OPERATION AND EASEMENT AGREEMENT

BETWEEN

CORPORATION

AND

____

For
Gateway Crossing Shopping Center

[Jerome OH/T-____]

OPERATION AND EASEMENT AGREEMENT
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EXHIBITS

OPERATION AND EASEMENT AGREEMENT

THIS OPERATION AND EASEMENT AGREEMENT ("**OEA**") is dated as of ________________, 20__ (the "**Effective Date**") between CORPORATION, a corporation ("") and ______________________, a ______________ ("**Developer**").

RECITALS

A. is the owner of certain real estate located in ______________ County, ____________, legally described in Exhibit A attached hereto and identified on Exhibit X (the "**Site Plan**") attached hereto as the " **Tract**".

B. Developer is the owner of certain real estate legally described in Exhibit B attached hereto and identified on the Site Plan as Developer Tract Parcel 1, Outparcel A, Outparcel B, and Outparcel C (collectively, the "**Developer Tract**").

C. The Tract and the Developer Tract (collectively, the "**Shopping Center**") are contiguous and adjacent to each other as shown on the Site Plan.

D. 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 or common interest development/community, and in order to effectuate the common use and operation of their respective Tracts they desire to enter into certain covenants and agreements, and to grant to each other certain reciprocal easements, in, to, over, and across their respective Tracts.

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

ARTICLE I – DEFINITIONS

1.1 Approving Party. "**Approving Party**" means the Party designated from time to time to make certain decisions and/or give certain approvals pursuant to this OEA. There is one (1) Approving Party representing the Developer Tract and one (1) Approving Party representing the Tract. Each Approving Party has absolute discretion to make the decisions and/or give the approvals expressly designated to be made and/or given on behalf of the real estate represented by such position regardless of whether the Approving Party then owns all or less than all of such Tract. The Party designated as Approving Party for the Developer Tract (the "Developer Tract Approving Party") may assign such status to any other Party owning a Parcel within the Developer Tract, but if such assignment is not made in writing, then the status of the Developer Tract Approving Party is automatically assigned to the Party acquiring all of the Developer Tract or the last Parcel of the Developer Tract owned by the Party then holding the status of the Developer Tract Approving Party. The Party designated as Approving Party for the Tract (the " **Tract Approving Party**") may assign such status to any other Party owning a Parcel within the Tract, but if such assignment is not made in writing, then the status of the Tract Approving Party is automatically assigned to the Party acquiring all of the Tract or the last Parcel of the Tract owned by the Party then holding the status of the Tract Approving Party. Developer is the initial Developer Tract Approving Party and is the initial Tract Approving Party.

1.2 Building. "**Building**" means any permanently enclosed structure placed, constructed or located on a Parcel.

1.3 Building Area. "**Building Area**" means the limited areas of the Shopping Center within which Buildings may be constructed, placed, or located and within which all building appurtenances such as stairs leading to or from a door, trash containers or compactors, canopies, supports, loading docks, truck ramps, and other outward extensions of such structure must be located. Building Areas are designated on the Site Plan. One or more Buildings may be located within a Building Area.

1.4 Common Area. "**Common Area**" means all areas within the exterior boundaries of the Shopping Center, exclusive of any Building and the appurtenances thereto referenced in Section 1.3 above.

1.5 Constant Dollars. "**Constant Dollars**" means the value of the U.S. dollar to which such phrase refers, as adjusted from time to time. An adjustment will occur on the 1st day of June of the sixth (6th) full calendar year following the Effective Date, and thereafter at five (5) year intervals. Constant Dollars are 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**" is the level of the Index on June 1st of the year this OEA commences; the "**Current Index Number**" is the level of the Index on June 1st of the year preceding the adjustment year; the "**Index**" is the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (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 must 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 that would have been achieved by the Index. If any item is to be increased by Constant Dollars as provided hereunder, the Party requesting such increase must include with the Budget and/or invoice, back up information showing in reasonable detail such Party's determination of such change in the Index and any increase in such item resulting therefrom.

1.6 Entertainment Use. "**Entertainment Use**" means an entertainment or physical activity venue or operation such as a (i) bowling alley, (ii) skating rink, (iii) golf simulator or golf facility, (iv) rock climbing operation, (v) paint ball field or course, (vi) laser tag or virtual reality operation, (vii) go cart operation, (viii) trampoline park, (ix) movie theater, (x) live performance theater, or (xi) pickleball or other sport court(s) (pickleball or other sport courts within, and incidental to, a fitness center are not considered an Entertainment Use).

1.7 Floor Area.

1.7.1 "**Floor Area**" means the aggregate number of square feet of:

(A) Space contained on each floor within a Building, including any mezzanine or basement space, as measured from the exterior faces of the exterior walls or store front and/or the center line of any common walls; except the following areas are not included in such calculation: (i) space attributable to any multi-deck, platform, rack, or other multi-level system used solely for the storage of merchandise that is located above ground floor, and (ii) space used solely for Building utilities or mechanical equipment.

(B) Space exclusively used for outdoor seating for customers of Restaurants and/or other food service businesses ("**Outdoor Seating**").

1.7.2 Within thirty (30) days after receipt of a request, a Party must certify to the requesting Party the amount of Floor Area applicable to such Party's Parcel. If any Party causes an as-built survey to be prepared with respect to any portion of the Shopping Center, such Party must furnish a copy of such survey to the other Parties for informational purposes only.

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

1.8 Governmental Authorities. "**Governmental Authorities**" means any federal, state, county, city or local governmental or quasi-governmental authority, entity or body (or any department or agency thereof) exercising jurisdiction over a particular subject matter.

1.9 Governmental Requirements. "**Governmental Requirements**" means all applicable laws, statutes, ordinances, codes, rules, regulations, orders, and applicable judicial decisions or decrees, as presently existing and hereafter amended, of any Governmental Authorities. Any Person making changes to a Parcel to comply with Governmental Requirements must implement such changes in a manner that minimizes, to the extent commercially feasible, any detrimental impact on the other party's rights and obligations under this OEA.

1.10 Maintenance Standard. "**Maintenance Standard**" means to operate, maintain, repair, and/or replace, as the case may be, a particular item, area, or improvement, in a safe, clean, and good state of repair and condition, and in compliance with all applicable Governmental Requirements and the terms of this OEA.

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

1.12 Operator. "**Operator**" means the owner of Developer Tract Parcel 1. If Developer Tract Parcel 1 ever consists of multiple Parcels owned by different Parties, then the Party designated as Developer Tract Approving Party will have primary liability for all obligations, liabilities, and covenants of Operator under this OEA, and, if none of such Parties is designated as Developer Tract Approving Party, then the Party holding the largest amount of acreage within Developer Tract Parcel 1 will have primary responsibility, but all Parties for Developer Tract Parcel 1 will remain jointly and severally liable for all obligations, liabilities, and covenants of Operator under this OEA. All of the duties, obligations, and responsibilities of the "Operator" constitute covenants running with the land, bind the Parcels described herein, and inure to the benefit of and bind each such Party. The Approving Parties may, from time to time, designate another Party to act as Operator, but there must at all times be a designated Operator and if there is no designated Operator, then such obligations will revert to the owner of Developer Tract Parcel 1 as provided above. For the avoidance of doubt, since Operator is also a Party, any rights, remedies, or obligations of Operator under this OEA may be exercised by Operator in its capacity as a Party (e.g. under Section 6.1.1(A)) and may be exercised by each Party against Operator (e.g. under Section 6.1.1(B)).

1.13 Operator Items. "**Operator Items**" means (i) all Common Utility Lines, (ii) the Pylon Sign (including any Separate Utility Line providing power thereto), and (iii) the Access Drive and Service Drive (including the paved surfaces of such roadways and adjacent curbing, but not including any irrigation systems, lighting, or landscaped areas, except for landscaped areas located within any medians in the Access Drive or Service Drive which are to be operated, maintained, repaired, and replaced by Operator pursuant to Section 4.3 of this OEA.

1.14 Order Fulfillment Activities/Improvements. "**Order Fulfillment Activities**" means order fulfillment activities, such as 's "Drive Up" program, supporting the physical and/or online operations of an Occupant. "**Order Fulfillment Improvements**" means restriping, reconfiguring, and other changes to the Common Area, including erecting or placing canopies (which may include lighting fixtures, solar panels, signage, and/or heating/cooling elements affixed thereto), lockers, or other equipment, facilities, or signage, all as part of Order Fulfillment Activities.

1.15 Outparcel. "**Outparcel**" means each portion of the Shopping Center designated as an Outparcel on the Site Plan. All of the terms and provisions of this OEA apply to each of the Outparcels except as expressly set forth otherwise in this OEA.

1.16 Outside Sales Area. "**Outside Sales Area**" means those areas, if any, designated on the Site Plan that from time to time may be used by an Occupant of the applicable Parcel for sales and/or display purposes associated with such Occupant's retail operations. During the period an Outside Sales Area is used for sales and/or display purposes, such area is not subject to the ingress, egress, and parking easements set forth in Section 2.1.1. If the Outside Sales Area is located within a Building Area, such area may be used for the location of Buildings. Notwithstanding the foregoing, the actual location, size, and number of Outside Sales Areas utilized by an Occupant of the Tract may vary from time to time, but such Outside Sales Areas must be located at least fifty (50) feet from another Party's Parcel (unless shown otherwise on the Site Plan, or approved in writing by the Party for such adjacent Parcel).

1.17 Outside Storage Area. "**Outside Storage Area**" means those areas, if any, designated on the Site Plan that from time to time may be used by an Occupant of the applicable Parcel for the storage of merchandise associated with such Occupant's retail operations. During the period an Outside Storage Area is used for such storage purposes, such area is not subject to the ingress, egress, and parking easements set forth in Section 2.1.1. If the Outside Storage Area is located within a Building Area, such area may be used for the location of Buildings. Notwithstanding the foregoing, the actual location, size, and number of Outside Storage Areas utilized by an Occupant of the Tract may vary from time to time, but such Outside Storage Areas must be located at least fifty (50) feet from another Party's Parcel (unless shown otherwise on the Site Plan, or approved in writing by the Party for such adjacent Parcel).

1.18 Parcel. "**Parcel**" means each separately subdivided portion of land composing any of the Tracts within the Shopping Center. The foregoing includes any portion of real estate within the Shopping Center that is separately designated by name on the Site Plan (such as an Outparcel) and/or has a distinct legal description within the legal descriptions attached to this OEA, even if such portions of real estate have not been "subdivided" or "platted" in accordance with Governmental Requirements. If a Tract is composed of only one (1) Parcel then such Tract is also a Parcel.

1.19 Party.

1.19.1 "**Party**" means each signatory hereto and its respective successors and assigns during the period of such Person's fee ownership of any Parcel within the Shopping Center. A Party transferring all or any portion of its fee interest in the Shopping Center must give notice to all other Parties and must include in such notice at least all of the following information:

(A) The name and address of the new Party.

(B) A copy of the deed evidencing the transfer and setting forth the legal description of the portion of the Tract transferred by such Party.

(C) Whether the new Party has been assigned the status of the Developer Tract Approving Party or the Tract Approving Party, as the case may be.

1.19.2 Each Party is liable for the performance of all covenants, obligations, and undertakings applicable to the Parcel or portion thereof owned by it that accrue during the period of such ownership, and such liability continues with respect to the Parcel transferred by such Party until the notice of transfer set forth above is given. Until such notice of transfer is given, the transferring Party will (for the purpose of this OEA only) be the transferee's agent. Once the notice of transfer is given, the transferring Party is released from all obligations pertaining to any Parcel transferred arising after the notice of transfer. For the purpose of this Section only, if the notice of transfer is given pursuant to Section 6.4, the effective date of such notice is the date such notice is sent. Notwithstanding anything to the contrary, if a notice of transfer is given, any payment made by a Party to the transferor within thirty (30) days of such notice will be deemed properly paid and the transferor and the transferee must resolve any necessary adjustments and/or prorations regarding such payment between themselves.

1.19.3 If a Parcel is owned by more than one (1) Party, the Party or Parties holding at least fifty-one percent (51%) of the ownership interest in such Parcel must designate in writing one (1) Person to represent all owners of the Parcel and such designated Person is the Person authorized to give consents and/or approvals, and join in the execution of amendments to the extent applicable as set forth in Section 6.8.5, pursuant to this OEA for such Parcel.

1.19.4 Nothing contained herein to the contrary affects the existence, priority, validity or enforceability of any lien permitted hereunder that is recorded against the transferred portion of the Shopping Center before receipt of such notice of transfer by the Party filing such lien.

1.20 Permittee. "**Permittee**" means all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended development, use and occupancy of the Shopping Center. Persons engaged in civic, public, charitable or political activities within the Shopping Center, including the following activities, are not considered Permittees: (i) exhibiting any placard, sign or notice; (ii) distributing any circular, handbill, placard or booklet; (iii) soliciting memberships, signatures or contributions for private, civic, public, charitable or political purposes; and (iv) parading, picketing or demonstrating.

1.21 Person. "**Person**" means any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or Governmental Authority.

1.22 Restaurant. "**Restaurant**" means any operation or business that requires a governmental permit, license, and/or authorization to prepare and/or serve food for either on or off-site consumption. Notwithstanding anything contained herein to the contrary, a supermarket, grocery store, or similar operation is not considered a Restaurant.

1.23 Signs. "**Signs**" means, collectively, the Pylon Sign defined in Section 2.4.2, and the Monument Signs defined in Section 5.3.1.

1.24 Tract. "**Tract**" means either the Tract and/or the Developer Tract as defined in the recitals to this OEA. Notwithstanding the transfer of any portion of a Tract, the Parcel transferred therefrom continues to remain part of such Tract and subject to all the applicable provisions of this OEA relating to such Tract.

1.25 Unlimited Area Building Grouping. "**Unlimited Area Building Grouping**" means the Building Areas on Developer Tract Parcel 1 and the Tract, that collectively provide protection for an "unlimited area building" referenced in Section 3.3.4 hereof.

1.26 Utility Lines. "**Utility Lines**" means those facilities and systems for the transmission of utility services, including the (i) drainage and storage of surface water and (ii) electronic shopping cart containment systems. "**Common Utility Lines**" means those Utility Lines that are designated as such by the Approving Parties and are installed to provide the applicable service for the benefit of the Developer Tract and the Tract. "**Separate Utility Lines**" means those Utility Lines that are installed to provide the applicable service for the benefit of one (1) Tract and/or that are not Common Utility Lines. For the purpose of this OEA, the portion of a Utility Line extending between a Common Utility Line and a Building is a Separate Utility Line. Utility Lines installed pursuant to the easements granted in this OEA must only provide service necessary for the development and/or operation of the Shopping Center.

ARTICLE II – EASEMENTS

2.1 Ingress, Egress and Parking.

2.1.1 Cross Access and Parking Easement. During the term of this OEA, each Party hereby grants and conveys to each other Party for its use and for the use of its Permittees, in common with others entitled to use the same, non-exclusive easements for the (i) passage of vehicles over and across the parking and driveway areas of the grantor's Parcel, as the same may from time to time be constructed and maintained for such use, (ii) parking of vehicles over and across the parking areas of the grantor's Parcel, as the same may from time to time be constructed and maintained for such use, and (iii) passage of pedestrians over and across the parking, driveways, and sidewalk areas of the grantor's Parcel, as the same may from time to time be constructed and maintained for such use. The easements herein established are appurtenant to and for the benefit of each grantee's Parcel, and are binding on, enforceable against and burden each grantor's Parcel. The foregoing easements are subject to the following reservations as well as the other applicable provisions contained in this OEA:

(A) Each Party reserves the right to close-off any portion of its Parcel for such reasonable period of time as may be legally necessary, in the opinion of such Party's counsel, to prevent the acquisition of prescriptive rights by anyone; except before closing-off any portion of its Parcel, such Party must give notice to each other Party of its intention to do so, and must attempt to coordinate such closing-off with each other Party so that no unreasonable interference with the passage of pedestrians or vehicles occurs.

(B) Each Party reserves the right at any time and from time to time to exclude and restrain any Person who is not a Permittee from using its Parcel.

(C) Each Party reserves the right to temporarily erect or place barriers in and around areas on its Parcel that are being constructed and/or repaired in order to insure either safety of Persons or protection of property.

