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BROWNSTEIN HYATT & FARBER  
410 SEVENTEENTH STREET 22ND FL  
DENVER, CO 80202-4437  
ATT: AARON HYATT

Arapahoe County Clerk & Recorder, Nancy A. Doty

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# OPERATION AND EASEMENT AGREEMENT

BETWEEN

TARGET CORPORATION,

GARTRELL ROAD, LLC

AND

SADDLE ROCK PC, LLC

FOR

SADDLE ROCK VILLAGE SHOPPING CENTER

AURORA, COLORADO

**OPERATION AND EASEMENT AGREEMENT  
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## EXHIBITS

- Exhibit A** Legal Description of Target Tract
- Exhibit B** Legal Description of Developer Tract
- Exhibit BB** Legal Description of Gartrell Tract
- Exhibit C** Design of Signs
- Exhibit D** Architectural Theme
- Exhibit E** Submission Guidelines
- Exhibit X** Site Plan

## OPERATION AND EASEMENT AGREEMENT

THIS OPERATION AND EASEMENT AGREEMENT ("OEA") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2004, between TARGET CORPORATION, a Minnesota corporation ("Target"), GARTRELL ROAD LLC, a Colorado limited liability company ("Gartrell") and SADDLE ROCK PC, LLC, a Colorado limited liability company ("Developer").

### WITNESSETH

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

WHEREAS, Developer is the owner of a certain tract of land legally described in Exhibit B attached hereto and identified as the "Developer Tract" on the Site Plan, which Developer Tract includes Lot 9 of the Outlots and "Tract A" (herein so called) all as shown on the Site Plan; and

WHEREAS, Gartrell is the owner of certain tracts of land legally described on Exhibit BB hereto, such tracts being Outlots and identified as Lots 1, 2, 4, 5, 7, 10 and 12 on the Site Plan, said tracts being sometimes collectively referred to herein as the "Gartrell Tract".

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

WHEREAS, the signatories hereto intend to develop and operate their respective Tracts in conjunction with each other as integral parts of a retail shopping complex, but not a planned 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" shall mean the Party designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this OEA. There shall be one (1) Approving Party representing the Developer Tract and one (1) Approving Party representing the Target Tract. Each Approving Party shall have absolute discretion to make the decisions and/or

give the approvals expressly designated to be made and/or given on behalf of the real estate represented by such position regardless of whether the Approving Party then owns all or less than all of the Developer Tract or the Target Tract, as the case may be. The Party designated as Approving Party for the Developer Tract shall have the right to assign such status to any other Party owning a Tract within the Developer Tract; provided, however, if such assignment is not made in writing, then the status of Approving Party for the Developer Tract shall automatically be deemed assigned to the Party acquiring the last portion of the Developer Tract owned by the Party then holding the status of Approving Party for the Developer Tract. The Party designated as Approving Party for the Target Tract shall have the right to assign such status to any other Party owning a Tract within the Target Tract; provided, however, if such assignment is not made in writing, then the status of Approving Party for the Target Tract shall automatically be deemed assigned to the Party acquiring the last portion of the Target Tract owned by the Party then holding the status of Approving Party for the Target Tract. Developer shall be the initial Approving Party for the Developer Tract; Target shall be the initial Approving Party for the Target Tract.

#### 1.2 Building

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

#### 1.3 Building Area

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

#### 1.4 Common Area

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

#### 1.5 Constant Dollars

“Constant Dollars” shall mean the value of the U.S. dollar to which such phrase refers, as adjusted from time to time. An adjustment shall occur on the 1st day of June of the sixth (6th) full calendar year following the date of this OEA, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The “Base Index Number” shall be the level of the Index for the year this OEA commences; the “Current Index Number” shall be the level of the Index for the year preceding the adjustment year; the “Index” shall be the Consumer Price Index for All Urban

Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Approving Parties shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

#### 1.6 Floor Area

“Floor Area” shall mean the aggregate of the actual number of square feet of space (i) contained on each floor within a Building, including any mezzanine or basement space, as measured from the exterior faces of the exterior walls or store front and/or the center line of any common walls; provided, however, that the following areas shall not be included in such calculation: space attributable to any multi-deck, platform, rack or other multi-level system used solely for the storage of merchandise which is located above ground floor; any space used solely for Building utilities or mechanical equipment and (ii) exceeding fifteen thousand (15,000) square feet within an Outside Sales Area. Within thirty (30) days after receipt of a request therefor, a Party shall certify to the requesting Party the amount of Floor Area applicable to such Party’s Tract. If any Party causes an as-built survey to be prepared with respect to any portion of the Shopping Center, such Party shall furnish a copy of such survey to the other Parties for informational purposes only.

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

#### 1.7 Governmental Authorities

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

#### 1.8 Governmental Requirements

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

1.9 Occupant

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

1.10 Operator

“Operator” shall mean the Person, if any, designated from time to time by the Approving Parties to maintain and operate the Common Area of the Shopping Center. The Person designated as Operator shall serve in such capacity until he resigns upon 60-days prior written notice, or is removed by the Approving Parties. The Approving Parties hereby designate Forest City Commercial Management, Inc., an Ohio corporation, as the initial Operator, and Forest City Commercial Management, Inc., hereby accepts such appointment. During any period an Operator is not designated, each Party shall maintain and operate its own Tract pursuant to Article IV hereof.

1.11 Outlot

“Outlot” shall mean each of Lots 1, 2, 4, 5, 7, 9, 10 and 12 and Tract A, as identified on the Site Plan and “Outlots” shall mean two (2) or more of such Lots and/or Tract A. All Outlots except the Gartrell Tract (which is comprised of Lots 1, 2, 4, 5, 7, 9, 10 and 12 of the Outlots) and Tract A are part of the Developer Tract. All of the terms and provisions of this OEA shall be applicable to each of the Outlots except as otherwise expressly set forth herein.

1.12 Outside Sales Area

“Outside Sales Area” shall mean those areas, if any, designated on the Site Plan which from time to time may be used for sales, display and/or storage purposes; provided, however, with respect to any Outside Sales Area located outside of a Building Area, the Parties acknowledge and agree that the actual location of such Outside Sales Area may vary from time to time, subject to the approval of the Approving Parties. During the period an Outside Sales Area is: (i) used for sales, display and/or storage purposes, such area shall not be considered part of the Common Area, and (ii) not used for sales, display and/or storage purposes, such area shall be considered part of the Common Area; provided, however, if the Outside Sales Area is located within a Building Area, such area may be used for the location of Buildings.

1.13 Party

“Party” shall mean each signatory hereto and its respective successors and assigns during the period of such Person’s fee ownership of any portion of the Shopping Center. A Party transferring all or any portion of its fee interest in the Shopping Center shall give notice to all other Parties and the Operator, if any, of such transfer and shall include in such notice at least the following information:

- (A) The name and address of the new Party;

- (B) A copy of the legal description of the portion of the Tract transferred by such Party; and
- (C) If the new Party is the designated Approving Party.

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

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

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

#### 1.14 Permittee

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

- (A) Exhibiting any placard, sign or notice.
- (B) Distributing any circular, handbill, placard or booklet.
- (C) Soliciting memberships or contributions for private, civic, public charitable or political purposes.



(D) Parading, picketing or demonstrating.

(E) Failing to follow regulations established by the Parties relating to the use and operation of the Shopping Center.

1.15 Person

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

1.16 Primary Building Area

“Primary Building Area” shall mean those specifically designated Building Areas on the Site Plan that collectively provide protection for an “unlimited area” building.

1.17 Restaurant

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

1.18 Tract

“Tract” shall mean that portion of the Shopping Center owned by a Party.

1.19 Utility Lines

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

## ARTICLE II - EASEMENTS

2.1 Ingress, Egress and Parking

2.1.1 During the term of this OEA, each Party hereby grants and conveys to each other Party for its use and for the use of its Permittees, in common with others entitled to use the same, a non-exclusive easement for the passage and parking of vehicles over and across the

parking and driveway areas of the grantor's Tract, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways and sidewalk areas of the grantor's Tract, as the same may from time to time be constructed and maintained for such use. Notwithstanding the foregoing, the Outlots shall not benefit from the parking easements granted in this Section 2.1. Each Outlot shall independently meet the parking requirements set forth in Section 3.2.5. The easement herein established shall be appurtenant to and for the benefit of each grantee's Tract, and shall be binding on, enforceable against and burden each grantor's Tract. Such easement rights shall be subject to the following reservations as well as the other applicable provisions contained in this OEA:

- (A) Each Party reserves the right to close-off any portion of its Tract for such reasonable period of time as may be legally necessary, in the opinion of such Party's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing-off any portion of its Tract, such Party shall give written notice to each other Party of its intention to do so, and shall attempt to coordinate such closing-off with each other Party so that no unreasonable interference with the passage of pedestrians or vehicles shall occur.
- (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 Tract.
- (C) Each Party reserves the right to temporarily erect or place barriers in and around areas on its Tract which are being constructed and/or repaired in order to insure either safety of Persons or protection of property.

2.1.2 In addition to the general 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) and (B), 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 Tract designated on the Site Plan as the Permanent Access Drive; such Permanent Access Drive to be approximately thirty 30 feet wide (except with respect to those portions of the Permanent Access Drive identified on the Site Plan as being only twenty-six feet (26') wide) (curb to curb), and to contain two (2) lanes, one in each direction. The easement herein established shall be appurtenant to and for the benefit of each grantee's Tract, and shall be binding on, enforceable against and burden each grantor's Tract. During the term of this OEA, each portion of the Permanent Access Drive shall be maintained in accordance with the provisions governing the maintenance of the parking and driveways on each grantor's Tract, and such Permanent Access Drive shall not be relocated without the approval of all grantees. After the termination of this OEA, any grantor may, at its expense, relocate the portion of the Permanent Access Drive located upon its Tract so long as the relocated portion remains reasonably direct and ties into/connects with the other portions of the Permanent Access Drive on

the immediately adjacent Tracts. Notice of such relocation shall be provided to each grantee at least thirty (30) days prior to relocation of such Permanent Access Drive.

After the termination of this OEA, that portion of the grantor's Tract on which the Permanent Access Drive is located shall be maintained in a safe, clean and good state of repair and condition by the grantor, at its sole cost and expense. In the event the grantor shall fail to perform the required maintenance, any grantee, after at least thirty (30) days prior notice to the grantor, shall have the right, but not the obligation, to cause such maintenance to be performed. If such curative measures are taken the grantor shall, upon demand, immediately pay to the grantee curing such default, all costs and expenses incurred with respect to such curative action. In addition, such grantee shall have the right to create a lien upon the grantor's Tract in order to secure payment of the amount expended by such grantee to perform such maintenance, plus Interest at the rate set forth in Section 6.2 hereof.

## 2.2 Utilities

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

- (A) Ground mounted electrical transformers;
- (B) As may be necessary during periods of construction, reconstruction, repair or temporary service;
- (C) As may be required by Governmental Authorities;
- (D) As may be required by the provider of such utility service; and
- (E) Fire hydrants.
- (F) The pond portion of the Retention Basin (as hereinafter defined).

At least thirty (30) days prior to utilizing the easement granted herein, the grantee shall provide the grantor with a written statement describing the need for such easement, shall identify the proposed location of the Utility Line, the nature of the service to be provided, the anticipated

commencement and completion dates for the work. Prior to commencing any work on a grantor's Tract, including any emergency work, the grantee shall provide to the grantor evidence of insurance coverage as required by Section 5.4.3.

2.2.2 Any Party electing to install a Separate Utility Line shall obtain all permits and approvals and shall pay all costs and expenses with respect to the initial construction and all subsequent maintenance, relocation or abandonment of the Separate Utility Line. The Separate Utility Line shall be maintained in a safe, clean and good state of repair and condition. The grantee shall perform such work in compliance with all Governmental Requirements, as quickly as possible and after normal business hours whenever possible. Except in the case of a maintenance emergency where such work may be initiated after reasonable notice, the grantee shall provide the grantor with at least fifteen (15) days prior notice before commencement of any work. The grantee of any Separate Utility Line agrees to defend, protect, indemnify and hold harmless the grantor from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the exercise of the right to install, maintain and operate the Separate Utility Line; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or the willful act or omission of the grantor.

2.2.3 Except as may otherwise be agreed, the Parties (the "Cooperating Parties") electing to install a Common Utility Line shall obtain all permits and approvals and shall pay all costs and expenses with respect to the initial construction thereof. Once constructed, Operator shall maintain, replace and/or relocate the Common Utility Line in a safe, clean and good state of repair and condition, and in compliance with all Governmental Requirements, as quickly as possible and after normal business hours whenever possible. If there is no Operator, then any Cooperating Party shall have the right to maintain, repair or replace the Common Utility Line without submission of a Budget or estimate of expenditures, except as hereinafter provided. If a Cooperating Party, in performing maintenance, repair or replacement of a Common Utility Line, is likely to incur costs of more than Twenty Thousand Dollars (\$20,000) in Constant Dollars for such work in any one instance (or series of related or repeated circumstances), such Cooperating Party shall first notify the other Cooperating Parties required to pay a portion of such costs, in which case the Cooperating Parties shall prepare a list of qualified bidders, shall seek competitive bids from the list of qualified bidders before performing the work and shall select the lowest, responsive qualified bidder to perform the work. If a list of bidders is not jointly prepared within fifteen (15) days of the request for bidders, the Cooperating Party desiring to perform the work may prepare the list (containing not less than three bidders) for such other Cooperating Parties' approval, which approval shall not be unreasonably withheld, from which bids will be solicited. After a Cooperating Party has incurred any costs for maintaining, repairing or replacing a Common Utility Line, it may send a statement of such costs, increased by an amount equal to the Administration Fee (defined in Section 4.2.2), together with a copy of any invoice reflecting a charge exceeding \$500.00 to each Cooperating Party benefiting from such Common Utility Line. Each Cooperating Party shall pay within thirty (30) days after receipt of the statement of costs either its allocable share of such costs as agreed upon when the Common Utility Line was installed, or if no separate cost sharing agreement was made, then in accordance

with the sharing of Common Area Maintenance Costs. Except in the case of a maintenance emergency where such work may be initiated after reasonable notice, the grantor shall be provided with at least fifteen (15) days prior notice before commencement of any work.

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

- (A) The grades and the surface water drainage/retention system for the Shopping Center shall be initially constructed in strict conformance with the plans and specifications approved by the Approving Parties, including without limitation that certain drainage/retention pond located on Tract A of the Developer Tract and identified on the Site Plan as "Retention Basin" and the related facilities for such basin (collectively the "Retention Basin"); and
- (B) No Party shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Tract if such alteration would materially increase the flow of surface water onto an adjacent Tract either within the aggregate or by directing the flow of surface water to a limited area. All surface water collection, retention and distribution facilities, including without limitation the Retention Basin, shall be deemed a Common Utility Line.

