EQUITY PROPERTIES AND DEVELOPMENT (ILLINOIS) LIMITED PARTNERSHIP,
AS AGENT FOR OWNER**

BK 739961503

OPERATION AND EASEMENT AGREEMENT

TABLE OF CONTENTS

Section	Page
PARTIES	1
ARTICLE I	
DEFINITIONS	1
1.1 <u>Approving Party</u>	1
1.2 <u>Building Area</u>	2
1.3 <u>Common Area</u>	2
1.4 <u>Constant Dollars</u>	2
1.5 <u>Floor Area</u>	2
1.6 <u>Occupant</u>	3
1.7 <u>Operator</u>	3
1.8 <u>Party</u>	3
1.9 <u>Person</u>	3
1.10 <u>Permittee</u>	4
1.12 <u>Restaurant</u>	4
1.13 <u>Tract</u>	4
1.14 <u>Utility Lines</u>	4
ARTICLE II	
EASEMENTS	4
2.1 <u>Exclusion</u>	4
2.3 <u>Construction, Maintenance and Reconstruction</u>	5
2.4 <u>Restriction</u>	6
ARTICLE III	
CONSTRUCTION	6
3.1 <u>General Requirements</u>	6
3.2 <u>Common Area</u>	7
3.3 <u>Building Improvements</u>	10
ARTICLE IV	
MAINTENANCE AND REPAIR	12
4.1 <u>Utility Lines</u>	12

	<u>Page</u>
4.2 <u>Common Area</u>	13
4.3 <u>Building Improvements</u>	19
 ARTICLE V	
OPERATION OF THE SHOPPING CENTER	20
5.1 <u>Uses</u>	20
5.2 <u>Lighting</u>	23
5.3 <u>Occupant Signs</u>	24
5.4 <u>Insurance</u>	25
5.5 <u>Liens</u>	28
 ARTICLE VI	
MISCELLANEOUS	29
6.1 <u>Default</u>	29
6.2 <u>Interest</u>	31
6.3 <u>Estoppel Certificate</u>	31
6.4 <u>Notices</u>	31
6.5 <u>Approval Rights</u>	32
6.6 <u>Condemnation</u>	32
6.7 <u>Binding Effect</u>	33
6.8 <u>Construction and Interpretation</u>	33
6.9 <u>Negation of Partnership</u>	34
6.10 <u>Not a Public Dedication</u>	34
6.11 <u>Excusable Delays</u>	34
6.12 <u>Mitigation of Damages</u>	34
6.13 <u>OEA Shall Continue Notwithstanding Breach</u>	34
6.14 <u>Time</u>	34
6.15 <u>No Waiver</u>	35
6.16 <u>Limitation of Liability</u>	35
 ARTICLE VII	
TERM	35
7.1 <u>Term of this OEA</u>	35

OPERATION AND EASEMENT AGREEMENT

THIS OPERATION AND EASEMENT AGREEMENT ("OEA") is made and entered into as of the 24th day of October, 1995, between DAYTON HUDSON CORPORATION, a Minnesota corporation ("Target") and EQUITY PROPERTIES AND DEVELOPMENT LIMITED PARTNERSHIP, D/B/A EQUITY PROPERTIES AND DEVELOPMENT (ILLINOIS) LIMITED PARTNERSHIP, an Illinois limited partnership ("Developer"), as agent for ZML-South Towne Marketplace Limited Partnership, an Illinois limited partnership ("Owner").

WITNESSETH

WHEREAS, Target is the ground lessee, pursuant to a certain Ground Lease dated of even date herewith by and between Developer and Target ("Ground Lease"), of a certain tract of land described in Exhibit A attached hereto and identified as the "Target Tract" on Exhibit B (the "Site Plan") attached hereto, which tract is owned by Developer; and

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

WHEREAS, the Target Tract and the Developer Tract (collectively the "Shopping Center") are contiguous and adjacent as shown on the Site Plan; and

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

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

ARTICLE I

DEFINITIONS

1.1 Approving Party. "Approving Party" shall mean the Party designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this OEA. There shall be one Approving Party representing the Developer Tract and one Approving Party representing the Target Tract. Each Approving Party shall have absolute discretion to make the decisions and/or give the approvals expressly designated to be made and/or given on behalf of the real estate represented by such position; provided, that the Developer shall have such authority regardless of whether the Developer then owns all or less than all of the Developer Tract. The holder of the Approving Party position on the Developer Tract shall have

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the right to assign such position to any other Party owning a Tract within the Developer Tract, but if an assignment is not made, then such Approving Party position shall automatically be deemed assigned to the Party acquiring the last Tract owned by the transferring Approving Party. The holder of the Approving Party position on the Target Tract shall be the ground lessee under the Ground Lease or any other Party which subleases more than 50% of the Target Tract in accordance with the terms of the Ground Lease. Developer shall be the initial Approving Party for the Developer Tract; Target shall be the initial Approving Party for the Target Tract. The Approving Party for the Target Tract and the Approving Party for the Developer Tract shall be designated as such in a memorandum recorded in the appropriate land records.

1.2 Building Area. "Building Area" shall mean the limited areas of the Shopping Center within which buildings (which for the purpose of this OEA shall include any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions) may be constructed, placed or located; Building Areas are designated on the Site Plan.

1.3 Common Area. "Common Area" shall mean all areas within the exterior boundaries of the Shopping Center, exclusive of buildings.

1.4 Constant Dollars. "Constant Dollars" means the present value of the dollars to which such phrase refers. An adjustment shall occur on January 1 of the sixth calendar year following the date of this OEA, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The "Base Index Number" shall be the level of the Index for the month during which the OEA is dated; the "Current Index Number" shall be the level of the Index for the month of September of the year preceding the adjustment year; the "Index" shall be the national Consumer Price Index, published by the United States Department of Commerce (base year 1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Approving Parties shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

1.5 Floor Area. "Floor Area" shall mean with respect to each building or structure situated in the Shopping Center, the number of square feet of floor area at each level or story lying within the exterior faces of exterior walls (except party walls, as to which the center line, not the exterior faces, shall be used for measurement purposes), excluding, however: (i) penthouse or other physically separated areas used exclusively for electrical, telephone or other mechanical equipment; (ii) loading docks which are not heated or air conditioned; and (iii) the upper levels of multi-deck stock areas. Within thirty (30) days of a request, a Party shall certify to the requesting Party the amount of Floor Area applicable to each building on its Tract. If any Party causes an as-built survey to be prepared with respect to any portion of the Shopping Center, such Party shall furnish a copy of the survey to the other Parties for informational purposes only.

During any period of rebuilding, repairing, replacement or reconstruction of a building, the Floor Area of that building shall be deemed to be the same as existed immediately prior to that period. Upon completion of such rebuilding, repairing, replacement or reconstruction, the Party upon whose Tract such building is located, shall cause a new determination of Floor Area for such building to be made in the manner described above, and such determination shall be sent to any Party requesting the same.

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

1.7 **Operator.** "Operator" shall mean the Developer and its successors and assigns. The Operator shall be set forth in a memorandum recorded in the appropriate land records.

1.8 **Party.** "Party" shall mean each signatory hereto and, after compliance with the notice requirements set forth below, (a) with respect to the Target Tract, Target's successor and/or assign who becomes the ground lessee under the Ground Lease and (b) with respect to the Developer Tract, Developer's successor and/or assign who becomes an owner of any portion of the Developer Tract. Each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the portion of the Shopping Center owned or leased by it which accrue during the period of such ownership or lease, and such liability shall continue with respect to any portion transferred until the notice of transfer set forth below is given, at which time the transferring Party's personal liability for unaccrued obligations shall terminate. A Party transferring all or any portion of its interest in the Shopping Center shall give notice to all other Parties and the Operator of such transfer and shall include therein at least the following information:

- (i) the name and address of the new Party;
- (ii) a copy of the legal description of the portion of the Shopping Center transferred; and
- (iii) if the transferee is the designated Approving Party.

If a Tract is owned in fee simple or leased by more than one Person, the Person or Persons holding at least 51% of the ownership or leasehold interest in the Tract shall designate one of their number to represent all owners of the Tract and such designated Person shall be deemed the Party for such Tract. Until the notice of transfer is given, the transferring Party shall (for the purpose of this OEA only) be the transferee's agent.

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

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

1.10 Permittee. "Permittee" shall mean all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended development, use and occupancy of the Shopping Center. Among others, Persons engaging in the following activities on the Common Area will not be considered to be Permittees:

- (i) Exhibiting any placard, sign, or notice;
- (ii) Distributing any circular, handbill, placard, or booklet;
- (iii) Soliciting memberships or contributions;
- (iv) Parading, picketing, or demonstrating; and
- (v) Failing to follow regulations relating to the use of the Shopping Center.

1.11 Primary Parking Area. "Primary Parking Area" shall mean that certain portion of the Shopping Center consisting of parking area located on the Developer Tract and depicted on Exhibit B hereto.

1.12 Restaurant. "Restaurant" shall mean any operation or business which requires a governmental permit, license and/or authorization to prepare and/or serve food for either on or off site consumption, except for the food services at Barnes & Noble, which shall not be considered to be a Restaurant.

1.13 Tract. "Tract" shall mean that portion of the Shopping Center owned or ground leased by a Party.

1.14 Utility Lines. "Utility Lines" shall mean those facilities and systems for the transmission of utility services, including drainage and storage of surface water. "Common Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to both the Developer Tract and the Target Tract. "Separate Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to the Target Tract, the Primary Parking Area, or the area described as Retail G on the Site Plan.

ARTICLE II

EASEMENTS

2.1 Exclusion. Each Party reserves the right at any time and from time to time to exclude and restrain any Person who is not a Permittee from using the Common Area on its Tract and upon receipt of a written request from Target's Store Manager Developer shall diligently undertake to exclude and restrain any Person who is not a Permittee from using the Primary Parking Area.

2.2 Surface Restrictions.

(A) The Common Area grades and the surface water drainage/retention system for the Shopping Center shall be initially constructed in strict conformance with the details approved by the Approving Parties.

(B) No Party shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Tract if such alteration would materially increase the flow of surface water onto an adjacent Tract either in the aggregate or by directing the flow of surface water to a limited area.

2.3 Construction, Maintenance and Reconstruction.

(A) In order to accommodate any building improvements which may inadvertently be constructed beyond a Tract's boundary line, Developer and Target each grant to the other an easement in, to, over, under, and across that portion of the grantor's Tract adjacent to such common boundary line for the maintenance and replacement of such building improvements to a maximum lateral distance of six inches (6").

(B) In the event a constructing Party (the "Constructing Party") determines that it is necessary to place underground piers, footings and/or foundations ("Subsurface Construction Elements") across the boundary line of its Tract, the Constructing Party shall advise the Party owning the adjacent Tract (or leasing with respect to the Target Tract) (the "Adjacent Party") of its construction requirement and shall provide plans and specifications relating thereto, including proposed construction techniques for the Subsurface Construction Elements. The Adjacent Party hereby grants and conveys to the Constructing Party for the benefit of its Tract an easement, not to exceed a maximum lateral distance of five feet (5'), in, to, under, and across that portion of the Adjacent Party's Tract not theretofore occupied by any then existing structure, for the installation, maintenance and replacement of such Subsurface Construction Elements; provided, however, that the Constructing Party shall have no right to use such easement if the Adjacent Party is able to provide the Constructing Party a reasonable alternative construction method for the placement of the Subsurface Construction Elements entirely on the Constructing Party's Tract.

The Adjacent Party reserves the right to require the Constructing Party to modify the design specifications for the Subsurface Construction Elements in order to permit the Adjacent Party the opportunity to utilize the same in connection with the construction of its building improvements to the end that each Party shall be able to place its building immediately adjacent to the common boundary line. If a common Subsurface Construction Element is used by the Parties, each shall assume and pay its reasonable share of the cost and expense of the design and construction thereof. In the event any building utilizing a common Subsurface Construction Element is destroyed and not replaced or is removed, the common Subsurface Construction Element shall remain in place for the benefit of the other building utilizing the same.

(C) The foregoing easement grants shall not diminish or waive any right of a Party to recover damages resulting from the Constructing Party's failure to construct its building within its Tract in the case of (A) above, or within the easement area limits in the case of (B) above. The easements in each instance shall:

(i) continue in effect for term of this OEA and thereafter for so long as the building utilizing the easement area exists (including a reasonable period to permit reconstruction or replacement of such building if the same shall be destroyed, damaged, or demolished); and

(ii) include the reasonable right of access necessary to exercise and enjoy such grant upon terms and with the limitations described in 3.1(E) below.

(D) Nothing herein shall be deemed to create or establish a "common" or "party" wall to be shared by buildings constructed along the common boundary line between the Tracts.

2.4 **Restriction.** No Party shall grant any easement for the purpose set forth in this Article for the benefit of any property not within the Shopping Center; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by a Party on its Tract which is necessary for the proper functioning of the Shopping Center, provided that such additional easements must be approved by the Approving Parties, and provided that all easements included as permitted exceptions to the Ground Lease shall be deemed approved by the Approving Parties.

ARTICLE III

CONSTRUCTION

3.1 General Requirements.

(A) Each Party agrees that all construction activities performed by it within the Shopping Center shall be performed in compliance with all applicable laws, rules, regulations, orders, and ordinances of the city, county, state, and federal government, or any department or agency thereof, including, without limitation, the Americans with Disabilities Act.

(B) Each Party further agrees that its construction activities shall not:

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

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

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

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

(C) Each Party agrees to defend, indemnify and hold harmless each other Party from all claims, losses, liabilities, actions, proceedings and costs (including reasonable attorneys' fees

and costs of suit), including liens, and any accident, injury or loss or damage whatsoever occurring to any Person or to the property of any Person arising out of or resulting from any construction activities which are performed at the request of such indemnifying Party; provided however, that the foregoing shall not be applicable to events or circumstances caused by the negligence or willful act or omission of such indemnified Party, its licensees, concessionaires, agents, servants, employees, or anyone claiming by, through, or under any of them unless covered by the release set forth in 5.4(D).