(D) Vehicles making deliveries to or pickups from a Party's Parcel must not park on another Party's Parcel.

(E) No Outparcel has any passage or parking rights, including easements, over or across the Tract.

2.1.2 Access Drive. In addition to the easement specified in Section 2.1.1, the Parties hereby grant and convey to each other Party for its use and for the use of its Permittees, in common with others entitled to use the same, and subject to the reservations set forth in Section 2.1.1, a non-exclusive, perpetual easement for the passage and accommodation of pedestrians and vehicles (but not for parking purposes) upon, over and across that portion of each grantor's Parcel designated on the Site Plan as the "**Access Drive**"; such Access Drive to be as wide (curb to curb) as shown on the Site Plan, and must contain two (2) lanes, one in each direction. The easements herein established are appurtenant to and for the benefit of each grantee's Parcel, and are binding on, enforceable against and burden each Parcel traversed thereby.

(A) The Access Drive must be operated, maintained, repaired, and replaced by Operator to the Maintenance Standard, including the minimum maintenance standards set forth in Section 4.2.1 that are applicable to drive areas. Operator must perform such work in a good and professional manner, as quickly as possible, and after normal business hours whenever possible. All costs incurred by Operator with respect to the Access Drive are part of Operator Costs (defined in Section 4.3) and are payable pursuant to Section 4.3. Except in the case of a maintenance emergency, where such work may be initiated after reasonable notice, Operator must give the other Parties at least thirty (30) days' notice before commencement of any work on the Access Drive and must attempt to coordinate such closing-off with each other Party so that no unreasonable interference with the passage of pedestrians or vehicles occurs. This provision survives termination of this OEA.

(B) During the term of this OEA, each portion of the Access Drive must remain in the location depicted on the Site Plan.

(C) After termination of this OEA, each grantor may, at its expense, relocate the portion of the Access Drive located on its Parcel so long as the relocated portion continues, in a direct manner, to connect to (i) all other Parcel(s) at the same location(s) on the common boundaries of such Parcels, and (ii) all previously existing access point(s) to the Shopping Center, if any. Notice of such relocation must be provided to each grantee at least thirty (30) days before relocation.

2.1.3 Service Drive. In addition to the easements specified in Section 2.1.1 and Section 2.1.2, the Parties hereby grant and convey to each other Party (but excluding the Outparcels) for its use and for the use of its Permittees, in common with others entitled to use the same, and subject to the reservations set forth in Section 2.1.1, a non-exclusive, perpetual easement for the passage and accommodation of pedestrians and vehicles (but not for parking purposes) upon, over and across that portion of each grantor's Parcel designated on the Site Plan as the

"Service Drive". The Service Drive must be as wide (curb to curb) as shown on the Site Plan and must contain two (2) lanes, one in each direction, as well as the truck turn around areas shown on the Site Plan. The easements herein established are appurtenant to and for the benefit of each grantee's Parcel (but excluding the Outparcels), and are binding on, enforceable against and burden each Parcel traversed thereby.

(A) The Service Drive must be operated, maintained, repaired, and replaced by Operator to the Maintenance Standard, including the minimum maintenance standards set forth in Section 4.2.1 that are applicable to drive areas. Operator must perform such work in a good and professional manner, as quickly as possible, and after normal business hours whenever possible. All costs incurred by Operator with respect to the Service Drive are part of Operator Costs (defined in Section 4.3) and are payable pursuant to Section 4.3. Except in the case of a maintenance emergency, where such work may be initiated after reasonable notice, Operator must give the other Parties at least thirty (30) days' notice before commencement of any work on the Service Drive and must attempt to coordinate such closing-off with each other Party so that no unreasonable interference with the passage of pedestrians or vehicles occurs. This provision survives termination of this OEA.

(B) During the term of this OEA, each portion of the Service Drive must remain in the location depicted on the Site Plan.

(C) After termination of this OEA, each grantor may, at its expense, relocate the portion of the Service Drive (other than the truck turnaround areas) located on its Parcel so long as the relocated portion continues, in a direct manner, to connect to (i) all other Parcel(s) at the same location(s) on the common boundaries of such Parcels, and (ii) all previously existing access point(s) to the Shopping Center, if any. Notice of such relocation must be provided to each grantee at least thirty (30) days before relocation.

2.1.4 Default. If a Party fails to perform its obligations under Section 2.1, any grantee may claim a default pursuant to Section 6.1 and avail itself of all the provisions therein contained, including the right to lien a Defaulting Party's Parcel, and receive Interest on all sums expended to cure such default. This provision survives the termination of this OEA.

2.2 Utilities.

2.2.1 Utility Line Easement. Each Party hereby grants and conveys to each other Party non-exclusive, perpetual easements in, to, over, under, along, and across those portions of the grantor's Parcel (exclusive of any portion located within Building Areas) necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, replacement, relocation, and removal of Utility Lines serving the grantee's Parcel. The location of any Utility Line is subject to the prior written approval of the Party whose Parcel is to be burdened thereby. Such easement must be no wider than necessary to reasonably satisfy the requirements of a private or public utility company, or five (5) feet on each side of the centerline if the easement is granted to a Party. The grantee must provide to the grantor a copy of an as-built survey showing the location of such Utility Line. All Utility Lines must be underground except (i) ground mounted electrical transformers; (ii) as may be necessary during periods of construction, reconstruction, repair, or temporary service; (iii) as may be required by Governmental Authorities; (iv) as may be required by the provider of such utility service; (v) as may be attached to a Building (e.g. solar panels); and (vi) fire hydrants. Any installation of a Utility Line pursuant to this easement: (a) may only be commenced thirty (30) days following grantor's receipt of written notice from grantee, such notice must describe the need for the easement, identify the proposed location of the Utility Line, the nature of the service to be provided, and the anticipated commencement and completion dates for the work, and (b) may not be performed during the months of November, December, or January (this subsection (b) will not be effective until the initial Occupant of the Tract has opened for business with the general public). Before commencing any work on a grantor's Parcel, including any emergency work, the grantee must provide to the grantor evidence (as set forth in Section 5.4.5) of insurance coverage as required by Section 5.4.2.

2.2.2 Separate Utility Lines. Any Party and/or Parties electing to install a Separate Utility Line must obtain all permits and approvals and pay all costs with respect to the initial construction and all subsequent maintenance, repair, replacement, removal, relocation (done at grantee's election), or abandonment of the Separate Utility Line. The Separate Utility Line must be operated, maintained, repaired, and replaced or removed by grantee(s) to the Maintenance Standard. The grantee(s) must perform such work in a good and professional manner, as quickly as possible, after normal business hours whenever possible, and must back fill and adequately compact the disturbed area to prevent voids and restore the surface to a condition equal to or better than that existing before such work was commenced. Except in the case of a maintenance emergency, where such work may be initiated after reasonable notice, the grantee(s) must provide the grantor with at least fifteen (15) days' notice before commencement of any work. Notwithstanding the indemnity set forth in Section 5.4.1 below, the grantee(s) of any Separate Utility Line must defend, protect, indemnify, and hold harmless the grantor from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses, and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the exercise of the right to install, maintain, repair, replace, remove, relocate, and operate the Separate Utility Line. If after such indemnity a court of law determines that such claim or demand was the result of negligence or the willful act or omission of the indemnified Party, then such indemnified Party must reimburse the indemnifying Party for all reasonable expenses and/or costs incurred by such Party defending against such claim or demand to the extent of such fault.

2.2.3 Common Utility Lines. Except as may otherwise be agreed, the Parties electing to install a Common Utility Line must obtain all necessary permits and approvals and must pay all costs with respect to the initial construction of such Common Utility Line. Once constructed Operator must operate, maintain, repair, and replace (and remove and/or relocate if requested by the Approving Parties) the Common Utility Line to the Maintenance Standards (including any reporting requirements under any storm water management agreements and performing annual inspections to determine if the Common Utility Lines are in need of repair or replacement). Operator must perform such work in a good and professional manner, as quickly as possible, and after normal business hours whenever possible. All costs incurred by Operator with respect to any Common Utility Line are part of Operator Costs (defined in Section 4.3) and are payable pursuant to Section 4.3. Except in the case of a maintenance emergency, where such work may be initiated after reasonable notice, Operator must give the grantor and the Approving Parties at least thirty (30) days' notice before commencement of any work. As of the Effective Date, the Approving Parties designate all of the following items as Common Utility Lines:

(A) Sanitary sewer and water (fire and domestic) lines that loop around the Unlimited Area Building Grouping.

(B) Storm water collection, transmission, and retention system, including catch basins, underground piping, conduits, and mains, detention/retention pond(s), and underground storm water storage facilities that are located within the Shopping Center and serve both the Developer Tract and the Tract.

(C) Irrigation lines serving both the Tract and the Developer Tract if such lines are not separately controlled by each of and Developer.

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

(A) The surface elevations for the Shopping Center and the surface water drainage/retention system serving the Shopping Center must be initially constructed in strict conformance with the plans and specifications approved by the Approving Parties.

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

2.2.5. Relocation of Utility Lines. Each grantor may relocate any Utility Line on its Parcel upon thirty (30) days prior notice to the grantee(s), provided that such relocation must comply with all of the following requirements:

(A) Not be performed during the months of November, December or January.

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

(C) Not reduce or unreasonably impair the usefulness or function of such Utility Line.

(D) Be performed without cost or expense to the grantee.

(E) Be completed using materials and design standards that equal or exceed those originally used.

(F) Have been approved by the provider of such utility service and the appropriate Governmental Authorities.

(G) Include documentation of the relocated easement area, including the furnishing of an "as-built" survey to all grantees, at the grantor's expense and as soon as possible following completion of such relocation.

2.2.6 <u>Default</u>. If a Party fails to perform its obligations under Section 2.2, any affected Party may claim a default pursuant to Section 6.1 and avail itself of all the provisions therein contained, including the right to lien a Defaulting Party's Parcel, and receive Interest on all sums expended to cure such default. This provision survives the termination of this OEA.

2.3 <u>Construction, Maintenance and Reconstruction</u>.

2.3.1 <u>Building Encroachments</u>. To accommodate any Building improvements that may <u>inadvertently</u> be constructed beyond a Parcel's boundary line, each Party grants to each other Party owning an adjacent Parcel, an easement, not to exceed a maximum lateral distance of six (6) inches, in, to, over, under, and across that portion of the grantor's Parcel adjacent to such common boundary line for the existence, maintenance and replacement of such encroaching Building improvements.

2.3.2 <u>Subsurface Construction Elements</u>. If 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 Parcel, the Constructing Party must advise the Party owning the adjacent Parcel (the "**Adjacent Party**") of the Constructing Party's construction requirements and must provide plans and specifications relating thereto to the Adjacent Party, including proposed construction techniques for the Subsurface Construction Elements.

(A) Each Adjacent Party hereby grants and conveys to each Constructing Party for the benefit of its Parcel an easement, not to exceed a maximum lateral distance of five (5) feet, in, to, under, and across that portion of the Adjacent Party's Parcel not theretofore occupied by any then existing structure, for the installation, maintenance, and replacement of such Subsurface Construction Elements; except the Constructing Party has no right to use such easement if there is available to the Constructing Party a reasonable alternative construction method for the placement of the Subsurface Construction Elements entirely on the Constructing Party's Parcel.

(B) 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 so that each Party is able to place its Building immediately adjacent to the common boundary line. If a common Subsurface Construction Element is used by the Constructing Party and the Adjacent Party, each must assume and pay its reasonable share of the expense of the design and construction thereof. If any Building utilizing a common Subsurface Construction Element is destroyed and not replaced or is removed, the common Subsurface Construction Element must remain in place for the benefit of the other Building utilizing the same.

2.3.3 Additional Terms. The easements established under Sections 2.3.1 and 2.3.2 are appurtenant to and for the benefit of each grantee's Parcel, and are binding on, enforceable against, and burden each grantor's Parcel. Notwithstanding such easement grant, nothing herein diminishes or waives the right of a grantor to recover damages resulting from a grantee's failure to construct either its Building within the Building Area on its Parcel in the case of Section 2.3.1, or its Subsurface Construction Elements within the easement area limits in the case of Section 2.3.2. Such easements in each instance, (i) will continue in effect for the term of this OEA and thereafter for so long as the Building utilizing the easement area exists (including a reasonable period to permit reconstruction or replacement of such Building if the same is 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 Section 3.1.5.

2.3.4 No Common Walls. With respect to Buildings constructed along the common boundary line of Parcels, nothing herein creates or establishes (i) a "common" or "party" wall to be shared with the adjacent Building, or (ii) the right for a Building to receive support from or apply pressure to the adjacent Building.

2.4 Sign Easement.

2.4.1 Pylon Sign. The Parties intend to erect a sign structure, including cabinets for the identification panels, and wiring for power (the "**Pylon Sign**") on that portion of the Shopping Center designated on the Site Plan as "Pylon Sign", upon which certain identification panel(s) for Occupants of the Shopping Center may be installed, replaced, maintained and operated. All Persons entitled to place identification panels on the Pylon Sign are called "**Panel Beneficiaries**", and each of such Panel Beneficiaries rights and obligations (other than expenses incurred by Operator with respect thereto) with respect to the Pylon Sign (the "**Allocable Share**") are based on the portion of panel area assigned to each, even if such identification panel area is not used. The Allocable Share for the Pylon Sign is as follows:

	Developer's Allocable Share	's Allocable Share
Pylon Sign	______%	______%

The design of the Pylon Sign, including the space for the various panel areas, is as shown on Exhibit C attached hereto (the "**Sign Exhibit**"), but another sign structure design that reflects the panel area allocation may be approved (a) during the term of this OEA by the Approving Parties, or (b) following termination of this OEA, by all of the Panel Beneficiaries.

(A) Design. Each Person attaching an identification panel to the Pylon Sign must, at its sole cost, (i) obtain all permits and approvals required for such installation, (ii) fabricate its identification panel, install the panel and connect the panel to the power source provided, and (iii) operate, maintain, repair, and replace or remove the identification panel (including any backlit lighting) to the Maintenance Standard.

(B) Operation and Maintenance. Subject to the provisions in subsection (A) above regarding individual identification panels, the Pylon Sign must be operated, maintained, repaired, and replaced by Operator to the Maintenance Standard. Operator must perform such work in a good and professional manner, as quickly as possible, and after normal business hours whenever possible. All costs incurred by Operator with respect to the Pylon sign (including the cost of providing power thereto) are part of Operator Costs payable pursuant to Section 4.3, except such costs and the Admin Fee applicable thereto will be apportioned based on each Panel Beneficiary's Allocable Share. Except in the case of a maintenance emergency where such work may be initiated after reasonable notice, Operator must give the Panel Beneficiaries at least thirty (30) days' notice before commencement of any work on the Pylon Sign.

(C) Condemnation. If the Pylon Sign is no longer available for freestanding sign purposes because of a condemnation or any Governmental Requirements, whether before or after termination of this OEA, the owner of the Developer Tract must designate a replacement Pylon Sign area with comparable visibility as close to the original location as is reasonably possible. The Operator is entitled to receive, and must hold the proceeds in trust, any condemnation or other award paid relating to the displaced Pylon Sign, including any relocation benefits, and Operator must cause a new Pylon Sign to be constructed in the replacement Pylon Sign area in accordance with the design criteria then applicable. If the award received for the Pylon Sign is less than the cost to replace it, then the Panel Beneficiaries must pay the deficiency based on their respective Allocable Share. The award (whether paid separately or as part of a lump sum) attributable to each identification panel taken will belong to the owner thereof.

(D) Developer Panel Easements. Developer may grant easements for the identification panel area specified on the Sign Exhibit. Each such grant must (i) automatically incorporate therein the provisions set forth above in the preceding two (2) paragraphs, (ii) recognize any prior panel easement grant, particularly the grant to specified below, and (iii) specify which identification panel area on the Pylon Sign is the subject of the panel easement grant. Developer must deliver a copy of the recorded easement to , Operator, and each other Person holding a prior identification panel easement right with respect to the Pylon Sign. All panel areas on the Pylon Sign not granted by Developer to Parties by easement are specifically reserved to Developer, subject to the restrictions set forth in Section 5.3.