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

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

- (A) Shall not be commenced during the months of November, December or January;
- (B) Shall not interfere with or diminish the utility service to the grantee during the grantee's business hours; and if an electrical line/computer line is being relocated, then the grantor and grantee shall coordinate such interruption to eliminate any detrimental effects;
- (C) Shall not reduce or unreasonably impair the usefulness or function of such Utility Line;

- (D) Shall be performed without cost or expense to the grantee;
- (E) Shall be completed using materials and design standards which equal or exceed those originally used; and
- (F) Shall have been approved by the provider of such utility service and the appropriate Governmental Authorities.

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

### 2.3 Construction, Maintenance and Reconstruction

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

2.3.2 In the event a constructing Party (the "Constructing Party") determines that it is necessary to place underground piers, footings and/or foundations ("Subsurface Construction Elements") across the boundary line of its Tract, the Constructing Party shall advise the Party owning the adjacent Tract (the "Adjacent Party") of the Constructing Party's construction requirements and shall provide plans and specifications relating thereto to the Adjacent Party, including proposed construction techniques for the Subsurface Construction Elements. Each Adjacent Party hereby grants and conveys to each Constructing Party for the benefit of its Tract 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 Tract not theretofore occupied by any then existing structure, for the installation, maintenance and replacement of such Subsurface Construction Elements; provided, however, that the Constructing Party shall have no right to use such easement if the Adjacent Party is able to provide the Constructing Party a reasonable alternative construction method for the placement of the Subsurface Construction Elements entirely on the Constructing Party's Tract.

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

Construction Element shall remain in place for the benefit of the other Building utilizing the same.

2.3.3 The easements established under Sections 2.3.1 and 2.3.2 shall be appurtenant to and for the benefit of each grantee's Tract, and shall be binding on, enforceable against and burden each grantor's Tract. Notwithstanding such easement grant, nothing herein shall diminish or waive the right of a grantor to recover damages resulting from a grantee's failure to construct its Building within its Tract in the case of Section 2.3.1, or within the easement area limits in the case of Section 2.3.2. Such easements in each instance shall:

- (A) Continue in effect for the term of this OEA and thereafter for so long as the Building utilizing the easement area exists (including a reasonable period to permit reconstruction or replacement of such Building if the same shall be destroyed, damaged or demolished).
- (B) 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 With respect to Buildings constructed along the common boundary line between Tracts, nothing herein shall be deemed to create or establish:

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

## 2.4 Sign Easement

### 2.4.1 Intentionally Deleted

2.4.2 Developer hereby grants and conveys to Target, its successors and assigns as the owner of the Target Tract, a perpetual easement for the right and privilege to place or affix identification panel(s) in the position (both sides) specified in Exhibit C to the sign structures to be located on those portions of the Developer Tract identified on the Site Plan as "Center Pylon Sign Area" (herein so called) and "Center Monument Sign Area" (herein so called); the easement grant shall include reasonable access over, across and upon the Developer Tract to permit such panel(s) to be installed, replaced, maintained and operated. Developer reserves the right to grant additional panel easements, subject to the restrictions set forth in Section 5.3.1, for the remaining panel areas specified on Exhibit C, and each such additional grant shall recognize the easement right and privileges granted herein to Target, and shall specify which panel space on the respective sign structures is the subject of the easement grant. A copy of the recorded easement shall be delivered to Target and each other Person holding a prior panel easement with respect to each such sign structure. In the event a sign structure as shown on the Site Plan is not in place within the Center Pylon Sign Area or the Center Monument Sign Area during the term of the

OEA, or at any time thereafter, then the aforesaid easement grant shall also include the right for Target to construct, reconstruct, replace, maintain and operate a sign structure within the Center Pylon Sign Area and the Center Monument Sign Area where no such sign structure has been located, together with reasonable access over, under, upon, through and across the Developer Tract to install, replace, maintain, repair and operate a Separate Utility Line pursuant to the terms and provisions set forth in Section 2.2 above in order to provide such sign structure(s) and panels with power. If Target elects to construct any such sign structures, the design thereof shall be as specified on Exhibit C, or another design approved either during the term of the OEA by the Approving Parties and the Parties entitled to place panels on such sign structures pursuant to Section 5.3.1, or following the expiration of the OEA, by the Persons entitled to place panels on such sign structures pursuant to easement grants. The foregoing easement, together with all rights and privileges specified, shall be for the benefit of the Target Tract and shall be binding on, enforceable against and burden the Developer Tract. Target shall have the right to release each easement granted to it hereunder, and upon such release Target shall remove its panel(s) and thereafter have no further rights, duties or responsibilities with respect to the sign structure for which the easement has been released.

During the term of this OEA, the right of other Occupants to place panels on the sign structures, the maintenance and/or replacement of the sign structures, and any relocation of the sign structures shall be governed by the provisions of Section 5.3.1 hereof. Developer (or Target if it has constructed the sign structure(s)) shall be entitled to receive the portion of any condemnation award relating to the condemned sign structure, including any relocation benefits, and the Person receiving the award shall cause a new sign structure to be constructed in accordance with Exhibit C in a replacement location acceptable to the Approving Parties. If the award received for the sign structure is less than the cost to replace the sign structure, the Parties entitled to place panels on the sign structure shall pay the deficiency based on the panel area allocated to each pursuant to Exhibit C, or the then approved design, even if such panel area is not used. The award (whether paid separately or as part of a lump sum) attributable to each panel taken shall belong to the owner thereof.

Following the termination of this OEA, the maintenance and/or replacement of each sign structure shall be performed by a Person designated by the majority of the grantees entitled to place panels on the sign structure, and all maintenance (including cost of providing power) and/or replacement costs shall be separately billed to the grantees based on the panel area allocated to each, even if such panel area is not used. Each Person attaching a panel to the sign structure(s) shall cause such panel (including any backlit lighting) to be maintained at its sole cost and expense in a safe condition and in a good state of repair and pursuant to Governmental Regulations. In the event the area upon which a sign structure is located is taken by condemnation, the owner of the land upon which the sign structure is located shall designate a replacement area with comparable visibility as close to the original location as is reasonably possible. The Person then maintaining the sign structure shall be entitled to receive the portion of the condemnation award relating to the sign structure taken, including any relocation benefits, and such Person shall cause a new sign structure to be constructed in the replacement location in accordance with the design criteria set forth in Exhibit C, or any other design criteria approved by the grantees entitled to place panels on the sign structure pursuant to the easement grant. If the



award received for the sign structure is less than the cost to replace the sign structure, the grantees entitled to place panels on the sign structure shall pay the deficiency based on the panel area allocated to each pursuant to the easement grants, even if such panel area is not used. The award (whether paid separately or as part of a lump sum) attributable to each panel taken shall belong to the owner thereof.

## 2.5 Restriction

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

## 2.6 Containment Loop

Each Party hereby grants and conveys to each other Party a perpetual easement in, to, over, under, along and across those portions of the grantor's Tract identified on the Site Plan as the "Containment Loop" (herein so called) for the purpose of the installation, operation, use, maintenance, repair, replacement and removal of an underground, electronic system designed and to be used for the electronic containment of shopping carts within the perimeter of the Containment Loop (the "Containment System"). The Containment Loop easement area shall be no wider than five (5) feet on each side of the centerline of the installed Containment System. Developer shall install the Containment System within the Containment Loop, shall obtain all permits and approvals for same, and shall pay all costs and expenses with respect to the initial construction thereof. Once constructed, Operator shall operate, maintain, replace and repair (and/or relocate subject to the conditions hereof) the Containment System in a safe, clean and good state of repair and condition, and in compliance with all Governmental Requirements, as quickly as possible and after normal business hours whenever possible. In no event shall the Containment Loop or the Containment System be relocated (during the term of this OEA or afterwards) without the prior written approval of the Approving Parties and the Containment Parties (as hereinafter defined). If there is no Operator (including after the term of this OEA), then the owner of the Target Tract (or the owner of any other Tract with an Occupant using the Containment System in the event the owner of the Target Tract is no longer using the Containment System) shall have the right to operate, maintain, repair, or replace (or relocate subject to the conditions hereof) the Containment System without submission of a Budget or estimate of expenditures, except as hereinafter provided. If a Party who is entitled to maintain the Containment System (a "Maintaining Party") or the Operator, in performing maintenance, repair or replacement of the Containment System, is likely to incur costs of more than Ten Thousand Dollars (\$10,000) in Constant Dollars for such work in any one instance (or series of related or repeated circumstances), such Maintaining Party shall first notify all Parties then currently required to share the costs of operation and maintenance of the Containment System, (the "Containment Parties"), in which case the Containment Parties shall prepare a list of qualified bidders, shall seek competitive bids from the list of qualified bidders before performing the work and shall select the lowest, responsive qualified bidder to perform the work. If a list of bidders is not jointly prepared within fifteen (15) days of the request for bidders, the Maintaining Party desiring to perform the work or Operator, as applicable, may prepare the list (containing not less than three bidders) for such other Containment Parties' approval, which approval shall

not be unreasonably withheld, from which bids will be solicited. After a Maintaining Party or Operator, as applicable, has incurred any costs for maintaining, repairing or replacing the Containment System it may send a statement of such costs, increased by an amount equal to the Administration Fee (defined in Section 4.2.2), together with a copy of any invoice reflecting a charge exceeding \$500.00 to each Containment Party. Each Containment Party shall share equally the costs of operating, maintaining, repairing and replacing (and/or relocating subject to the conditions hereof) the Containment System (the "Containment Costs") and shall pay such costs within thirty (30) days after receipt of the statement of costs. The Containment Costs shall be shared equally by the Containment Parties. Notwithstanding the preceding, the Parties acknowledge that Target is the only Containment Party as of the date hereof, and until there are other Containment Parties, Target shall be responsible for one hundred percent (100%) of the Containment Costs.

Except in the case of a maintenance emergency where such work may be initiated after reasonable notice, the grantor shall be provided with at least fifteen (15) days prior notice before commencement of any work within the Containment Loop easement area.

### ARTICLE III - CONSTRUCTION

#### 3.1 General Requirements

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

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

- (A) Cause any unreasonable increase in the cost of constructing improvements upon another Party's Tract.
- (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 Tract to be in violation of any Governmental Requirements.

3.1.3 Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims and demands, including any action or proceeding brought

thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys fees and cost of suit, arising out of or resulting from any construction activities performed or authorized by such indemnifying Party; provided, however, that the foregoing shall not be applicable to either events or circumstances caused by the negligence or willful act or omission of such indemnified Party, its licensees, concessionaires, agents, servants, employees, or anyone claiming by, through, or under any of them, or claims covered by the release set forth in Section 5.4.4.

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

3.1.5 Each Party hereby grants and conveys to each other Party and to such Party's contractors, materialmen and laborers a temporary license for access and/or use over and across the Common Area of the grantor's Tract as shall be reasonably necessary for the grantee to construct and/or maintain improvements upon the grantee's Tract; provided, however, that such license shall be in effect only during such periods of time when actual construction and/or maintenance is being performed and provided further that the use of such license shall not unreasonably interfere with the use and operation of the Common Area by the other Parties or their Permittees. Prior to exercising the rights granted herein, the grantee shall first provide the grantor with a written statement describing the need for such license and shall identify the area of use. Each grantee physically using a portion of the grantor's Tract in connection with the construction and/or maintenance of the grantee's Tract shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by Section 5.4.3, shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean the area, and restore and/or repair the affected portion of the grantor's Tract to a condition which is equal to or better than the condition which existed prior to the commencement of such work. Notwithstanding the foregoing, in the event a dispute exists between the contractors, laborers, suppliers and/or others

connected with such construction activities, each Party shall have the right to prohibit the contractors, laborers, suppliers and/or others working for another Party from using the Common Area on its Tract.

### 3.2 Common Area

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

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

- (A) 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 footcandle at the perimeter of the parking areas.

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

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

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

3.2.4 Utility Lines that are placed underground shall be at depths designated by consultants approved by the Approving Parties. If surface water retention and/or detention areas, including without limitation the Retention Basin, are located outside of the general parking areas, such retention and/or detention areas shall be fenced or otherwise secured to impede public access thereto.

3.2.5 The parking area on the Target Tract, and on each separate Tract and/or legally subdivided parcel of land (regardless of ownership) comprising the Developer Tract (including each Outlot) shall 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:

- (A) Four and seven tenths (4.7) parking spaces for each one thousand (1,000) square feet of Floor Area, exclusive of Restaurant parking requirements set forth below; provided, however, that compact car parking spaces, which may not exceed twenty percent (20%) of total parking spaces, shall be located only in the areas, if any, designated on the Site Plan.
- (B) If a business use contains a drive-up unit (such as a remote banking teller or food ordering/dispensing facility), then there shall also be created space for stacking not less than five (5) automobiles for each drive-up unit.
- (C) For each single Restaurant which has less than five thousand (5,000) square feet of Floor Area, then ten (10) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use.
- (D) For each single Restaurant which has at least five thousand (5,000) square feet of Floor Area, but less than seven thousand (7,000) square feet of Floor Area, then fifteen (15) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use.
- (E) For each single Restaurant which has seven thousand (7,000) square feet or more of Floor Area, then twenty (20) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use.
- (F) Notwithstanding anything to the contrary contained in this Section 3.2.5, for any Restaurant located on the Outlots identified on the Site Plan as Lot 1, Lot 2, and Lot 12, the parking area on each such Outlot for any such Restaurant shall only be required to contain the number of parking spaces required by all applicable Governmental Requirements.

If an Occupant operates a Restaurant incidental to its primary business purpose, then so long as such incidental operation continues, the portion of the Floor Area occupied by such

Restaurant shall be excluded from the application of (C), (D) and (E) above. For the purpose of this clause only, a Restaurant shall be an "incidental operation" if it occupies less than seven percent (7%) of the Occupant's Floor Area and does not have a separate customer entry/exit door to the outside of the Building. In the event an Occupant utilizes Floor Area for Restaurant and other purposes, only the portion of Floor Area allocated for Restaurant purposes shall be subject to the increased parking requirements set forth above.

In the event of a condemnation of part of a Tract or a sale or transfer in lieu thereof that reduces the number of usable parking spaces on such Tract below that which is required herein, the Party whose Tract is so affected shall use its 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 shall not be deemed in default hereunder, but such Party shall not be permitted to expand the amount of Floor Area located on its Tract. If such Floor Area is thereafter reduced other than by casualty, then the Floor Area on such Tract may not subsequently be increased unless the parking requirements set forth above are satisfied.