(D) In connection with any construction, reconstruction, repair or maintenance on the Target Tract, Developer shall specify a staging area within which Target's off-premises activities shall be confined, which staging area is shown on Exhibit B. Developer shall have the right by reasonable written notice to Target to require Target to relocate the staging area during the construction of improvements on the Target Tract provided such relocated staging area is constructed by Developer at Developer's sole cost and expense and is reasonably located in terms of access and distance to the Target Tract. All storage of materials and the parking of construction vehicles, including vehicles of workers, shall occur only on the constructing Party's Tract or its designated staging area, and all laborers, suppliers, contractors and others connected with such construction activities shall use only the access points located upon the Constructing Party's Tract or the staging area. Target's construction activities in the Shopping Center shall be subject to Developer's reasonable and non-discriminatory control, including without limitation Developer's right to (i) specify points of delivery of construction materials to the Shopping Center in close proximity to the Target Tract and routes within the Shopping Center to be used for delivery thereof to Target's staging area and/or the Target Tract, and (ii) require Target to maintain the staging area and the Target Tract in a reasonably clean and neat condition at all times. Upon completion of construction, the constructing Party shall restore the affected staging area to a condition equal to or better than that existing prior to commencement of such work.

(E) Each Party hereby grants and conveys to each other Party and to its respective contractors, materialmen and laborers a temporary license for access and passage over and across the Common Area of the grantor's Tract as shall be reasonably necessary for the grantee to construct and/or maintain improvements upon the grantee's Tract as set forth in the preceding paragraph; provided, however, that such license shall be in effect only during periods when actual construction and/or maintenance is being performed and provided further that the use of such license shall not unreasonably interfere with the use and operation of the Common Area by others. Prior to exercising the rights granted herein, the grantee shall first provide the grantor with a written statement describing the need for such license, and shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by 5.4(C) hereof. Any Party availing itself of the temporary license shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean the area, and restore and/or repair the affected portion of the Common Area to a condition which is equal to or better than the condition which existed prior to the commencement of such work. Notwithstanding the foregoing, in the event a dispute exists between the contractors, laborers, suppliers and/or others connected with construction activities, each Party shall have the right to prohibit the contractors, laborers, suppliers and/or others working for another Party from using the Area on its Tract.

3.2 Common Area. The Parties have agreed that the Common Area of the Shopping Center shall be initially constructed as shown on the Site Plan, provided, however, no fence or other barrier which would prevent or unreasonably obstruct the passage of pedestrian or vehicular travel shall be erected or permitted within or across the Common Area, exclusive of the limited curbing and other forms of traffic control depicted on the Site Plan, or permitted staging and/or storage areas. Pursuant to that certain Site Development Agreement between Developer and Target (the "Site Development Agreement"), Developer shall be responsible for the construction of the Common Area improvements, except that contemporaneously with the construction of the improvements on the Target Tract, Target shall cause that portion of the sidewalk which is located on the Target Tract to be substantially completed no later than the day Target opens for business with the public. The construction of the Common Area improvements work shall be done in a good and workmanlike manner and in accordance with good engineering standards; provided, however, the following minimum general design standards shall be complied with throughout the term of this OEA:

(A) The lighting system shall be designed to produce a minimum maintained lighting intensity measured at grade at all points in the Common Area of 2.00 foot candle; provided however, that the extreme edge of the parking or drive areas may have not less than a minimum maintained lighting intensity measured at grade of 1.0 foot candle, and provided further that the drive areas immediately in front of the entrance to any building shall have not less than a minimum maintained lighting intensity measured at grade of 5.0 foot candles. Target shall control the lighting system located on the Primary Parking Area and said lighting shall be separately metered to Target, however Developer shall construct, at Target's sole cost and expense, a manual override system to enable Developer to turn on and separately meter to Developer the lights on the Primary Parking Area during such hours that Target is not required to light the Primary Parking Area pursuant hereto at Developer's sole discretion. The type and design of the Common Area light standards shall be approved by the Approving Parties.

(B) The slope in the parking area shall not exceed a maximum of four percent (4%), nor be less than a minimum of one percent (1%).

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

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

(E) The parking area on (i) the Target Tract and the Primary Parking Area and (ii) on the balance of the Developer Tract shall contain sufficient ground level parking spaces in order to comply with the following minimum requirements:

(i) five (5.0) parking spaces for each one thousand (1,000) square feet of Floor Area; provided, however, that compact car parking spaces shall be located only in the areas, if any, designated on the Site Plan;

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

(iii) for each single Restaurant which has less than five thousand (5,000) square feet of Floor Area, then five (5) additional parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use;

(iv) for each single Restaurant which has at least five thousand (5,000) square feet of Floor Area, but less than seven thousand (7,000) square feet of Floor Area, then ten (10) additional parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use; and

(v) for each single Restaurant which has seven thousand (7,000) square feet of Floor Area or more, then fifteen (15) additional parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use.

If an Occupant operates a Restaurant incidentally to its primary business purpose, then so long as such incidental operation continues, the portion of the Floor Area occupied by such Restaurant shall be excluded from the application of (iii), (iv) and (v) above. For the purpose of this clause only, a Restaurant shall be an "incidental operation" if it occupies less than seven percent (7%) of the Occupant's Floor Area and does not have a separate Customer entry/exit door to the outside of the building. In the event an Occupant utilizes Floor Area for Restaurant and other purposes, only the portion of Floor Area allocated for Restaurant purposes shall be subject to the increased parking requirements.

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

(F) No Party shall make changes to the improved Common Area on its Tract without the approval of the Approving Parties, except that each Party hereby reserves the right, from time to time without obtaining the consent or approval of any other Party, to make at its own expense any insignificant change, modification or alteration in its portion of the Common Area, including the installation of convenience facilities such as mailboxes, public telephones and benches, provided that:

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

(ii) there shall be maintained at all times within such Common Area, a sufficient number of vehicular parking spaces to meet the parking requirements set forth in 3.2(E) as well as all governmental rules, regulations, and/or ordinances relating to parking requirements, but without reliance on parking spaces that may be available on another Tract; provided, however, that no more than two percent (2%) of the parking spaces depicted on the Site Plan for such Tract shall be eliminated;

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

(iv) no change shall be made in the access points between the Common Area and the public streets; provided, however, that an additional access point as shown on the Site Plan may be created without the approval of the Approving Parties; and

(v) at least thirty (30) days prior to making any such change, modification or alteration, the Party desiring to do such work shall deliver to each other Party copies of the plans therefor, and provided further that such work shall not occur between October 1st and the following January 31st except in connection with the initial construction of the improvements on the Common Areas.

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

3.3 Building Improvements.

(A) While it is acknowledged and agreed that no Party shall have an obligation to commence construction of any building on its Tract, the Parties hereby agree once construction has been commenced, such building shall be completed. If a Building Area has a maximum Floor Area designation, such amount shall not be exceeded.

(B) The Approving Parties have agreed upon an architecturally compatible theme for the exterior of all buildings to be constructed, placed or located within the Shopping Center, such theme being shown on the drawings attached hereto as Exhibit G. In order to insure compliance with such theme, each Party shall submit to the Approving Parties detailed plans ("Plans") as required by Exhibit H attached hereto covering the initial construction of each building and any additions, remodeling, reconstruction or other alteration thereto which changes the exterior thereof for approval at least 30 days prior to the commencement of any such work. If neither Approving Party objects to said Plans within said 30 day period, the Plans shall be deemed approved by both Approving Parties. If an Approving Party should reject the Plans for not complying with the architectural theme established by Exhibit G, the submitting Party, and

the Approving Parties shall mutually consult to establish approved Plans for the proposed work. The Approving Parties shall not arbitrarily or unreasonably withhold approval of the Plans or recommend changes in the Plans which otherwise conform with the requirements hereof, nor shall they withhold approval of exterior remodeling or exterior reconstruction which does not either substantially enlarge an existing structure, or substantially change an existing structure. In no event shall an Approving Party require any other Party to utilize design standards superior to those utilized by the Approving Party in the construction of buildings on its Tract. Approval of Plans by the Approving Parties shall not constitute assumption of responsibility for the accuracy, sufficiency, or propriety thereof, nor shall such approval constitute a representation or warranty that the Plans comply with applicable laws. No material deviation shall be made from the approved Plans. The Parties hereby approve of the exterior of the improvements to be constructed on the Target Tract, as approved by the town of Sandy and set forth on Exhibit J hereto.

(C) Developer and Target hereby specifically consent to the placement of buildings along the common boundary line between the Target Tract and the Developer Tract, and each agrees to support any request by the other for a side-yard or setback variance if the same is required in order to accommodate such construction.

(D) Developer acknowledges that Target initially proposes to construct on the Target Tract a "prototype Target building" which is classified as an "unlimited area" building under certain building codes. (By way of explanation, but not limitation, an "unlimited area" building is designated II-N or V-N under the Uniform Building Code.) Target and Developer agree that all buildings constructed within the Building Areas designated Retail A, B, C, D, E and F, on the Site Plan shall comply with the following requirements:

(i) no building shall be constructed within sixty feet (60') of the Building Area on an adjoining Tract unless such building, hereinafter referred to as the "adjacent building", shall be located immediately adjacent to the common boundary line and is attached to the building, if any, on the adjacent Tract;

(ii) if an "adjacent building" exists, then no building shall be located within sixty feet (60') of the "adjacent building" unless such building is attached to the "adjacent building"; the "adjacent building" and all other buildings on the Tract that are attached to the "adjacent building" and to each other are hereinafter referred to as the "building group";

(iii) any building that is not part of the "building group", shall be located at least sixty feet (60') distant from the "building group"; and

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

In addition to the requirements set forth above, Target and Developer agree that no building shall initially be placed or constructed on their respective Tracts in a manner which

will, based on then existing governmental regulations, either preclude the construction on the Primary Building Areas of an "unlimited area" building, or cause an existing "unlimited area" building thereon to no longer be in conformance with applicable building code requirements, it being understood and agreed, however, that subsequent changes in governmental regulations shall not obligate a Party to modify or alter its existing building.

If required by any governmental authority, each Party agrees to join in a recordable declaration which confirms the existence of a sixty foot (60') clear area around Retail A, B, C, D, E and F as shown on the Site Plan.

(E) The second Party to construct a building along a common boundary line shall do so in a manner that does not result in damage to the improvements in place on the adjoining Tract, and further shall undertake and assume at its sole cost the obligation of completing and maintaining the nominal attachment (flashing and seal) of its building to that of the existing building on the other Tract, it being the intent of the Parties to establish and maintain the appearance of one continuous building complex except with respect to Lots 1, 4 and 5 shown on the Site Plan. In performing such attachment, the wall of one building shall not receive support from nor apply pressure to the wall of the other building.

(F) No building or other structure (exclusive of any light poles or free standing sign referred to in 5.3 hereof) shall exceed one story or the following height restrictions:

- | | | |
|------|------------------------|-----------|
| (i) | On the Target Tract | - 45 feet |
| (ii) | On the Developer Tract | - 40 feet |

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

(G) Target and Developer shall at all times comply with all applicable laws, ordinances, rules and regulations governing any improvements located on their Tract, including the construction thereof. Target and Developer shall make all required improvements to their respective improvements in order to continually comply with all said applicable laws, ordinances, rules and regulations, to the extent required for existing improvements.

ARTICLE IV

MAINTENANCE AND REPAIR

4.1 Utility Lines.

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

(B) Common Utility Lines shall be maintained and replaced as part of the Common Area pursuant to 4.2 below.

4.2 Common Area.

(A) The Operator shall maintain the Common Areas and the sidewalk on the Target Tract in a sightly, safe condition and good state of repair (provided that the replacement or reconstruction of the sidewalk on the Target Tract shall be treated in the same manner as Target's obligation to replace or reconstruct the building on the Target Tract). The unimproved Common Area shall be maintained as appropriate and kept litter-free by the Operator (except that at any time that the Target Tract is vacant, Target shall be responsible for keeping the Target Tract litter-free). The minimum standard of maintenance for the improved Common Area shall be comparable to the standard of maintenance followed in other first class retail developments of comparable size in the Salt Lake City area; notwithstanding the foregoing, however, the Common Area shall be operated and maintained in compliance with all applicable governmental laws, rules, regulations, orders and ordinances, and the provisions of this OEA. All Common Area improvements shall be repaired or replaced, subject to 4.2(F) hereof, with materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony of the Shopping Center as a whole. The maintenance and repair obligation shall include but not be limited to the following:

(i) **Drive and Parking Areas.** Maintaining all paved surfaces and curbs, including but not limited to those in the Primary Parking Area, in a smooth and evenly covered condition, including, without limitation, replacement of base, skin patch, resealing and resurfacing. (For the purpose of this section, an overlay or resurfacing of the drives and parking areas shall be considered a maintenance item and not a capital item.)

(ii) **Debris and Refuse.** Periodic removal of all papers, debris, filth, refuse, ice and snow (2" on surface), including daily vacuuming and broom sweeping to the extent necessary to keep the Common Area in a first-class, clean and orderly condition; provided, however, that Occupant trash and/or garbage removal shall not be a Common Area Maintenance Cost since such removal obligation is covered by 4.3(A). All sweeping shall be at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Area by Permittees.

(iii) **Non-Occupant Signs and Markers.** Maintaining, cleaning and replacing any appropriate directional, stop or handicapped parking signs; restripe parking lots and drive lanes as necessary to maintain parking space designation and traffic direction; and keep clearly marked fire lanes, loading zones, no parking areas and pedestrian crosswalks.

(iv) **Lighting.** Maintaining, cleaning and replacing Common Area lighting facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers.

(v) **Landscaping.** Maintaining and replacing of all landscape plantings, trees and shrubs in an attractive and thriving condition, trimmed and weed free. Maintain and replace landscape planters, including those adjacent to exterior walls of buildings. Modify irrigation system to satisfy governmental water allocation or emergency requirements. If any Occupant requires "special" landscaping (i.e. beyond the standard landscaping requirements for the remainder of the Shopping Center), or if landscaping additions/modifications are required as a result of a building addition, expansion or remodel, the cost of installation, replacement and maintenance of such special or required landscaping shall be borne solely by such Occupant and shall not be included in Common Area Maintenance Costs.

(vi) **Common Utility Lines.** Maintaining, cleaning, replacing, and repairing any and all Common Utility Lines.

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

(viii) **Sidewalks.** Maintaining, cleaning and replacing of all sidewalks, including those adjacent and contiguous to buildings located within the Shopping Center except that Target shall be responsible for the expense of replacing the sidewalk on the Target Tract. Sidewalks shall be steam cleaned at least monthly and shall be swept at appropriate intervals during such time as shall not interfere with the conduct of business or use of the Common Area.

(ix) **Supervisory Personnel.** Providing of professional supervisory personnel for the Common Area in accordance with the standards of a first-class shopping center in the Salt Lake City area.