(E) Easement. Developer hereby grants and conveys to , its successors and assigns as the owner of the Tract, a perpetual easement for the right and privilege to place or affix identification panel(s) of various sizes, but not more than two (2) in total, to the Pylon Sign in the cabinet space (both sides of structure) designated "" on the Sign Exhibit; the easement grant includes reasonable access over, across and upon the Developer Tract to permit such identification panel(s) to be installed, replaced, maintained and operated. If the Pylon Sign is not initially constructed in accordance with Section 5.3.1, or is thereafter removed and not replaced, then the aforesaid easement grant to must also include the right for to construct, reconstruct, replace, maintain, and operate the Pylon Sign within the designated area, together with reasonable access over, under, upon, through, and across the Developer Tract to install, replace, maintain, repair, and operate a Separate Utility Line pursuant to Section 2.2 above in order to provide the Pylon Sign with power. If elects to construct the Pylon Sign, will have the sole right to design the Pylon Sign, including the number of panel areas to be located thereon, taking into account however, the panel requirements of those additional Panel Beneficiaries, but only if such Persons have deposited with , in advance, an amount equal to 125% of their respective Allocable Share based on 's reasonable estimate of the costs to be incurred by to obtain permits for, construction of, and bringing power to the Pylon Sign. If any Panel Beneficiary does not make such deposit within thirty (30) days of receipt of 's estimate, then such Person will be deemed to have released, and hereby does release, all right, title and interest in and to the Pylon Sign, specifically including the right to place an identification panel thereon. Upon a reconciliation of the costs of the new Pylon Sign, and the remaining Panel Beneficiary must adjust their payments and/or deposits to equal each Person's Allocable Share. The foregoing easement, together with all rights and privileges specified, is for the benefit of the Tract and is binding on, enforceable against, and burdens the Developer Tract. may release the easement, and upon such release must remove its identification panel(s) and thereafter have no further rights, duties, or responsibilities with respect to the Pylon Sign.

(F) Temporary Panels. Developer hereby grants a temporary license to place an identification panel(s) on the Pylon Sign (the "**Temporary Panels**") in panel locations otherwise reserved for Developer. The Temporary Panels may only be used by to advertise a store, but may also state " Now Open" or some short promotional message of a similar nature. The Temporary Panels will be created, installed and removed at ’s sole cost. The temporary license for the Temporary Panels will expire ninety (90) days after Developer’s notice to of Developer’s obligation to provide such identification panel to an Occupant of the Developer Tract.

(G) Survival. The provisions of this Section 2.4.1 survive termination of this OEA for so long as the Pylon Sign is available for freestanding sign purposes.

2.4.2 Default. If a Party fails to perform its obligations under Section 2.4, any affected Party may claim a default pursuant to Section 6.1, and avail itself of all the provisions therein contained, including the right to lien a Defaulting Party’s Parcel, and receive interest on all sums expended to cure such default. This provision survives the termination of this OEA.

2.5 Restriction. No Party may grant any easement for the benefit of any property not within the Shopping Center, except each Party may grant or dedicate utility easements on its Parcel to Governmental Authorities or to public utility companies for provision of Utility Lines to service all or a portion the Shopping Center. If a Utility Line is dedicated and accepted for maintenance by a Governmental Authority or public utility, then the operation and maintenance of such Utility Line will thereafter be the responsibility of the Person accepting the dedication.

ARTICLE III – CONSTRUCTION

3.1 General Requirements.

3.1.1 Governmental Requirements. All construction activities performed or authorized within the Shopping Center must be performed in compliance with all Governmental Requirements. All construction must utilize new materials and must be performed in a good, safe, and professional manner.

3.1.2 Additional Requirements. No construction activities performed or authorized are allowed to do any of the following:

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

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

(C) 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.

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

3.1.3 Indemnity. Notwithstanding the indemnity set forth in Section 5.4.1 below, each Party must defend, protect, indemnify, and hold harmless each other Party from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses, and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from any construction activities performed or authorized by such indemnifying Party within the Shopping Center, including the use of the temporary license pursuant to Section 3.1.5 below; except, that (i) the foregoing is not applicable to claims covered by the release set forth in Section 5.4.3, and (ii) if, after such indemnity a court of law determines that such claim or demand was the result of negligence or the willful act or omission of the indemnified Party, then such indemnified Party must reimburse the indemnifying Party for all reasonable expenses and/or costs incurred by such Party defending against such claim or demand to the extent of such fault.

3.1.4 Staging Areas; Construction Traffic. In connection with any construction, reconstruction, repair, or maintenance on its Parcel, each Party reserves the right, at its expense, to create a temporary staging and/or storage area on its Parcel at such location as will not unreasonably interfere with access between such Parcel and the other areas of the Shopping Center. Before the commencement of any work that requires the establishment of a staging and/or storage area on its Parcel outside of a Building Area, a Party must give at least thirty (30) days prior notice to the Approving Parties, for their approval, of the proposed location of such staging and/or storage area unless such area is located at least fifty (50) feet from another Party's Parcel. If substantial work is to be performed, the constructing Party must, at the request of any Approving Party, fence such staging and/or storage area. Notwithstanding the foregoing, if a business is operating on the Tract then no other Party's staging and/or storage area may be located within one hundred (100) feet of the Tract, unless such area is located within a Building Area. If the Approving Parties do not approve the proposed location of the staging and/or storage area, the requesting Party must modify the proposed location of the staging and/or storage area to satisfy the reasonable requirements of the Approving Parties. All storage of materials and the parking of construction vehicles, including vehicles of workers, may only occur on the constructing Party's Parcel, and all laborers, suppliers, contractors, and others connected with such construction activities may only use the access points located upon the constructing Party's Parcel. However, if no direct public access is available to the Parcel of the Party performing such construction, then the Access Drive or Service Drive may be used for such access. Upon completion of such work, the constructing Party must, at its expense, restore any damaged area to a condition equal to or better than that existing before commencement of such work.

3.1.5 Temporary License. The Parties hereby grant to each other and their respective contractors, materialmen, and laborers a temporary license for access and/or use over and across the Common Area of the grantor's Parcel as reasonably necessary for the grantee to construct, maintain, repair, or replace improvements upon the grantee's Parcel. Such license is effective only during such periods of time when actual construction, maintenance, repair, or replacement is being performed, and the use of such license must not unreasonably interfere with the use and operation of the Common Area by the other Parties or their Permittees. The foregoing license does not permit the storage by grantee of any items on the grantor's Parcel. Before exercising the rights granted herein, the grantee must first provide the grantor with a written statement describing the need for such license and must identify the area of use. Each grantee physically using a portion of the grantor's Parcel in connection with the construction and/or maintenance of the grantee's Parcel must furnish a certificate or memorandum of insurance showing that the Party or its contractor has obtained the insurance coverage required by Section 5.4.2, must promptly pay all costs associated with such work, must diligently complete such work as quickly as possible, and must promptly clean the area, and restore and/or repair the affected portion of the grantor's Parcel to a condition that is equal to or better than the condition that existed before commencement of such work. Notwithstanding the foregoing, if a dispute exists between the contractors, laborers, suppliers, and/or others connected with such construction activities, each Party may prohibit the contractors, laborers, suppliers and/or others working for another Party from using the Common Area on its Parcel.

3.2 Common Area. Subject to Section 3.2.6, the Common Area may only be constructed as shown on the Site Plan and any designated Common Utility Lines specified in Section 2.2.3 must be installed as part of the initial Shopping Center development. No fence or other barrier that would prevent or unreasonably obstruct the passage of pedestrian or vehicular travel is allowed or permitted within or across the Common Area, exclusive of the limited curbing and other forms of traffic control depicted on the Site Plan, permitted staging and/or storage areas, Outside Sales Areas, Outside Storage Areas, and Order Fulfillment Improvements. The Common Area on each Party's Parcel must be substantially completed no later than the day the first Occupant of such Parcel opens for business with the public. At a minimum, the following general design standards must be complied with throughout the term of this OEA:

3.2.1 Lighting System. The lighting system must use a lamp source of light emitting diodes (LED) with a color temperature of 4000K (or such other color temperature as may be required by applicable Governmental Requirements), and must be designed to produce, at a minimum, an average maintained lighting intensity measured at grade at all points of the number of footcandles set forth in (A) – (D) below. For each Tract, measured in each zone (A) through (D) below, (i) a uniformity ratio of 2:1 average footcandles/minimum footcandles lighting ratio may not be exceeded and (ii) a 4:1 maximum footcandles to minimum footcandles lighting ratio may not be exceeded. At no point may the lighting intensity be greater than 13 footcandles unless otherwise approved by the Approving Parties. Each Party may elect to control the lighting system located on its Parcel. The type and design of the Common Area light standards must be approved by the Approving Parties.

(A) 3.5 footcandles at curb in front of the entrance to any Building.

(B) 2 footcandles at entry drives to the Shopping Center.

(C) 2 footcandles in the general parking areas.

(D) 1 footcandles at the perimeter of the parking areas.

3.2.2 Slope. The slope in the parking area may not exceed a maximum of three percent (3%) nor be less than a minimum of one and one-half percent (1 1/2%), and the slope at all entrances to the Shopping Center may not exceed a maximum of five percent (5%), unless Approving Parties agree to a different standard.

3.2.3 Sidewalks. All sidewalks and pedestrian aisles must be concrete or other materials approved by the Approving Parties. The automobile parking areas, driveways, and access roads must be designed in conformity with the recommendations of a licensed soils engineer approved by the Approving Parties, such design may require the installation of a suitable base and surfacing with an asphaltic concrete or concrete-wearing material.

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

3.2.5 Parking Ratio.

(A) The parking area on each Parcel must each contain sufficient ground level parking spaces, without reliance on parking spaces that may be available on another portion of the Shopping Center, in order to comply with the greater of Governmental Requirements or the following minimum requirements:

(1) Four (4) parking spaces for each one thousand (1,000) square feet of Floor Area and fraction thereof (rounded up to the next whole parking space), plus any Restaurant parking requirements set forth below. Compact car parking spaces, which may not exceed twenty percent (20%) of total parking spaces, may only be located in the areas, if any, designated on the Site Plan.

(2) If a business use contains a drive up or through unit (such as a remote banking teller or food ordering/dispensing facility) (a "**Drive Through**"), then there must also be created space for stacking not less than (a) thirty (30) automobiles for each business with a Drive Through on such Parcel if the use is a Restaurant, or (b) ten (10) automobiles for each business with a Drive Through on such Parcel, if the use is not a Restaurant. The Approving Parties may grant to a Party written exceptions that reduce the required number of spaces for stacking, in each Approving Party's reasonable discretion (solely for that Party and not subject to the terms of Section 6.5.2 below), based on factors such as the type of use (including the operation's reliance on drive through), proximity to driveways and other Parcels (including the Tract), and orientation of parking spaces. In all cases, no Occupant may use (x) any areas outside of the Parcel upon which its business is located, or (y) any portion of the Access Drive or Service Drive, for stacking for Drive Throughs. For clarity:

(i) The required stacking above is a required total for a business operation and does not increase if the business operation has multiple lanes or windows.

(ii) The term "space for stacking" includes all contiguous and suitable drive aisles (within the Parcel upon which the business is located) leading to the area where orders are made, retrieved, and paid for, and does not need to be solely dedicated to stacking (e.g., such space could also serve as an internal driveway).

(iii) Subsequent changes to a business operation may require that the improvements on a Parcel also be changed to meet the stacking requirements above (e.g. a bank, requiring stacking for 10 automobiles, changes to a Restaurant, requiring stacking for 30 automobiles).

(3) For each single Restaurant that has less than five thousand (5,000) square feet of Floor Area, then six (6) additional parking spaces for each one thousand (1,000) square feet and fraction thereof (rounded up to the next whole parking space) of Floor Area devoted to such use.

(4) For each single Restaurant that 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 eleven (11) additional parking spaces for each one thousand (1,000) square feet and fraction thereof (rounded up to the next whole parking space) of Floor Area devoted to such use.

(5) For each single Restaurant that has seven thousand (7,000) square feet or more of Floor Area, then sixteen (16) additional parking spaces for each one thousand (1,000) square feet and fraction thereof (rounded up to the next whole parking space) of Floor Area devoted to such use.

(B) If an Occupant operates a Restaurant incidental to its primary business purpose, then so long as such incidental operation continues, the portion of the Floor Area occupied by such Restaurant will be excluded from the application of (3), (4) and (5) above. For the purpose of this clause only, a Restaurant is 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. If an Occupant utilizes Floor

Area for Restaurant and other purposes, only the portion of Floor Area allocated for Restaurant purposes is subject to the increased parking requirements set forth above. By way of example as to the calculation of parking spaces, if an Occupant (other than a Restaurant) has 1,234 square feet of Floor Area, the store would require 5 parking spaces (i.e., 1.234 x 4 = 4.936, rounded up to 5).

(C) If a condemnation of part of a Parcel or a sale or transfer in lieu thereof that reduces the number of usable parking spaces on such Parcel below that required herein, the Party whose Parcel is so affected must 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 reasonably possible, such Party will not be deemed in default hereunder, but such Party may not expand the amount of Floor Area located on its Parcel. If such Floor Area is thereafter reduced other than by casualty, then the Floor Area on such Parcel may not subsequently be increased unless the parking requirements set forth above are satisfied.

(D) Temporary unavailability of parking spaces caused by uses or promotions permitted under this OEA is not a violation of this Section 3.2.5.

3.2.6 Changes to Common Area. No changes may be made to the Common Area from that depicted on the Site Plan, except:

(A) The foregoing restriction does not apply to Building Areas. Additionally, if a Party's use of a Building Area makes it reasonably necessary to modify adjacent portions of the Common Area on its Parcel to effect the use of such Building Area for a Building (e.g. an existing pedestrian sidewalk located within such Building Area is to be relocated partially within a driveway) then such Party may modify such Common Area so long as (i) vehicular traffic (as it relates to the remainder of the Shopping Center) is not unreasonably restricted or hindered, and (ii) all parking fields and vehicular traffic lanes must remain generally as shown on the Site Plan.

(B) If a Party's use of an Outside Sales Area or Outside Storage Area on its Parcel from time to time as provided in this OEA makes it reasonably necessary to modify the Common Area located within such Outside Sales Area or Outside Storage Area, then such Party may modify such Common Area so long as (i) vehicular traffic (as it relates to the remainder of the Shopping Center) is not unreasonably restricted or hindered, and (ii) during the periods such areas are not being used for Outside Sales Area or Outside Storage Area, as the case may be, the modified Common Area is restored generally as shown on the Site Plan.

(C) The Common Area on the Tract may be modified from time to time as reasonably necessary to accommodate the establishment and operation of Order Fulfillment Activities and Order Fulfillment Improvements, such as ’s “Drive Up” program, supporting the physical and/or online operations of the Occupant(s) of the Tract. As part of its Order Fulfillment Activities, such Occupant(s) may (i) install, maintain, repair, replace, remove, and relocate Order Fulfillment Improvements, and (ii) establish areas for storage and staging of orders and merchandise, employee waiting and administration areas, and pedestrian pathways to/from such activity areas. In any case, vehicular traffic (as it relates to the remainder of the Shopping Center) must not be unreasonably restricted or hindered, and the Common Area on the Tract must at all times continue to comply with the minimum parking requirements set forth in Section 3.2.5.

(D) Each Party may from time to time make, at its own expense, any insignificant change, modification, or alteration to the portion of the Common Area on its Parcel, including installation of landscaping planters or bollards (including the placement by of spherical bollards (’s branded)) on the sidewalk in front of a Building and installation of convenience facilities such as mailboxes, public telephones, shopping cart corrals, benches, bicycle racks, and directional and/or parking information signs, so long as:

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

(2) There must be maintained at all times within such Common Area a sufficient number of vehicular parking spaces to meet the parking requirements set forth in Section 3.2.5, and no more than two percent (2%) of the parking spaces depicted on the Site Plan for such Parcel may be eliminated.

(3) No Governmental Requirements are violated as a result of such action. Each Governmental Requirement applicable to such modifications must be satisfied by the Party performing the same. Each action must not result in any other Party being in violation of any Governmental Requirements.