Temporary unavailability of parking spaces caused by uses or promotions permitted under this OEA shall not result in or be deemed a violation of this Section 3.2.5.

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

- (A) The accessibility of such Common Area for pedestrian and vehicular traffic (as it relates to the remainder of the Shopping Center) is not unreasonably restricted or hindered, and all parking stalls and rows and vehicular traffic lanes shall remain generally as shown on the Site Plan.
- (B) There shall be maintained at all times within such Common Area a sufficient number of vehicular parking spaces to meet the parking requirements set forth in Section 3.2.5; provided, however, that no more than two percent (2%) of the parking spaces depicted on the Site Plan for such Tract shall be eliminated; and provided further that for purposes of this subsection (B), each Outlot shall be considered a separate Tract.
- (C) No Governmental Requirements shall be violated as a result of such action; any and all Governmental Requirements applicable to such modifications shall be satisfied by the Party performing the same; and such

action shall not result in any other Party being in violation of any Governmental Requirements.

- (D) No change shall be made in the access points between the Common Area and the adjacent public streets; provided, however, that additional access points may be created with the approval of the Approving Parties.
- (E) At least thirty (30) days prior to making any such change, modification or alteration, the Party desiring to do such work shall deliver to each Approving Party copies of the plans therefor, and provided further that such work shall not occur during the months of October, November, December or January.

The provisions of this Section 3.2.6 do not apply to any changes, modifications or alterations of Common Area located within Building Areas which result from or arise out of the construction, expansion or maintenance of Buildings or Outside Sales Areas.

### 3.3 Building Improvements

3.3.1 Building(s) shall only be located within the Building Areas designated on the Site Plan. While it is acknowledged and agreed that no Party shall have an obligation to commence construction of any Building on its Tract, each Party agrees that once it has commenced construction of a Building, such Building shall be completed within a reasonable time.

If the number of "square feet" of building space within the Shopping Center is restricted by Governmental Requirements, the Parties hereby allocate the permitted square footage as follows: (i) to the Target Tract, the number of square feet necessary to accommodate 175,500 square feet of Floor Area, plus any Outdoor Sales Area; and (ii) to the Developer Tract, the balance of such permitted square footage. The Parties understand that the calculation of Building sizes shown on the Site Plan is based on the definition of "Floor Area" set forth in this OEA, and further that such term is unique to this OEA and is not intended to mirror the definition of "square feet" set forth in codes/regulations established by the local Governmental Authorities.

3.3.2 The Approving Parties have agreed upon an architecturally compatible theme for the exterior of all Buildings to be constructed, placed or located within the Shopping Center, as represented by the Building elevations (the "Theme") attached hereto as Exhibit D. Each Party agrees that any Building located on its Tract shall comply with such Theme, shall not have backlit lighting for any awning or canopy forming a part thereof, and shall comply with the other requirements of the OEA. In order to insure compliance with such Theme, each Party shall, at least thirty (30) days prior to the commencement of any work on its Tract, submit to the Approving Parties for approval detailed plans ("Plans") as required by Exhibit E attached hereto covering the initial construction of each Building and any additions, remodeling, reconstruction or other alteration thereto which changes the exterior thereof; provided, however, the Approving

Parties waive the requirement for the submission of Plans for the initial Building to be constructed on the Target Tract if such Building reflects a prototype "Target" retail store. If an Approving Party should reject the Plans for not complying with the Theme, the submitting Party and the Approving Parties shall mutually consult to establish approved Plans for the proposed work. The Approving Parties shall not withhold approval of, or recommend changes in the Plans if the plans conform to the Theme and other requirements of the OEA. In no event shall an Approving Party require any other Party to utilize design standards superior to those utilized by the Approving Party in the construction of any Buildings on its Tract. Approval of Plans by the Approving Parties shall not constitute assumption of responsibility for the accuracy, sufficiency or propriety thereof, nor shall such approval constitute a representation or warranty that the Plans comply with Governmental Requirements. No material deviation shall be made from the approved Plans.

3.3.3 The Parties hereby specifically consent to the placement of Buildings along their respective common boundary lines, and each Party agrees to support any request by another Party for a side-yard or setback variance if the same is required in order to accommodate such construction. The front wall of any Building to be constructed immediately adjacent to the Building on the Target Tract shall be set back at least two (2) feet from the front wall of the Building on the Target Tract. The second Party to construct a Building along a common boundary line shall:

- (A) Cause such construction to be completed in such a manner that the improvements on the adjoining Tract are not damaged, and so that the wall, roof, foundation or other structure portion of one Building does not receive support from, nor apply pressure to the other Building.
- (B) Undertake and assume the obligation of completing and maintaining the nominal attachment (flashing and seal) of its Building to that of the existing Building on the adjoining Tract, it being the intent of the Parties to establish and maintain the appearance of one (1) continuous Building complex.

Along the common boundary line between the Developer Tract and the Target Tract, the separation of Building walls shall be no less than two (2) inches. Target agrees to use reasonable efforts to locate its Building wall at least three (3) inches from the common boundary line, but in no event more than three (3) inches therefrom. Developer agrees to use reasonable efforts to locate its Building wall at least two (2) inches from the common boundary line, but in no event more than three (3) inches therefrom.

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



- (A) No Building shall be constructed within sixty (60) feet of the Building Area on an adjoining Tract unless such Building, hereinafter referred to as the "Adjacent Building," shall be located immediately adjacent to the common boundary line and is attached to the Building, if any, on the adjacent Tract in accordance with Section 3.3.3.
- (B) If an Adjacent Building exists, then no Building shall be located within sixty (60) feet of the Adjacent Building unless such Building is attached to the Adjacent Building in accordance with Section 3.3; the Adjacent Building and all other Buildings on the Tract that are attached to the Adjacent Building and to each other are hereinafter referred to as the "Building Group".
- (C) Any Building that is not part of the Building Group shall be located at least sixty (60) feet distant from the Building Group.
- (D) The Adjacent Building or the Building Group, as the case may be, shall comply with the building code requirements applicable to an "unlimited area" building, including without limitation the installation of an approved sprinkler system for fire protection.

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

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

3.3.5 No Building shall exceed one (1) story, nor the following height restrictions:

- (A) On the Target Tract - 37 feet, 4 inches
- (B) On the Developer Tract - 35 feet
- (C) On each Outlot - 30 feet

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

#### 3.4 Liens

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

### ARTICLE IV - MAINTENANCE AND REPAIR

#### 4.1 Utility Lines

Utility Lines shall be maintained as provided in Section 2.2.

#### 4.2 Common Area

4.2.1 Subject to the joint maintenance provision set forth in Section 4.2.2, each Party shall cause to be operated and maintained including any replacement due to ordinary wear and tear, at its sole cost and expense, the Common Area on its Tract in a sightly, safe condition and good state of repair. The unimproved Common Area shall be mowed and kept litter-free. The minimum standard of maintenance for the improved Common Area shall be comparable to the standard of maintenance followed in other first class retail developments of comparable size in the Aurora/Denver metropolitan area; notwithstanding the foregoing, however, the Common

Area shall be operated and maintained in compliance with all applicable Governmental Requirements, and the provisions of this OEA. All Common Area improvements shall be repaired or replaced with materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony of the Shopping Center as a whole. Such operation, maintenance and repair obligation shall include but not be limited to the following:

- (A) Drive and Parking Areas. Maintaining all paved surfaces and curbs in a smooth and evenly covered condition, including, without limitation, replacement of base, skin patch, resurfacing and resealing. (For the purpose of this Section, an overlay of the drives and parking areas shall be considered a maintenance item.)
- (B) Debris and Refuse. Periodically removing papers, debris, filth, refuse, ice and snow (2" on surface), including vacuuming and broom-sweeping at least 5 times per week, but in any event to the extent necessary to keep the Common Area in a first-class, clean and orderly condition; provided, however, that trash and/or garbage removal from a Party's Building shall not be considered a Common Area Maintenance Cost (defined below) since such removal obligation is covered by Section 4.3.1. All sweeping shall be at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Area by Permittees.
- (C) Directional Signs and Markers. Maintaining, cleaning and replacing any appropriate directional, stop or handicapped parking signs or markers; restriping parking lots and drive lanes at least every 24 months on the Target Tract (and when needed on the balance of the Common Area, but in no event longer than 36 months), but in any event as necessary to maintain parking space designation and traffic direction; and keeping clearly marked fire lanes, loading zones, no parking areas and pedestrian crosswalks.
- (D) Lighting. Maintaining, cleaning and replacing Common Area lighting facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers, illuminating the Common Area pursuant to Section 5.2.1; provided however, exterior Building lighting fixtures, including any lighting fixtures associated with a canopy or other architectural feature forming a part of such Building, shall be considered a part of such Building, and the maintenance and replacement of such fixtures, and the cost of illumination, shall be the obligation of the Party upon whose Tract such fixtures are located.
- (E) Landscaping. Maintaining and replacing all landscape plantings, trees and shrubs in an attractive and thriving condition, trimmed and weed-free;

maintaining and replacing landscape planters, including those adjacent to exterior walls of Buildings; providing water for landscape irrigation through a properly maintained system, including performing any seasonal (start up and/or winterization) maintenance thereto, and any modifications to such system to satisfy governmental water allocation or emergency requirements. If any Party or Occupant requires "special" landscaping (i.e. flowers, shrubs, trees, etc.) beyond the standard landscaping requirements for the remainder of the Shopping Center, or if landscaping additions/modifications are required as a result of a Building addition, expansion or remodel, the cost of installation, replacement and maintenance of such special or required landscaping shall be borne solely by such Party or Occupant, as the case may be, and shall not be included in Common Area Maintenance Costs.

- (F) Obstructions. Keeping the Common Area free from any obstructions, including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this OEA.
- (G) Sidewalks. Maintaining, cleaning and replacing sidewalks, including those adjacent and contiguous to Buildings. Sidewalks shall be steam-cleaned at least monthly and pressure washed periodically in the interim, shall be swept at appropriate intervals during such time as shall not interfere with the conduct of business or use of the Common Area, and shall be cleared of ice or snow (after each snow fall of 2" or more).
- (H) Security Measures. Providing security measures, including personnel, for the Common Area, if reasonably required.
- (I) Traffic. Supervising traffic at entrances and exits to the Tract and within the Tract as conditions reasonably require in order to maintain an orderly and proper traffic flow.
- (J) Retention Basin. Maintaining the Retention Basin and all related facilities, including without limitation, underground lines and catch-basins.

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

4.2.2 Prior to Operator commencing any operation and/or maintenance duties, Operator shall obtain, and thereafter maintain during the period of such operation and/or maintenance performance, the insurance required by Section 5.4.4. Commencing on the earlier

of thirty (30) days prior to the date specified by the Occupant of the Target Tract that it intends to open for business with the general public, or the date the Approving Parties designate in writing, Operator shall operate and maintain the Common Area of the Shopping Center in accordance with the requirements of Section 4.2.1., exclusive of any replacement of "capital" improvements due to ordinary wear and tear, which replacement shall be the responsibility of the Party owning the affected Tract. At least fourteen (14) days prior to any major work in the parking lots or drive areas, Operator shall advise the Approving Parties of the scope thereof, and the proposed commencement and completion dates; except in an emergency, such major work shall not be performed between October and the following January. Operator shall expend only such funds as are reasonably necessary for the operation and maintenance of the Common Area, including the performance of other obligations imposed on Operator pursuant to Section 5.3.1 hereof, and shall promptly pay such costs ("Common Area Maintenance Costs") when incurred. Within thirty (30) days following the commencement of such maintenance and operation, Operator shall provide the Approving Parties an estimated budget for the balance of the current calendar year containing the information required by Section 4.2.3, and each Party agrees to pay its share of Common Area Maintenance Costs actually incurred during the balance of such year, plus the Administration Fee (defined below), in accordance with Section 4.2.4. Operator may hire companies affiliated with it to perform the maintenance and operation of the Common Area, but only if the rates charged by such affiliates are competitive with those of other companies furnishing similar services in the metropolitan area in which the Shopping Center is located, it being agreed that this provision shall be construed strictly against Operator. Each Party hereby grants to Operator, its agents, contractors and employees, a license to enter upon such Party's Tract to discharge Operator's duties to operate, maintain and repair the Common Area. For the purpose of this OEA, Common Area Maintenance Costs shall not include:

- (A) 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.
- (B) Any charge for electricity for Building accent lighting or Building security lighting. Also, any charge for electricity to a Party that separately pays the cost of power to illuminate the Common Area on its Tract.
- (C) Any charge for water to a Party that separately pays the cost of water for irrigating the landscaping upon its Tract.
- (D) Intentionally deleted.
- (E) Any costs from construction, maintenance or replacement of a Party's Building(s); any cost to remove trash and/or garbage from a Building, such removal being the obligation and responsibility of the Party owning the Building.

- (F) Any costs resulting from or arising out of the repair or replacement of items covered by warranties or guaranties including, but not limited to, such as site improvements, signs, trees, plants or other landscaping.
- (G) Real property taxes and assessments on the Common Area, including without limitation, the Retention Basin.
- (H) Operator's profit, administrative and overhead costs including, but not limited to: office space, equipment and utilities; legal, insurance, accounting and administrative service; Operator's personnel who are not permanently located at the Shopping Center; premiums relating to bonding over mechanic's liens; but shall include costs relating to hiring, training, screening, drug testing and/or background checks of personnel.
- (I) Intentionally deleted.
- (J) Entertainment, transportation, meals and lodging of anyone.
- (K) Any fee, assessment or charge to a Party that separately pays such kind of imposition for fire hydrants located on its Tract.

In lieu of Operator's profit, administrative, indirect and overhead costs, Operator shall be permitted to charge an amount ("Administration Fee") computed by multiplying the Common Area Maintenance Costs (exclusive of utility charges, and the portion of single purpose expenditures that exceed \$25,000) by five percent (5%). If any of Operator's personnel at the Shopping Center perform services, functions or tasks in addition to Common Area duties, then the cost of such personnel shall be equitably allocated according to time spent performing such duties.

4.2.3 Operator shall, at least ninety (90) days prior to the beginning of each calendar year during the term of this OEA, submit to the Approving Parties an estimated budget ("Budget") for the Common Area Maintenance Costs and the Administration Fee for operating and maintaining the Common Area for the ensuing calendar year. In the event an Approving Party believes the charge for a particular function is excessive, such Approving Party shall notify Operator of such belief, and thereupon Operator shall obtain no fewer than two (2) competitive bids for such function. Unless the existing provider's cost is lower, the lowest acceptable bidder shall be utilized as soon as the contract with the existing provider can be terminated without penalty. The Budget shall be in a form and content reasonably acceptable to the Approving Parties and shall identify separate cost estimates for at least the categories specified under Section 4.2.1, plus:

- (A) The Administration Fee.

