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Title of Document: Declaration Regarding Construction, Operation and Reciprocal Easements

Date of Document: March 5, 2008

Grantor: 135 Metcalf, L.L.C.

Grantee: State Line, LLC

Grantee's Mailing Address: 16820 Frances St., Suite 102, Omaha, NE 68130

Legal Description: See Exhibit A-1

Reference Document No:

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DECLARATION REGARDING CONSTRUCTION, OPERATION AND RECIPROCAL
EASEMENTS

made by

135 METCALF, L.L.C.

an Iowa limited liability company,

and

STATE LINE, LLC

an Iowa limited liability company

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DECLARATION REGARDING CONSTRUCTION, OPERATION AND RECIPROCAL

EASEMENTS

This Declaration Regarding Construction, Operation and Reciprocal Easements (the "**Declaration**") is made this 5th day of March, 2008 ("**Effective Date**"), by 135 METCALF, L.L.C., an Iowa limited liability company ("**135 Metcalf**"), and STATE LINE, LLC, an Iowa limited liability company ("**State Line**"). 135 Metcalf and State Line are hereinafter collectively referred to as "**Developer**".

RECITALS:

A. 135 Metcalf is the owner in fee of that certain real property located in the City of Overland Park, County of Johnson, State of Kansas, more particularly described in Exhibit "**A-1**" attached hereto ("**135 Metcalf Property**"). 135 Metcalf owns an undivided 62.5% interest in the fee of that certain real property located in the City of Overland Park, County of Johnson, State of Kansas, more particularly described in Exhibit "**A-1**" attached hereto ("**135 Metcalf/State Line Property**") and State Line owns an undivided 37.5% interest in the 135 Metcalf/State Line Property. Commerce Bank, N.A., a national banking association is the owner in fee of that certain real property located in the City of Overland Park, County of Johnson, State of Kansas, more particularly described in Exhibit "**A-1**" attached hereto ("**Commerce Bank Property**" or the "**Commerce Bank Parcel**"). The 135 Metcalf Property, 135 Metcalf/State Line Property and Commerce Bank Property are hereinafter collectively referred to as the "**Shopping Center Property**".

B. The Shopping Center Property includes: (i) the parcel of land more particularly described in Exhibit "**A-2**" attached hereto (the "**Von Maur Parcel**"), (ii) the parcel of land more particularly described in Exhibit "**A-3**" attached hereto (the "**NYLO Parcel**"), (iii) the parcel of land more particularly described in Exhibit "**A-4**" attached hereto (the "**Penney Parking Parcel**"), (iv) the parcel of land more particularly described in Exhibit "**A-5**" attached hereto (the "**Condominium Parcel**"), (v) the Commerce Bank Parcel and (vi) various other parcels of land more particularly described in Exhibit "**A-6**" attached hereto (the parcels described in Exhibit "**A-6**" are hereinafter collectively referred to as the "**Developer Property**").

C. The Von Maur Parcel is anticipated to be sold and conveyed in fee simple to Von Maur (as hereinafter defined) on or about the date hereof.

D. The NYLO Parcel is anticipated to be sold and conveyed in fee simple to NYLO (as hereinafter defined) on or about the date hereof.

E. The Penney Parking Parcel and the Condominium Parcel are anticipated to be sold and conveyed in fee simple to Penney (as hereinafter defined) on or about the date hereof or shortly hereafter, in connection with which sale the Condominium Parcel shall, on or about the date hereof (or as promptly hereafter as is able to be accomplished in accordance with Kansas law), be subjected to a Declaration of Condominium (the "**Condominium Declaration**") in accordance with the Kansas Apartment Ownership Act and, as a result, established as a condominium (the "**Condominium**") containing three (3) units, being (x) a condominium unit where the Penney Store will be located (the "**Penney Unit**"), (y) a condominium unit located beneath a portion of the Penney Unit where a covered parking area will be located (the "**Parking Unit**") and (z) a condominium unit located beneath a portion of the Penney Unit in which certain Developer Stores will be located (the "**Small Shops Unit**"), and certain other "**Common Elements**", all as hereinafter and in the Condominium Declaration more particularly described or to be described.

F. As soon as is reasonably possible following creation of the Condominium, the Small Shops Unit shall be reconveyed to Developer and the Penney Unit and Parking Unit shall be conveyed to or retained by Penney Owner. The Developer Property is subdivided, or is anticipated hereafter to be subdivided, into one or more separate legal parcels, with all such parcels so established (together with the Small Shops Unit, as the context requires or permits) being herein sometimes collectively called the "**Developer Parcels**", with any single one of the Developer Parcels being a "**Developer Parcel**" hereunder. The Penney Parking Parcel, Penney Unit and Parking Unit described herein are sometimes collectively referred to as the "**Penney Property**" or the "**Penney Parcels**."

G. Developer desires and intends that owners from time to time of Parcels in the Shopping Center Property be committed to operate their respective Parcels as an integrated shopping center and hotel complex for the mutual benefit of such Parcels, and, therefore,

wishes to declare and establish certain reciprocal easements, covenants, and conditions with respect to the Parcels comprising the Shopping Center Property.