(4) No change may be made in the access points between the Common Area and the adjacent public streets; except additional access points may be created with the approval of the Approving Parties.

(5) At least thirty (30) days before making any such change, modification or alteration, the Party desiring to do such work must deliver to each Approving Party copies of the plans therefor, and provided further that such work must not occur between October 15th and the following January 15th.

3.2.7 Universal Electric Vehicle Charging Stations. Each Party may from time to time, at its sole cost, develop, install, maintain, repair, replace, remove and/or relocate universal electric vehicle charging stations and improvements and equipment relating thereto (collectively, "**EV Improvements**") on its Parcel, subject to the following:

(A) Unless identified on the Site Plan, all EV Improvements (except for underground electric utility lines) must be located at least fifty feet (50') from any other Parcel.

(B) The conditions contained in Section 3.2.6(D)(1)-(5) apply to the development and operation of EV Improvements. For clarity, parking spaces associated with electric vehicle charging ("**EV Spaces**") are includable parking spaces for purposes of the parking requirements of Section 3.2.5.

(C) EV Improvements must be designed and operated in a manner that prevents interference with traffic circulation (including stacking of vehicles on or adjacent to) on the Access Drive, Service Drive, and/or any other Parcel.

(D) Except on the Developer Tract, EV Improvements may include the installation and maintenance of canopies over all or a portion of the EV Spaces (which may include lighting fixtures, solar panels, and/or heating/cooling elements affixed thereto), subject to approval of the Approving Parties, not to be unreasonably withheld.

(E) EV Improvements may include branding and informational signage (including on any canopy), but may not include any third party identification or advertising other than Occupants within the Shopping Center. Additionally, all signage must comply with the following:

(1) No monument or pylon signs are permitted.
(2) No "reader board" type or digital signs are permitted, except for the customer interface screen on the charging equipment.
(3) No flashing, moving, or audible signs are permitted.
(4) No signs utilizing (a) exposed neon tubes, (b) exposed LEDs, (c) exposed ballast boxes, (d) exposed transformers, or (e) exposed raceways unless such exposed raceways comply with the all of the requirements contained in Section 5.3.2(A)(5)(v)(a)-(d) are permitted.

(5) No signs made of paper or cardboard or temporary in nature are permitted.

(6) Except as provided in this Section 3.2.7(E), no other form of exterior expressions, including pennants, pictures, notices, flags, seasonal decorations, writings, lettering, designs, or graphics, may be installed or maintained as part of EV Improvements.

(F) The Party with respect to such Parcel must use commercially reasonable efforts to prevent the use of the charging stations by commercial and delivery vehicles (other than commercial and delivery vehicles (i) of Occupant(s) of such Parcel, or (ii) servicing such Parcel).

(G) Except for and/or EV Improvements on the Tract, no retailer that operates a General Merchandise Use anywhere in the United States may install, operate, or be identified on any EV Improvements.

3.3 Building Improvements.

3.3.1 Construction of Buildings. Building(s) and the appurtenances thereto referenced in Section 1.3 may only be located within the Building Areas designated on the Site Plan. While no Party is obligated to commence construction of any Building on its Parcel, once a Party has commenced construction of a Building, such Building must be completed within a reasonable time. If the number of "square feet" of building space within the Shopping Center is restricted by Governmental Requirements, the Parties hereby allocate the permitted square footage as follows: (i) to the Tract, the number of square feet necessary to accommodate one hundred forty one thousand (141,000) square feet of Floor Area, plus any Outside Sales Area; and (ii) to the Developer Tract, the balance of such permitted square footage. The Parties understand that the calculation of Building sizes is based on the definition of "Floor Area" set forth in this OEA, and further that such term is unique to this OEA and is not intended to mirror the definition of "square feet" set forth in codes/regulations established by the local Governmental Authorities.

3.3.2 Architectural Theme. The exterior of all Buildings must comply with the architecturally compatible theme represented by the Building elevations attached hereto as Exhibit D-1 (the "**Theme**") and all other requirements of this OEA. In addition, no Building may have backlit lighting for any awning or canopy forming a part thereof. Those Buildings located on Outparcel(s) are positioned in locations such that the rear and/or other portions of such Buildings may be visible to Permittees of other Buildings ("**All Sided Buildings**"). To effectuate the implementation of the Theme throughout the Shopping Center the front, rear, and all other sides of each All Sided Building must comply with the depiction of the façade of such particular All Sided Building shown on the Theme, including all materials, massing features, wall articulation, glass openings and colors shown on the Theme (the "**All Side Requirements**").

(A) To ensure compliance with such Theme, each Party must, at least thirty (30) days before commencement of (x) initial construction of each Building on its Parcel or (y) any additions, remodeling, reconstruction, or other alteration to a Building on its Parcel that changes the exterior thereof, submit to the Approving Parties for approval those submittals ("**Theme Submittals**") required by Exhibit D-2 and Exhibit D-3 attached hereto. Notwithstanding anything to the contrary herein, the Approving Parties waive the requirement for the submission of Theme Submittals for the initial Building to be constructed on the Tract, and any reconstruction thereof, or exterior alterations thereto, if such Building or alterations reflect a prototype "" retail store.

(B) If an Approving Party rejects the Theme Submittals for not complying with the Theme, the submitting Party and the Approving Parties will mutually consult to establish approved Theme Submittals for the proposed work. The Approving Parties must not withhold approval of, or recommend changes to, the Theme Submittals if the Theme Submittals conform to the Theme and all other requirements of this OEA. No Approving Party may require any other Party to utilize design standards superior to those utilized by the Approving Party in the construction of any Buildings on its Parcel. However, any Approving Party may require that an All Sided Building meet the All Side Requirements. Approval of Theme Submittals by the Approving Parties does not constitute assumption of responsibility for the accuracy, sufficiency or propriety thereof, nor does such approval constitute a representation or warranty that the Theme Submittals comply with Governmental Requirements. No material deviation may be made from the approved Theme Submittals.

3.3.3 Common Boundary Lines. Buildings may be located along each Party's respective common boundary lines, and each Party will support any request by another Party for a side-yard or setback variance if the same is required in order to accommodate such construction. Notwithstanding the foregoing, the wall, roof, foundation, or other structural portion of one Building must not receive support from, nor apply pressure to the other Building.

(A) The front wall of any Building to be constructed immediately adjacent to the Building on the Tract located within the Unlimited Area Building Grouping must be set back at least two (2) feet from the front wall of the Building. The second Party to construct a Building along a common boundary line must do all of the following:

(1) Cause such construction to be completed in a manner that the improvements on the adjoining Parcel are not damaged.

(2) Undertake and assume the obligation of completing and maintaining the nominal attachment (flashing and seal) of its

Building to that of the existing Building on the adjoining Parcel, it being the intent of the Parties to establish and maintain the appearance of one (1) continuous Building complex.

(B) Along the common boundary line between the Building Areas on the Developer Tract and the Tract, each Party must use reasonable efforts to locate its Building wall at least __ (_) inches from the common boundary line, but not more than __ (_) inches therefrom.

3.3.4 Unlimited Area Buildings. initially proposes to construct on the Tract a Building that is classified as an "unlimited area building" under certain building codes; the term "unlimited area building", as used in this document, refers to a building that is allowed to exceed area limitations stipulated in the applicable building code, not by virtue of its construction type, but as a condition of its isolation on the property and by its inclusion of a sprinkler system. No Party may place or construct a Building on its Parcel in a manner that would, based on Governmental Requirements, either preclude the construction of an "unlimited area building" on the Tract along such Tract's common boundary lines or cause an existing "unlimited area building" on the Tract to no longer be in conformance with applicable building code requirements.

3.3.5 Unlimited Area Building Grouping. All Buildings constructed within any Unlimited Area Building Grouping must comply with the requirements set forth in (A) – (D) below. If required by any Governmental Authorities, each Party will join in a recordable declaration that confirms the existence of a sixty (60) foot clear area around the Unlimited Area Building Grouping.

(A) No Building may be constructed within sixty (60) feet of the Building Area on an adjoining Parcel unless such Building, hereinafter referred to as the "**Adjacent Building**," is located immediately adjacent to the common boundary line and is attached to the Building, if any, on the adjacent Parcel in accordance with Section 3.3.3.

(B) If an Adjacent Building exists, then no Building may be located within sixty (60) feet of the Adjacent Building unless such Building is attached to the Adjacent Building in accordance with Section 3.3.3; the Adjacent Building and all other Buildings on the Parcel that are attached to the Adjacent Building and to each other are hereinafter referred to as the "**Building Group**".

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

(D) The Adjacent Building and the Building Group must comply with the building code requirements applicable to an "unlimited area building", including the installation of an approved sprinkler system for fire protection.

3.3.6 Building Heights. No Building may exceed one (1) story, nor the height restrictions below. The height of each Building is 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 may install, maintain, repair, replace, and remove Communications Equipment on the top of the Building on its Parcel that extend above the height limits established above, but such Communication Equipment must be set back from the front of the Building or screened in order to reduce visibility thereof by customers. "**Architectural Feature**" means any gable, peak, tower, screening, parapet, penthouse, mechanical equipment or similar appurtenance located on the façade or roof of such Store. "**Communications Equipment**" means such things as satellite and microwave dishes, antennas, and laser heads, together with associated equipment and cable.

Tract/Parcel Name	***Maximum Building Height***	***Maximum Architectural Feature Height***	***Maximum Architectural Feature Coverage***
(A) Tract	32	40	No more than 25% of any building side
(B) Developer Tract	25	35	No more than 25% of any building side
(C) Outparcels	25	28	No more than 25% of any building side

3.4 Liens.

3.4.1 Indemnity; Right to Contest. If any mechanic's lien is recorded against the Parcel of one Party as a result of services performed or materials furnished for the use of another Party, then notwithstanding the indemnities set forth in Section 5.4 below, the Party permitting or causing such lien must defend, protect, indemnify, and hold harmless each other Party and its Parcel from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from such lien. The Party permitting or causing such lien to be recorded may contest the validity thereof in any manner such Party chooses so long as such contest is pursued with reasonable diligence, but if either: (i) the lien is causing material harm to the Party owning such Parcel (for example, impeding a sale or finance) or (ii) the lien claimant begins formal foreclosure proceedings, then the Party permitting or causing such lien must immediately cause such lien to be released and discharged of record, either by paying the indebtedness that gave rise to such lien or by posting such bond or other security as required by law to obtain such release and discharge.

3.4.2 Release. Upon the request of the Party whose Parcel is subject to such lien, the Party permitting or causing such lien to be recorded must promptly cause such lien to be released and discharged of record with respect to such Parcel by posting a bond or other security as required by law to obtain such release and discharge. If the laws of the State within which the Shopping Center is located do not provide for a method to release real estate from a lien claim, then the Party permitting or causing such lien must deposit with the Party whose Parcel is subject to such lien security (cash or other reasonably acceptable substitution) equal to 150% of the amount of the lien. The security must be held until the contest provisions set forth in Section 3.4.1 are completed and the lien released, but if either the lien is not contested and then released pursuant to Section 3.4.1 above, or the Party permitting or causing such lien elects to satisfy the claim, then the security must be used to pay the lien claim and obtain the release of record.

ARTICLE IV – MAINTENANCE AND REPAIR

4.1 Utility Lines; Signs. Utility Lines must be maintained, repaired, and replaced as provided in Section 2.2. Signs must be maintained, repaired, and replaced as provided in Sections 2.4 and 5.3.1.

4.2 Common Area.

4.2.1 Maintenance Standards. Subject to the provisions relating to Utility Lines, Signs, and Operator's responsibility with respect to the Operator Items, each Party must, at its sole cost, operate, maintain, repair, and replace the Common Area on its Parcel to the Maintenance Standard, at a minimum, and otherwise in a manner consistent with other first class retail developments of comparable size in the Columbus, metropolitan area. Subject to the provisions of Section 5.4.3 below, if any damage or destruction of Common Area on a Parcel is caused in whole or in part by another Party or a third Person, the Party obligated to make such repair or replacement reserves and retains the right to proceed against such other Party or third Person for indemnity, contribution, and/or damages. All Common Area improvements must be repaired or replaced with materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony of the Shopping Center as a whole. For the avoidance of doubt, EV Improvements, Order Fulfillment Improvements, and other similar facilities, such as the convenience facilities referenced in Section 3.2.6(D) are considered part of the Common Area. The Maintenance Standard for the Common Area includes the following minimum maintenance standards:

(A) Drive and Parking Areas. All paved surfaces and curbs must be kept in a smooth and evenly covered condition, including (i) replacement of base, skin patch, resurfacing and, resealing; (ii) restriping parking areas and drive lanes at least every twenty-four (24) months, but in any event as necessary to clearly identify parking space designations, traffic direction designations, fire lanes, loading zones, no parking areas, and pedestrian cross-walks; and (iii) removal of ice, and when there is an accumulation of two (2) inches or more on surface, snow.

(B) Unimproved Common Area. The unimproved Common Area must be mowed and kept litter-free.

(C) Debris and Refuse. Periodic removal of papers, debris, filth, and refuse, including vacuuming and broom-sweeping of paved areas must be performed at least 3 days per week, but in any event to the extent necessary to keep the Common Area in a clean and orderly condition. All sweeping must be done at appropriate intervals during such times that do not interfere with the conduct of business or use of the Common Area by Permittees.

(D) Directional Signs and Markers. Appropriate directional, stop, or handicapped parking signs or markers, must be provided and maintained to the Maintenance Standard.

(E) Lighting. Common Area lighting facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers, must be provided in order to illuminate the Common Area pursuant to Section 5.2.1, and such lighting facilities must be operated, maintained, repaired, and replaced to the Maintenance Standard.

(F) Landscaping. All landscape plantings, trees, and shrubs must be kept in an attractive, live, and thriving condition, weed-free and trimmed to maintain a neat appearance and prevent obstruction of adjacent security cameras or signage. All landscape planters and irrigation systems must be maintained, repaired, and replaced to the Maintenance Standard. If an irrigation system is installed as a Common Utility Line, then the Maintenance Standard includes an obligation to perform all seasonal (start up and/or winterization) maintenance thereto, and to make any modifications to such system as required to satisfy governmental water allocation or emergency requirements.

(G) Obstructions. The Common Area must be kept 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.

(H) Sidewalks. The sidewalks must be kept in a smooth and evenly covered condition. Sidewalks must be: (i) steam-cleaned at least quarterly and pressure washed periodically in the interim, but in any event to the extent necessary to keep the surface to the Maintenance Standard; (ii) swept at appropriate intervals during times that do not interfere with the conduct of business or use of the sidewalks; and (iii) cleared of ice, and when there is an accumulation of 2 inches or more on surface, snow.

(I) Security Measures. Security measures, including personnel, for the Common Area, must be provided if reasonably required.

(J) Traffic. Traffic at public entrances and exits to the Parcel must be supervised as conditions reasonably require in order to maintain an orderly and proper traffic flow.

4.2.2 Notice of Work. At least thirty (30) days before any major work in the parking or drive areas, the Party performing such work must advise the Approving Parties of the scope thereof, and the proposed commencement and completion dates; except in an emergency, such major work must not be performed between October 15th and the following January 15th.

4.3 Operator Items. Commencing on the earlier of thirty (30) days before the date specified by the Occupant of the Tract that it intends to open for business with the general public, or the date the Approving Parties designate in writing, Operator must operate, maintain, repair, and replace the Operator Items to the Maintenance Standard, including the minimum maintenance standards set forth in Section 4.2.1. Operator may only expend such funds as are reasonably necessary to operate, maintain, repair, and replace the Operator Items ("**Operator Costs**") and for the performance of other obligations imposed on Operator pursuant to this OEA, and must promptly pay all such costs when incurred. Operator must perform such work in a good and professional manner, as quickly as possible, and after normal business hours whenever possible. Each Party hereby grants to Operator, its agents, contractors, and employees, a license to enter upon its Parcel to discharge Operator's duties under this OEA. The provisions of this Section 4.3, including the subsections below, will survive termination of this OEA as long as Operator is maintaining the Operator Items.