- (B) Rental or purchase of equipment and supplies used in maintaining or repairing the Common Area.
- (C) Depreciation or trade-in allowance applicable to items purchased for Common Area purposes.
- (D) Maintenance of sign structure(s) pursuant to Section 5.3.1.
- (E) Maintenance of Common Utility Line(s) pursuant to Section 2.2.3.
- (F) The Containment Costs pursuant to Section 2.6.

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

If an Approving Party disapproves the proposed Budget, it shall consult with the other Approving Party and Operator to establish a final approved Budget. If a Budget is not approved by December 1st of any calendar year, Operator shall have the right to terminate its maintenance obligation with respect to the Common Area located on the Tract of the disapproving Approving Party by written notice given prior to December 10th of such calendar year. If such notice is given, commencing on the following April 1st, such Approving Party shall (i) maintain and operate the Common Area on its Tract at its expense; and (ii) contribute towards the costs of the specified maintenance and operation functions performed by Operator set forth in Section 4.2.7 as though it was a withdrawing Party; and Operator shall maintain and operate the balance of the Common Area covered by its maintenance obligations; during the period from January 1st to March 31st, such Approving Party shall pay its share of maintenance of the Common Area pursuant to Section 4.2.4. If such notice is not given, then Operator shall continue to maintain and operate all of the Common Area for the next calendar year. Approval of the Budget, or any of the line items comprising a part thereof, shall not be considered a waiver of a Party's right to audit and/or contest, challenge or dispute the Reconciliation (defined in Section 4.2.4).

Operator shall use its diligent, good faith efforts to operate and maintain the Common Area in accordance with the Budget. Notwithstanding the foregoing, Operator shall have the right to make emergency repairs to the Common Area to prevent injury or damage to Persons or property, it being understood that Operator shall nevertheless advise each Party of such emergency condition as soon as reasonably possible, including the corrective measures taken and

the cost thereof. If the cost of the emergency action exceeds \$10,000.00 in Constant Dollars, then Operator shall submit a supplemental billing to each Party, together with evidence supporting such cost, and each Party shall pay its share thereof within thirty (30) days after receipt of such billing. If the cost limitation set forth above is not exceeded then such costs shall be included as part of the Common Area Maintenance Costs for that year.

4.2.4 Common Area Maintenance Costs and the Administration Fee shall be allocated based on land area, as follows:

- (A) To the Developer Tract 45%
- (B) To the Target Tract 37%
- (C) The Outlots in the aggregate 18%

In the event an existing Tract is divided, the Party causing such division shall, at its expense, prorate the allocation of Common Area Maintenance Costs and the Administration Fee attributable to the original Tract between the newly created Tracts, file a recorded declaration confirming such allocation and deliver a copy of such declaration to Operator and each other Party. Each Party shall pay to the Operator in equal monthly payments, in advance, the share of the Common Area Maintenance Costs and the Administration Fee attributable to such Party's Tract based either upon the amount set forth in the approved Budget or, if a Budget is not approved, then the lesser of the amount set forth in the unapproved Budget or the monthly payment established for such Party for the prior year. Notwithstanding the provision for determining the amount of payment set forth in the immediately preceding sentence, in the event a Budget is not approved because Operator elected not to submit a Budget for consideration, and such election continues so that no Budget is submitted at least sixty (60) days prior to the beginning of the calendar year, then each Approving Party not receiving a Budget shall have the right to use its reasonable judgment to determine the amount of the Budget for the next calendar year, and each Party represented by such Approving Party shall pay to Operator monthly payments attributable to such Party's Tract, based on the amount of the Budget established by that Approving Party. Within sixty (60) days after the end of each calendar year, Operator shall provide each Party with a statement certified by an authorized Person, together with supporting invoices and other materials setting forth the actual Common Area Maintenance Costs paid by Operator for the operation and maintenance of the Common Area (such statement and supporting data are collectively called the "Reconciliation"), the Administration Fee, and the share of the aggregate thereof that is attributable to each Party's Tract. The Reconciliation shall separately identify cost categories specified in Sections 4.2.1 and 4.2.3, and shall be in a form reasonably acceptable to the Approving Parties. If the amount paid with respect to a Tract for such calendar year shall have exceeded the share allocable to such Tract, Operator shall refund by check the excess to the Party owning such Tract at the time the Reconciliation is delivered, or if the amount paid with respect to a Tract for such calendar year shall be less than the share allocable to such Tract, the Party owning such Tract at the time such Reconciliation is delivered shall pay the balance of such Party's share to Operator within sixty (60) days after receipt of such



Reconciliation, less any amounts disputed in writing, it being understood and agreed that the 60-day period only establishes the period for payment, and is not to be construed as an acceptance of the Reconciliation. If Operator does not timely submit the Reconciliation, then such Party's payment period shall be extended an additional 60 days. If Operator does not refund amounts shown by the Reconciliation to be owed a Party, then such Party may offset the refund owed, plus Interest, against payments for Common Area Maintenance Costs and Administration Fee due for any future period. Notwithstanding anything contained herein to the contrary, if during a calendar year the Operator resigns or is replaced, the replacement Operator shall be responsible for the Reconciliation adjustments, including any reimbursement due to a Party for such calendar year; 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 shall be deemed properly paid, and the old and new Operators shall resolve any necessary adjustments and/or prorations regarding such payments between themselves.

Within three (3) years after the date of receipt of a Reconciliation, each Party shall have the right to audit Operator's books and records pertaining to the operation and maintenance of the Common Area for the calendar year covered by such Reconciliation. A Party shall notify Operator of such Party's intent to audit at least fifteen (15) days prior to the designated audit date. If such audit shall disclose any error in the determination of the Common Area Maintenance Costs, the Administration Fee or any allocation thereof to a particular Tract, the auditing Party shall provide Operator with a copy of the audit, and an appropriate adjustment shall be made forthwith. Notwithstanding anything to the contrary, the approval of a prior Reconciliation, or any line item comprising a part thereof, shall not be a waiver of a Party's right to challenge subsequent Reconciliations regarding such line item. The cost of any audit shall be assumed by the auditing Party unless such Party shall be entitled to a refund in excess of three percent (3%) of the amount calculated by Operator as such Party's share for the applicable calendar year, in which case Operator shall pay the cost of such audit. If Operator does not respond to the results of such audit within ninety (90) days after receipt of the audit, then the auditing Party shall have the right to offset the refund claimed, plus Interest, from the date Operator receives the audit, plus costs of the audit if appropriate, against subsequent payments due Operator; provided, however, Operator shall retain 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 shall be deemed acceptance of such audit.

4.2.5 Operator agrees to defend, indemnify and hold each Party harmless from and against any mechanic's, materialmen's and/or laborer's liens, and all costs, expenses and liabilities in connection therewith, including reasonable attorney's fees and court costs, arising out of the maintenance and operation by Operator of the Common Area, and if any Tract shall become subject to any such lien, Operator shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting such bond or other security as shall be required by law to obtain such release and discharge. This indemnity shall not include any Party that is currently in default in its payment of Common Area Maintenance Costs, unless such Party is protesting such payment for which it is in default, after notice and opportunity to cure.

4.2.6 Subject to the provisions of Section 2.2.3 regarding Common Utility Lines and Section 2.4 regarding sign structures, if any portion of the Common Area is damaged or destroyed by any cause whatsoever, whether insured or uninsured, during the term of this OEA, other than damage caused by ordinary use or wear and tear, the Party upon whose Tract such Common Area is located shall repair or restore such Common Area at its sole cost and expense with all due diligence; provided, however, that no Party shall be required to expend more than \$250,000 in Constant Dollars in excess of insurance proceeds which may be available (or which would have been available except for such Party's election of deductibles or self-insurance, which amount such Party shall be responsible to contribute) for such repair or restoration. Notwithstanding the limitation set forth in the preceding sentence, a Party may require the Party upon whose Tract such Common Area is located to do such restoration work if the requiring Party has agreed in writing to pay the costs in excess of \$250,000.00. Except to the extent limited by Section 5.4.4, if such damage or destruction of Common Area on a Tract is caused in whole or in part by another Party or a third Person, the Party obligated to make such repair or restoration reserves and retains the right to proceed against such other Party or third Person for indemnity, contribution and/or damages.

4.2.7 Target shall have the right, upon giving not less than sixty (60) days written notice to Operator, to take-over and assume the maintenance of the Common Area upon the Target Tract. Following the effective date of such take-over and assumption, Target shall maintain the Common Area on its Tract, and shall pay all costs and expenses incurred in connection therewith; provided, however, Operator shall continue to (i) maintain the Common Utility Lines of the Shopping Center, including the Retention Basin and any other detention/retention ponds, regardless of location, (ii) maintain the Common Area security program, if any, and (iii) maintain any Sign upon which a Target panel is attached. Upon such take-over and assumption, Target shall be released from the obligation to contribute towards Common Area Maintenance Costs for the balance of the Common Area, except with respect to those functions identified above for which continued participation is mandatory or elected. Target's share of such costs shall be paid in accordance with the allocation set forth in Section 4.2.4 or, with respect to Signs, Section 5.3.1 or with respect to Common Utility Lines, Section 2.2.3, or with respect to the Containment System, Section 2.6. Operator shall continue to maintain the balance of the Common Area in accordance with the standards set forth herein.

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

- (A) Target shall give Operator at least sixty (60) days prior notice of Target's intention to have Operator resume the operation and maintenance of the Common Area on the Target Tract; provided, however, such date for resumption shall always be the first day of a calendar quarter; and
- (B) Prior to the date established for Operator to resume the maintenance and operation thereof, Target shall, at its sole cost and expense, cause the Common Area on its Tract to be at least equal to the same condition of

maintenance then existing on the other portions of the Common Area then being maintained by Operator.

Provided the above conditions are satisfied, concurrently with the designated date, Operator shall resume full operation and maintenance of the Common Area located on the Target Tract and Target shall be responsible for its share of Common Area Maintenance Costs as set forth in Section 4.2.4.

#### 4.3 Building and Outside Sales Area

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

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

### ARTICLE V - OPERATION OF THE SHOPPING CENTER

#### 5.1 Uses

5.1.1 The Shopping Center shall be used only for retail sales, offices, Restaurants or other permitted commercial purposes. "Business Office" shall mean an office which does not provide services directly to consumers; "Retail Office" shall mean an office which provides services directly to consumers, including but not limited to financial institutions, real estate, stock brokerage and title companies, travel and insurance agencies, and medical, dental and legal clinics. No more than twenty percent (20%) of the total Floor Area on the Developer Tract may be used for Retail Office and/or Business Office purposes; provided,

however, that office space used by an Occupant for administrative purposes, and which is not open to the general public, shall not be considered Retail Office or Business Office for the purpose of this limitation.

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

- (A) Any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any Building in the Shopping Center.
- (B) An operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation.
- (C) Any "second hand" store, "surplus" store, or pawn shop, provided, however this shall not prohibit nationally or regionally recognized chain retailers who sell second-hand or used sports related, video, or CD products.
- (D) Any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.
- (E) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any Building.
- (F) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.
- (G) Any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Shopping Center is located.
- (H) Any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation; provided however, this Section 5.1.2(H) shall not prohibit the operation of one(1) establishment providing tire, lube, oil and filter sales and service on one(1) Outlot, provided that all of

such operations, including without limitation tires, are completely screened from public view.

- (I) Any bowling alley or skating rink.
- (J) Any movie theater or live performance theater within one thousand (1,000) feet of the Target Building.
- (K) Any hotel, motel, short or long term residential use, including but not limited to: single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments or lodging rooms.
- (L) Any veterinary hospital or animal raising or boarding facility; provided, however, this prohibition shall not be applicable to pet shops. Notwithstanding the forgoing exception, any veterinary or boarding services provided in connection with the operation of a pet shop shall only be incidental to such operation; the boarding of pets as a separate customer service shall be prohibited; all kennels, runs and pens shall be located inside the Building; and the combined incidental veterinary and boarding facilities shall occupy no more than fifteen percent (15%) of the Floor Area of the pet shop.
- (M) Any mortuary or funeral home.
- (N) Any establishment selling or exhibiting "obscene" material.
- (O) Any establishment selling or exhibiting drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff.
- (P) Any bar, tavern, or Restaurant within three hundred (300) feet of the Target Building (provided however that any of the foregoing identified establishments located on that portion of the Developer Tract that is southwest of the Target Building and abuts Lots 1, 2 and 4 of the Outlots may be located closer than three hundred (300) feet from the Target Building but in no event closer than one hundred fifty (150) feet from the Target Building and in no event in the location identified as Anchor B on the Site Plan, or any bar, tavern, Restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds forty percent (40%) of the gross revenues of such business.

- (Q) Any health spa, fitness center or workout facility within four hundred (400) feet of the Target Building; any massage parlors or similar establishments.
- (R) Any flea market, amusement or video arcade, pool or billiard hall, car wash or dance hall; provided however, this Section 5.1.2 (N) shall not prohibit (i) one (1) establishment offering children's entertainment incidental to dining, so long as such establishment is not located within one thousand (1000) feet of the Target Building or is located on an Outlot, or (ii) one (1) car wash located on an Outlot, so long as such car wash is a high quality, full service car wash.
- (S) Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an Occupant incidental to the conduct of its business at the Shopping Center.
- (T) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not be applicable to government sponsored gambling activities or charitable gambling activities, so long as such activities are incidental to the business operation being conducted by the Occupant.