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

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

(B) Commencing on the date the Common Areas are completed in accordance with the Site Development Agreement, the Operator shall operate and maintain the Common Area of the Shopping Center in accordance with the requirements of (A) above. Within 30 days following the commencement of such maintenance and operation, Operator shall provide the Approving Parties an estimated budget for the balance of the current calendar year containing the information required by (C) below, and each Party agrees to pay its share thereof in accordance with (D) below. Operator may hire companies affiliated with it to perform the maintenance and operation of the Common Area, but only if the rates charged by such companies are competitive with those of other companies furnishing similar services in the metropolitan area in or about the Shopping Center, it being agreed that this provision shall be construed strictly against Operator. Each Party hereby grants to Operator, its agents and employees a license to enter upon its Tract to discharge the duties to operate, maintain and repair the Common Area. Operator shall expend only such funds as are reasonably necessary for the operation, maintenance, repair and insurance of the Common Area and shall promptly pay such costs ("Common Area Maintenance Costs") when incurred. For the purpose of this OEA, Common Area Maintenance Costs shall not include:

- (i) any late charges or fees;
- (ii) any charge for electricity to Target provided that Target separately pays the electrical costs for lighting the Common Area on its Tract and the Primary Parking Area;
- (iii) any costs to clean up or repair the Common Area resulting from promotional activities (other than in connection with promotional activities sponsored for the benefit of the occupants of the Shopping Center) or from construction, maintenance or replacement of buildings;
- (iv) real property taxes and assessments;
- (v) Operator's profit, administrative and overhead costs (including but not limited to: office space, equipment and utilities; legal, accounting or administrative services; Operator's personnel who are not permanently located at the Shopping Center); and
- (vi) entertainment, transportation, meals and lodging of anyone.

In lieu of Operator's profit, administrative and overhead costs, Operator shall be permitted to charge an amount ("Administration Fee") computed by multiplying the Common

Area Maintenance Costs (exclusive of insurance premiums, fees paid to third Persons who perform the Common Area operation and maintenance on Operator's behalf, and utility charges) by ten percent (10%). In the event the Operator contracts all or a substantial part of the maintenance of the Common Area to a commercial property management company unaffiliated with Developer, Operator shall not receive the Administration Fee on that portion of the Common Area Maintenance Costs so contracted out. If any of Operator's personnel at the Shopping Center perform services, functions or tasks in addition to Common Area duties, then the cost of such personnel shall be equitably allocated according to time spent performing such duties.

(C) Operator shall, at least 50 days prior to the beginning of each calendar year, submit to Target for approval an estimated budget ("Budget") for the Common Area Maintenance Costs for operating, maintaining, repairing and insuring the Common Area of the Shopping Center for the ensuing calendar year. The Budget shall identify separate cost estimates for at least the categories specified under 4.2(A), plus:

- (i) premium for public liability insurance covering the Common Area as required by 5.4 (A) below;
- (ii) rental or purchase of equipment and supplies;
- (iii) depreciation or trade-in allowance applicable to items purchased for Common Area purposes; and
- (iv) Administration Fee.

If an item of maintenance or replacement is to be accomplished in phases over a period of calendar years, such as resurfacing of the drive and/or parking areas, then the Budget shall separately identify the cost attributable to such year (including the area of the Common Area affected), and shall note the anticipated cost and timing (indicating the area of the Common Area affected) of such phased work during succeeding calendar years.

Target shall, in writing within thirty (30) calendar days of the receipt of the proposed Budget, either approve or disapprove the Budget. Failure to respond within such thirty (30) day period shall constitute a waiver of Target's right to approve the Budget.

If Target disapproves the proposed Budget, Target shall immediately consult with the Operator to establish a final approved Budget. If a Budget is not approved by December 1st of any calendar year, Operator shall have the right to (a) terminate its maintenance obligation with respect to the Common Area located on the Target Tract and the Primary Parking Area by written notice prior to December 10 or (b) continue to operate and maintain the Common Area under the Budget for the then current year increased by ten percent (10%). If the notice is given, then Target shall maintain and operate the Common Area on the Target Tract and Primary Parking Area and the Operator shall maintain and operate the balance of the Common Area, commencing on the following January 1st. If the notice is not given, then Operator shall continue to maintain and operate the Common Area for the next calendar year. In the event that Target and the Operator are unable to establish a final Budget within 60 calendar days of the

date Target shall notify Operator of Target's disapproval of the proposed Budget, Target and Operator shall then select a senior real estate attorney in a Salt Lake City law firm which has not represented either Developer or Target in the previous five (5) years (the "Budget Arbitrator") to revise the Budget, if necessary, based on (a) the Budget Arbitrator's analysis of the current year's cost of operation, (b) a reasonable estimate of the increase in said costs for the upcoming calendar year together with any additional maintenance or replacement, and (c) the terms contained herein for calculating Common Area maintenance costs.

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

(D) Common Area Maintenance Costs and the Administration Fee shall be allocated as follows:

- | | |
|----------------------------|-----|
| (i) To the Developer Tract | 42% |
| (ii) To the Target Tract | 58% |

In the event an existing Tract is divided by conveyance of fee title, the Party causing such division shall prorate the allocation attributable to the existing Tract between the newly created Tracts, file a recorded declaration confirming such allocation and deliver a copy of such declaration to the Operator and each other Party. Each Party shall pay to the Operator in equal monthly payments on the first day of each month, in advance, its share of the Common Area Maintenance Costs and the Administrative Fee based upon the amount set forth in the Budget. The Operator shall reasonably estimate such costs for the partial year during which its maintenance obligations commence and each Party shall make its first payment in the month following Operator's undertaking of such maintenance and repair of the Common Area. Notwithstanding the foregoing, Target shall not be responsible for its allocation of Common Area Maintenance Costs until the period commencing October 1, 1996 unless Target opens its store to the public prior to such date in which event Target's responsibility for its allocation of Common Area Maintenance Costs shall commence upon the date Target opens its store to the public. Within forty-five (45) days after the end of each calendar year, Operator shall provide each Party with a statement certified by an authorized Person, together with supporting invoices and other materials setting forth the actual Common Area Maintenance Costs paid by it for the operation and maintenance of such Common Area, the Administration Fee, and such Party's share of the aggregate thereof. If the amount paid by a Party for such calendar year shall have exceeded its share, Operator shall refund the excess to such Party at the time such certified statement is delivered, or if the amount paid by a Party for such calendar year shall be less than

its share, such Party shall pay the balance of its share to Operator within 30 days after receipt of such certified statement.

Within two (2) years after receipt of any such certified statement, each Party shall have the right to audit Operator's books and records pertaining to the operation and maintenance of the Common Area for the calendar year covered by such certified statement; the Party shall notify Operator of its intent to audit at least 15 days prior to the designated audit date. In the event that such audit shall disclose any error in the determination of the Common Area Maintenance Costs, the Administration Fee or in the allocation thereof to a Tract, an appropriate adjustment shall be made forthwith. The cost of any audit shall be assumed by the auditing Party unless such Party shall be entitled to a refund in excess of three percent (3%) of the amount calculated by Operator as its share for the calendar year, in which case Operator shall pay the cost of such audit.

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

(F) In the event any of the Common Area is damaged or destroyed by any cause whatsoever, whether insured or uninsured, during the term of this OEA, other than damage caused by ordinary use or wear and tear, the Party upon whose Tract such Common Area is located shall repair or restore such Common Area at its sole cost and expense with all due diligence; provided that no Party shall be required to expend more than the insurance proceeds which may be available (or which would have been available except for elections relating to deductibles or self-insurance for which the Party shall be responsible to contribute). Notwithstanding the limitation set forth in the preceding sentence, a Party may require another Party to do such restoration work if the requiring Party has agreed in writing to pay the costs in excess of such sum. Except to the extent limited by 5.4(D) hereof, in the event such damage or destruction of Common Area is caused in whole or in part by another Party or third Person, the Party obligated to make such repair or restoration reserves and retains the right to proceed against such other Party or third Person for indemnity, contribution or damages. Notwithstanding the terms of this Paragraph, Developer shall be obligated to rebuild the Common Area in accordance with the terms of this Paragraph, if and only if Target is operating sixty percent (60%) of the building on the Target Tract in accordance with the Ground Lease.

(G) In the event that Developer shall fail or neglect promptly to begin and proceed to perform any of its obligations to be performed by it under the provisions of this OEA with respect to the Primary Parking Area and any other area of the Shopping Center necessary for the operation of the Target Tract, then Target shall have the right (but not the obligation), upon giving thirty (30) days (or 24 hours in the case of an emergency) notice to Developer (unless within said 30-day (or 24-hour) period, Developer shall begin and continue to perform with due diligence its said obligation) to perform such obligation at the expense of Developer until suc:

time the Developer shall resume the performance of the applicable obligation hereunder, and the Developer shall upon demand reimburse Target for the reasonable costs and expenses involved in such performance, with interest thereon at the lesser of fifteen percent (15%) or "prime rate" (as hereinafter defined) plus two percent (2%) per annum. As used herein, "prime rate" shall mean the rate publicly announced from time to time as the prime rate of The First National Bank of Chicago. In the event Developer's failure with respect to the Primary Parking Area and any other area of the Shopping Center necessary for the operation of the Target Tract arises under 4.2(F), then Target, following the notice and cure provisions provided in this 4.2(G), shall have the right to offset said costs of reconstruction of the Primary Parking Area and any other area of the Shopping Center necessary for the operation of Target Tract for which Developer would be liable hereunder against future payments owed by Target under 4.2(D) hereunder and under Article III of the Ground Lease.

4.3 Building Improvements.

(A) After completion of construction, each Party covenants and agrees to maintain and keep the exterior, interior and all structural components of the building improvements located on its Tract in first-class condition and state of repair, in compliance with all governmental laws, rules, regulations, orders, and ordinances exercising jurisdiction thereover that apply to existing improvements, and in compliance with the provisions of this OEA, including the architectural theme set forth in Exhibit G. Each Party further agrees to store all trash and garbage in adequate containers, to locate such containers so that they are not readily visible from the parking area, and to arrange for regular removal of such trash or garbage.

(B) In the event any of the building improvements are damaged by fire or other casualty (whether insured or not), the Party upon whose Tract such building improvements are located shall, subject to governmental regulations and/or insurance adjustment delays, immediately remove the debris resulting from such event and provide a sightly barrier, and within a reasonable time thereafter shall either (i) repair or restore the building improvements so damaged to a complete unit containing at least sixty percent (60%) of the original square feet of Floor Area of the buildings on such Tract, such repair or restoration to be performed in accordance with all provisions of this OEA, (ii) erect other building improvements in such location containing at least sixty percent (60%) of the original square feet of Floor Area of the buildings on such Tract, such construction to be performed in accordance with all provisions of this OEA, or (iii) demolish the damaged portion and/or the balance of such building improvements and restore the cleared area to either a hard surface condition or a landscaped condition in which event the area shall be Common Area until a replacement building is erected. Such Party shall have the option to choose which of the foregoing alternatives to perform, but such Party shall be obligated to perform one of such alternatives. Such Party shall give notice to each other Party within ninety (90) days from the date of such casualty of which alternative it elects. In the event that Target elects not to rebuild or fails to commence reconstruction within six (6) months of said casualty or elects to reconstruct in accordance herewith but fails to complete construction in accordance with the terms hereof within twenty-four (24) months after the casualty, the OEA and the Ground Lease shall terminate at Developer's sole discretion and upon written notice of such termination from Developer to Target. In the event Target elects to repair less than one hundred percent (100%) of the original square feet of the Floor Area pursuant to either clause (i) or (ii) above, then, at the option of Developer and upon written

notice to Target within sixty (60) days after Target notifies Developer of its election, Developer and Target shall enter into an amendment to the Ground Lease and this OEA amending the description of the "Premises" (as said term is defined in the Ground Lease) and the Target Tract (for purposes of this OEA) to exclude that portion of the Premises and Target Tract, respectively, upon which Target will not be performing restoration (the "Released Premises"). Such amendment with respect to the Ground Lease shall, *inter alia*, amend the definition of the term "Premises", provide for reduction in rent for the remainder of the Term based on the pro rata reduction in the number of square feet of Floor Area, and provide for a reduction in the Primary Parking Area based on the pro rata reduction in the number of square feet of the Floor Area. In addition, the Parties shall attempt to obtain a separate assessment for real estate taxes and assessments for the Released Premises and related Primary Parking Area and in the interim Developer shall pay its pro rata portion of real estate taxes based on the number of square feet contained in the Released Premises. With respect to the amendment to this OEA, the Developer shall pay a portion of Target's allocation for Common Area Maintenance Costs and the Administration Fee equal to the product contained by (x) multiplying Target's allocation of Common Area Maintenance Costs and Administration Fee by (y) a fraction obtained by dividing the number of square feet of Floor Area contained in that portion of the improvements not reconstructed by Target by the number of square feet of Floor Area contained in the improvements on the Target Tract prior to the casualty.

ARTICLE V

OPERATION OF THE SHOPPING CENTER

5.1 Uses.

(A) No part of the Shopping Center shall be used for other than retail sales, offices, Restaurants or other commercial purposes. "Business Office" shall mean an office which does not provide services directly to consumers; "Retail Office" shall mean an office which provides services directly to consumers, including but not limited to financial institutions, real estate, stock brokerages, title company and escrow offices, travel and insurance agencies, and medical, dental and legal clinics. Not more than ten percent (10%) of the total Floor Area on the Developer Tract may be used for Retail Office and/or Business Office.

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

(i) any use which emits an obnoxious odor, noise, or sound which can be heard or smelled outside of any building in the Shopping Center;

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

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

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

(v) any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any building);

(vi) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;

(vii) any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping districts in the metropolitan area where the Shopping Center is located;

(viii) any automobile, truck, trailer or motorized recreational vehicles sales, leasing, display or body shop repair operation except that Developer may operate and maintain a tire, battery and auto facility in Lot 1 of the Shopping Center;

(ix) any bowling alley or skating rink;

(x) any movie theater or live performance theater;

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

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

(xiii) any mortuary or funeral home;

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

(xv) any bar, tavern, restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds thirty percent (30%) of the gross revenues of such business ("Bar");

(xvi) any restaurant (not qualifying as a Bar) which is located within 180 feet of the Target Tract;

(xvii) any health spa, fitness center or workout facility;

(xviii) any flea market, amusement or video arcade, pool or billiard hall, car wash, or dance hall;

(xix) any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering

primarily to students or trainees rather than to customers; provided however, this prohibition shall not be applicable to on-site employee training by an Occupant incidental to the conduct of its business at the Shopping Center; and

(xx) any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines, video poker/black-jack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities, or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the Occupant.