4.3.1 Operator Costs.

(A) Included and Excluded Expenses. Within thirty (30) days following the commencement of Operator's obligations under this OEA, Operator must provide the Approving Parties an estimated budget for the balance of the current calendar year containing the information required by Section 4.3.2, and each Party must pay its share of Operator Costs actually incurred during the balance of such year, plus the Admin Fee (defined below), in accordance with Section 4.3.3. Operator may hire companies affiliated with it to perform its obligations, but only if Operator can clearly establish that the rates charged by such affiliates are competitive with those of other companies furnishing similar services in the metropolitan area where the Shopping Center is located. Notwithstanding anything to the contrary, Operator Costs do not include any of the following:

(1) Any late charges or fees; any cost, fee, fine, penalty, or similar charge arising out of or resulting from any violation by Operator or anyone else relating to the Shopping Center.

(2) Any costs for electricity, unless such electricity is necessary for the operation of an Operator Item (e.g. the Pylon Sign).

(3) Any costs for water to irrigate any landscaped areas, unless such landscaping is included as an Operator Item (e.g. located within a median in the Access Drive or Service Drive).

(4) Any costs for promotional, marketing, seasonal, or holiday activities, including materials, decorations, lighting, set up, take down, or clean up.

(5) Any costs to clean up or repair any Operator Item resulting from construction, maintenance, repair, or replacement of a Party's Building or its Common Area, such costs to be borne by the constructing Party.

(6) Any costs associated with trash and/or garbage removal from a Party's Parcel, such removal obligation being the responsibility of the Party owning the Parcel.

(7) Any costs for "day porter" services or other manual removal of papers, debris, trash, filth, and refuse.

(8) Any costs for security monitoring systems, unless such monitoring systems were installed, with the approval of the Approving Parties, for the express purpose of monitoring an Operator Item.

(9) Any costs resulting from or arising out of the repair or replacement of items covered by warranties or guaranties, including site improvements, signs, trees, plants, or other landscaping. Also, any costs for replacement of landscape plantings within any median with the Access Drive or Service Drive during the initial twelve (12) months of Operator's obligation to maintain the Operator Items pursuant to this Section 4.3 regardless of whether covered by warranties or guaranties.

(10) Real property taxes and assessments on the Operator Items.

(11) Insurance costs and/or premiums regardless of whether any such insurance is required by this OEA.

(12) Operator's profit, administrative costs, overhead costs, and all other direct and indirect costs including: office space, equipment, and utilities; legal fees and/or costs; accounting and administrative service; Operator's personnel; premiums relating to bonding over mechanic's liens; and costs relating to hiring, training, screening, drug testing, and/or background checks of personnel.

(13) Any fee or charge relating to the management and/or supervision of the operation of the Operator Items, or any

part thereof, paid to a third party, commercial management company, or similar provider.

(14) Entertainment, transportation, meals, or lodging of anyone.

(15) Any costs, fees, expenses, and/or adjustments related to any Operator Costs submitted more than three (3) years after the date incurred by Operator.

(B) Admin Fee. In lieu of the costs set forth in Section 4.3.1(A)(12) above, Operator may charge an amount ("**Admin Fee**") computed by multiplying Operator Costs (exclusive of utility charges, and the portion of single purpose expenditures that exceeds $25,000), by three percent (3%).

4.3.2 Budget. By October 1st of each calendar year during the term of this OEA Operator must submit to the Approving Parties an estimated budget ("**Budget**") for Operator Costs and the Admin Fee for the ensuing calendar year. If an Approving Party believes the charge for a particular function is excessive, such Approving Party may notify Operator of such belief, and thereupon Operator must obtain no fewer than two (2) competitive bids for such function. Unless the existing provider's cost is lower, the lowest acceptable bidder must be utilized as soon as the contract with the existing provider can be terminated without penalty.

(A) Form of Budget. The Budget must be in a form and content reasonably acceptable to the Approving Parties and identify separate cost estimates for each of the following:

(1) The Admin Fee.

(2) Rental fees or purchase price of equipment and supplies used in Operator's duties with respect to the Operator Items.

(3) Credit for any depreciation or trade-in allowance applicable to items purchased for Operator's duties with respect to the Operator Items.

(4) Operation, maintenance, repair, and/or replacement for each Operator Item.

(5) Any single purpose expenditure over $25,000 (including evidence that Operator sought no fewer than two (2) competitive bids from qualified contractors or vendors and selected the lowest, qualified, responsive bidder to perform the work).

(6) If applicable to any items within the Budget, any adjustment in Constant Dollars.

(B) Phased Work. If an item of maintenance, repair, or replacement with respect to an Operator Item is to be accomplished in phases over a period of calendar years during the term of this OEA, such as replacement of the stormwater system, then the Budget must separately identify the cost attributable to the applicable calendar year (including the portion of the Operator Item affected) and must note the anticipated cost and timing (indicating the portion of the Operator Item affected) of such phased work during succeeding calendar years. The cost of approved "phased" work must be paid by the Parties approving the same, or their successors and assigns, as the case may be, notwithstanding that such successor and assign may not have been a Party at the time of such approval.

(C) Unapproved Budgets; Mediation. If an Approving Party reasonably disapproves of the proposed Budget, it must notify Operator and the other Approving Parties, if any, of such disapproval within thirty (30) days following receipt of the proposed Budget. Thereafter, such Parties must engage in good faith negotiations to reach an agreement on the final Budget. If such Parties are unable to reach an agreement on a final Budget within thirty (30) from the date of disapproval, the matter must be submitted to non-binding mediation. The Approving Parties and Operator must mutually agree upon a qualified mediator within ten (10) business days following the expiration of the negotiation period. The mediator must be experienced in commercial real estate disputes and acceptable to each of the Approving Parties and Operator. If such Parties cannot agree on a mediator within the specified timeframe, any Party may request that the American Arbitration Association ("**AAA**") appoint a mediator in accordance with its rules. The mediation must be scheduled to occur within thirty (30) days of the selection of the mediator, unless otherwise agreed by the Approving Parties and Operator. The mediation will take place virtually, or if the Approving Parties consent, at a mutually agreed location within the jurisdiction where the Shopping Center is located. The mediation will be conducted in accordance with the AAA's Commercial Mediation Rules then in effect. All discussions, negotiations, and documents exchanged during the mediation process must be treated as confidential and must not be disclosed to any third party or used in any subsequent legal proceedings, except as required by law. Each party must bear its own costs and expenses of mediation, and the mediator's fees and any administrative costs will be shared equally by the Approving Parties and Operator, unless otherwise agreed. The mediation process will be non-binding, and any resolution reached will not be enforceable unless reduced to writing and signed by the Approving Parties and Operator. The Approving Parties and Operator retain the right to pursue other legal remedies if the mediation does not result in a mutually acceptable final Budget. The Approving Parties and Operator agree to participate in the mediation process in good faith, with the intention of resolving the budgetary dispute amicably and efficiently. If a Budget for any calendar year is not approved by January

1st of the applicable calendar year, because the Approving Parties and Operator were unable to reach agreement on a final approved Budget or because Operator failed to submit a Budget for consideration by the October 1st deadline set forth above, then the share of Operator Costs and the Admin Fee attributable to each Party's Parcel will be the lesser of (i) the amount set forth in the unapproved Budget, or (ii) the monthly payment established for such Party for the prior year. Notwithstanding the foregoing, once a final Budget is agreed upon by the Approving Parties and Operator, either on their own or through the mediation process described above, then the share of Operator Costs and Admin Fee attributable to each Party's Parcel will be the amount set forth in the approved Budget. Approval of the Budget, or any of the line items comprising a part thereof, is not considered a waiver of a Party's right to audit and/or contest, challenge, or dispute the Reconciliation.

(D) Emergency Repairs. Operator must use its diligent, good faith efforts to operate, maintain, repair, and replace the Operator Items in accordance with the Budget. Notwithstanding the foregoing, Operator may make emergency repairs to the Operator Items to prevent injury or damage to Persons or property, it being understood that Operator must 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 must submit a supplemental billing to each Party, together with evidence supporting such cost, and each Party must pay its share thereof within thirty (30) days after receipt of such billing. If the cost limitation set forth above is not exceeded then such costs will be included as part of Operator Costs for that year.

4.3.3 Allocation, Payment, and Reconciliation.

(A) Allocation. Subject to the provisions relating to Allocable Shares for the Pylon Sign as provided in Section 2.4.1, Operator Costs and the Admin Fee are allocated as follows (insert Tract size):

(1) To the Developer Tract ___%

(2) To the Tract ___%

(B) Division of Parcels. If an existing Parcel is divided, the Party causing such division must, at its expense, prorate the allocation of Operator Costs and the Admin Fee attributable to the original Parcel between the newly created Parcels, file a recorded declaration confirming such allocation, and deliver a copy of such declaration to each other Party.

(C) Payment. Each Party must pay to Operator in equal monthly payments, in advance, the share of Operator Costs and the Admin Fee attributable to such

Party's Parcel based either upon the amount set forth in the approved Budget or, if a Budget is not approved, then the amount determined as provided in Section 4.3.2(C).

(D) Reconciliation. On or before March 1st of each calendar year, Operator must provide each Party with a statement certified by an authorized Person, together with supporting invoices and other materials setting forth the actual Operator Costs paid by Operator (such statement and supporting data are collectively called the "**Reconciliation**"), the Admin Fee, and the share of the aggregate thereof that is attributable to each Party's Parcel for the prior calendar year. The Reconciliation must separately identify cost categories specified in Section 4.3.2(A), identify any discrepancies with the approved Budget, and be in a form reasonably acceptable to the Approving Parties. If the amount paid with respect to a Parcel for such calendar year exceeds the share allocable to such Parcel, Operator must refund by check the excess to the Party owning such Parcel at the time the Reconciliation is delivered. If the amount paid with respect to a Parcel for such calendar year is less than the share allocable to such Parcel as shown on the approved Budget, the Party owning such Parcel at the time such Reconciliation is delivered must pay the balance of such Party's share to Operator within sixty (60) days after receipt of such Reconciliation, less any amounts disputed in writing, provided that the 60-day period only establishes the period for payment and is not to be construed as an acceptance of the Reconciliation. Notwithstanding the foregoing, no Approving Party is obligated to make payments upon receipt of a Reconciliation if a Budget was never approved by such Approving Party so long as such Approving Party's disapproval of the Budget was done in good faith and such Approving Party cooperated with the mediation process set forth above; provided such Approving Party must work in good faith with Operator to resolve any Budget disagreements as part of the Reconciliation process. A Party's review and dispute of a Reconciliation does not limit such Party's right to audit Operator's books and records as set forth below. If Operator does not timely submit the Reconciliation, then such Party's payment period will be extended an additional 60 days for a total of 120 days after receipt of the Reconciliation. If Operator does not refund amounts shown by the Reconciliation to be owed a Party, then such Party may offset the refund owed, plus Interest, against payments for Operator Costs and Admin Fee due for any future period. Notwithstanding anything contained herein to the contrary, if during a calendar year Operator is replaced, then the replacement Operator is responsible for the Reconciliation adjustments, including any reimbursement due to a Party for such calendar year and all prior years; in addition for a period of sixty (60) days after a substitution of Operator is made, any payment made by a Party to the prior Operator will be deemed properly paid, and the old and new Operators must resolve any necessary adjustments and/or prorations regarding such payments between themselves.

(E) Audit Rights. Within three (3) years after the date of receipt of a Reconciliation, each Party may audit Operator's books and records pertaining to operation, maintenance, repair, and/or replacement of the Operator Items for the calendar year covered by such Reconciliation. If a Party desires to conduct an audit at Operator's office, the Party must notify Operator of such Party's intent to audit at least fifteen (15) days before the designated audit date. If any audit discloses any error in the determination of Operator Costs, the Admin Fee, or any allocation thereof to a particular Parcel, the auditing Party may provide Operator with a copy of the audit, and an appropriate adjustment must be made forthwith. Notwithstanding anything to the contrary, the approval of a prior Reconciliation, or any line item comprising a part thereof, is not a waiver of a Party's right to challenge subsequent Reconciliations regarding such line item. The cost of any audit must be paid by the auditing Party, unless such Party is entitled to a refund in excess of three percent (3%) of the amount calculated by Operator as such Party's share for the applicable calendar year, in which case Operator must pay the cost of such audit. If Operator does not respond to the results of such audit within ninety (90) days after receipt of the audit, then the auditing Party may offset the refund claimed, plus Interest, from the date Operator receives the audit, plus costs of the audit if appropriate, against subsequent payments due Operator. Operator retains the right to dispute the results of such audit for a period of six (6) months following receipt of such audit, and Operator's election not to contest the results of such audit during the 6-month period will be deemed acceptance of such audit.

4.4 Buildings.

4.4.1 Standard of Maintenance. Each Party must maintain each Building, if any, including the building appurtenances referenced in Section 1.3 and all exterior Building lighting fixtures (including any lighting fixtures associated with a canopy or other architectural feature forming a part of such Building) located on its Parcel to the Maintenance Standard, and otherwise in accordance with the Theme or the exterior architectural concept approved for such Building by the Approving Parties. Each Party must store all trash and garbage from its Buildings 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.

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

ARTICLE V – OPERATION OF THE SHOPPING CENTER

5.1 Uses.

5.1.1 Retail Use Generally. The Shopping Center may only be used for retail sales, offices, Restaurants, or other commercial purposes not prohibited by this OEA. "**Business Office**" means an office that does not provide services directly to consumers. "**Retail Office**" means an office that provides services directly to consumers, including financial institutions, real estate, stock brokerage and title companies, travel and insurance agencies, and medical, dental and legal clinics. No more than ten percent (10%) of the total Floor Area on the Developer Tract may be used for Retail Office or Business Office purposes. Office space that is used by an Occupant for administrative purposes, and is not open to the general public, is not considered a Retail Office or a Business Office for the purpose of the limitation in the foregoing sentence.

5.1.2 Shopping Center Restrictions. No use is permitted in the Shopping Center that (i) is inconsistent with the operation of a first class retail shopping center, (ii) constitutes a public or private nuisance, or (iii) interferes with the safety of Occupants and/or their Permittees. Without limiting the generality of the foregoing sentence, the following uses are not permitted in the Shopping Center:

(A) Any use that emits an obnoxious odor, obnoxious noise, or obnoxious sound that can be heard or smelled outside of any Building in the Shopping Center.

(B) Any operation primarily used as a storage, warehouse, distribution, or other fulfillment operation.

(C) Any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation.

(D) Any flea market or pawn shop.

(E) Any of the following uses:

(i) Any "second hand", "surplus", or "salvage" stores.

(ii) Any operation selling "salvage" goods.

(iii) Any operation selling "surplus" goods, except the foregoing does not prohibit first-class, off-price retailers (such as T.J. Maxx, Marshalls, HomeGoods, Ross, Burlington, or Nordstrom Rack) that (a) primarily sell first-quality, brand-name merchandise at discount prices, (b) maintain visual merchandising standards consistent with first-class retail operations, and (c) do not market themselves primarily as "surplus", "closeout", or "bargain" stores (such as Ollie's Bargain Outlet, Big Lots, Where Ya Bin, or Dirt Cheap).

(F) Any mobile home park, trailer court, labor camp, junkyard, or stockyard, but this prohibition is not applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.

(G) Any dumping, disposing, incineration or reduction of garbage, but this prohibition does not apply to (i) garbage compactors or other garbage collection areas or facilities located near the rear of any Building, or (ii) recycling centers that may be required by Governmental Requirements.

(H) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.

(I) Any central laundry, dry cleaning plant, or laundromat, but this restriction is not intended to prevent the operation of an on-site service oriented solely to pickup and delivery of clothing by the ultimate consumer, with no washing or processing facilities within the Shopping Center, as the same may be found in retail shopping centers in the metropolitan area where the Shopping Center is located.

(J) Any (i) automobile, truck, trailer, or recreational vehicle sales, leasing, or display operation, (ii) car wash, or (iii) body shop repair operation.

(K) Any hotel, motel, short or long term residential use, including single family dwellings, townhouses, condominiums, other multi-family units, or other forms of living quarters, sleeping apartments, or lodging rooms.