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

For the purpose of this Section 5.1.3, the term (i) "Hazardous Materials" shall mean and refer to the following: petroleum products and fractions thereof, asbestos, asbestos containing materials, urea formaldehyde, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials, substances and wastes listed or identified in, or regulated by, any Environmental Law, and (ii) "Environmental Laws" shall mean and refer to the following: all federal, state, county, municipal, local and other

statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

5.1.4 No merchandise, equipment or services, including but not limited to vending machines, promotional devices and similar items, shall be displayed, offered for sale or lease, or stored within the Common Area; provided, however, the foregoing prohibition shall not be applicable to:

- (A) the storage of shopping carts on the Target Tract;
- (B) the installation of an "ATM" banking facility within an exterior wall of any Building;
- (C) the seasonal display and sale of bedding plants on the sidewalk in front of any Building located on the Target Tract;
- (D) the placement of bicycle racks and landscaping planters on the sidewalk in front of any Building;
- (E) the placement of spherical bollards (Target's brand) on the sidewalk in front of any Building on the Target Tract;
- (F) temporary Shopping Center promotions, except that no promotional activities will be allowed in the Common Area without the prior written approval of the Approving Parties;
- (G) any recycling center required by law, the location of which shall be subject to the approval of the Approving Parties;
- (H) outdoor seating shown on the Site Plan, or
- (I) any designated Outside Sales Area; provided, however, with respect to any Outside Sales Area which is not included within a Building Area, such space may be used not more than three (3) times per calendar year, and the duration of such use shall be 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 The following use and occupancy restrictions shall be applicable to the Developer Tract and the Gartrell Tract:

- (A) No Restaurant, bar or tavern shall be located thereon within three hundred (300) feet of the Building Area located on the Target Tract, except as otherwise provided in Section 5.1.2(P) hereof.
- (B) Intentionally deleted.
- (C) No drug store exceeding ten thousand (10,000) square feet of Floor Area shall be permitted, and no store of any size selling or offering for sale any pharmaceutical products requiring the services of a licensed pharmacist shall be permitted.
- (D) No pet shop shall be located thereon in the locations identified as Anchor B and Anchor C on the Site Plan.
- (E) No more than one (1) gas/service station and/or other facility that dispenses gasoline, diesel or other petroleum products as fuel shall be permitted and then only if such facility is located on an Outlot.
- (F) No liquor store offering off-premises sale of alcoholic beverages shall be permitted in the locations identified as Anchor B and Anchor C on the Site Plan.
- (G) No grocery store, supermarket, convenience store or other store, or department within a store, for the sale of food, groceries, fruit, produce, dairy products, vegetables, meats or delicatessen products shall be permitted, except for convenience stores and, additionally two (2) Occupants may use up to three thousand five hundred (3,500) square feet of Floor Area each for the retail sale and display of such products. One-half of the aisle space adjacent to any shelving or display case used for the retail display of such products shall be included in calculating Floor Area for purposes of this Subsection. Restaurants shall not be prohibited by this restriction.

5.1.6 The names "Target", "Greatland", "SuperTarget" or any variation using the name "Target" shall not be used to identify the Shopping Center or any business or trade conducted on the Developer Tract. Until the Approving Parties agree upon a name change, the Shopping Center shall be called "Saddle Rock Village."

5.1.7 Except to the extent required by law, no Permittee shall be charged for the right to use the Common Area; provided, however, for the purpose of this provision, a tax



assessment or other form of charge applicable to parking spaces or parking lots shall be deemed by the Approving Parties an imposition required by law.

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

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

## 5.2 Lighting

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

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

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

If the Requesting Party is of the opinion that the estimated prepayment established by the Requested Party is greater than one hundred ten percent (110%) of such additional operation, the Parties shall attempt to agree upon the cost of such additional operation but if they cannot do so, then the amount the Requesting Party is obligated to pay shall be estimated by the electrical

utility company furnishing such power, or if the electrical utility company elects not to do so, by a reputable electrical engineer. Upon the failure of a Requesting Party to pay the estimated amount or renew a prepayment as required hereby, the Requested Party shall have the right to discontinue such additional lighting and to exercise any other remedies herein provided. Any such request for additional lighting may be withdrawn or terminated at any time by written notice from the Requesting Party, and a new request or requests for changed hours of additional operation may be made from time to time.

### 5.3 Occupant Signs

5.3.1 No freestanding sign shall be 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. If a sign area is no longer available for use because of condemnation or Governmental Requirements, a replacement sign area may be approved by the Approving Parties, subject to the consent, which shall not be unreasonably withheld, of the Party owning the Tract to be burdened by the replacement Sign Area location. Each sign structure at the Shopping Center shall be utilized as follows:

“Project Sign”: The design criteria for each sign structure to be located in each area designated Project Sign Area on the Site Plan, and identification panel designations, are shown on Exhibit C. Developer shall have the right to attach one (1) identification panel to each sign structure specifying the name of the Shopping Center..

“Center Pylon Sign”: The design criteria for this sign structure to be located in the area designated Center Pylon Sign Area on the Site Plan, and identification panel designations, are shown on Exhibit C. An identification panel may be attached to this sign structure specifying the name of the Shopping Center. Developer shall have the right to attach one (1) identification panel to this sign structure for each of up to three (3) Occupants of the Developer Tract, and Target shall have the right to attach one (1) identification panel to this sign structure for each of up to three (3) Occupants of the Target Tract (by subdividing the space allocated to Target on Exhibit C).

“Center Monument Sign”: The design criteria for the sign structure to be located in each area designated Center Monument Sign Area on the Site Plan, and identification panel designations, are shown on Exhibit C. An identification panel may be attached to this sign structure specifying the name of the Shopping Center. Developer shall have the right to attach one (1) identification panel to each of these sign structures for each of up to three (3) Occupants of the Developer Tract, and Target shall have the right to attach one (1)

identification panel to this sign structure for each of up to three (3) Occupants of the Target Tract (by subdividing the space allocated to Target on Exhibit C).

Prior to the opening of the Building on the Target Tract for business with the general public, Developer shall cause the above referenced sign structures to be located upon the Center Pylon Sign Area, the Center Monument Sign Area, and the Project Sign Area to be constructed in accordance with the criteria set forth in Exhibit C. Developer shall cause the identification panel for the Shopping Center name to be attached to the Center Sign, and Developer and Target shall cause their respective panels to be attached to the various structures when desired. Once constructed, Operator shall maintain each of the foregoing sign structures as originally constructed and such costs (including cost of providing power) shall be included in Common Area Maintenance Costs; provided, however, if there is no Operator, then such maintenance shall be performed by a Person designated by the majority of Parties entitled to place panels on the particular sign structure and all costs (including cost of providing power) expended for such purpose shall be separately billed to each Party based on the identification panel area allocated to each, even if such panel area is not used.

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

The Parties hereby approve the design of the sign structures shown on Exhibit C and any identification panels indicated thereon. To the extent not shown on Exhibit C, the Approving Parties shall have the right to approve the design and size of all sign structures located within the Shopping Center, including the identification panels to be attached thereto; provided, however, that the identification panel for an Occupant of more than sixty thousand (60,000) square feet of Floor Area shall not be subject to the approval of the Approving Parties so long as such identification panel is the standard prototype panel for said Occupant, as the same exists from time to time. No "reader board" type sign shall be permitted within the Shopping Center.

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

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

- (A) 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.
- (B) Placed at any angle to the Building; provided, however, the foregoing shall not apply to any sign located under a sidewalk canopy if such sign is at least eight (8) feet above the sidewalk.
- (C) Painted on the surface of any Building.
- (D) Flashing, moving or audible.
- (E) Made utilizing exposed raceways, exposed neon tubes, exposed ballast boxes, or exposed transformers.
- (F) Made of paper or cardboard, or be temporary in nature (exclusive of contractor signs), or be a sticker or decal; provided, however, the foregoing shall not prohibit the placement at the entrance of each Occupant's space of a small sticker or decal indicating hours of business, emergency telephone numbers, acceptance of credit cards and other similar items of information.

No Occupant of less than fifteen thousand (15,000) square feet of Floor Area shall have an exterior sign which identifies leased departments and/or concessionaires operating under such Occupant's business or trade name, nor shall such sign identify specific brands or products for sale or services offered within a business establishment, unless such identification is used as part of the Occupant's trade name.

5.3.3 Notwithstanding anything contained herein to the contrary, each Party shall be permitted to place within the Common Area located on its Tract the temporary display of leasing information and the temporary erection of one (1) sign identifying each contractor working on a construction job on its Tract. Each Party shall have the obligation to operate, maintain and repair, in a clean, sightly and safe condition, all signs, including components thereof, located upon its Tract pursuant to Section 5.3.2 or the provisions hereof.

5.3.4 Exclusive of signs permitted by Sections 5.3.2 and 5.3.3, no other form of exterior expressions, including, but not limited to, pennants, pictures, notices, flags, seasonal decorations, writings, lettering, designs or graphics, shall be placed on or attached to the exterior of any Building.

5.4 Insurance

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

- (A) Commercial General Liability Insurance with a combined single limit of liability of Five Million Dollars (\$5,000,000.00) in Constant Dollars for bodily injury, personal injury and property damage, arising out of any one occurrence. The other Parties shall be "additional insureds" under such policy as it applies to the insuring Party's Tract.
- (B) Workers' compensation and employer's liability insurance:
  - (i) Worker's compensation insurance as required by any applicable law or regulation.
  - (ii) Employer's liability insurance in the amount of \$1,000,000 each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.
- (C) Automobile Liability Insurance for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

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

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

- (A) Workers' compensation and employer's liability insurance:
  - (i) Worker's compensation insurance as required by any applicable law or regulation.
  - (ii) Employer's liability insurance in the amount of \$1,000,000 each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.
- (B) Commercial General Liability insurance covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability and coverages:
  - (i) Required coverages:
    - (1) Premises and Operations.
    - (2) Products and Completed Operations.
    - (3) Contractual Liability, insuring the indemnity obligations assumed by contractor under the contract documents.
    - (4) Broad Form Property Damage (including Completed Operations).
    - (5) Explosion, Collapse and Underground Hazards.
    - (6) Personal Injury Liability.
  - (ii) Minimum limits of liability:
    - (1) \$1,000,000 each occurrence (for bodily injury and property damage).
    - (2) \$1,000,000 for Personal Injury Liability.
    - (3) \$2,000,000 aggregate for Products and Completed Operations.

- (4) \$2,000,000 general aggregate applying separately to this project.
- (C) Automobile liability insurance including coverage for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage. The contractor shall require each of his subcontractors to include in their liability insurance policies coverage for automobile contractual liability.
- (D) The contractor shall also carry umbrella/excess liability insurance in the amount of \$5,000,000. If there is no per project aggregate under the Commercial General Liability policy, the limit shall be \$10,000,000.

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

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

Each Party (the "Releasing Party") hereby releases and waives for itself, and each Person claiming by, through or under it, each other Party (the "Released Party") from any liability for any loss or damage to all property of such Releasing Party located upon any portion of the Shopping Center, which loss or damage is of the type covered by the insurance required to be maintained under Section 5.4.3, irrespective of the amount of such insurance required or actually carried, including any deductible or self insurance reserve. Each Releasing Party agrees to use its reasonable efforts to obtain, if needed, appropriate endorsements to its policies of insurance, and to the policies of insurance carried by its Occupants, with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release and waiver hereinabove given.

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

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

- (A) Commercial General Liability Insurance with a combined single limit of liability of Two Million Dollars (\$2,000,000.00) for bodily injury, personal injury and property damage, arising out of any one occurrence. Each Party shall be an "additional insured" under such policy applied as to Operator's operation and maintenance obligations under this OEA.
- (B) Workers' Compensation and Employer's Liability Insurance:
  - (i) Worker's compensation insurance as required by any applicable law or regulation.
  - (ii) Employer's liability insurance in the amount of \$1,000,000 for each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.
- (C) Automobile Liability Insurance for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

Operator agrees to defend, protect, indemnify and hold harmless each 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 maintenance and operation of the Common Area; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or the willful act or omission of the Party to be indemnified. In the event it is determined that such Party was not at fault, then the Operator shall reimburse such other Party for all reasonable expenses and/or costs incurred by such Party defending against such claim or demand.



5.4.5 All insurance required by a Person pursuant to Section 5.4 shall be written on an occurrence basis and procured from companies rated by Best's Rating Guide not less than A-/X, and which are authorized to do business in the state where the Shopping Center is located. All insurance may be provided under (i) an individual policy covering the Shopping Center, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Party; provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than \$20,000,000 in Constant Dollars, then such insuring Party shall also maintain excess liability coverage necessary to establish a total liability insurance limit of \$20,000,000 in Constant Dollars, (iii) a plan of self-insurance, provided that any Party so self-insuring notifies the other Parties of its intent to self-insure and agrees that upon request it shall deliver to such other Parties each calendar year a copy of its annual report that is audited by an independent certified public accountant which discloses that such Party has \$250,000,000 in Constant Dollars of both net worth and net current assets, or (iv) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by a Party in compliance with Section 5.4, such Party shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed \$50,000.00 in Constant Dollars unless such Party complies with the requirements regarding self-insurance pursuant to (iii) above. Each Party and Operator, if any, agree to furnish to any Person requesting the same, a certificate(s) of insurance, or statement of self-insurance, as the case may be, or the Web address where such insurance information is contained, evidencing that the insurance required to be carried by such Party or Operator, as the case may be, is in full force and effect.

Any insurance provision that requires another Person to be added as an "additional insured" shall include the following provisions:

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

## 5.5 Taxes and Assessments

Each Party shall pay, or cause to be paid prior to delinquency, all taxes and assessments with respect to its Tract, the Building, and other improvements located thereon, and any personal

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

#### ARTICLE VI - MISCELLANEOUS

##### 6.1 Default

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

- (A) The failure to make any payment required to be made hereunder 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 (i) above, within thirty (30) days after the issuance of a notice by another Party or Operator, as the case may be (the "Non-Defaulting Party") specifying the nature of the default claimed.

6.1.2 With respect to any default under Section 6.1.1(B), any Non-Defaulting Party shall have the right following the expiration of any applicable cure period, if any, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party; provided, however, that in the event such default shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Non-Defaulting Party shall have the right to enter upon the Tract of the Defaulting Party (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. Each Party shall be responsible for the default of its Occupants. In the event any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses incurred in connection with such curative action, plus Interest as provided herein, within ten (10) days after receipt of demand therefor, together with reasonable documentation supporting the expenditures made. In the event the Defaulting Party does not reimburse the Non-Defaulting Party as set forth above, in addition to any other remedy available, the Non-Defaulting Party shall have the right to offset such amount owed against any current or future sum of money due the Defaulting Party until the full amount owed is recovered.

The right to cure the default of another Party shall not be deemed to:

- (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.

6.1.3 Costs, expenses and Interest accruing and/or assessed pursuant to Section 6.1.1(A) and/or Section 6.1.2 above shall constitute a lien against the Defaulting Party's Tract. Such lien shall attach and take effect only upon recordation of a claim of lien in the office of the Recorder of the County of the State in which the Shopping Center is located by the Party making such claim. The claim of lien shall include the following:

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

6.1.4 Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other Person, violating or attempting to violate or defaulting upon any of the provisions contained in this OEA, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another Party or Person of any of the terms, covenants or conditions of this OEA, or to obtain a decree to compel performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to a Party under this OEA or at law or in equity shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy. If a Party brings an action of law or in equity to enforce the terms and provisions of this OEA, the prevailing Party as determined by the Court in such action shall be entitled to recover reasonable attorney's fees and court costs for all stages of litigation, including but not limited to, appellate proceedings, in addition any remedy granted.