(C) No Party shall use, or permit the use of Hazardous Materials on, about, under or in its Tract, or the Shopping Center, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws. Each Party shall indemnify, protect, defend and hold harmless the other Parties (provided that any mortgagee or purchaser at foreclosure sale shall not be responsible for the indemnification of its predecessor but shall inure to the benefits of the indemnification of the other Parties) from and against all claims, suits, actions, demands, costs, damages and losses of any kind, including but not limited to costs of investigation, litigation and remedial response, arising out of any Hazardous Material used or permitted to be used by such Party, whether or not in the ordinary course of business.

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

(D) No merchandise, equipment or services, including but not limited to vending machines, promotional devices and similar items, shall be displayed, offered for sale or lease, or stored within the Common Area; provided however, that the foregoing prohibition shall not be applicable to (i) the storage of shopping carts on the Target Tract; (ii) the seasonal display and sale of bedding plants on the sidewalk in front of any building located on the Target Tract, provided such display does not materially impede pedestrian use of the sidewalk; or (iii) temporary Shopping Center promotions on the area labeled as available for such activities on the Site Plan, provided that no promotional activities will be allowed in the Common Area without the prior written approval of the Approving Parties which may be withheld in their sole and absolute discretion. In addition, if a recycling center or equipment is required by law to be located in the Shopping Center, the location thereof shall be subject to the approval of the Approving Parties.

(E) No drug store exceeding 15,000 square feet of Floor Area shall be permitted on the Developer Tract.

(F) The name "Target" shall not be used to identify the Shopping Center or any business or trade conducted on the Developer Tract. Until the Approving Parties agree upon a name change, the Shopping Center shall be called "South Towne Marketplace".

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

(H) Each Party shall use its diligent efforts to cause the employees of the Occupants of its Tract to park their vehicles only on such Tract (and the Primary Parking Area, with respect to Target).

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

(J) Target shall comply with the rules and regulations attached hereto as Exhibit I, and Developer shall use reasonable efforts to cause all Occupants to comply with such rules and regulations.

5.2 Lighting.

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

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

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

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

The Requesting Party agrees to pay one hundred ten percent (110%) of the cost to the Requested Party of electrical power to provide such extra-hours illumination, and the prepayment shall be applied to such obligation as incurred. If the Requested Party is of the opinion that the prepayment made by the Requesting Party does not cover one hundred ten percent (110%) of such costs, the Parties shall attempt to agree to the cost of such electrical power and if they cannot do so, then the amount the Requesting Party is obligated to pay shall be determined from the power costs as estimated by the electrical utility company furnishing such power, or if the utility fails to do so, by a reputable engineer. Upon the failure of a Requesting Party to pay the aforesaid amount or renew a prepayment as required hereby, the Requested Party shall have the right to discontinue such additional lighting and to exercise other remedies herein provided. Any such request for additional lighting may be withdrawn or terminated at any time by written notice from the Requesting Party, and a new request or requests for changed hours may be made from time to time.

(C) In addition to the process of lighting another's Tract as set forth in (B) above, and in accordance with 3.2(F) hereof, Developer shall install a manual override system to the light standards on the Primary Parking Area, which would permit a portion or all of the lighting on the Primary Parking Area to be operated contemporaneously with the lighting on the balance of the Developer Tract. All costs and expenses associated with the installation of such manual override system shall be assumed and promptly paid by Target. All costs and expenses associated with the maintenance, replacement, and operation of such secondary wiring, including the cost of energy to light any portion of the Primary Parking Area at the direction of Developer after 11 p.m., shall be assumed and promptly paid by Developer. Developer and Target shall develop and approve the appropriate plans and specifications for the installation of such manual override systems in accordance with the terms of the Site Development Agreement.

5.3 Occupant Signs.

(A) No freestanding sign shall be permitted within the Shopping Center unless constructed in areas designated on the Site Plan, and only one (1) such sign may be located in each designated area. The freestanding signs at the Shopping Center shall be utilized as follows:

(i) "Pylon Sign A" may be used to identify 4 Occupants of the Developer Tract and 1 Occupant of the Target Tract;

(ii) "Pylon Sign B" may be used to identify 4 Occupants of the Developer Tract and 1 Occupant of the Target Tract; and

(iii) "Monument Sign 3" may be used to identify the name of the Shopping Center and not more than 4 Occupants of the Developer Tract and 1 Occupant of the Target Tract.

The designation of a freestanding sign location on a Tract shall in no way obligate the benefiting Party(ies) to construct such freestanding sign. However, if a freestanding sign is constructed, the benefiting Party(ies) shall be responsible for the sign's operation and maintenance on a first-class basis, and each Party having a sign panel thereon shall maintain such panel at its expense. The Developer shall have the right to approve the design and size of all freestanding signs, including the panel inserts; provided, however, it is agreed that any Occupant of more than 60,000 square feet of Floor Area shall have the unqualified right to use in the panel or space allocated to it on any freestanding sign its standard prototype identification as the same exists from time to time.

(B) Any Occupant occupying less than twenty-five thousand (25,000) square feet of Floor Area may have only one (1) identification placed on the exterior of the building it occupies; provided however, that if any such Occupant is located at the corner of a building, then such Occupant may have an identification sign on each side of such corner. Any Occupant occupying at least twenty-five thousand (25,000) square feet of Floor Area may have more than one identification sign placed on the exterior of the building it occupies.

No Occupant identification sign attached to the exterior of a building shall be:

- (i) placed on canopy roofs extending above the building roof, placed on penthouse walls, or placed so as to project above the parapet, canopy, or top of the wall upon which it is mounted;
- (ii) placed at any angle to the building; provided, however, the foregoing shall not apply to any sign located under a sidewalk canopy if such sign is at least eight (8) feet above the sidewalk;
- (iii) painted on the surface of any building;
- (iv) flashing, moving or audible signs;
- (v) signs employing exposed raceways, exposed neon tubes, exposed ballast boxes, or exposed transformers; or
- (vi) paper or cardboard signs, temporary signs (exclusive of contractor signs), stickers or decals; provided, however, the foregoing shall not prohibit the placement at the entrance of each Occupant's space a small sticker or decal, indicating hours of business, emergency telephone numbers, acceptance of credit cards, and other similar bits of information.

No Occupant of less than sixty thousand (60,000) square feet of Floor Area shall have an exterior sign which identifies leased departments, and/or concessionaires operating under the Occupant's business or trade name, nor, shall such sign identify specific brands or products for sale or services offered within a business establishment, unless such identification is used as part of the Occupant's trade name.

(B) Notwithstanding anything above to the contrary, each Party shall be permitted to place within the Common Area located on its Tract directional signs or informational signs such as "Handicapped Parking", the temporary display of leasing information and the temporary erection of one sign identifying each contractor working on a construction job.

5.4 Insurance.

(A) During the period the Operator is maintaining the Common Area, Operator shall maintain or cause to be maintained in full force and effect Commercial General Liability Insurance covering the Common Area of the Shopping Center with a combined single limit of liability of not less than Five Million Dollars (\$5,000,000.00) in Constant Dollars for bodily injury to or personal injury or death of any person and consequential damages arising therefrom, and for property damage, arising out of any one occurrence; each Party shall be a "named insured" under such policy. It is the agreement of the Parties that the insurance maintained by Operator shall be primary insurance to the insurance maintained by the Parties pursuant to (B) below.

Operator covenants to defend, protect, indemnify and hold harmless each Party and its respective directors, officers, agents, representatives and employees from and against all claims, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities (including attorneys' fees and cost of suit) asserted or incurred in connection with or arising as a result of the death of, or any injury, loss or damage whatsoever to any Person, or to the property of any Person, as shall occur due to the performance or failure to perform by Operator of its duties or obligations under this OEA with respect to the maintenance and operation of the Common Area, except for claims caused by the negligence or by the willful act or omission of the indemnified Party or its directors, officers, contractors, licensees, concessionaires, agents, representatives or employees.

(B) Except to the extent coverage is provided by the insurance required to be maintained under (A) above, each Party (as to its Tract only) shall maintain or cause to be maintained in full force and effect Commercial General Liability Insurance with a combined single limit of liability of not less than Five Million Dollars (\$5,000,000.00) in Constant Dollars for bodily or personal injury or death, and for property damage, arising out of any one occurrence; the other Parties shall be "additional insureds" under such policy.

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

(C) Prior to commencing any construction activities within the Shopping Center, each Party and Operator shall obtain or require its contractor to obtain and thereafter maintain so long

as such construction activity is occurring, at least the minimum insurance coverages in Constant Dollars set forth below:

- (i) Workers' Compensation - statutory limits;
- (ii) Employers' Liability - \$500,000; and
- (iii) Comprehensive General/Commercial General Liability and Business Auto Liability as follows:
 - (a) Bodily Injury - \$1,000,000 per occurrence;
 - (b) Property Damage - \$1,000,000 per occurrence;
 - (c) Independent Contractors Liability; same coverage as set forth in (a) and (b) above;
 - (d) Products/Completed Operations Coverage which shall be kept in effect for two (2) years after completion of work;
 - (e) "XCU" Hazard Endorsement, if applicable;
 - (f) "Broad Form" Property Damage Endorsement;
 - (g) "Personal Injury" Endorsements; and
 - (h) "Blanket Contractual Liability" Endorsement.

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

(D) Effective upon the commencement of construction of any building on its Tract and so long as such building exists, a Party shall carry, or cause to be carried, casualty insurance with "extended" or "all-risk" coverage, in the amount of 100% of full replacement cost thereof (excluding footings, foundations or excavations).

Each Party (the "Releasing Party") hereby releases and waives for itself, and each Person claiming by, through or under it, each other Party and Operator (the "Released Party") from any liability for any loss or damage to all property of such Releasing Party located upon the Releasing Party's Tract, which loss or damage is of the type covered by the insurance required to be maintained under 5.4(D), irrespective either of any negligence on the part of the Released Party which may have contributed to or caused such loss, or of the amount of such insurance

required or actually carried, including any deductible or self insurance reserve. Each Party agrees to use its reasonable efforts to obtain, if needed, appropriate endorsements to its policies of insurance with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release hereinabove given. Each Party ("Indemnitor") covenants and agrees to indemnify, defend and hold harmless the Operator and each other Party in either case ("Indemnitee") from and against all claims asserted by or through any Permittees of the Indemnitor's Tract for any loss or damage to the property of such Permittee located upon the Indemnitor's Tract, which loss or damage is covered by the insurance required to be maintained under 5.4(D), irrespective of any negligence on the part of the Indemnitee which may have contributed to or caused such loss.

(E) All insurance required by 5.4 shall be procured from companies licensed in the state where the Shopping Center is located and shall be rated by Best's Insurance Reports not less than A/X. All insurance may be provided under (i) an individual policy covering this location, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Party; provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than \$20,000,000 in Constant Dollars, then such insuring Party shall also maintain excess liability coverage necessary to establish a total liability insurance limit of \$20,000,000 in Constant Dollars, (iii) a plan of self-insurance, provided that any Party so self-insuring notifies the other Parties of its intent to self-insure and agrees that upon request it shall deliver to such other Parties each calendar year a copy of its annual report that is audited by an independent certified public accountant which discloses that such Party has \$100,000,000 in Constant Dollars or more of net current assets, or (iv) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by a Party in compliance with 5.4, such Party shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed \$50,000 in Constant Dollars unless such party complies with the requirements regarding self-insurance pursuant to (iii) above. Each Party and Operator agrees to furnish to any Party requesting the same, a certificate(s) of insurance evidencing that the insurance required to be carried by such Person is in full force and effect.

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

(i) shall provide that the policy may not be canceled or reduced in amount or coverage below the requirements of this OEA, without at least thirty (30) days' prior written notice by the insurer to each insured and to each additional insured;

(ii) shall provide for severability of interests;

(iii) shall provide that an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other named insureds; and

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

5.5 Liens. In the event any mechanic's lien is filed against the Tract of one Party as a result of services performed or materials furnished at the instance of another Party, the Party permitting or causing such lien to be so filed agrees to cause such lien to be discharged within fifteen (15) days after the entry of final judgment (after all appeals) for the foreclosure of such lien and further agrees to indemnify, defend, and hold harmless the other Party and its Tract against liabilities, losses, damages, costs or expenses (including reasonable attorneys' fees and cost of suit) on account of such claim of lien. Upon request of the Party whose Tract is subject to such lien, the Party permitting or causing such lien to be filed agrees to promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge. Nothing herein shall prevent a Party permitting or causing such lien from contesting the validity thereof in any manner such Party chooses so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such Party shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien. All liens must be disclosed in advance of a foreclosure sale.

ARTICLE VI

MISCELLANEOUS

6.1 Default.

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

(i) the failure to make any payment required to be made hereunder within ten (10) days of the due date, or

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

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

of receipt of demand, together with reasonable documentation supporting the expenditures made. The terms of this 6.1(B) shall not be deemed to grant Target any remedies contained in this 6.1(B) with respect to defaults that can be cured in accordance with the provisions of 4.2(G) hereof.

(C) Costs and expenses accruing and/or assessed pursuant to 6.1(B) or 6.1(A) above shall constitute a lien against the Defaulting Party's Tract or Target's ground lease estate, as applicable. The lien shall attach and take effect only upon, and shall have a priority as of, the date of recordation of a claim of lien in the office of the Recorder of the County of the State in which the Shopping Center is located, by the Party making the claim. The claim of lien shall include the following:

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

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

(D) No waiver by any Party of any default under this OEA shall be effective or binding on such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this OEA shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this OEA.

(E) Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other Person, violating or attempting

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

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

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

(ii) two percent (2%) per annum in excess of the prime rate.

6.3 Estoppel Certificate. Target or Developer shall at any time and from time to time upon not less than twenty (20) days' prior written notice from the other Party execute, acknowledge and deliver to the requesting Party a statement in writing (i) certifying that this OEA is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this OEA, as so modified, is in full force and effect) and the dates to which any charges under the OEA are paid in advance, if any, and (ii) acknowledging that there are not, to the requested Party's knowledge, any uncured defaults on the part of the requesting Party hereunder, or specifying such defaults if any are claimed. Such statement shall act as a waiver of any claim by the Person furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. The issuance of an estoppel certificate shall in no event subject the Person furnishing it to any liability for the negligent or inadvertent failure of such Person to disclose correct and/or relevant information, nor shall such issuance be construed to waive any right of the issuer to either request an audit of the Common Area Maintenance Costs for any year it is entitled to do so, or challenge acts committed by other Parties for which approval by the Approving Parties was required but not sought or obtained.