(L) Any veterinary hospital or animal raising or boarding facility. This provision does not prohibit non-emergency, small animal, veterinary clinics (which, for clarification, are Retail Offices) or pet shops that offer veterinary or boarding services incidental to the operation of a pet shop, provided in both instances (i) the boarding of pets as a separate customer service is prohibited for both pet shops and veterinary clinics; (ii) all kennels, runs, and pens must be located inside the Building for both pet shops and veterinary clinics; (iii) the incidental boarding facilities may not occupy more than ten percent (10%) of the Floor Area of the veterinary clinic or pet shop; and (iv) all animal and medical waste must be disposed of in compliance with all Governmental Requirements.

(M) Any mortuary or funeral home.

(N) Any establishment selling or exhibiting obscene or sexually explicit material.

(O) Any establishment selling or exhibiting illicit drugs or related paraphernalia.

(P) Any strip club or any Restaurant, or other operation, whose personnel wear a uniform or attire that a reasonable person would consider to be sexually provocative (e.g. Hooters, Tilted Kilt).

(Q) 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.

(R) Any massage parlor or similar establishment (but the provision of therapeutic massages as part of a first-class health or beauty spa operation or by professional health care providers is permitted).

(S) Any amusement or video arcade, pool or billiard hall, night club, or dance hall.

(T) Any training or educational facility, including: beauty schools, barber colleges, reading rooms, places of instruction, or other operations catering primarily to students or trainees rather than to customers, but this prohibition is not applicable to on-site employee training by an Occupant incidental to the conduct of its business at the Shopping Center.

(U) Any gambling facility or operation, including: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall.

(V) Any firearms testing or firing range, or the sale or display of any type of firearms or ammunition, except that a sporting goods retailer may sell and display firearms and ammunition as an incidental part of its business.

(W) Any gas station and/or other facility that dispenses gasoline, diesel or other petroleum products as fuel.

(X) Any (i) automotive service/repair station or (ii) any facility that both sells and installs any lubricants, tires, batteries, transmissions, brakes, or other vehicle parts or accessories.

(Y) Any outdoor Entertainment Use. For purposes of this subsection, “outdoor” means not fully enclosed within a conditioned Building.

5.1.3 Hazardous Materials. No Party may, with respect to the Shopping Center, use Hazardous Materials, or with respect to its Parcel, permit the use of Hazardous Materials on, about, under or in its Parcel, except in the ordinary course of its usual business operations conducted thereon, and any such use must at all times be in compliance with all Environmental Laws.

(A) Notwithstanding the indemnity set forth in Section 5.4.1 below, each Party must defend, protect, indemnify, and hold harmless each other Party from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including costs of investigation, remedial or removal response, and reasonable attorneys' fees and cost of suit, arising out of or resulting from any Hazardous Material used or permitted to be used by such Party, whether or not in the ordinary course of business.

(B) For the purpose of this Section 5.1.3, (i) "**Hazardous Materials**" means the following: petroleum products and fractions thereof, asbestos, asbestos containing materials, urea formaldehyde, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials, substances and wastes listed or identified in, or regulated by, any Environmental Law, and (ii) "**Environmental Laws**" means the following: all federal, state, county, municipal, local and other statutes, laws, ordinances, and regulations that relate to or deal with human health or the environment, all as may be amended from time to time.

5.1.4 Use of Common Areas. No merchandise, equipment, or services, including vending machines, order pick up lockers, promotional devices, and similar items, may be displayed, offered for sale or lease, or stored within the Common Area. The foregoing prohibition is not applicable to any of the following:

(A) The storage of shopping carts on the Tract.

(B) The installation of an "ATM" banking facility within an exterior wall of any Building.

(C) Order Fulfillment Activities or Order Fulfillment Improvements on the Tract.

(D) EV Improvements.

(E) Temporary Shopping Center promotions, with the prior written approval of the Approving Parties.

(F) Any recycling center required by law, the location of which is subject to the approval of the Approving Parties.

(G) Outdoor Seating shown on the Site Plan.

(H) Any staging area permitted pursuant to Section 3.1.4 above.

(I) Any Outside Storage Area.

(J) Any Outside Sales Area; except, with respect to any Outside Sales Area within the Developer Tract, such space may be used not more than three (3) times per calendar year, and the duration of such use is subject to the following limitations: during the period commencing on October 15th and ending on December 27th -- no limitation on the number of days of consecutive use; during the period commencing February 15th and ending on July 10th -- not more than one hundred twenty-five (125) consecutive days of use; and, during any other period -- not more than thirty (30) consecutive days of use.

5.1.5 Site Plan Restrictions. The provisions of this Section 5.1.5 are solely for the benefit of the Tract Approving Party and the Tract. The following uses are not permitted on the Developer Tract in the locations set forth below:

(A) Any Restaurant within three hundred (300) feet of the Building Area on the Tract.

(B) Any indoor Entertainment Use within five hundred (500) feet of the Building Area on the Tract. For purposes of this Section 5.1.5(B), "indoor" means fully enclosed within a conditioned Building.

(C) Any pet shop or veterinary clinic within one hundred (100) feet of the Building Area on the Tract.

(D) Except for one (1) Permitted Workout Facility, any health spa, fitness center, or workout facility within four hundred (400) feet of the Building Area on the Tract. A "**Permitted Workout Facility**" is a health spa, fitness center, or workout facility that is (i) less than two thousand (2,000) square feet of Floor Area, and (ii) not located within one hundred (100) feet of the Building Area on the Tract.

5.1.6 Tract Exclusives. The provisions of this Section 5.1.6 are solely for the benefit of the Tract Approving Party and the Tract. The following uses are not permitted on the Developer Tract regardless of location:

(A) Any toy store exceeding five thousand (5,000) square feet of Floor Area.

(B) Any sale of pharmaceutical drugs for human use requiring the services of a licensed pharmacist.

(C) Any sale of alcoholic beverages for off-premises consumption except that such sales are permitted as part of an integrated operation (under the same trade name, without a separate exterior entrance, and without a drive-up facility) within one (1) Permitted Grocer so long as such sales are part of such Permitted Grocer's prototypical operations. The incidental use of alcohol served at restaurants is allowed. A "**Permitted Grocer**" is a full line national or regional supermarket or grocery store that: (i) does not present itself as a discount or value retailer (such as Aldi or Lidl or any Walmart concept), and (ii) is not larger than 40,000 square feet of Floor Area.

(D) Except for one (1) Permitted Market, any sale of food and/or non-alcoholic beverages for off-premises consumption, except that stores with no more than the lesser of (i) one thousand (1,000) square feet of Floor Area or (ii) 10% of its Floor Area, devoted to the display for sale of such products are not prohibited by this subsection. One-half of the aisle space adjacent to any display of such products will also be included in calculating Floor Area for purposes of this subsection. Restaurants are not prohibited based upon this subsection.

(E) Any store operating primarily as a "dollar" store or other similar variety discount type store, such as those operated on the Effective Date under the trade name Dollar Tree, Family Dollar, or 99 cents Only; provided however, the foregoing will not prohibit a Five Below.

(F) Any General Merchandise Use. "**General Merchandise Use**" means any store, department, service, or operation (each an "**Operation**") that offers for sale or delivery (whether through in-store sales, Online Fulfillment, or any combination thereof) a broad assortment of merchandise in <u>all</u> of the following categories: (i) apparel and accessories, (ii) baby products (including a variety of disposable diapers), (iii) consumer electronics, (iv) toys, (v) health and beauty products, and (vi) household cleaning products (collectively, the "**Required Categories**"). For avoidance of doubt, any Operation that offers some, but not all, of the Required Categories is not a General Merchandise Use. "**Online Fulfillment**" means any method of fulfilling online merchandise orders at the Shopping Center directly to the customer through an Operation, including lockers, kiosks, pick-up counters, drive up facilities, or other pick-up services or facilities; ship/delivery from the Operation; or other types of fulfillment operations or facilities. This Section 5.1.6(F) does not prohibit the Operation of a third-party delivery, return, and courier service (such as, by way of example, those currently operated as of the Effective Date by USPS, UPS or Fed Ex) so long as such Operation provides such services to the general public for shipping all manner of goods without any branding associated with a General Merchandise Use. Notwithstanding this Section 5.1.6(F), the placement and use of Amazon lockers for the storage of merchandise solely from Whole Foods or Amazon.com in up to fifty (50) square feet within the interior (no separate entrance) of a Whole Foods store (e.g., no exterior lockers or drive up) will not be prohibited so long as there is no signage identifying Amazon that is on or visible from the exterior of the Whole Foods premises.

(G) Any beauty specialty store or beauty-retail concept store such as those operated on the Effective Date under the trade name ULTA or Sephora.

(H) Any storing, selling, dispensing, or distributing THC Products by prescription, medical recommendation, or otherwise. "**THC Products**" means any form of cannabis intended for human consumption (via inhalation, ingestion, injection, topical application, or otherwise) that contains psychoactive levels of THC, or similar psychoactive derivatives, chemicals, or substances, whether natural or synthetic. THC Products *do not* include non-psychoactive cannabis derivatives, such as industrial hemp, cannabidiol (commonly known as CBD) derived from industrial hemp, or other non-psychoactive cannabis derivatives, compounds, or substances, whether for human consumption or other use.

5.1.7 Shopping Center Name. The names "", "Super", or any variation using the name "" may 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 will be called "Gateway Crossing."

5.1.8 No Charge for Use of Common Area. Except to the extent required by law, no Permittee may be charged for the right to use the Common Area. For the purpose of this provision, a tax assessment or other form of governmental charge applicable to parking spaces or parking lots is deemed by the Approving Parties as an imposition required by law.

5.1.9 Employee Parking. Each Party must use reasonable efforts to cause the employees of the Occupants of its Parcel to park their vehicles only on such Parcel.

5.1.10 No Operating Covenants. This OEA is not intended to, and does not, create or impose any obligation on a Party to operate, or continuously operate, a business or any particular business at the Shopping Center or on any Parcel.

5.2 Lighting.

5.2.1 Minimum Lighting Period. After completion of the Common Area lighting system on its Parcel, each Party must (i) keep its Parcel fully illuminated from dusk to at least 10:30 p.m. unless the Approving Parties agree upon a different time; (ii) keep any exterior Building security lights on from dusk until dawn; and (iii) keep any Common Area lighting system that was designed to illuminate the Access Drive and/or Service Drive illuminated from dusk to at least 10:30 p.m. unless the Approving Parties agree upon a different time (this requirement will survive termination of this OEA for so long as the perpetual easement with respect to the Access Drive and/or Service Drive is in effect). Each Party grants an irrevocable, perpetual license to each other Party for the purpose of permitting the lighting from one Parcel to incidentally shine on the adjoining Parcel.

5.2.2 Additional Lighting Hours. 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 Parcel be illuminated before or after the required time period. Accordingly, a Party ("**Requesting Party**") may, at any time, require the Party that controls the lighting on such Parcel ("**Requested Party**") to keep the Common Area lights it controls operating as stipulated by the Requesting Party, provided that the Requesting Party notifies the Requested Party of such request not less than fifteen (15) days in advance.

(A) The Requesting Party must state the period it wishes such Common Area lights to be kept operating and must pay to the Requested Party a prepayment as follows:

(1) If the period is less than thirty (30) days, then the prepayment equals one hundred ten percent (110%) of the reasonable cost for such additional operation (including electrical power, bulbs and labor), as estimated by the Requested Party.

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

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

5.3 Occupant Signs.

5.3.1 Freestanding Signs. With the exception of directional or parking signage or signage related to Order Fulfillment Activities all as contemplated in Section 3.2.6, and the Signs contemplated below, no freestanding sign is permitted within the Shopping Center unless constructed in one of the specific areas designated on the Site Plan and only one (1) such sign structure may be located in each sign area.

(A) Design Criteria. The initial design criteria for the Pylon Sign and the double-sided identification panel designations thereon are shown on the Sign Exhibit. One (1) double-sided identification panel may be attached to the Pylon Sign specifying the name of the Shopping Center. The Pylon Sign may only be utilized as follows:

"Pylon Sign": Developer may attach one (1) identification panel to the Pylon Sign for each of up to seven (7) Occupants of the Developer Tract, and may attach one (1) identification panel to the Pylon Sign for each of up to two (2) Occupants of the Tract.

(B) Monument Signs. Each Outparcel on the Tract may have one (1) freestanding monument sign (each a "**Monument Sign**"). Each Monument Sign.

(C) Construction and Maintenance. Developer must cause the Pylon Sign to be constructed in the locations designated on the Site Plan. Developer must attach the identification panel for the Shopping Center name to the Pylon Sign. Each Party will cause their respective identification panels to be attached to the Pylon Sign when desired. Once constructed, (i) the Pylon Sign will be operated, maintained, repaired, and replaced pursuant to Section 2.4.1, and (ii) each Monument Sign must be operated, maintained, repaired, and replaced to the Maintenance Standard, at the sole cost of the owner of the Outparcel upon which the Monument Sign is located.

(D) Identification Panels. Each Party must cause the identification panel (including any backlit lighting) of its Occupant attached to or forming a part of the Pylon Sign to be maintained, repaired, and replaced at its sole cost to the Maintenance Standard. If a Party elects not to attach an identification panel to the Pylon Sign for which it is permitted to do so when initially constructed, but later decides to have its Occupant's identification panel attached thereto, then the Party making such later decision must pay all costs, regardless of nature or origin, necessary to permit the attachment of such identification panel to the Pylon Sign and none of the previously attached identification panels on the Pylon Sign will be required to be modified or relocated in order to permit the attachment of such additional identification panel.

(E) Modifications. Any change, modification, or alteration to the design or size of the Pylon Sign or a Monument Sign, including the identification panels to be attached thereto, is subject to the approval of the Approving Parties;

except the identification panel for an Occupant of more than sixty thousand (60,000) square feet of Floor Area is not subject to the approval of the Approving Parties so long as such identification panel is the standard prototype panel for said Occupant, as the same exists from time to time. No digital or “reader board” type signs are permitted within the Shopping Center.

5.3.2 Building Signage. Any Occupant occupying less than twenty-five thousand (25,000) square feet of Floor Area may place up to one (1) exterior identification sign on each side of the Building it occupies, but such signs may only be located on the exterior of the space the Occupant occupies within the Building. Any Occupant occupying at least twenty-five thousand (25,000) square feet of Floor Area may place more than one (1) exterior identification sign on each side of the Building it occupies, but such signs may only be located on the exterior of the space the Occupant occupies within the Building.

(A) Identification sign(s) attached to the exterior of a Building must not be:

(1) Placed on canopy roofs extending above the Building roof, placed on penthouse walls, or placed so as to project more than two (2) feet above the parapet, canopy, or top of the wall upon which it is mounted.

(2) Placed at any angle to the Building. The foregoing does not apply to any sign located under a sidewalk canopy if such sign is at least eight (8) feet above the sidewalk.

(3) Painted on the surface of any Building.

(4) Flashing, moving, or audible.

(5) Made utilizing (i) exposed neon tubes, (ii) exposed LEDs, (iii) exposed ballast boxes, (iv) exposed transformers, or (v) exposed raceways unless such exposed raceways comply with the all of the following requirements: (a) the raceways do not exceed eight inches (8”) in depth and/or twelve (12”) in height; (b) the color of the raceways are the same color as the materials upon which such raceways are located; (c) all transformers are remote mounted behind the Building fascia; and (d) the letters to be installed on the raceways do not exceed a height of thirty-six inches (36”).

(6) Made of paper or cardboard, or be temporary in nature (exclusive of contractor signs), or be a sticker or decal. The foregoing does not prohibit the placement, at the entrance of each Occupant's space, of a small sticker or decal indicating

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

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

5.3.3 Leasing/Contractor Signage; Maintenance. Notwithstanding anything contained herein to the contrary, each Party may place within the Common Area located on its Parcel the temporary display of leasing information and the temporary erection of one (1) sign identifying each contractor working on a construction job on its Parcel. Each Party must, at its sole cost, operate, maintain, repair, and replace all signs, including components thereof, located upon its Parcel pursuant to Sections 5.3.2 and 5.3.3 to the Maintenance Standard.

5.3.4 No Other Signage. Exclusive of signs permitted by Sections 5.3.2 and 5.3.3, no other form of exterior expressions, including pennants, pictures, notices, flags, seasonal decorations, writings, lettering, designs, or graphics, may be placed on or attached to the exterior of any Building.