## 6.2 Interest

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

- (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" shall mean the rate of interest published from time to time as the "Prime Rate" in the Wall Street Journal under the heading "Money Rates"; provided, however, that (i) if more than one such rate is published therein the prime rate shall be the highest such rate and (ii) if such rate is no longer published in the Wall Street Journal or is otherwise unavailable, the prime rate shall be a substantially comparable index of short term loan interest rates charged by U.S. banks to corporate borrowers selected by the Approving Parties.

## 6.3 Estoppel Certificate

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

- (A) 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.
- (B) 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.
- (C) Whether this OEA is in full force and effect.

Such estoppel certificate shall act to estop the issuer from asserting a claim or defense against a bona fide encumbrancer or purchaser for value to the extent that such claim or defense is based upon facts known to the issuer as of the date of the estoppel certificate which are contrary to the facts contained therein, and such bona fide purchaser or encumbrancer has acted in reasonable reliance upon such estoppel certificate without knowledge of facts to the contrary. The issuance of an estoppel certificate shall in no event subject the issuer to any liability for the negligent or inadvertent failure of the issuer to disclose correct and/or relevant information, nor shall such issuance be construed to waive any rights of the issuer to perform an audit or obtain an adjustment with respect to Common Area Maintenance Costs for any year it is entitled to do so, or to challenge acts committed by other Parties for which approval by the Approving Parties was required but not sought or obtained.

#### 6.4 Notices

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

|            |  |
|------------|--|
| Target:    | Target Corporation<br>Property Development<br>Attn: Property Administration/Administrator for Colorado<br>1000 Nicollet Mall<br>Minneapolis, MN 55403  |
| Developer: | Will Hazel, Esq., Manager<br>c/o Atlantic Exchange Company, LLC<br>77 Franklin Street, 10 <sup>th</sup> Floor<br>Boston, MA 02110<br>Telephone: (617) 350-6231; Telefax: (617) 350-6228<br>E-mail: hazel@aec1031.com |

With a  
copy to: Forest City Enterprises, Inc.  
Terminal Tower  
50 Public Square  
Suite 1000B  
Cleveland, OH 44113-2267  
Attention: General Counsel

With respect to any "notice" to Operator: As time to time designated.

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

#### 6.5 Approval Rights

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

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

6.5.3 If the Approving Parties' approval is requested, unanimous approval must be given.

#### 6.6 Condemnation

In the event any portion of the Shopping Center shall be condemned, or conveyed under threat of condemnation, the award shall be paid to the Party owning the Tract or the improvements taken, and the other Parties hereby waive and release any right to recover any value attributable to the property interest so taken, except that (i) if the taking includes

improvements belonging to more than one (1) Party, such as Utility Lines or Signs, the portion of the award allocable thereto shall be used to relocate, replace or restore such jointly owned improvements to a useful condition, and (ii) if the taking includes easement rights which are intended to extend beyond the term of this OEA, the portion of the award allocable to each such easement right shall be paid to the respective grantees thereof. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this OEA which does not reduce or diminish the amount paid to the Party owning the Tract or the improvement taken, then the owner of such other property interest shall have the right to seek an award for the taking thereof. Except to the extent they burden the land taken, no easement or license set forth in this OEA shall expire or terminate based solely upon such taking.

#### 6.7 Binding Effect

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

#### 6.8 Construction and Interpretation

6.8.1 This OEA and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior negotiations, correspondence, memoranda or agreements are superseded in total by this OEA and the Exhibits attached hereto; provided however that any two or more Parties may vary its terms by a supplemental agreement only so far as it relates to the rights of those respective Parties. This OEA has been fully negotiated at arms length between the signatories hereto, and after advice by counsel and other representatives chosen by such Parties, and such Parties are fully informed with respect thereto; no such Party shall be deemed the scrivener of this OEA; and, based on the foregoing, the provisions of this OEA and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party.

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

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

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

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

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

#### 6.9 Negation of Partnership

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

#### 6.10 Not a Public Dedication

Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any Tract or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Party hereto shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

#### 6.11 Excusable Delays

Whenever performance is required of any Party hereunder, such Party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such Party, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this



Section shall not operate to excuse any Party from the prompt payment of any monies required by this OEA.

6.12 Mitigation of Damages

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

6.13 OEA Shall Continue Notwithstanding Breach

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

6.14 Time

Time is of the essence of this OEA.

6.15 No Waiver

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

ARTICLE VII - TERM

7.1 Term of this OEA

This OEA shall be effective as of the date first above written and shall continue in full force and effect until 11:59 p.m. on April 30, 2066; provided, however, that (i) the easements referred to in Article II hereof which are specified as being perpetual or as continuing beyond the term of this OEA shall continue in full force and effect as provided herein, and (ii) the building covenants and restrictions set forth in Section 3.3.4 (D) hereof shall continue in full force and

effect so long as an “unlimited area” Building exists within the Primary Building Area. Upon the termination of this OEA, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this OEA, except as relates to the easements mentioned above, shall terminate and have no further force or effect; provided, however, that the termination of this OEA shall not limit or affect any remedy at law or in equity that a Party may have against any other Party with respect to any liability or obligation arising or to be performed under this OEA prior to the date of such termination.

## ARTICLE VIII - EXCULPATION

### 8.1 Certain Limitations on Remedies

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

- (A) Casualty Insurance and Condemnation Proceeds. To recover from another Party all damages and costs on account of, or in connection with, casualty insurance or condemnation proceeds which are not applied or used in accordance with the terms of this OEA.
- (B) Hazardous Substances. To recover from another Party all damages and costs arising out of or in connection with, or on account of, a breach by such Party of its obligations under Section 5.1.3.
- (C) Liability Insurance. To recover from another Party all damages and costs arising out of or in connection with, or on account of, a breach by such Party of its obligations under Section 5.4.
- (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 another Party all damages and costs as a result of any fraud or misrepresentation by such Party in connection with any term, covenant or condition in this OEA.
- (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.

*[Rest of page intentionally left blank]*

SIGNATURE PAGE  
FOR  
OPERATION AND EASEMENT AGREEMENT  
BETWEEN  
TARGET CORPORATION,  
GARTRELL ROAD LLC  
AND  
SADDLE ROCK PC,LLC

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

Saddle Rock PC, LLC,  
a Colorado limited liability company  
("Developer")

By: J. Patrice Dowdell  
Name: J. Patrice Dowdell  
Title: Manager

STATE OF MASS. )  
 ) ss.  
COUNTY OF SUFFOLK )

On this 30th day of April, 2004, before me, a Notary Public within and for said County, personally appeared J. Patrice Dowdell to me personally known, being first by me duly sworn, did say that he is the Manager of Saddle Rock PC, LLC, a Colorado limited liability company and that said instrument was signed on behalf of said entity and J. Patrice Dowdell acknowledged said instrument to be the free act and deed of said entity.

WM. A. HAZEL  
Notary Public WM. A. HAZEL

My commission expires: 10/01/04

SIGNATURE PAGE  
FOR  
OPERATION AND EASEMENT AGREEMENT  
BETWEEN  
TARGET CORPORATION,  
GARTRELL ROAD LLC  
AND  
SADDLE ROCK PC,LLC

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

GARTRELL ROAD, LLC,  
a Colorado limited liability company  
("Gartrell")

By: FC Denver Power Center, LLC,  
a Colorado limited liability company,  
its Managing Member

By: Forest City Commercial Group, Inc.,  
an Ohio corporation,  
its Sole Member

By:   
Name: Emerick J. Corsi  
Title: Executive Vice President

STATE OF OHIO                     )  
  ) ss.  
COUNTY OF CUYAHOGA         )

On this 30th day of April, 2004, before me, a Notary Public within and for said County, personally appeared Emerick J. Corsi to me personally known, being first by me duly sworn, did say that he is the Executive Vice President of Forest City Commercial Group, Inc., an Ohio corporation and the sole member of FC Denver Power Center, LLC, a Colorado limited liability company and the Managing Member of Gartrell Road LLC, a Colorado limited liability company and that said instrument was signed on behalf of said entities in the capacities stated and he acknowledged said instrument to be the free act and deed of said entities.

  
Notary Public

My commission expires: \_\_\_\_\_



SIGNATURE PAGE  
FOR  
OPERATION AND EASEMENT AGREEMENT  
BETWEEN  
TARGET CORPORATION,  
GARTRELL ROAD LLC  
AND  
SADDLE ROCK PC,LLC

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

TARGET CORPORATION  
("Target")

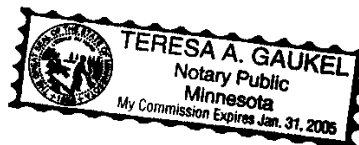
By:   
Name: Scott A. Nelson  
Title: Vice President  
REAL ESTATE

STATE OF MINNESOTA                     )  
   ) ss.  
COUNTY OF HENNEPIN                     )

On this 30th day of April, 2004, before me, a Notary Public within and for said County, personally appeared Scott A. Nelson to me personally known, being first by me duly sworn, did say that he is the Vice President of Target Corporation and that said instrument was signed on behalf of said corporation by authority of its Board of Directors and Scott A. Nelson acknowledged said instrument to be the free act and deed of said corporation.

  
Notary Public

My commission expires: \_\_\_\_\_



AGREED AND ACCEPTED

The undersigned hereby agrees to the designation as "Operator" in that certain Operation and Easement Agreement (the "OEA") dated as of May 3, 2004 by and between Target Corporation ("Target") and Saddle Rock P C, LLC ("Developer"), and Gartrell Road, LLC with respect to a shopping center located in the City of Aurora, Arapahoe County, Colorado, to which this document is attached, and further agrees to accept and perform all of the duties, obligations and responsibilities of the "Operator" as specified in said OEA.

"Operator"

Forest City Commercial Management, Inc.,  
an Ohio corporation

By: *Layton McCown*

Name: Layton McCown

Vice President and

Title: Assistant Secretary

Address:

50 Public Square

Terminal Tower, Suite 1130

Cleveland, Ohio 44113-2267

Attention: Layton McCown

STATE OF OHIO )

COUNTY OF CUYAHOGA ) ss.

On this 3rd day of May, 2004, before me, a Notary Public within and for said County, personally appeared Layton McCown to me personally known, being first by me duly sworn, did say that he is the Vice President & Assistant Secretary of Forest City Commercial Management, Inc. and that said instrument was signed on behalf of said corporation by authority of its Board of Directors and said officer acknowledged said instrument to be the free act and deed of said corporation.

*Denise M. Scaglione*  
Notary Public

My commission expires: \_\_\_\_\_

174665v8



Denise M. Scaglione, Notary Public  
STATE OF OHIO  
My Commission Expires April 21, 2007

**EXHIBIT A**  
**LEGAL DESCRIPTION OF TARGET TRACT**

Lot 6, Block 1, SADDLE ROCK EAST COMMERCIAL SUBDIVISION FILING NO. 1,  
County of Arapahoe, State of Colorado



**EXHIBIT B**  
**LEGAL DESCRIPTION OF DEVELOPER TRACT**

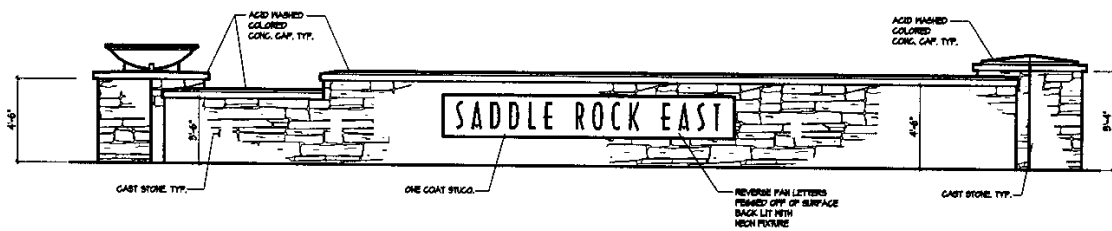
Lots 3, 8, 9, 11 and 13, Block 1 and Tract A, SADDLE ROCK EAST COMMERCIAL  
SUBDIVISION FILING NO. 1, County of Arapahoe, State of Colorado

**EXHIBIT BB**  
**LEGAL DESCRIPTION OF GARTRELL TRACT**

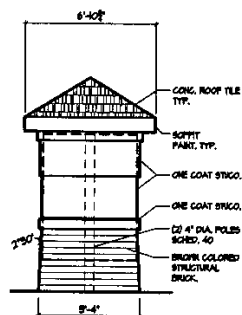
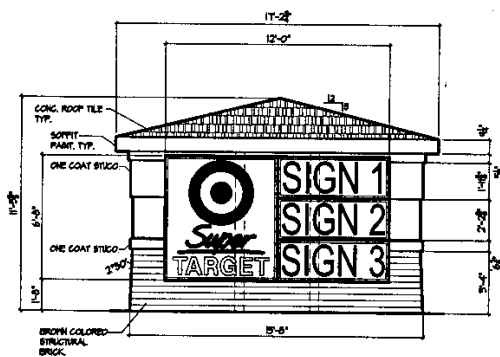
Lots 1, 2, 4, 5, 7, 10 and 12, Block 1, SADDLE ROCK EAST COMMERCIAL SUBDIVISION  
FILING NO. 1, County of Arapahoe, State of Colorado

**EXHIBIT C**  
**DESIGN OF SIGNS**

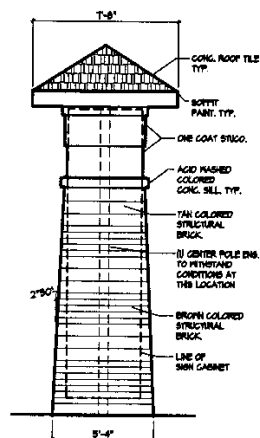
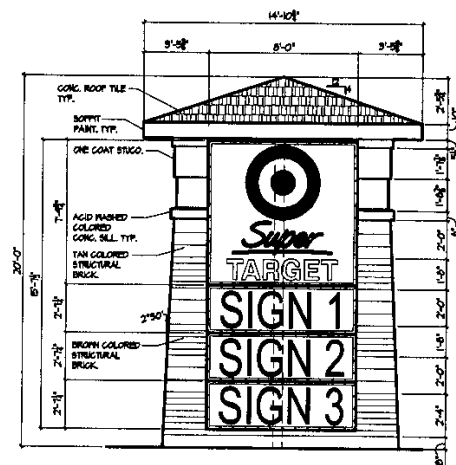
[Attached]



**PROJECT ENTRY SIGN**  
 1/4" = 1'-0"



**SMALL MONUMENT SIGN**  
 1/4" = 1'-0" TOTAL 2



**LARGE MONUMENT SIGN**  
 1/4" = 1'-0" TOTAL 2

**EXHIBIT D**  
**ARCHITECTURAL THEME**

[to be attached]