6.4 Notices. All notices, demands and requests (collectively the "notice") required or permitted to be given under this OEA must be in writing and shall be deemed to have been given as of the date such notice is (i) delivered to the Party intended, (ii) delivered to the then designated address of the Party intended, (iii) rejected at the then designated address of the Party intended, provided such notice was sent prepaid, or (iv) sent via facsimile so long as the original

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

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

Developer: Equity Properties and Development
Limited Partnership
Two North Riverside Plaza
Chicago, IL 60606-2689
Attn: Senior Vice President, Real Estate
Fax: (312) 454-0359

Copy: Equity Properties and Development
Limited Partnership
Two North Riverside Plaza
Chicago, IL 60606-2689
Attn: General Counsel
Fax: (312) 454-0359

Operator: As from time to time designated.

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

6.5 Approval Rights.

(A) Nothing contained in this OEA shall limit the right of Operator or a Party to exercise its business judgment, or act, in a subjective manner, with respect to any matter as to which it has specifically been granted such right, or the right to act in its sole discretion or sole judgment, whether "objectively" reasonable under the circumstances, and any such exercise shall not be deemed inconsistent with any covenant of good faith and fair dealing otherwise implied by law to be part of this OEA; and the Parties intend by this OEA to set forth their entire understanding with respect to the terms, covenants, conditions and standards pursuant to which their obligations are to be judged and their performance measured.

(B) Unless provision is made for a specific time period, each response to a request for an approval or consent shall be given by the Person to whom directed within thirty (30) days of receipt. Each disapproval shall be in writing and, subject to (A) above, the reasons shall be clearly stated. If a response is not given within the required time period, the requested Party shall be deemed to have given its approval.

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

6.6 Condemnation. In the event any portion of the Shopping Center shall be condemned, the award shall be paid to the Party owning the land or the improvement taken, except that (i) if the taking includes improvements belonging to more than one Party, such as Utility Lines or signs, the portion of the award allocable thereto shall be used to relocate, replace or restore such jointly owned improvements to a useful condition, and (ii) if the taking includes easement rights which are intended to extend beyond the term of this OEA, the portion of the award allocable to each such easement right shall be paid to the respective grantee thereof. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this OEA which does not reduce or diminish the amount paid to the Party owning the land or the improvement taken, then the owner of such other property interest shall have the right to seek an award for the taking thereof.

6.7 Binding Effect. The terms of this OEA and all easements granted hereunder shall constitute covenants running with the land and shall bind the real estate described herein and inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns who become Parties hereunder. This OEA is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby.

6.8 Construction and Interpretation.

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

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

(C) The captions preceding the text of each article and section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this OEA. Capitalized terms are also selected only for convenience of reference and do not

necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this OEA.

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

(E) This OEA may be amended by, and only by, a written agreement signed by all of the then current Approving Parties and shall be effective only when recorded in the county and state where the Shopping Center is located. No consent to the amendment of this OEA shall ever be required of any Occupant or Person other than the Approving Parties, nor shall any Occupant or Person other than the Approving Parties have any right to enforce any of the provisions hereof. Each Approving Party may consider, approve or disapprove any proposed amendment to this OEA in its sole and absolute discretion without regard to reasonableness or timeliness. Notwithstanding the foregoing, any amendment made to this OEA without the consent of any mortgagee of a Tract which has required mortgagee consent as a condition to amendment, shall not be effective in the event that such mortgagee takes title to the mortgaged property.

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

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

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

6.11 Excusable Delays. Whenever performance is required of any Person hereunder, such Person shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such Person, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this section shall not operate to excuse any Person from the prompt payment of any monies required by this OEA.

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

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

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

6.15 No Waiver. The failure of Operator or any Party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which Operator or that Party may have hereunder, at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

6.16 Limitation of Liability. Except as specifically provided below, the liability of Developer (including, without limitation, Owner) shall be limited to the extent of Developer's and Owner's interest in the Shopping Center and any insurance proceeds with respect thereto and in no event shall Developer, Owner, or any of their respective beneficiaries, shareholders, partners, officers, affiliates, agents or employees, heirs, successors or assigns have any personal liability of any kind or nature for or by reason of any matter or thing whatsoever under, in connection with, arising out of or in any way related to this OEA and the transactions contemplated herein, and Target hereby waives for itself and anyone who may claim by, through or under Target any and all rights to sue or recover on account of any such alleged personal liability; provided, however, the foregoing shall not in any way impair, limit or prejudice the right of any Party:

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

(ii) to recover from another Party (or its guarantor) all losses suffered, liabilities incurred or costs imposed arising out of or in connection with, or on account of, such Party (or its Guarantor) not funding its self insurance obligations which were assumed pursuant to 5.4 above.

ARTICLE VII

TERM

7.1 Term of this OEA. This OEA shall be effective as of the date first above written and shall continue in full force and effect until 11:59 p.m. on the twentieth (20th) anniversary of the first day of the Primary Term (as defined in the Ground Lease), subject to

Target's right, on terms and conditions set forth in the Ground Lease, to extend the term of the Ground Lease for six (6) periods of five (5) years each. This OEA shall remain in effect during all extensions of the Ground Lease. Within thirty (30) days of the first day of the Primary Term, Developer and Target shall execute and record in the land records of Salt Lake County, Utah a memorandum which sets forth the first day of the Primary Term. Upon termination of this OEA, all rights and privileges derived from and all duties and obligations created and imposed by the Provisions of this OEA shall terminate and have no further force or effect; provided, however, that the termination of this OEA shall not limit or affect any remedy at law or in equity that a Party may have against any other Party with respect to any liability or obligation arising or to be performed under this OEA prior to the date of such termination.

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

EQUITY PROPERTIES AND DEVELOPMENT
LIMITED PARTNERSHIP, D/B/A
EQUITY PROPERTIES AND DEVELOPMENT
(ILLINOIS) LIMITED PARTNERSHIP,
an Illinois limited partnership,
as agent for owner

("Developer")

By: *SC Management, Inc.*

By: 

Name: DAVID J. CONTIS

Title: C.O.O. / C.F.O.

DAYTON HUDSON CORPORATION,
a Minnesota corporation
("Target")

By: 


Name: Edward J. Bierman

Title: Vice President

Target Stores

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

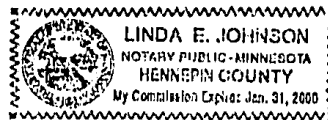
On this 29th day of October, 1995, before me, a Notary Public within and for said County, personally appeared David J. Contis, to me personally known, who, being first by me duly sworn, did say that he is the C.O.O. I.C.F.O and a duly authorized signatory of SE Management Inc., and that the foregoing instrument was signed by him on behalf of said corporation by authority of its Board of Directors, as general partner of Equity Properties and Development Limited Partnership, and he acknowledged said instrument to be the free act and deed of said corporation on behalf of said limited partnership.


Notary Public SEAL
GEORGE J. CURAS
Notary Public, State of Illinois
My Commission Expires 5/22/97

BK 7399PE1543

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

On this 22nd day of September, 1995, before me, a Notary Public within and for said County, personally appeared Edward J. Bierman, to me personally known, who, being first by me duly sworn, did say that he is the Vice President-Target Stores, and a duly authorized signatory of Dayton Hudson Corporation, and that the foregoing instrument was signed by him on behalf of said corporation by authority of its Board of Directors and Edward J. Bierman acknowledged said instrument to be the free act and deed of said corporation.



AK 7399PG1544

EXHIBIT A
LEGAL DESCRIPTION OF TARGET TRACT

Attached hereto.

AK 7399 Pg 1545

A parcel of land located in the Southeast quarter of Section 12, Township 3 South, Range 1 West, Salt Lake Base & Meridian, Salt Lake County, Utah, being more particularly described as follows:

Beginning at a point North $89^{\circ}49'53''$ West 502.72 feet along the Section line and North $00^{\circ}10'07''$ East 167.73 feet from the Southeast Corner of said Section 12 (Basis of bearing being South $00^{\circ}01'50''$ East 2599.11 feet along the monument line of State Street between the monuments found marking the intersections of 10200 South & 10600 South Streets), said Southeast Corner of Section 12 being South $89^{\circ}53'20''$ West 92.33 feet from the monument at the intersection of 10200 South and State Streets, and running thence West 188.61 feet; thence South 19.27 feet; thence West 124.61 feet; thence North 98.33 feet; thence West 74.33 feet; thence North 433.09 feet; thence East 47.48 feet; thence North 46.09 feet; thence East 339.78 feet; thence South 558.23 feet to the point of the beginning.