5.4 Insurance.

5.4.1 Liability Insurance.

(A) Each Party (as to its Parcel only) must maintain in full force and effect at least the minimum insurance coverages in Constant Dollars set forth below:

(1) Commercial General Liability Insurance of Five Million Dollars ($5,000,000.00) per occurrence for bodily injury, products and completed operations, contractual liability, personal injury and property damage. The other Parties must be "additional insureds" under such policy as it applies to the insuring Party's Parcel. The insurance provided herein will be considered "primary" insurance, and all limits of such policy must be exhausted before insurance of another Party carried pursuant to this Section 5.4.1 is considered.

(2) Workers' compensation and employer's liability insurance:

(a) Worker's compensation insurance as required by any applicable law or regulation.

(b) Employer’s liability insurance or if not available as part of each Party’s workers’ compensation insurance, functionally equivalent “stop gap” coverage, in the amount of $1,000,000 per accident for bodily injury, $1,000,000 policy limit for bodily injury by disease and $1,000,000 per employee for bodily injury by disease.

(3) Automobile liability insurance (including coverage for owned, hired, and non-owned vehicles) of $5,000,000 per accident if a Party owns, hires or operates any vehicles at the Shopping Center.

(B) Each Party (an “**Indemnifying Party**”) must defend, protect, indemnify, and hold harmless each other Party (an “**Indemnified Party**”) from and against all claims or demands, including any action or proceedings brought thereon, and all costs, losses, expenses and liability of any kind relating thereto, including reasonable attorneys’ fees and cost of suit, arising out of or resulting from the injury to or death of any Person, or damage to the property of any Person located on the Parcel owned by each Indemnifying Party. Until a court of competent jurisdiction holds that an Indemnified Party is negligent, a claim of negligence against an Indemnified Party will not limit any Indemnifying Party’s duties under this Section, and the Indemnifying Party must defend, indemnify, and hold harmless that Indemnified Party against claims of negligence against that Indemnified Party. Upon a holding of negligence against an Indemnified Party, such Indemnified Party will be responsible for such claim or demand as determined by the court and must also reimburse the Indemnifying Party, in proportion to the negligent Indemnified Party’s fault, for reasonable costs incurred by the Indemnifying Party in defending such claim of negligence against that Indemnified Party.

5.4.2 Insurance During Construction.

(A) Before commencing any construction activities within the Shopping Center, each Party performing such activities must 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:

(1) Workers' compensation and employer's liability insurance:

(a) Worker's compensation insurance as required by any applicable law or regulation.

(b) Employer's liability insurance or if not available as part of such Party's workers' compensation insurance, functionally equivalent "stop gap" coverage, in the amount of $1,000,000 per accident for bodily injury, $1,000,000 policy limit for bodily injury by disease and $1,000,000 per employee for bodily injury by disease.

(2) Commercial General Liability insurance:

(a) Required coverages:

(i) Premises and Operations.

(ii) Products and Completed Operations.

(iii) Contractual Liability, insuring the indemnity obligations assumed by contractor under the contract documents.

(iv) Broad Form Property Damage (including Completed Operations).

(v) Explosion, Collapse and Underground Hazards.

(vi) Personal Injury Liability.

(b) Liability amounts:

(i) $1,000,000 each occurrence (for bodily injury and property damage).

(ii) $1,000,000 for Personal Injury Liability.

(iii) $2,000,000 aggregate for Products and Completed Operations.

(iv) $2,000,000 general aggregate applying separately to this project.

(3) Automobile liability insurance (including coverage for owned, hired, and non-owned vehicles) of $5,000,000 per accident if a Party owns, hires or operates any vehicles, at the Shopping Center. The contractor must require each of his

subcontractors to include in their liability insurance policies coverage for automobile contractual liability.

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

(B) If the construction activities involve the use of another Parcel, then the constructing Party must cause (x) the owner of such other Parcel to be an additional insured on each policy (for the Commercial General Liability policy, pursuant to a combination of both endorsements CG 2010 10-1 and CG 2037 10-01, or equivalent), (y) with respect to the work on such other Parcel, the coverage set forth in Section 5.4.2 (A)(2)(b)(iii) to be extended for a three (3) year period following final completion of work, and (z) any notice of cancellation of an insurance policy to be immediately delivered to the owner of such Parcel. If any of the insurance policies are cancelled, expire or the amount or coverage thereof is reduced below the level required, then all work and use of the other Parcel for the benefit of the constructing Party must immediately stop until either the required insurance is reinstated, or replacement insurance is obtained, and evidence thereof is given to the owner of such other Parcel.

5.4.3 Property Insurance. Effective upon the commencement of construction of any Building on its Parcel a Party or its contractor must carry "Builder's Risk" insurance in the amount of one hundred percent (100%) of the full replacement cost thereof. In addition, so long as a Building exists on a Party's Parcel, such Party must carry property insurance with "Special Form" coverage, in the amount of one hundred percent (100%) of full replacement cost thereof.

(A) Notwithstanding anything to the contrary in this OEA, each Occupant (the "**Releasing Occupant**") hereby releases and waives for itself, and each Person claiming by, through or under it, each other Occupant (the "**Released Occupant**") from any liability for any loss or damage, to all property of such Releasing Occupant located upon any portion of the Shopping Center, which loss or damage is of a type covered or coverable by the insurance required to be maintained under this Section 5.4.3, irrespective of (i) any negligence on the part of the Released Occupant that may have contributed to or caused such loss, or (ii) the amount of such insurance required or actually carried, including any deductible or self-insurance reserve. In addition, the Releasing Occupant's release and waiver includes any claim for loss of rent and/or profits.

(B) Each Party must defend, protect, indemnify, and hold harmless each other Party from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit asserted by or through any Occupant of the indemnifying Party's Parcel for any loss or damage to the property of such Occupant located upon the indemnifying Party's Parcel, which loss or damage is of a type covered or coverable by the insurance required to be maintained under this Section 5.4.3.

5.4.4 Operator's Insurance.

(A) During the period Operator is maintaining the Operator Items, Operator must maintain in full force and effect at least the minimum insurance coverages in Constant Dollars set forth below:

(1) Commercial General Liability Insurance of Five Million Dollars ($5,000,000.00) per occurrence for bodily injury, products and completed operations, contractual liability, personal injury and property damage. Each Party must be an "additional insured" under such policy applied as to Operator's obligations under this OEA with respect to the Operator Items. The insurance provided herein will be considered "primary" insurance, and all limits of such policy must be exhausted before insurance of another Party carried pursuant to this OEA is considered.

(2) Workers' Compensation and Employer's Liability Insurance:

(a) Worker's compensation insurance as required by any applicable law or regulation.

(b) Employer's liability insurance or if not available as part of Operator's workers' compensation insurance, functionally equivalent "stop gap" coverage, in the amount of $1,000,000 per accident for bodily injury, $1,000,000 policy limit for bodily injury by disease and $1,000,000 per employee for bodily injury by disease.

(3) Automobile liability insurance (including coverage for owned, hired, and non-owned vehicles) of $5,000,000 per accident if Operator owns, hires or operates any vehicles at the Shopping Center.

(B) Operator must defend, protect, indemnify, and hold harmless each Party (an "**Indemnified Party**") from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind, including reasonable attorneys' fees and cost of suit, asserted or incurred in connection with or arising out of the performance, or failure to perform, by Operator of its duties or obligations under this OEA with respect to the Operator Items. Until a court of competent jurisdiction holds that an Indemnified Party is negligent, a claim of negligence against an Indemnified Party will not limit Operator's duties under this Section, and Operator must defend, indemnify, and hold harmless such Indemnified Party against claims of negligence against that Indemnified Party. Upon a holding of negligence against such Indemnified Party, such Indemnified Party will be responsible for the claim or demand as determined by the court and must also reimburse Operator, in proportion to the negligent Indemnified Party's fault, for reasonable costs incurred by Operator in defending such claim of negligence against that Indemnified Party.

(C) The provisions of this Section 5.4.4 will survive termination of this OEA for so long as Operator is obligated to operate, maintain, repair, and replace the Operator Items.

5.4.5 <u>Terms of Insurance</u>. All insurance required by a Person pursuant to Section 5.4 must be written on an occurrence basis and procured from companies rated by Best's Rating Guide not less than A-/VII, and who are authorized to do business in the state where the Shopping Center is located. All insurance may be provided under (i) a combination of primary, excess, and/or umbrella policies, (ii) an individual policy covering the Shopping Center, (iii) a blanket policy or policies that includes other liabilities, properties, and locations of such Party, but 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 must also maintain excess liability coverage necessary to establish a total liability insurance limit of $20,000,000 in Constant Dollars, (iv) a plan of self-insurance but only if such Person is a Party and only in its capacity as a Party, provided that any Party so self-insuring notifies the other Parties of its intent to self-insure and must, upon request, deliver to such other Parties each calendar year a copy of its annual report that is audited by an independent certified public accountant that discloses that such Party has at least $250,000,000 in Constant Dollars of tangible net worth, or (v) a combination of any of the foregoing insurance programs. To the extent any deductible or self-insurance retention amount is permitted or allowed as a part of any insurance policy carried by a Party pursuant to this Section 5.4, such Party is deemed to be covering the amount thereof under an informal plan of self-insurance, but no deductible or self-insurance amount may exceed $50,000.00 in Constant Dollars unless such Party complies with the requirements regarding self-insurance pursuant to (iv) above. Each Party must furnish to any Party, (x) upon request, a certificate(s), evidence of coverage, or memorandum(s) of insurance, or statement of self-insurance, as the case may be, or the Web address where such insurance information is available, and (y) upon receipt by the receiving Party, any notice of cancellation of an insurance policy.

5.4.6 <u>Additional Insured</u>. Any insurance policy required under this OEA that requires another Person to be added as an "additional insured" must include the following provisions:

(A) Must provide for separation of insureds.

(B) Must provide for contractual liability coverage with respect to any indemnity obligation set forth in this Section 5.4.

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

ARTICLE VI – MISCELLANEOUS

6.1 Default.

6.1.1 Notice of Default. The occurrence of any one or more of the following events constitutes a material default and breach of this OEA by the non-performing Party (the "**Defaulting Party**"):

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

(B) The failure to observe or perform any of the covenants, conditions or obligations of this OEA, other than as described in (A) above, within thirty (30) days after the giving of a notice by another Party (the "**Non-Defaulting Party**") specifying the nature of the default claimed. Notwithstanding the foregoing, if such default cannot reasonably be cured within said 30-day period, then, provided the Defaulting Party notifies the Non-Defaulting Party, as the case may be, of such claimed inability to cure and the Defaulting Party begins to cure the default within said 30-day period and is diligently pursuing such cure, the Defaulting Party is entitled to additional time, not to exceed thirty (30) additional days, to cure such default.

6.1.2 Right to Cure Default. With respect to any default under Section 6.1.1(B), any Non-Defaulting Party may 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 following the expiration of any applicable cure period. If such default constitutes an emergency condition, the Defaulting Party is only entitled to such advance notice as is reasonably possible under the circumstances or, if necessary, no notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Non-Defaulting Party that issued such notice may enter upon the Parcel of the Defaulting Party (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. Each Party is responsible for the default of its Occupants. If any Non-Defaulting Party cures a default, the Defaulting Party must reimburse the Non-Defaulting Party for all costs incurred in connection with such curative action within ten (10) days after receipt of demand therefor, together with reasonable documentation supporting the expenditures made.

6.1.3 Right of Offset. If a Defaulting Party does not reimburse the Non-Defaulting Party as set forth above, in addition to any other remedy available, the Non-Defaulting Party may offset such amount owed against any current or future sum of money due the Defaulting Party until the full amount owed is recovered.

6.1.4 Right to Lien. The costs incurred by a Party to cure a default of the type set forth in Section 6.1.1(B) in accordance with Section 6.1.2, plus in either case Interest on all such sums, constitute a lien against the Defaulting Party's Parcel. Such lien will attach and take effect only upon recordation of a claim of lien in the office of the Recorder of the County of the State where the Shopping Center is located by the Party making such claim. The claim of lien must include all of the following:

(A) The name of the lien claimant.

(B) A statement concerning the basis for the claim of lien and identifying the lien claimant as a Non-Defaulting Party.

(C) An identification of the owner or reputed owner of the Parcel or interest therein against which the lien is claimed.

(D) A description of the Parcel against which the lien is claimed.

(E) A description of the work performed that has given rise to the claim of lien and a statement itemizing the amount thereof.

(F) A statement that the lien is claimed pursuant to the provisions of this OEA, reciting the date and recordation hereof. The notice must be duly verified, acknowledged, and contain a certificate that a copy thereof has been served upon the Party against whom the lien is claimed, by personal service or by mailing pursuant to Section 6.4 below. The lien so claimed will attach from the date of recordation solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law, including a suit in the nature of a suit to foreclose a mortgage/deed of trust or mechanic's lien under the applicable provisions of the law of the State where the Shopping Center is located. The lien will be subordinate to the lien of any mortgage or deed of trust that is of record before the claim of lien is placed of record.

6.1.5 Additional Remedies. Each Non-Defaulting Party may 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 may include the right to restrain by injunction any violation or threatened violation by another Party or Person of any of the terms, covenants, or conditions of this OEA, or to obtain a decree to compel performance of any such terms, covenants, or conditions because 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, at law, or in equity, are cumulative and not alternative, and the invocation of any such right or remedy does not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy. If a Party brings an action at law or in equity to enforce the terms and provisions of this OEA, the prevailing Party as determined by the Court in such action is entitled to recover reasonable attorneys' fees and court costs for all stages of litigation, including appellate proceedings, in addition to any remedy granted.

6.1.6 No Obligation to Cure. The right to cure the default of another Party does not:

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

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

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

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

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

(A) The highest rate permitted by law to be either paid on such type of obligation by the Party obligated to make such payment or charged by the Party to whom such payment is due, whichever is less.

(B) The prime rate, plus three percent (3%). As used herein, "prime rate" means the rate of interest published from time to time as the "Prime Rate" in the Wall Street Journal under the heading "Money Rates". If more than one such rate is published therein the prime rate will be the highest such rate. If such rate is no longer published in the Wall Street Journal, or is otherwise unavailable, the prime rate will be a substantially comparable index of short term loan interest rates charged by U.S. banks to corporate borrowers selected by the Approving Parties.

6.3 Estoppel Certificate.

(A) Terms. Each Party must, upon written request (which may not be more frequent than three (3) times during any calendar year) of any other Party, issue within thirty (30) days after receipt of such request to such Party, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge as of such date:

(1) Whether it knows of any default under this OEA by the requesting Party, and if there are known defaults, specifying the nature thereof in reasonable detail.

(2) Whether this OEA has been assigned, modified or amended in any way by it and if so, then stating the nature thereof in reasonable detail.

(3) Whether this OEA is in full force and effect.

(B) Issuance. Such estoppel certificate will act to estop the issuer from asserting a claim or defense against a bona fide encumbrancer or purchaser for value to the extent that such claim or defense is based upon facts known to the issuer as of the date of the estoppel certificate that are contrary to the facts contained therein, and such bona fide purchaser or encumbrancer has acted in reasonable reliance upon such estoppel certificate without knowledge of facts to the contrary. The issuance of an estoppel certificate does not subject the issuer to any liability for the negligent or inadvertent failure of the issuer to disclose correct and/or relevant information, nor does such issuance waive any rights of the issuer to perform an audit or obtain an adjustment with respect to Operator Costs for any year it is entitled to do so, or to challenge acts committed by other Parties for which approval by the Approving Parties was required but not sought or obtained.

6.4 Notices. All notices, demands, and requests (collectively, the "notice") required or permitted to be given under this OEA must be in writing and will be deemed to have been given as of the date such notice is (i) delivered to the Party intended, (ii) delivered to the then designated address of the Party intended, (iii) rejected at the then designated address of the Party intended, provided such notice was sent prepaid, or (iv) sent by nationally recognized overnight courier with delivery instructions for "next business day" service, or by United States certified mail, return receipt requested, postage prepaid and addressed to the then designated address of the Party intended. Upon at least ten (10) days prior notice, each Party may change its address to any other address within the United States of America. The initial addresses of the Parties are:

:

Developer: ____________________
____
____

6.5 Approval Rights.

6.5.1 Business Judgment. Except as otherwise specifically provided in this OEA, with respect to any matter where a Party has specifically been granted an approval right under this OEA, nothing contained in this OEA limits the right of a Party to exercise its business judgment in its sole discretion, whether or not "objectively" reasonable under the circumstances, and any such decision will not be deemed inconsistent with any covenant of good faith and fair dealing that may be implied by law to be part of this OEA. The Parties intend by this OEA to set forth their entire understanding with respect to the terms, covenants, conditions, and standards pursuant to which their obligations are to be judged and their performance measured.