# Saddle Rock East Commercial

Site Plan Submittal  
Aurora, Colorado

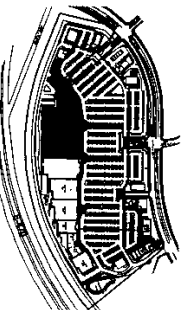
Owner:  
The MAHER GROUP, LTD.  
1000 West 10th Avenue  
Suite 100  
Denver, Colorado 80202  
Tel: 303.733.1111  
Fax: 303.733.1112

Architect:  
The MAHER GROUP, LTD.  
1000 West 10th Avenue  
Suite 100  
Denver, Colorado 80202  
Tel: 303.733.1111  
Fax: 303.733.1112

Structural Engineer:  
The MAHER GROUP, LTD.  
1000 West 10th Avenue  
Suite 100  
Denver, Colorado 80202  
Tel: 303.733.1111  
Fax: 303.733.1112

MEP Engineer:  
The MAHER GROUP, LTD.  
1000 West 10th Avenue  
Suite 100  
Denver, Colorado 80202  
Tel: 303.733.1111  
Fax: 303.733.1112

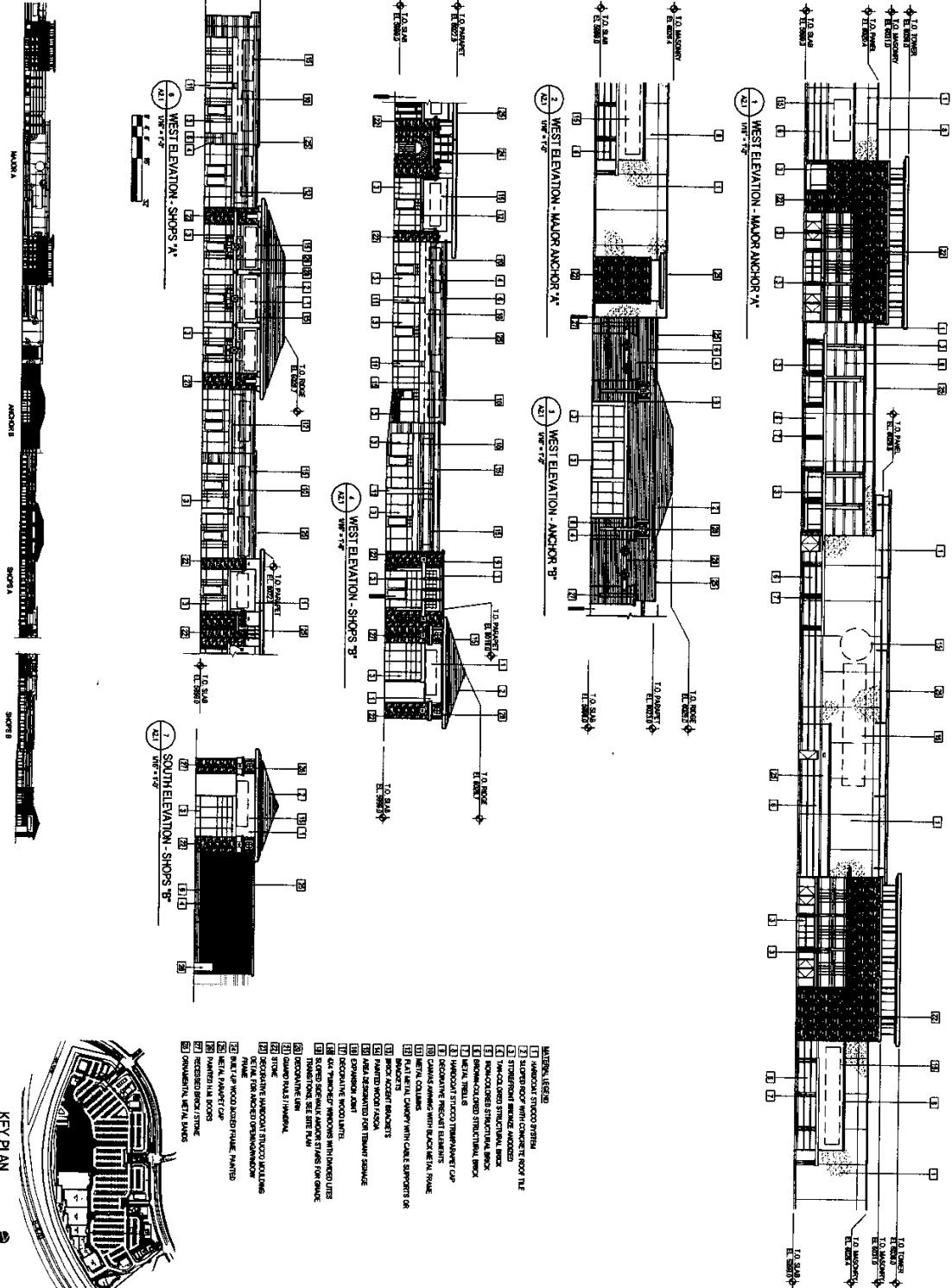
Site Plan  
A2.1



- MATERIALS LISTED:
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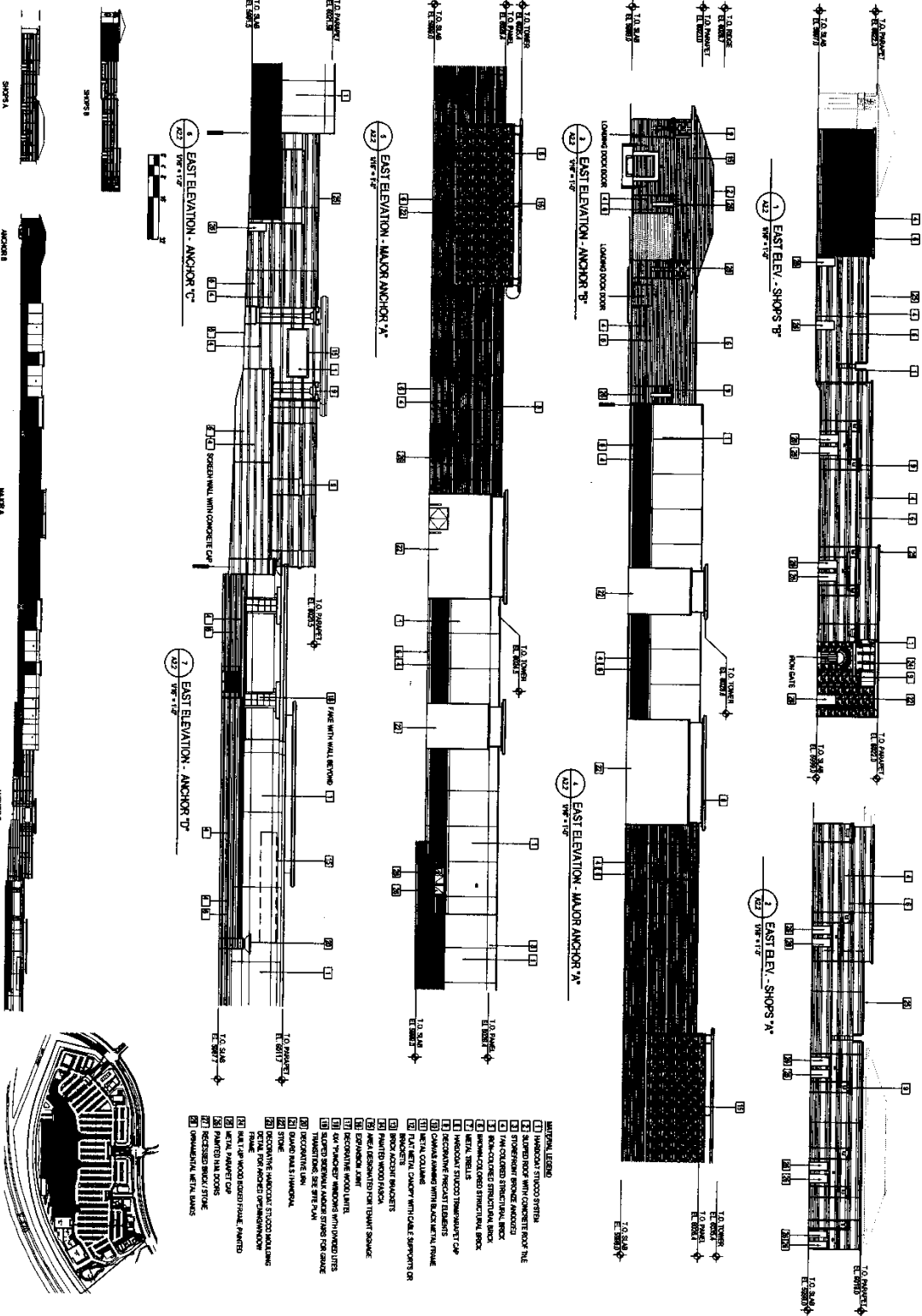
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FILENAME:

X-REFS:



## Saddle Rock East Commercial

Site Plan Submittal  
Aurora, Colorado

Sheet Number  
A2.2



**Saddle Rock East Commercial**  
Site Plan Submittal  
Aurora, Colorado

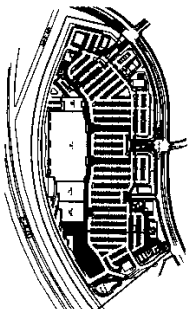
Client:  
Saddle Rock East Commercial  
10000 E. Harvard Ave., Suite 100  
Denver, CO 80231  
Tel: 303.755.1100  
Fax: 303.755.1101

Architect:  
The Mattern Group, L.P.  
10000 E. Harvard Ave., Suite 100  
Denver, CO 80231  
Tel: 303.755.1100  
Fax: 303.755.1101

Engineer:  
The Mattern Group, L.P.  
10000 E. Harvard Ave., Suite 100  
Denver, CO 80231  
Tel: 303.755.1100  
Fax: 303.755.1101

Material List:  
1. CONCRETE  
2. BRICK  
3. STONE  
4. METAL  
5. GLASS  
6. WOOD  
7. PLASTER  
8. PAINT  
9. ROOFING  
10. FLOORING  
11. LIGHTING  
12. MECHANICAL  
13. ELECTRICAL  
14. SANITARY  
15. FURNITURE  
16. FIXTURES  
17. EQUIPMENT  
18. VEHICLES  
19. LANDSCAPE  
20. SIGNAGE

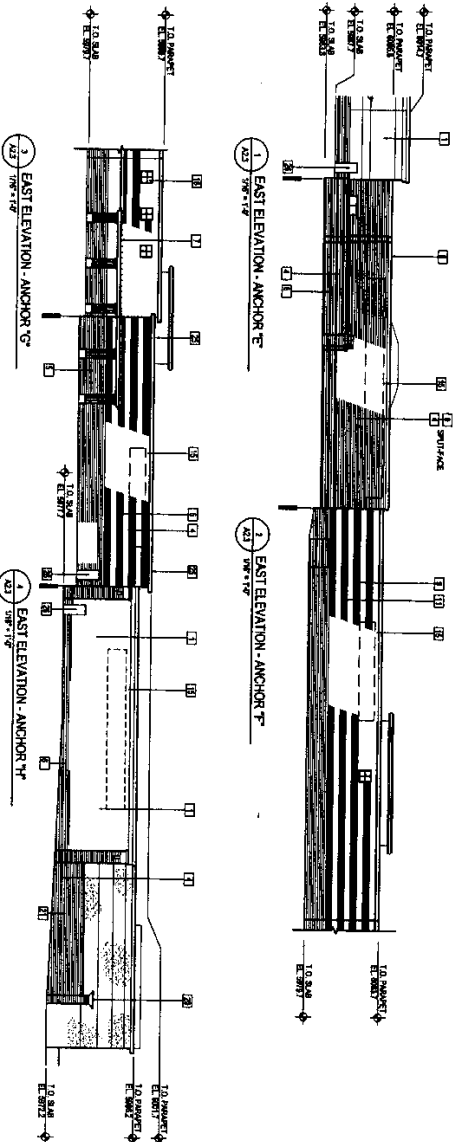
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KEY PLAN

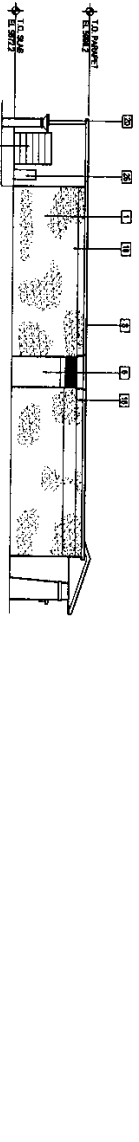
**MATERIAL LIST**

1. CONCRETE
2. BRICK
3. STONE
4. METAL
5. GLASS
6. WOOD
7. PLASTER
8. PAINT
9. ROOFING
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15. FURNITURE
16. FIXTURES
17. EQUIPMENT
18. VEHICLES
19. LANDSCAPE
20. SIGNAGE



1 EAST ELEVATION - ANCHOR T'

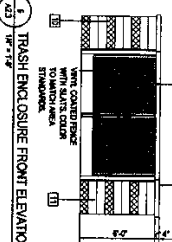
2 EAST ELEVATION - ANCHOR T'



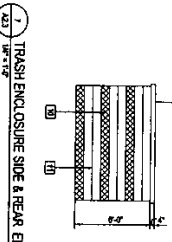
3 EAST ELEVATION - ANCHOR G'