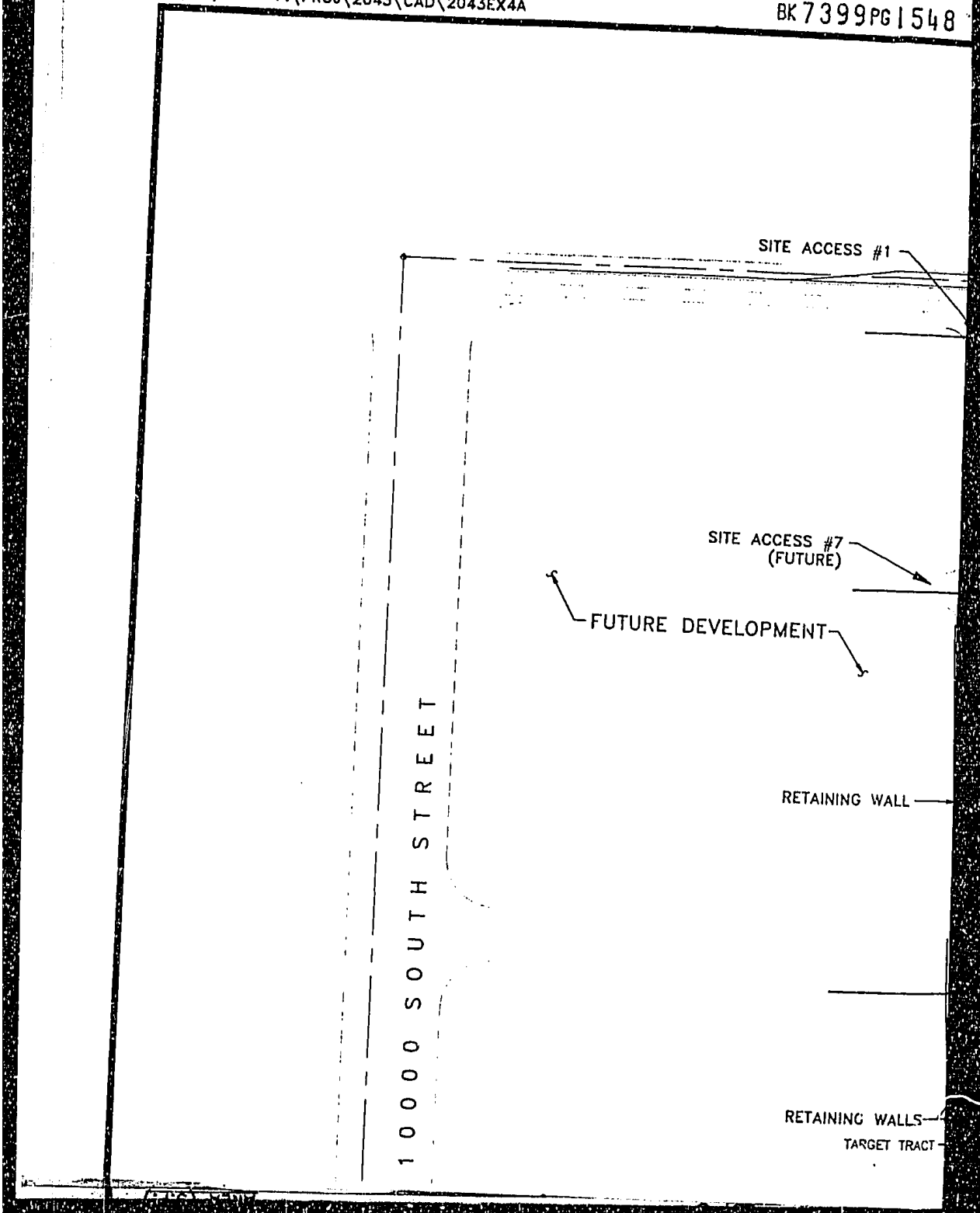
BK 7399PG 1546

EXHIBIT B

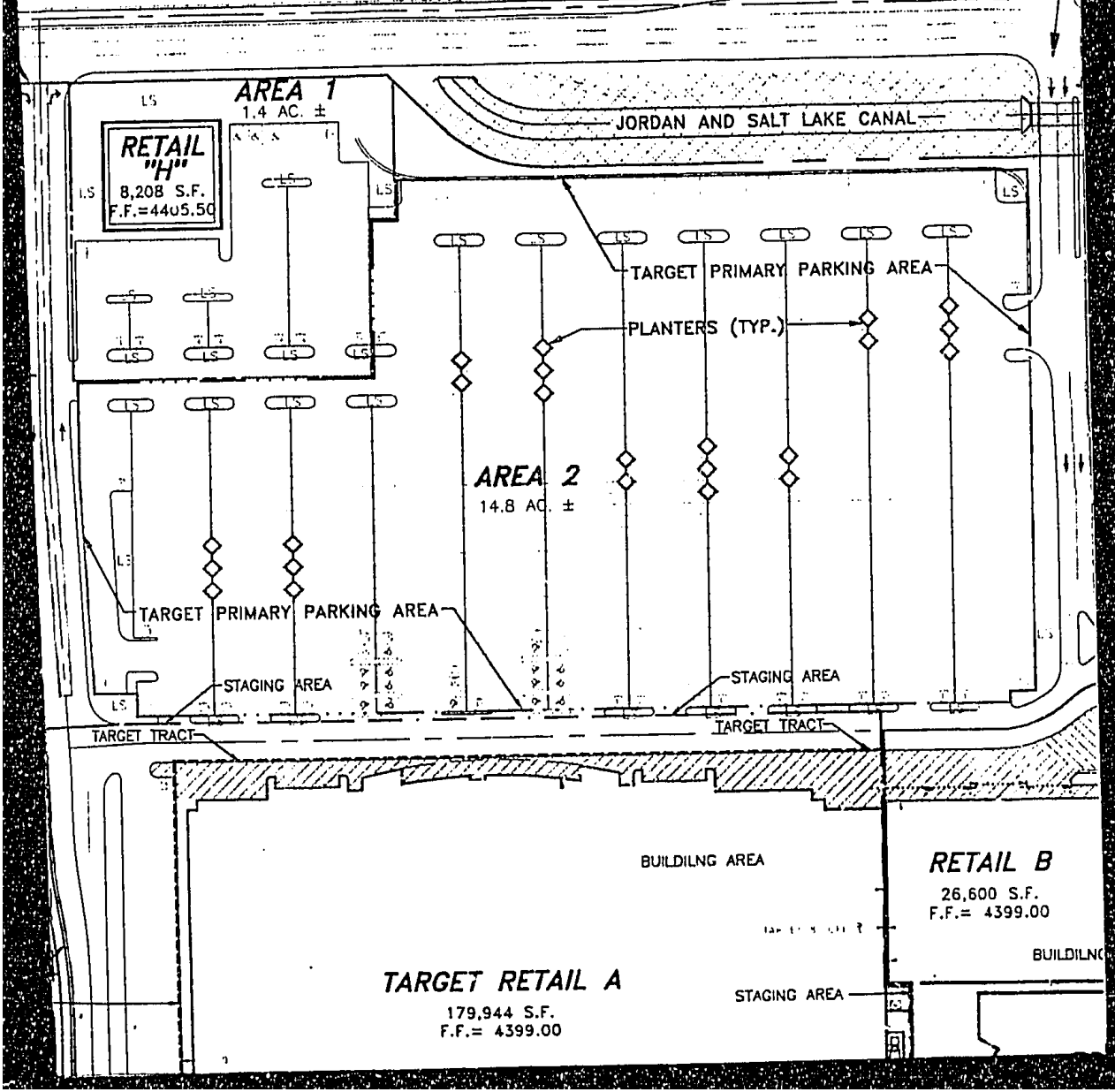
SITE PLAN

Attached hereto.

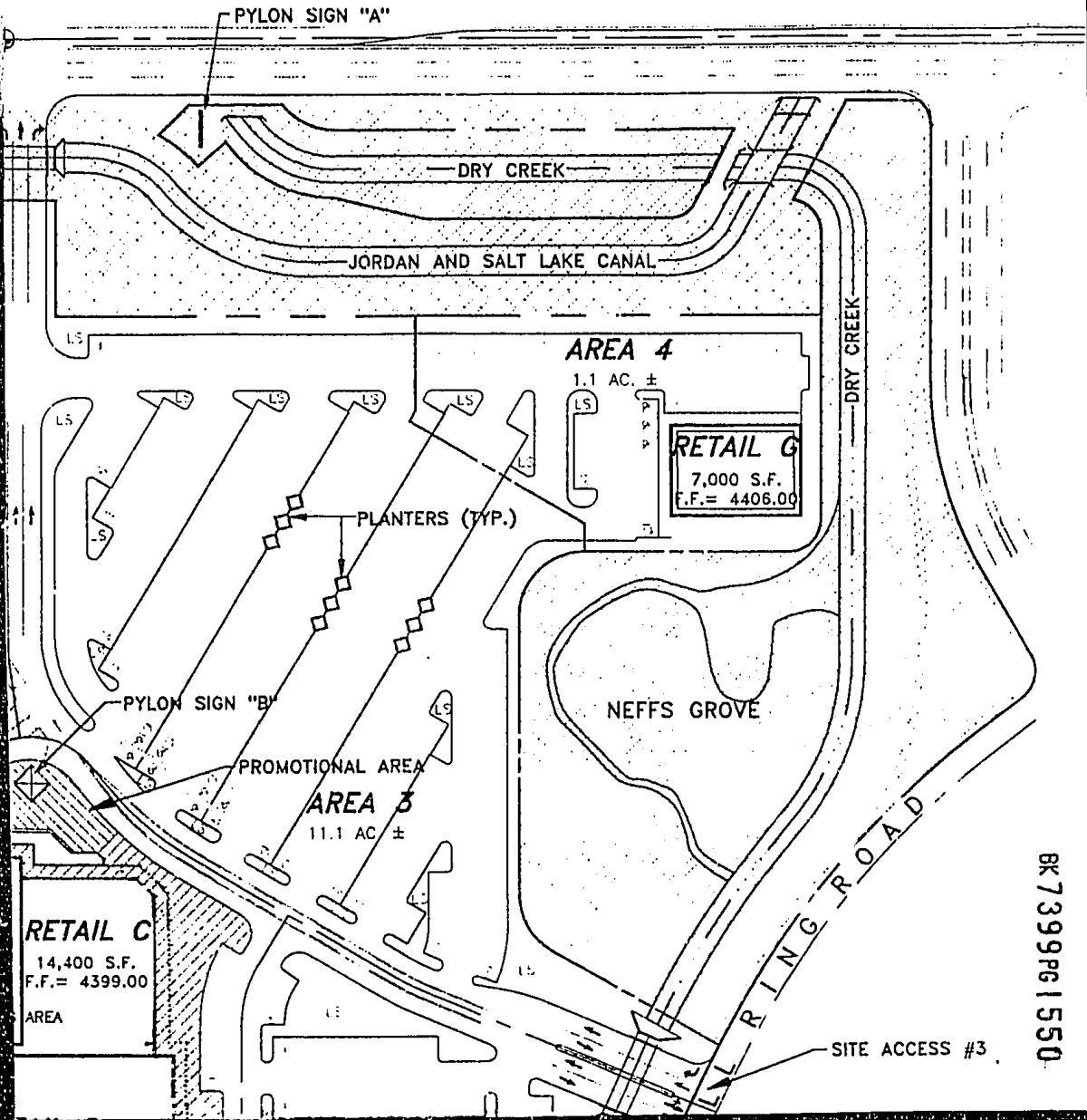
BK 7399PG 1547



STATE STREET (U.S. 89-91) (4-LANE)







SITE ACCESS #2
(AKA 102nd street)



BK 7399PG1550

LEGEND

.....	BUILDING CANOPY
-----	TRACT A TARGET LEASED PREMISES
-----	PROPOSED LOT LINE
-----	PROPOSED CURB AND GUTTER
-----	PROPERTY LINE -- DEVELOPER TRACT
-----	STAGING AREA
-----	TARGET PRIMARY PARKING AREA
	WETLANDS
	HEAVY DUTY CONCRETE
	HARDSCAPE/LANDSCAPE AREA
	CANAL RIGHT OF WAY
.	HANDICAP PARKING
LS	LANDSCAPED AREA

SITE DATA

<u>AREA</u>	<u>(ACRES)</u>
1	1.4
2	15.0
3	11.1
4	1.1
<u>TOTAL LAND AREA</u>	<u>28.6</u>

<u>LOT 1</u>	<u>AREA (S.F.)</u>
AUTO SERVICE PARKING PROVIDED	8,208 82 (10.0/1,000 S.F.)
<u>LOT 2</u>	<u>AREA (S.F.)</u>
MAJOR RETAIL A, TARGET PARKING PROVIDED	179,944 900 (5.0/1,000 S.F.)

BK 7399Pg 1551

FUTURE DEVELOPMENT

STAGING AREA

RETAINING WALL

SANDY CITY
HALL

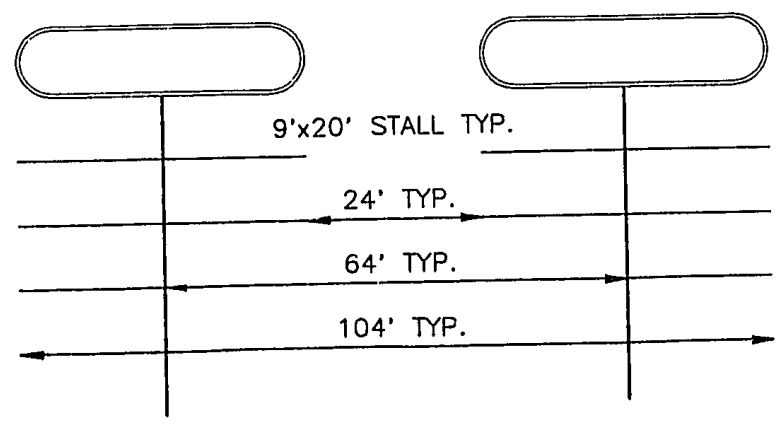
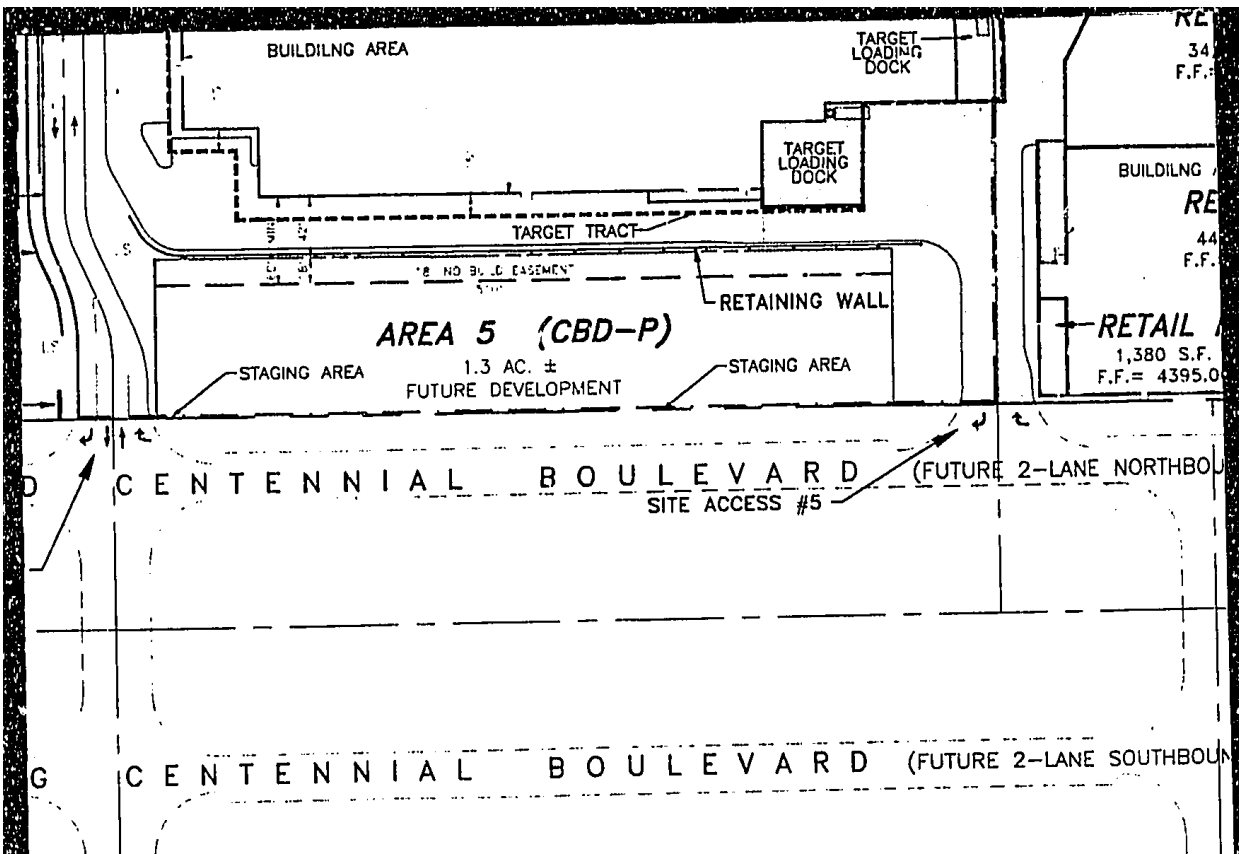
MONUMENT SIGN "D"

P R O P O S E

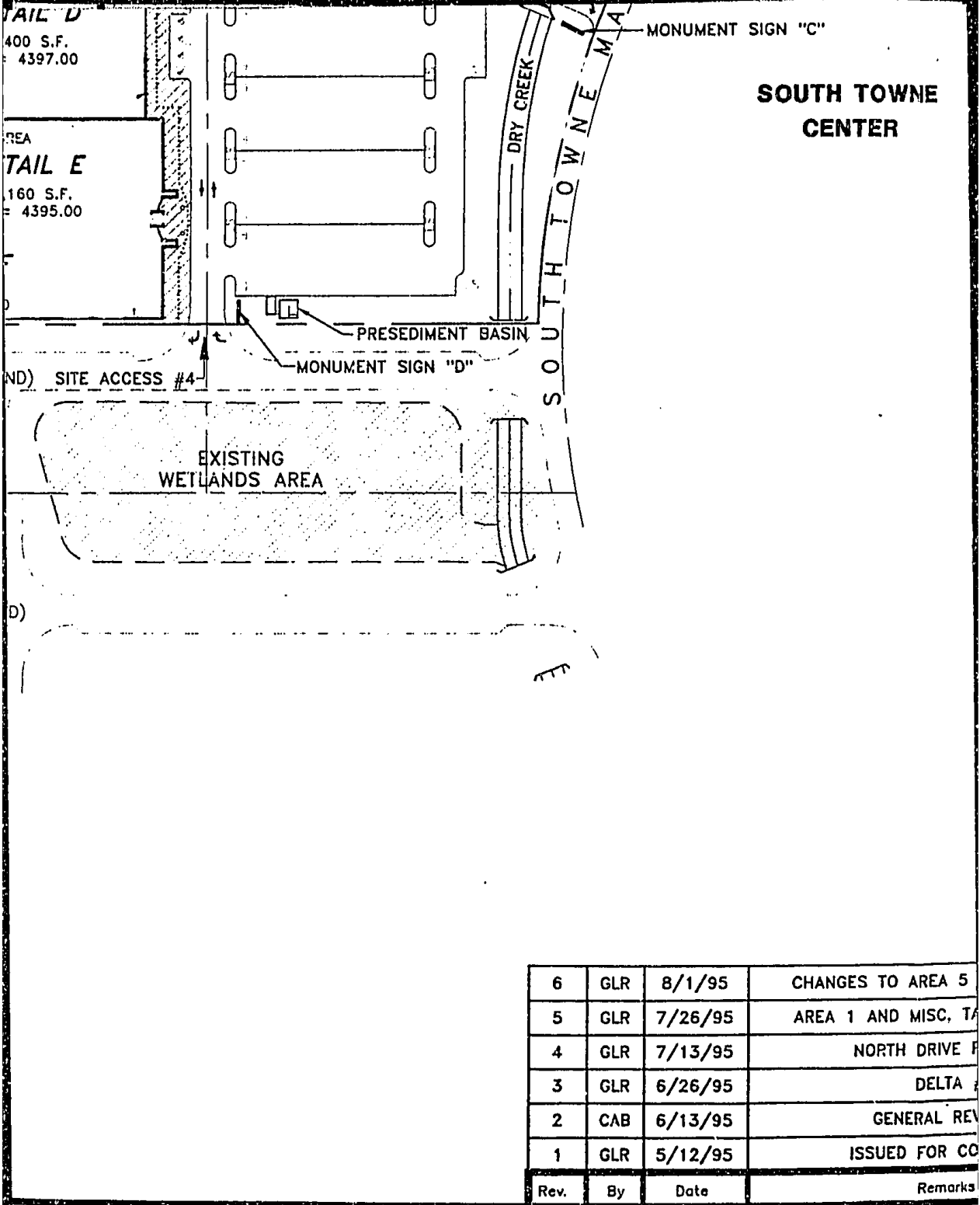
SITE ACCESS #6

E X I S T I N

BK 7399 Pg 1552
BK 7399



PARKING DETAIL
SCALE: 1" = 20'