6.5.2 Deemed Approval. Unless provision is made for a specific time period, each response to a request for an approval or consent required to be considered pursuant to this OEA must be given by the Party to whom directed within thirty (30) days after receipt thereof. Each disapproval must be in writing and, subject to Section 6.5.1, the reasons therefor must be clearly stated. If a response is not given within the required time period, the requested Party will be deemed to have given its approval if the original notice stated in capitalized letters that failure to respond within the applicable time period will be deemed an approval. Notwithstanding anything contained herein to the contrary, the provisions of this Section 6.5 do not apply in any manner or fashion to any request that requires an amendment to this OEA, such requests being governed solely by the provisions of Section 6.8.5.

6.5.3 Approving Parties. If the Approving Parties' approval is required for any matter under this OEA, such approval will only be effective if unanimous approval is given.

6.6 Condemnation. If any portion of the Shopping Center is condemned, or conveyed under threat of condemnation, the award will be paid to the Party owning the Parcel or the improvements taken, and the other Parties hereby waive and release any right to recover any value attributable to the property interest so taken, except that (i) if the taking includes improvements belonging to more than one (1) Party, such as Utility Lines or the Pylon Sign, the portion of the award allocable thereto must be used to relocate, replace, or restore such jointly owned improvements to a useful condition, and (ii) if the taking includes easement rights that are intended to extend beyond the term of this OEA, the portion of the award allocable to each such easement right must be paid to the respective grantees thereof. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this OEA that does not reduce or diminish the amount paid to the Party owning the Parcel or the improvement taken, then the owner of such other property interest may seek an award for the taking thereof. Except to the extent they burden the land taken, no easement or license set forth in this OEA will expire or terminate based solely upon such taking.

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

6.8 Construction and Interpretation.

6.8.1 Entire Agreement. This OEA and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof, and any prior negotiations, correspondence, memoranda or agreements are superseded in total hereby. 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 Parties, and such Parties are fully informed with respect thereto; no such Party will be deemed the scrivener of this OEA; and, based on the foregoing, the provisions of this OEA and the Exhibits hereto must be construed as a whole according to their common meaning and not strictly for or against any Party.

6.8.2 Terminology. Whenever required by the context of this OEA, (i) the singular includes the plural, and vice versa, and the masculine includes 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 must 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 are deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter. Whenever this OEA imposes an obligation upon a Party to perform an action (e.g. obtain a policy of insurance) such obligation is deemed satisfied if such Party has caused such obligation to be performed regardless of whether such Party has itself performed such action, but nothing in this provision relieves such Party from responsibility for complying or causing compliance with the terms and provisions of this OEA. The use of the words "and/or" means each of the items listed whether together, in partial combination or alone.

6.8.3 Captions. The captions preceding the text of each article and section of this OEA are included only for convenience of reference. Captions must 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.

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

6.8.5 Amendment. This OEA may be amended by, and only by, a written agreement signed by all of the then current Approving Parties; except no Party will be bound by any provision of an amendment that imposes any materially greater obligation on, or materially impairs any right of, a Party or its Parcel under this OEA unless such Party has joined in the execution of such amendment. No agreement to any amendment of this OEA will ever be required of any Occupant or Person other than the Parties. Since the submission of a proposed amendment to the Parties is not an item of "consent" or "approval", each Party may consider any proposed amendment to this OEA in its sole and absolute discretion without regard to reasonableness or timeliness.

6.8.6 Counterparts. This OEA, and any amendments thereto, may be executed in several counterparts, each of which will be deemed an original. The signatures may be executed and notarized on separate pages, and when attached to each other will constitute one (1) complete document.

6.9 Negation of Partnership. None of the terms or provisions of this OEA are meant to create a partnership between or among the Parties in their respective businesses or otherwise, nor cause them to be considered joint venturers or members of any joint enterprise. Each Party is considered a separate owner, and no Party may 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; No Third Party Beneficiaries. Nothing herein contained is meant to be a gift or dedication of any portion of the Shopping Center or of any Parcel 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 will inure to the benefit of any third-party Person, nor will any third-party Person be deemed to be a beneficiary of any of the provisions contained herein. Without limiting the generality of the foregoing, no Occupant or Person other than the Parties have any right to enforce any of the provisions of this OEA.

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

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

6.13 OEA Continues Notwithstanding Breach. No breach of this OEA (i) entitles any Party to cancel, rescind, or otherwise terminate this OEA, or (ii) defeats or renders invalid the lien of any mortgage or trust deed made in good faith and for value as to any part of the Shopping Center. However, such limitation does not affect in any manner any other rights or remedies that a Party may have hereunder by reason of any such breach.

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

6.15 No Waiver. The failure of any Party to insist upon strict performance of any of the terms, covenants, or conditions hereof is not a waiver of any rights or remedies that Party may have hereunder, at law, or in equity, and is not a waiver of any subsequent breach or default in any of such terms, covenants, or conditions. No waiver by any Party of any default under this OEA is effective or binding on such Party unless made in writing by such Party and no such waiver will be implied from any omission by a Party to take action in respect to such default. No express written waiver of any default affects any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One (1) or more written waivers of any default under any provision of this OEA are not a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this OEA. Except as otherwise expressly stated in this OEA, the failure of a Party to provide a Reconciliation or statement for amounts owed within a specified time does not act as a waiver of such Party's right to collect such amount upon the later issuance of the required Reconciliation or statement.

6.16 Authority. Each Party represents and warrants to the other Parties that the Person executing this OEA on behalf of said Party has been fully empowered to execute and deliver this document and that no further action is required on behalf of such Party to bind it to the terms and provisions herein contained.

6.17 Attorney's Fees. If any Party brings an action at law or in equity to interpret or enforce this OEA, the prevailing Party as determined by the Court in such action is entitled to recover reasonable attorney's fees and court costs for all stages of litigation, including appellate proceedings, in addition to any other remedy granted.

ARTICLE VII – TERM

7.1 Term of this OEA. This OEA is effective as of the date first above written and continues in full force and effect until 11:59 p.m. on April 30, 2099; except, (i) the easements referred to in Article II hereof that are specified as being perpetual or as continuing beyond the term of this OEA will continue in full force and effect as provided herein, (ii) the building covenants and restrictions set forth in Section 3.3.4 hereof will continue in full force and effect so long as an "unlimited area building" exists within the Unlimited Area Building Grouping or is being reconstructed, and (iii) as otherwise specifically provided in this OEA. Except as provided in the preceding sentence, upon the termination of this OEA, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this OEA will terminate and have no further force or effect, but termination of this OEA will 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 before the date of such termination.

ARTICLE VIII – EXCULPATION

8.1 Certain Limitations on Remedies. None of the Persons comprising a Party (whether partners, shareholders, officers, directors, members, managers, trustees, employees, beneficiaries or otherwise) are personally liable for any judgment obtained against a Party. Each Party must look solely to the interest in the Shopping Center of a Defaulting Party for recovery of damages for any breach of this OEA. The foregoing does not in any way impair, limit, or prejudice the right of a Party:

(A) Casualty Insurance and Condemnation Proceeds. To recover from a Party all damages and costs on account of, or in connection with, such Party's failure to apply or use casualty insurance or condemnation proceeds in accordance with the terms of this OEA.

(B) Hazardous Substances. To recover from a Party all damages and costs arising out of or in connection with, or on account of, a breach by such Party of its obligations under Section 5.1.3.

(C) Liability Insurance and Indemnity. To recover from a Party all damages and costs arising out of or in connection with, or on account of, either a breach by such Party of its obligations under Section 5.4, or a failure by such Party to satisfy any indemnity obligation required of it under this OEA.

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

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

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

ARTICLE IX – ADJACENT LAND

9.1 Adjacent Land. As of the Effective Date, certain land adjacent to the Shopping Center depicted on the Site Plan is neither owned nor leased by Developer but is subject to the [*Existing Declaration*][1] (the "**Adjacent Land**").

9.2 Enforcement of Declarations. To the extent either Existing Declaration, or any operating agreements, reciprocal easement agreements or similar instruments (collectively, "**Declarations**") are applicable to all or any portion of the Adjacent Land, Developer must enforce, all of Developer's rights under such Declarations with respect to the Adjacent Land so that the Adjacent Land is subject (to the extent enforceable under the Declarations) to the terms and provisions of this OEA applicable to the Developer Tract (by way of example only, if a Declaration allows Developer to prohibit all or any portion of the Adjacent Land from being used for purposes in violation of the Developer Tract restrictions set forth in Section 5.1.6 of this OEA, then Developer must enforce such right).

[1] Are there any existing agreements relating to this land?

9.3 Incorporation into OEA. In the event that Developer or any affiliate of Developer (i) acquires control (e.g. fee ownership, leasehold, etc.) of all or any portion of the Adjacent Land, such area shall automatically be deemed incorporated into the Developer Tract for all purposes under this OEA, (ii) the Adjacent Land is released from either Existing Declaration, or (iii) either Existing Declaration expires, terminates, or is no longer in effect, Developer agrees to subject such Adjacent Property to the OEA (provided doing so does not diminish any tenant's rights under an existing lease). Although such incorporation shall be automatic, Developer agrees (and has the unilateral right without joinder of any other Party or Person) to amend the description of the Shopping Center (which, less and except the Tract, is the Developer Tract) to evidence the consummation of the foregoing provision.

9.4 Further Assurances. Developer and its affiliates will take such actions, including execution and delivery of such documents, instruments, petitions and certifications as may become necessary or appropriate to carry out the terms, provisions and intent of this Article IX.

[*SIGNATURE PAGES FOLLOW*]

SIGNATURE PAGE
FOR
OPERATION AND EASEMENT AGREEMENT

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

DEVELOPER:

___________________________,
a _________________________

By: ___________________________

Name: _________________________

Title: __________________________

STATE OF ___________________)
) ss.
COUNTY OF _________________)

On this ______ day of ___________, 20__, before me, a Notary Public within and for said County, personally appeared _______________________________ to me personally known, being first by me duly sworn, did say that they are the _____________________________________ of ___________________________ and that said instrument was signed on behalf of said [company/corporation], and acknowledged said instrument to be the free act and deed of said [company/corporation].

____
Notary Public

My commission expires: ______________

SIGNATURE PAGE
FOR
OPERATION AND EASEMENT AGREEMENT

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

:

CORPORATION,

By: ___________________________

Name: ________________________

Title: _________________________

STATE)
) ss.
COUNTY)

On this ______ day of _____________, 20__, before me, a Notary Public within and for said County, personally appeared ________________________________ to me personally known, being first by me duly sworn, did say that they are the _______________________________________ of Corporation, a corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and acknowledged said instrument to be the free act and deed of said corporation.

____
Notary Public

My commission expires: _______________

EXHIBIT A
LEGAL DESCRIPTION OF TRACT

EXHIBIT B
LEGAL DESCRIPTION OF DEVELOPER TRACT

EXHIBIT C
DESIGN OF SIGNS

PYLON SIGN

EXHIBIT D-1
ARCHITECTURAL THEME

EXAMPLE ONLY – USE SITE SPECIFIC ELEVATION

EXHIBIT D-2
THEME SUBMITTALS

The constructing Party must make the Theme Submittals to the Approving Parties in full compliance with the following provisions:

A. All submittals must be made using the form Submittal Letter attached to the OEA as Exhibit D-3, without any deviation therefrom.

B. All submittals must be delivered on 8 ½" x 11" paper. All text (including on any schedules, elevations or plans) must be in at least eight (8) point font. If requested by the Approving Party, the constructing Party must also submit an electronic copy (in .pdf, 8 ½" x 11" format) to an email address provided by such Approving Party. An Approving Party may request that only an electronic copy be sent.

C. The submittals must include all of the following, all in reasonable detail (the "**Theme Submittals**"):

Location

__ A copy of the OEA's existing Site Plan ("**Exhibit X**") marked to show the location of the Building(s) for which elevation approval is requested

Elevations and Materials

__ Color elevations of all exposed sides of the Building(s) for which elevation approval is requested

__ Building and architectural feature heights for such Building(s)

__ Materials schedule for all exposed sides of such Building(s) (if materials used differ from those used in the remainder of the Shopping Center, this must be specifically noted and explained)

Site Plan, Signage, and Related Items

__ Any proposed signage for the proposed Occupant (including all Building, monument, and directional/way finding signage, and any pylon sign panels)

__ An engineered site layout plan showing the Building, and the immediate area around such Building, including (i) the parking spaces and the parking ratio (upon completion) for the Parcel upon which the Building(s) will be built, (ii) the Building Area (defined in the OEA) as depicted on Exhibit X, (iii) the construction staging area (if a business is then operating on the Tract), and (iv) Unlimited Area Building Grouping compliance (if applicable)

__ Statement or spreadsheet detailing the construction schedule for the Building

EXHIBIT D-3
FORM SUBMITTAL LETTER

_________________ _______________________________

Approving Party: ___________________________
Address: ______________________________
____
____

Re: Theme Submittals for ______________ Shopping Center
Operation and Easement Agreement dated _____________ between Corporation ("") and ____ ("Developer") ("OEA")
City: ___________, State: ___________ (T-_____)

The purpose of this letter is to comply with the Theme Submittals provisions of Section 3.3.2 of the OEA relating to the above-referenced Shopping Center. This letter relates only to approval of the elevation for the Building or Buildings detailed on the attached schedules for Theme purposes, and does not contain or constitute a request for any other approval, nor any waiver or amendment. The Party requesting approval represents to the Approving Party that the Theme Submittals described below do not depict any changes to, or violations of, the requirements of the OEA.

As required by Exhibit D-2 to the OEA, attached are the following (the "Theme Submittals"):

Schedule 1 A copy of the OEA's existing Site Plan ("Exhibit X") marked to show the location of the Building(s) for which elevation approval is requested.

Schedule 2 Color elevations of all exposed sides of the Building(s) for which elevation approval is requested (including Building and architectural feature heights), along with a materials schedule for all exposed sides of the Building that specifically notes and explains any variations from materials used in the remainder of the Shopping Center.

Schedule 3 Copies of (i) any proposed signage for the proposed Occupant (including all Building, monument, and directional/way finding signage, and any pylon sign panels), (ii) an engineered site layout plan showing the Building, and the immediate area around such Building, including the parking spaces and the parking ratio (upon completion) for the Parcel upon which the Building(s) will be built, the Building Area (defined in the OEA) as depicted on Exhibit X, construction staging area (if a business is operating on the Tract), and Unlimited Area Building Grouping compliance (if applicable), and (iii) a statement or spreadsheet detailing the construction schedule for the Building.

Please indicate the Approving Party's approval or disapproval by signing below, and return this letter to me. PURSUANT TO SECTION 6.5.2 OF THE OEA, IF THE APPROVING PARTY DOES NOT RESPOND WITHIN 30 DAYS AFTER RECEIPT OF THIS LETTER (AND RECEIPT OF ALL REQUIRED THEME SUBMITTALS), THE ATTACHED ELEVATION WILL BE DEEMED APPROVED AS TO COMPLIANCE WITH THE THEME.

Sincerely,

Requesting Party: ____________________________

By: ____

Its: ____

Elevation Approval/Disapproval

The Approving Party hereby:

__ APPROVES the attached elevations as to Theme only

__ APPROVES the attached elevations as to Theme only, with the following conditions:
____
____

__ DISAPPROVES the attached elevations because one or more items disclosed in the Theme Submittals do not comply with the following requirements of the OEA:

- __ the attached elevations do not comply with the Theme
- __ the following information required to be provided under the OEA was not provided:
  ____
  ____
- __ other reason(s): ____

APPROVING PARTY: _______________________

____
Print name: ____________________

Date: __________________________

EXHIBIT X
SITE PLAN