4 EAST ELEVATION - ANCHOR T'

5 NORTH ELEVATION - ANCHOR T'



6 NORTH ELEVATION - ANCHOR T'



7 TRASH ENCLOSURE SIDE & REAR ELEVATION

8 TRASH ENCLOSURE FRONT ELEVATION

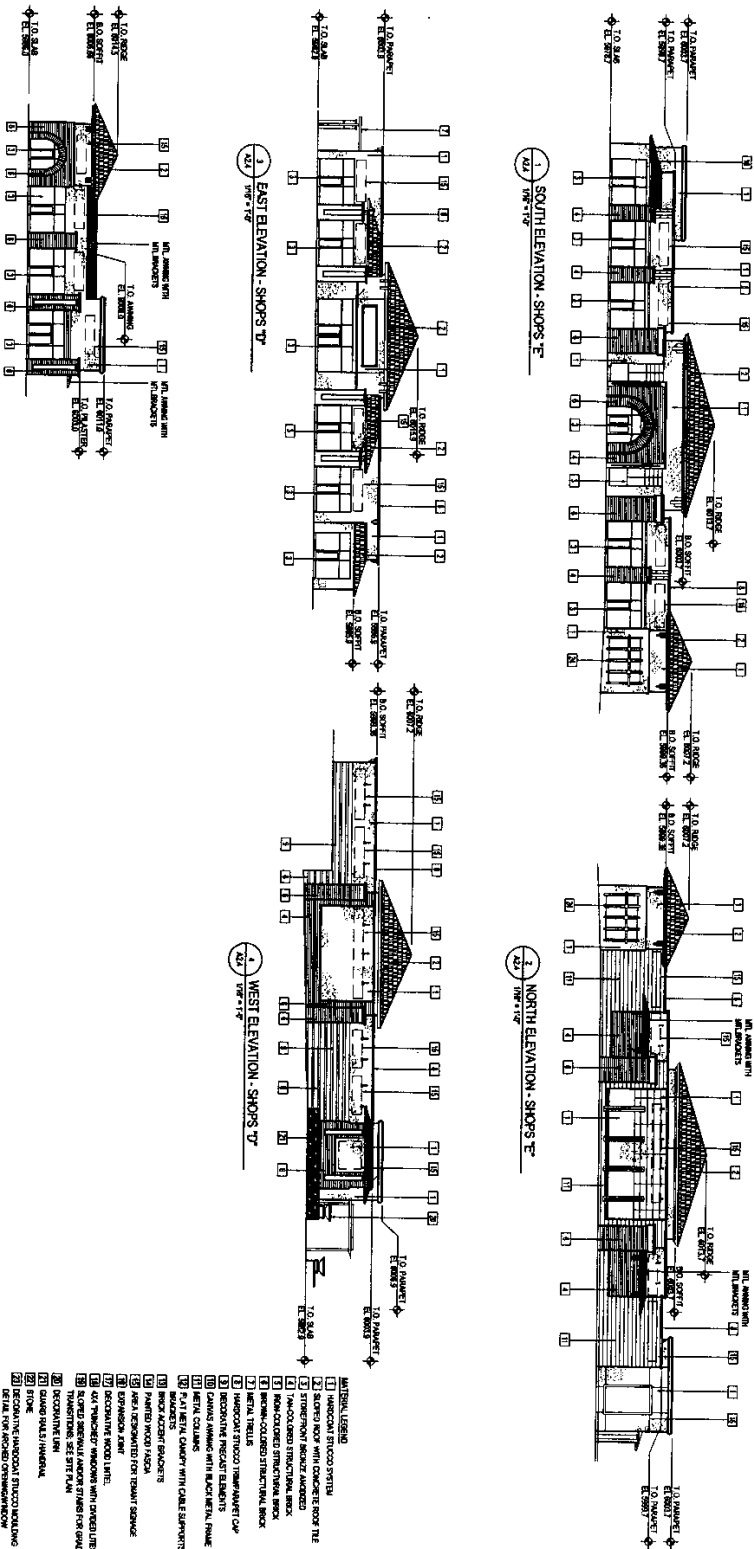


KEY PLAN

Sheet No.  
A2.3

DRAWN BY:  
FILENAME:

X-REFS:



## Saddle Rock East Commercial

Site Plan Submittal  
Aurora, Colorado

Owner:

Architect:

Engineer:

Interior Designer:

Landscaping Architect:

Structural Engineer:

MEP Engineer:

Fire Marshal:

Health Department:

Police Department:

Fire Department:

Public Works:

Planning Department:

City Council:

Mayor:

City Manager:

City Clerk:

City Treasurer:

City Attorney:

City Engineer:

City Planner:

City Surveyor:

City Historian:

City Librarian:

City Archivist:

City Records Manager:

City Information Systems:

City Communications:

City Public Works:

City Police:

City Fire:

City Health:

City Planning:

City Council:

City Mayor:

City Manager:

City Clerk:

City Treasurer:

City Attorney:

City Engineer:

City Planner:

City Surveyor:

City Historian:

City Librarian:

City Archivist:

City Records Manager:

City Information Systems:

Sheet Number  
A2.4

**EXHIBIT E**  
**SUBMISSION GUIDELINES**

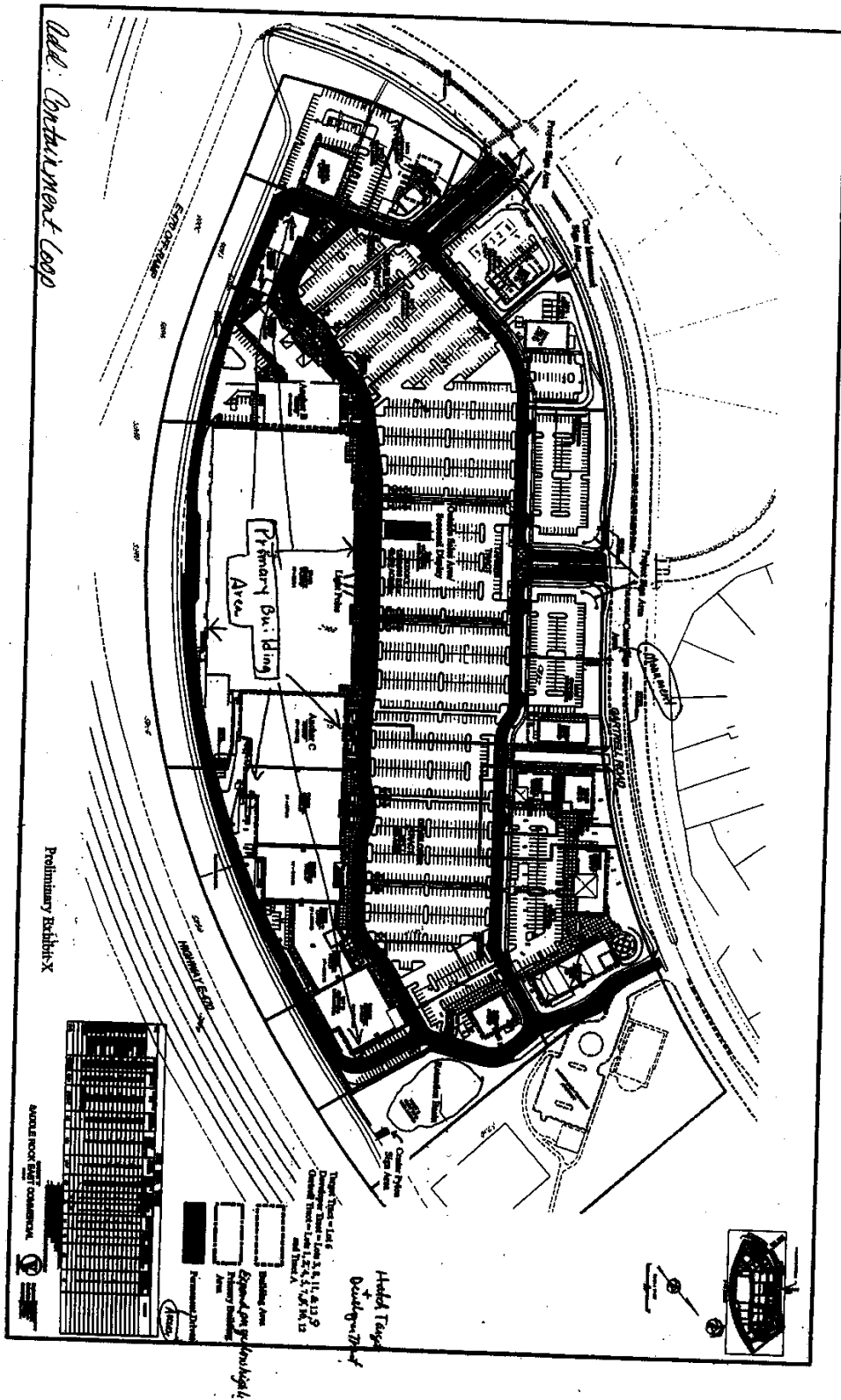
1. During the conceptual design phase, the constructing party shall submit to the other parties the following:
  - A. Site Design Documents to Indicate the Following:
    - o Parking configurations and car parking count
    - o Typical bay width and stall dimensions
    - o Drive widths
    - o Setbacks
    - o Curb cuts
    - o Spot elevations or rough contours
    - o Rough landscape scope
    - o Lighting pole locations
    - o Preliminary utility strategies
  - B. Building Design Single Line Plans to Indicate the Following:
    - o Exterior wall configuration
    - o Doors and store front extent
    - o Canopies and overhangs
    - o Probable column locations at exterior and abutting our building on interior
  - C. Exterior Elevation Drawings to Indicate the Following:
    - o Opaque wall areas with doors and store fronts
2. After approval has been granted of conceptual design phase submitted in accordance with the guidelines specified in 1 above, the constructing party shall submit final design phase plans to the other parties as follows:
  - A. Site Design Documents Delineating Information Outlined in the Concept Phase with the Following Added Detail:
    - o Refined grading plans
    - o Selected lighting fixtures and resultant lighting levels in foot candles
    - o Landscaping showing generic planting materials and locations
    - o Proposed paving section designs and location
    - o Utility layouts including hydrants and sizes proposed
    - o Proposed details for curbs, site structures, manholes, etc.
    - o Proposed site signage designs and locations
  - B. Building Design Plans Delineating Information Outlined in the Concept Phase with the Following Added Detail:
    - o Exterior wall thicknesses
    - o Structural columns or bearing walls at building exterior and proposed foundation design at adjoining wall between abutting buildings

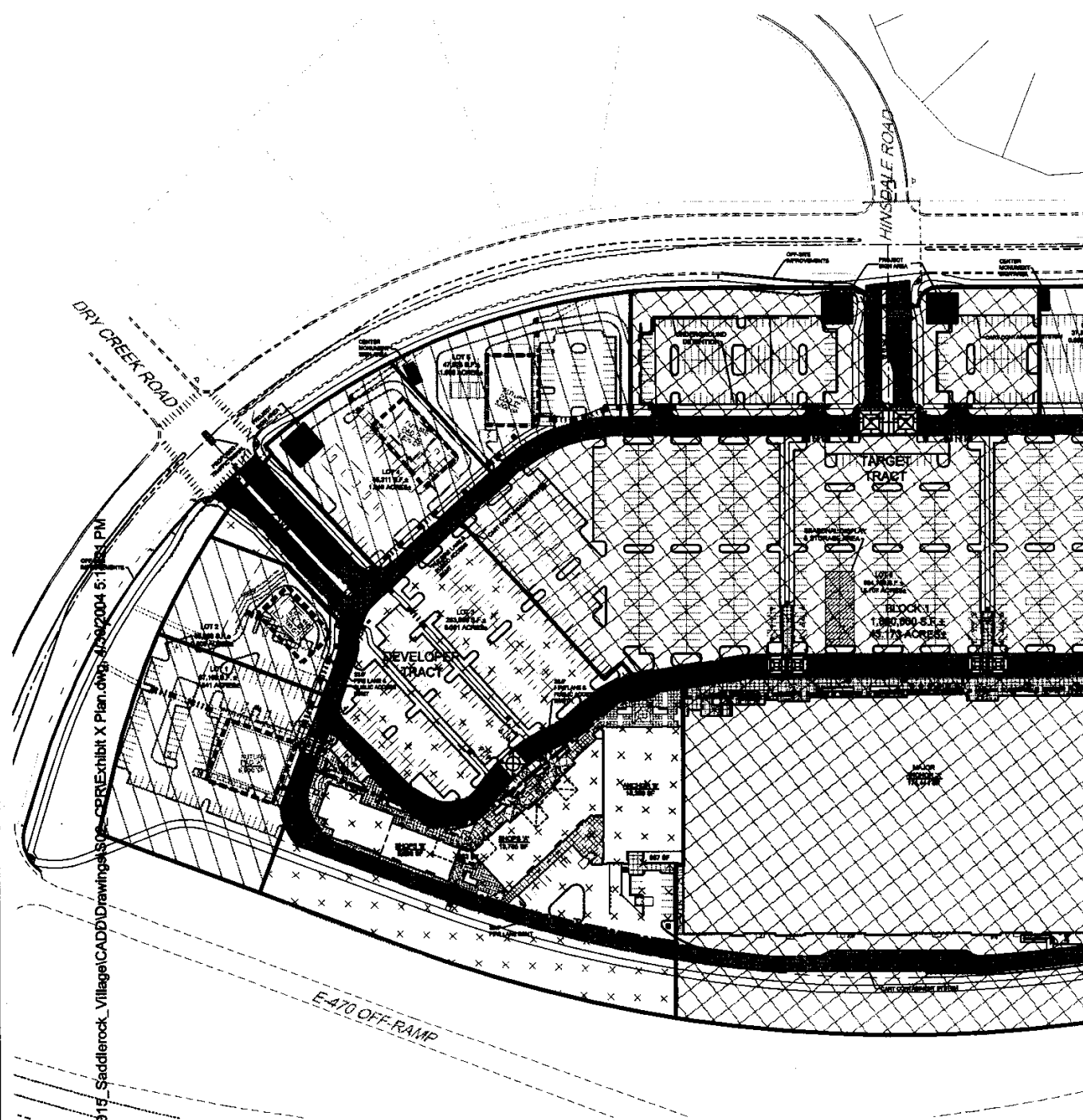
- o Where common footings are to be shared provide wall or column load information for design of that footing
  - o Proposed roof plan showing slopes and location of penthouses or other major mechanical equipment
  - o References of key flashing details of roof to adjoining building
- C. Exterior Elevation Drawings Delineating Information Outlined in the Concept Phase with the Following Added Detail:
- o Proposed building sign standards
  - o Paint color chips and samples of other materials such as brick or concrete aggregates (glass or aluminum finishes may be annotated on the elevations)
  - o Proposed large scale details of key section conditions to show exterior design intent
  - o Major penthouses or rooftop equipment profiles
  - o Features such as special masonry patterns, bands or special materials and textures
  - o Rain leaders or scuppers
  - o Wall sections at various exterior locations including at the demising wall to the adjoining building with key vertical dimensioning
3. If a building is to have a through-the-wall pedestrian access connection to an adjoining building, then the final design phase submission shall also include (to the owner of such adjoining building) the following:
- o Plans of the pedestrian mall circulation showing any variations in floor elevations
  - o Elevations/sections of the proposed mall space showing store front sign bulkheads and key dimensions
  - o Proposed ceiling design including special features such as variations in height or skylights
  - o Floor material patterns
  - o Landscaping and mall seating areas
  - o Proposed interior sign guidelines
  - o Paint color chips and samples of other materials such as brick or concrete aggregates (glass or aluminum finishes may be annotated on the plans or elevations)
  - o Proposed large scale details of key section conditions to show interior design intent
4. The constructing party shall provide the other parties with a complete set of bid documents for the building and/or improvements to be located upon its Tract.

**EXHIBIT X**  
**SITE PLAN**

[Attached]

# EXHIBIT X





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