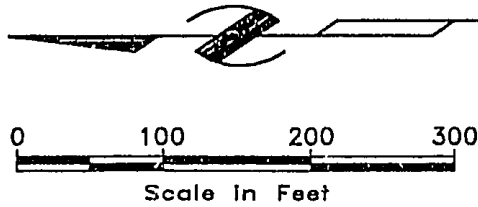
6	GLR	8/1/95	CHANGES TO AREA 5
5	GLR	7/26/95	AREA 1 AND MISC, TA
4	GLR	7/13/95	NORTH DRIVE P
3	GLR	6/26/95	DELTA
2	CAB	6/13/95	GENERAL REV
1	GLR	5/12/95	ISSUED FOR CO
Rev.	By	Date	Remarks

BK7399PG1554

RETAIL B, BARNES AND NOBLE		26,600
RETAIL C, OLD NAVY		14,400
RETAIL D		34,400
RETAIL E, GART BROTHERS		44,160
RETAIL F		1,380
TOTAL BLDG. AREA		120,940
PARKING PROVIDED	-	605 (5.0/1,000 S.F.)

<u>LOT 4</u>		<u>AREA (S.F.)</u>
RETAIL G, RESTAURANT		7,000
PARKING PROVIDED	-	70 (10.0/1,000 S.F.)

TOTAL BUILDING AREA	-	316,092 S.F.
TOTAL PARKING PROVIDED	-	1657 (5.2/1,000 S.F.)



EQUITY PROPERTIES & DEVELOPMENT CO.

SOUTH TOWNE MARKET PLACE
SANDY CITY, UTAH

TARGET EXHIBIT

& DESCRIPTIONS

TARGET REVISIONS

REVISIONS

1

REVISIONS

CONVENTION

**B BINGHAM
ENGINEERING**

SALT LAKE CITY - (801) 532-2520

Design: GLR

Drawn: GLR

Checked: CAB

Reviewed: TB, JH

Date AUG. 1995

Proj. # 2043

Sht 1 of 1

BK 7399PG1555

EXHIBIT C

LEGAL DESCRIPTION OF DEVELOPER TRACT

Attached hereto.

BK 7399 PG 1556

EXHIBIT C TO THE OPERATION AND EASEMENT AGREEMENT
DEVELOPER TRACT

BEGINNING at a point on the Westerly right of way line of State Street, which point is North $89^{\circ}50'56''$ 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 $00^{\circ}01'50''$ East 2599.11 feet along the monument line of State Street between the monuments found marking the intersections of 10600 South & 10200 South Streets), said Northeast Corner of Section 13 being South $89^{\circ}53'20''$ West 92.33 feet from the monument, at the intersection of 10200 South and State Streets, and running thence South $00^{\circ}01'50''$ East 583.24 feet along said line; thence South $00^{\circ}50'43''$ East 70.31 feet along said line; thence South $00^{\circ}01'50''$ East 53.16 feet along said line to the northerly line of an access road and a point on a 25.00 foot radius curve to the right; thence running along said Northerly line for the next five courses, Southwesterly 21.60 feet along the arc of said curve through a central angle of $49^{\circ}30'41''$ (chord bearing South $65^{\circ}15'40''$ West 20.94 feet); thence North $89^{\circ}59'00''$ West 192.15 feet to the point of tangency with a 306.00 foot radius curve to the left; thence Southwesterly 162.31 feet along the arc of said curve through a central angle of $30^{\circ}23'31''$; thence South $59^{\circ}37'30''$ West 74.04 feet to the point of tangency with a 25.00 foot radius curve to the right; thence Northwesterly 37.15 feet along the arc of said curve through a central angle of $85^{\circ}08'19''$ to the point of tangency with a 758.00 foot radius curve to the left and being the North line of the South Towne Mall Ring Road; thence Northwesterly 712.45 feet along the arc of said curve through a central angle of $53^{\circ}51'11''$ along said line; thence North $00^{\circ}00'36''$ East 1300.81 feet; thence South $89^{\circ}57'20''$ East 519.88 feet; thence North $86^{\circ}50'50''$ East 266.48 feet; thence South $89^{\circ}59'01''$ East 280.57 feet to said West right of way line of State Street; thence South $00^{\circ}07'35''$ East 847.85 feet along said line to the point of BEGINNING.

BK 7399PG 1557

LESS AND EXCEPTING the following:

Beginning at a point on the Westerly right of way line of State Street, which point is North $89^{\circ}50'56''$ 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 $00^{\circ}01'50''$ East 2599.11 feet along the monument line of State Street between the monuments found marking the intersections of 10600 South & 10200 South Streets), said Northeast corner of Section 13 being South $89^{\circ}53'20''$ West 92.33 feet from the monument at the intersection of 10200 South and State Streets, and running thence South $00^{\circ}01'50''$ East 142.94 feet along said line; thence North $45^{\circ}00'00''$ West 32.77 feet to a point on a 116.00 foot radius curve to the right; thence Southwesterly 38.99 feet along the arc of said curve through a central angle of $19^{\circ}15'29''$ (chord bears South $39^{\circ}19'27''$ West 38.81 feet); thence South $41^{\circ}02'50''$ East 28.93 feet; thence South $50^{\circ}28'54''$ West 7.88 feet to a point of curvature with a 102.00 foot radius curve to the left; thence Southwesterly 89.92 feet along the arc of said curve through a central angle of $50^{\circ}30'43''$; thence South $13^{\circ}14'00''$ West 71.92 feet; thence South $00^{\circ}01'50''$ East 190.71 feet to a point of curvature with a 17.00 foot radius curve to the left; thence Southeasterly 18.24 feet along the arc of said curve through a central angle of $61^{\circ}29'08''$; thence South $61^{\circ}30'58''$ East 67.84 feet; thence North $00^{\circ}01'50''$ West 308.03 feet to a point of curvature with a 50.00 foot radius curve to the right; thence Northeasterly 44.08 feet along the arc of said curve through a central angle of $50^{\circ}30'43''$; thence North $50^{\circ}28'54''$ East 2.33 feet to said Westerly right of way line of State Street; thence South $00^{\circ}01'50''$ East 367.99 feet along said line; thence South $00^{\circ}50'43''$ East 66.61 feet along said line; thence North $61^{\circ}30'58''$ West 86.65 feet to a point on a 25.00 foot radius curve to the right; thence Southwesterly 36.21 feet along the arc of said curve through a central angle of $82^{\circ}58'40''$ (chord bears South $48^{\circ}31'41''$ West 33.12 feet); thence North $89^{\circ}59'14''$ West 63.53 feet; thence North $00^{\circ}01'50''$ West 590.56 feet; thence North $89^{\circ}52'57''$ East 89.62 feet; thence North $00^{\circ}07'35''$ West 469.81 feet to a point of curvature with a 113.00 foot radius curve to the right; thence Northeasterly 89.42 feet along the arc of said curve through a central angle of $45^{\circ}20'24''$; thence North $45^{\circ}12'48''$ East 56.83 feet to said Westerly right of way; thence South $00^{\circ}07'35''$ East 550.60 feet to the point of beginning.

BK 7399PG 1558

AND LESS AND EXCEPTING the following:

Beginning at a point North 89°49'53" West 1027.21 feet along the Section line and North 00°00'36" East 225.75 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 2599.11 feet along the monument line of State Street between the monuments found marking the intersections of 10600 South & 10200 South Streets), said Northeast corner of Section 13 being South 89°53'20" West 92.33 feet from the monument at the intersection of 10200 South and State Streets, and running thence North 00°00'36" East 510.00 feet; thence East 110.28 feet; thence South 510.00 feet; thence West 110.37 feet to the point of beginning.

FOOT COPY
OF RECORD

AND LESS AND EXCEPTING the following:

A parcel of land located in the Southeast quarter of Section 12, Township 3 South, Range 1 West, Salt Lake Base & Meridian, Salt Lake County, Utah, being more particularly described as follows:

Beginning at a point North 89°49'53" West 502.72 feet along the Section line and North 00°10'07" East 167.73 feet from the Southeast Corner of said Section 12 (Basis of bearing being South 00°01'50" East 2599.11 feet along the monument line of State Street between the monuments found marking the intersections of 10200 South & 10600 South Streets), said Southeast Corner of Section 12 being South 89°53'20" West 92.33 feet from the monument at the intersection of 10200 South and State Streets, and running thence West 188.61 feet; thence South 19.27 feet; thence West 124.61 feet; thence North 98.33 feet; thence West 74.33 feet; thence North 433.09 feet; thence East 47.48 feet; thence North 46.09 feet; thence East 339.78 feet; thence South 558.23 feet to the point of the beginning.

BK 7399Pg 1559

EXHIBIT D
INTENTIONALLY DELETED

BK 7399PG 1560

EXHIBIT E
INTENTIONALLY DELETED

BK 7399 PG 1561

EXHIBIT F
INTENTIONALLY DELETED

BK 7399PG 1562

EXHIBIT G
ARCHITECTURAL THEME

Attached hereto.

BK 7399Pg 1563

**Preliminary Site Plans
South Towne Center Market Place
Sandy City, Utah**

Civil Land Consultants
8480 E. Orchard Road
Suite 2000
Englewood, Colorado 80111
(303) 770-2234 Phone
(303) 770-2349 Fax

<u>SHEET</u>	<u>TITLE</u>	<u>DATE</u>
Sheet 1 of 8	Cover Sheet	N/A
Sheet 2 of 8	Preliminary Site Plan	12/23/94
Sheet 3 of 8	Preliminary Garden & Drainage Plan	12/94
Sheet 4 of 8	Preliminary Utility Plan	12/94
Sheet 5 of 8	Parking Lot Lighting South Towne Alternative	12/94
Sheet 6 of 8	Preliminary Landscape Plan	12/19/94
Sheet 7 of 8	Preliminary Elevations	12/12/94
Sheet 8 of 8	Preliminary Target Elevations	12/23/94

Young Electric Sign Company
1148 South 300 West
Salt Lake City, Utah 84101
(801) 487-8481

<u>SHEET</u>	<u>TITLE</u>	<u>DATE</u>
Sheet 1 of 1	Proposed "Market Place" I.D. & Tenant Signage	7/30/95

BK 7399PG1564

**Retail Spaces - Exterior Finished - Shell Only Interior -
Spaces 'B', 'C', 'D' and 'E'
South Towne Center Market Place
Sandy, Utah**

Steven N. Warr & Associates Architects
178 West 800 South
Salt Lake City, Utah 84101
(801) 359-6900

<u>SHEET</u>	<u>DRAWING NO.</u>	<u>TITLE</u>	<u>DATE</u>
Sheet 1 of 33	0	Cover Sheet	8/07/95
Sheet 2 of 33	C-1	Sidewalk Plan	8/07/95
Sheet 3 of 33	A-1	Floor Plan	8/03/95
Sheet 4 of 33	A-1A	Reflected Ceiling Plan	8/07/95
Sheet 5 of 33	A-1B	Roof Plan	8/07/95
Sheet 6 of 33	A-2	Elevations	8/03/95
Sheet 7 of 33	A-3	Building Sections	8/07/95
Sheet 8 of 33	A-5	Wall Sections	8/07/95
Sheet 9 of 33	A-6	Wall Sections	8/07/95
Sheet 10 of 33	A-7	Wall Sections	8/07/95
Sheet 11 of 33	A-8	Wall Sections	8/07/95
Sheet 12 of 33	A-9	Wall Sections	8/07/95
Sheet 13 of 33	A-10	Wall Sections	8/07/95
Sheet 14 of 33	A-11	Wall Sections	8/07/95
Sheet 15 of 33	A-12	Wall Sections	8/07/95
Sheet 16 of 33	A-13	Wall Sections	8/07/95
Sheet 17 of 33	A-14	Wall Sections	8/07/95
Sheet 18 of 33	A-15	Wall Sections	8/07/95
Sheet 19 of 33	A-16	Door Schedule	8/07/95
Sheet 20 of 33	A-17	Window Schedule	8/07/95
Sheet 21 of 33	A-18	Door & Window Details	8/07/95
Sheet 22 of 33	A-20	Details	8/07/95
Sheet 23 of 33	S-1	Struct. Notes, Details	8/07/95
Sheet 24 of 33	S-2	Footing & Fdtn. Plan	8/07/95
Sheet 25 of 33	S-3	Roof Framing Plan	8/07/95
Sheet 26 of 33	S-4	South Town Center Marketplace	8/07/95
Sheet 27 of 33	S-5	Details	8/07/95
Sheet 28 of 33	S-6	Schedules and Details	8/07/95
Sheet 29 of 33	P-1	Piumbing Plan	8/07/95
Sheet 30 of 33	E0.0	Schedules & Details	8/07/95
Sheet 31 of 33	E0.1	One Line Diagrams & Schedules	8/07/95
Sheet 33 of 33	E1.0	Electrical Site Plan	8/07/95
Sheet 33 of 33	E2.0	Electrical Plan	8/07/95

BK 7399pg | 565

EXHIBIT H

SUBMISSION GUIDELINES

1. During the conceptual design phase, the constructing party shall submit to the other parties the following:
 - A. Site Design Documents to Indicate the Following:
 - Parking configurations and car parking count
 - Typical bay width and stall dimensions
 - Drive widths
 - Setbacks
 - Curb cuts
 - Spot elevations or rough contours
 - Rough landscape scope
 - Lighting pole locations
 - Preliminary utility strategies
 - B. Building Design Single Line Plans to Indicate the Following:
 - Exterior wall configuration
 - Doors and store front extent
 - Canopies and overhangs
 - Probable column locations at exterior and abutting our building on interior
 - C. Exterior Elevation Drawings to Indicate the Following:
 - Opaque wall areas with doors and store fronts

2. After approval has been granted of conceptual design phase submitted in accordance with the guidelines specified in 1 above, the constructing party shall submit final design phase plans to the other parties as follows:
 - A. Site Design Documents Delineating Information Outlined in the Concept Phase with the Following Added Detail:

BK 7399PG 1566

- Refined grading plans
 - Selected lighting fixtures and resultant lighting levels in foot candles
 - Landscaping showing generic planting materials and locations
 - Proposed paving section designs and location
 - Utility layouts including, hydrants and sizes proposed
 - Proposed details for curbs, site structures, manholes, etc.
 - Proposed site designs and locations signage
- B. Building Design Plans Delineating Information Outlined in the Concept Phase with the Following Added Detail:**
- Exterior wall thicknesses
 - Structural columns or bearing walls at building exterior and proposed foundation design at adjoining wall between abutting buildings
 - Where common footings are to be shared provide wall or column load information for design of that footing
 - Proposed roof plan showing slopes and location of penthouses or other major mechanical equipment
 - References of key flashing details of roof to adjoining building
- C. Exterior Elevation Drawings Delineating Information Outlined in the Concept Phase with the Following Added Detail:**
- Proposed building sign standards
 - Paint color chips and samples of other materials such as brick or concrete aggregates (glass or aluminum finishes may be annotated on the elevations)
 - Proposed large scale details of key section conditions to show exterior design intent
 - Major penthouses or roof top equipment profiles
 - Features such as special masonry patterns, bands or special materials and textures

8K7399PC1567

- Rain leaders or scuppers
 - Wall sections at various exterior locations including at the demising wall to the adjoining building with key vertical dimensioning
3. If a building is to have a through-the-wall pedestrian access connection to an adjoining building, then the final design phase submission shall also include (to the owner of such adjoining building) the following:
- Plans of the pedestrian mall circulation showing any variations in floor elevations
 - Elevations/sections of the proposed mall space showing store front sign bulkheads and key dimensions
 - Proposed ceiling design including special features such as variations in height or skylights
 - Floor material patterns
 - Landscaping and mall seating areas
 - Proposed interior sign guidelines
 - Paint color chips and samples of other materials such as brick or concrete aggregates (glass or aluminum finishes may be annotated on the plans or elevations)
 - Proposed large scale details of key section conditions to show interior design intent
4. The constructing party shall provide the other parties with a complete set of bid documents for the building and/or improvements to be located upon its Tract.

EXHIBIT I

RULES AND REGULATIONS

Each Occupant covenants and agrees, at all times during the term of this OEA and such other times as such Occupant occupies a Tract or any part thereof, to comply, at its own cost and expense, with the following:

A. Any handling of freight or deliveries to or from Occupant's Tract shall be made in a manner which is consistent with good shopping center practice, in the areas and through the entrances and exits designated on the Site Plan.

B. All garbage and other refuse shall be kept in the area shown on the Site Plan for collection. Occupant shall be solely responsible for the removal (including any recycling required by any applicable Law) of all garbage and other refuse from the Occupant's Tract and shall pay promptly all charges therefor.

C. Occupant shall not (i) suffer, allow or permit any vibration, noise, odor or flashing or bright light to emanate from the Occupant's Tract; (ii) paint or cause to be displayed, painted or placed, any handbills, bumper stickers or other advertising devices on any vehicle(s) parked in the parking area(s) of the Shopping Center, whether belonging to Occupant, its employee(s), or any other person(s); (iii) solicit business or distribute, or cause to be distributed, in the Common Areas any handbills, promotional materials or other advertising; (iv) conduct or permit any other activities in the Occupant's Tract that might constitute a nuisance; (v) permit the parking of vehicles so as to interfere with the use of any driveway, corridor, walkway, parking area, mall or any other Common Area; or (vi) use or occupy the Occupant's Tract or do or permit anything to be done therein which in any manner might cause injury or damage to or about the Shopping Center.

D. Occupant shall use good faith efforts to avoid any action which would cause any work stoppage, picketing, labor disruption or dispute, or any interference with the business or the rights and privileges of any Occupant or other person lawfully in the Shopping Center (any such event shall be referred to collectively herein as a "Labor Dispute"). If any action or inaction on the part of Occupant causes a Labor Dispute, Occupant shall have any pickets removed and, if deemed necessary by Operator, terminate at any time any construction work being performed in the Occupant's Tract giving rise to such Labor Dispute, until such time as Operator shall have given its written consent for the resumption of such work (which consent shall not be unreasonably withheld), and Occupant shall have no claim for damages of any nature against Developer or Operator in connection therewith, nor shall the date of the commencement of the Term be extended as a result thereof.

E. Occupant shall (i) use the Shopping Center name as existing, or as the same may be changed from time to time, in designating the location of the Occupant's Tract in all local newspaper or other local advertising, and all other references to the location of the Occupant's Tract; and (ii) to the extent Occupant mentions in local advertising the location of any of its stores, Occupant shall include its trade name and the address and identity of Occupant's business

BK 7399Pg 1569

in the Occupant's Tract in all such local advertisements made by Occupant in any manner, in any medium.

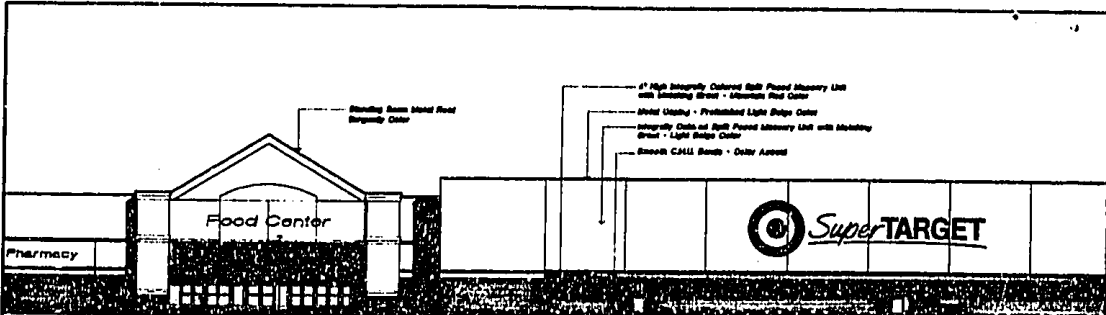
F. Occupant shall comply with and observe all other non-discriminatory rules and reasonable rules and regulations established by Operator, from time to time, provided such rules and regulations shall be uniformly and non-discriminatorily applicable to all other tenants at the Shopping Center.

BK 7399 Pg 1570

EXHIBIT J
EXTERIOR OF TARGET TRACT

Attached hereto.

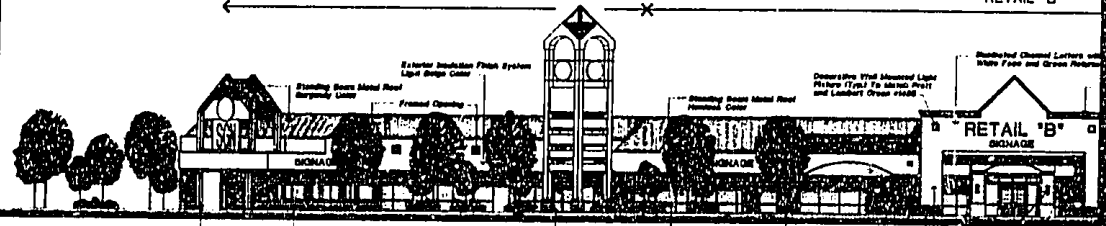
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Preliminary East E

SCA

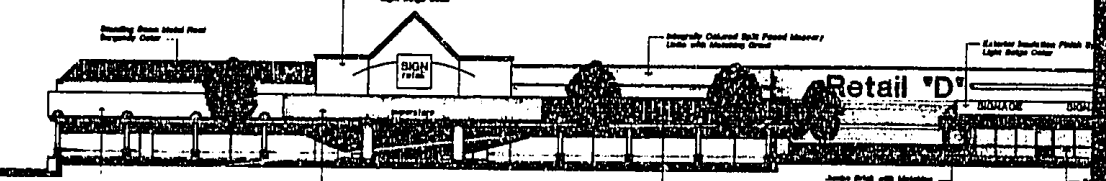
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Preliminary East E

SCA

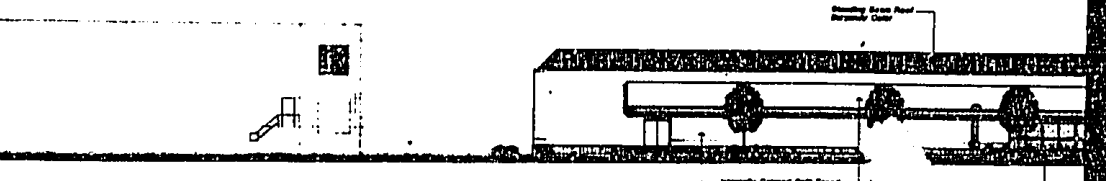
← RETAIL 'E' RETAIL 'D' →



Preliminary South E

SCA

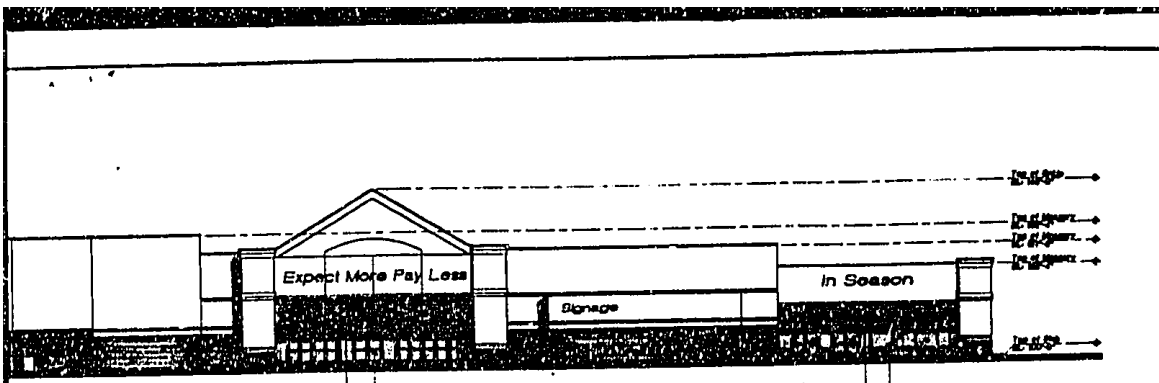
← RETAIL →



Preliminary West E

SCA

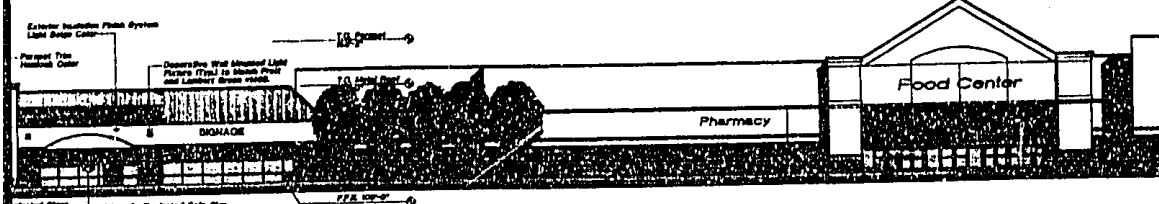
BK 7399PG | 572



Elevation
 LE: 1/16" = 1'-0"

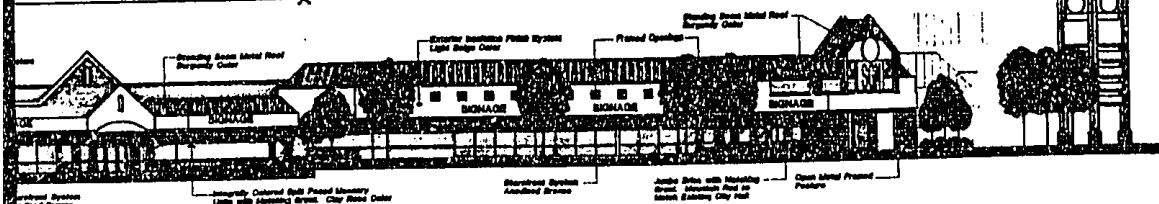
RETAIL "A"

(Refer to Sheet A2 for Complete Elevations)

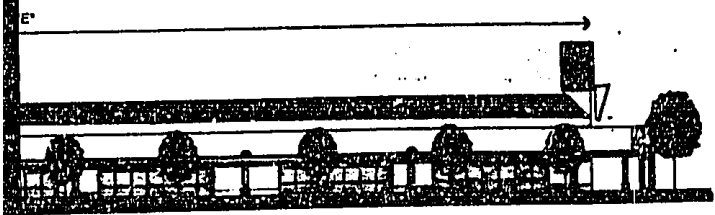


Elevation
 LE: 1/16" = 1'-0"

RETAIL "C"



Elevation
 LE: 1/16" = 1'-0"



Elevation
 LE: 1/16" = 1'-0"

Exhibit J

SOUTH TOWNE CENTER MARKET PLACE SANDY CITY, UTAH	
PRELIMINARY ELEVATIONS	
CME Lowe Consultants, Inc.	Planning/Engineering/Land Services Landscape Architecture
DATE: 12/12/04	PROJECT NO: 0351
DRAWN BY: LRB	SHEET NO: 17
CHECKED BY: GBN	DATE: 12/12/04

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NOTES: 1. ALL DIMENSIONS AND PROPORTIONS SHOWN ARE UNLESS OTHERWISE SPECIFIED. 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. 3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. 4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. 5. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. 6. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. 7. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. 8. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. 9. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. 10. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.