H. Developer also desires (i) to make provision for regulation of construction of Stores (as defined in Article I below) on the various Parcels within the Shopping Center Property, as well as regulation of certain other improvements on and within the Shopping Center Property as are substantially consistent with the Site Plan attached hereto as Exhibits "B-1" through "B-7" and the terms of this Declaration, and (ii) to construct certain Common Area improvements (as defined in Article I below) necessary for the integrated use of the Shopping Center on the Von Maur Parcel, the NYLO Parcel, the Penney Parcels and the Developer Parcels.

I. In furtherance of all of the foregoing, Developer, recognizing that, for the optimum development and operation of the Shopping Center as a unified and coordinated project, it is necessary that the Owners of the various Parcels within the Shopping Center Property be bound by certain restrictions, covenants and agreements respecting certain matters relating to construction, maintenance and operation of the Shopping Center (including, but not limited to, matters relating to the construction and maintenance of facilities on, and the operation, use and restrictions on the use of, the respective Parcels), and recognizing further that establishment of such restrictions, covenants and agreements will afford successor Owners of Parcels within the Shopping Center Property further assurances as an inducement to undertake development and/or operation on the various Parcels of the Shopping Center Property, Developer does hereby declare that the Shopping Center Property is and shall be henceforth subject to the terms, provisions, easements, restrictions, covenants and agreements of this Declaration hereinafter set forth, which easements, restrictions, covenants and other agreements are hereby established on the terms and conditions hereof such that the Shopping Center Property and each Owner of any Parcel or Parcels therein henceforth shall be subject to and bound by, the easements, covenants and restrictions hereinafter set forth, all so as to assure that all development on and within the Shopping Center Property will be in conformity herewith during the Term hereof.

ARTICLE I DEFINITIONS

1.1 **Definitions.** Certain terms are defined in the text of this Declaration and shall have the meanings ascribed to such terms where so defined elsewhere in the text. In addition to those defined terms, however, when used herein the following terms shall have the following meanings:

"135 Metcalf Property" is defined in Paragraph "A" of the Recitals above.

"135 Metcalf/State Line Property" is defined in Paragraph "A" of the Recitals above.

"Access Road(s)" shall mean those certain accessways and entrances shown and designated as such on Exhibit "B-5" Site Plan.

"Allocable Share" shall mean an Owner's share of Common Area Expenses incurred on behalf of the Shopping Center as provided in Section 8.3 herein.

"Building Area(s)" shall mean the areas of the Shopping Center designated on the Exhibit "B-7" Site Plan within which Stores (which for the purpose of this Declaration shall include any appurtenant canopies, supports, loading docks, truck docks, turn-around and loading delivery areas or the portions of truck ramps serving any Store, and other outward extensions, as well as attached trash compactors and utility transformers) and any Outdoor Sales area may be constructed, placed or located. The Building Area may from time to time be modified by Developer on the Developer Parcels in its sole discretion without joinder of any other party, subject to the restrictions contained in Sections 4.4, 4.5 and 13.5; provided, however, that: (1) Developer shall not modify the Building Areas on the Von Maur Parcel or located within the Von Maur Control Area without the Von Maur Owner's prior written approval (which shall be in the Von Maur Owner's sole and absolute discretion); (2) Developer shall not modify any Building Area on the Penney Parcels or located within the Penney Control Area without the Penney Owner's prior written approval (which shall be in the Penney Owner's sole and absolute discretion); and (3) Developer shall not modify the Building Area, easements or restrictions on the NYLO Parcel without the NYLO Owner's prior written approval (which shall be in the NYLO Owner's sole and absolute discretion). Subject to the express limitations set forth in this Declaration, Developer shall be permitted to construct within the Building Areas, or cause to be constructed thereon, such buildings or structures, as are permitted by this Declaration.

"Commerce Bank Property" is defined in Paragraph "A" of the Recitals above.

"Common Area" shall be the portion of the Shopping Center intended for the nonexclusive use by the Owners and their Permittees, in common with other users as permitted by this Declaration. It is Developer's intention that, at such time as each Store is constructed within its respective Building Area, except as set forth below, all portions of the Parcels not developed (i) with vertical improvements or structures (except for the portion of the Penney Parcels comprised of the Parking Unit, for which the Parking Area located in such portion shall be deemed Common Area), or (ii) as a truck or loading dock area (including any concrete apron associated with such area) shall be Common Area for purposes of this Declaration. Common Area shall include, but not be limited to, common utility lines and systems, Parking Area, Access Roads, the Ring Road, the Penney Parking Access Way, driveways, lanes, entrances, public restrooms, public halls and hallways, walkways, sidewalks, public elevators, escalators and stairs located within or about Parking Area and sidewalks (not to include any such facilities interior to a Store), landscaping, a Shopping Center management office, any detention or retention ponds, areas and drainage facilities. The Common Area shall include all items of Common Area shown on the Site Plan, as the Site Plan, or portions thereof, may be modified from time to time by Developer, to the extent permitted to be modified by Developer as set forth herein. The Common Area shall also include all areas surrounding the Von Maur Store and outside the actual footprint of the Von Maur Store (the portion of land under the building) and shall specifically include the sidewalk and landscaped areas on the Von Maur Parcel. The Common Area shall also include all areas within the Penney Parcels other than the area of the Penney Store within the Penney Unit and shall specifically include the sidewalk and landscaped areas on the Penney Parcels. The Common Area shall also include the Hotel Parking Area, Hotel Adjacent Parking Area and the Drop-Off Area on the NYLO Parcel. Common Area shall not include any (i) Floor Area, (ii) truck and/or loading docks or the concrete apron or ramp leading to such areas (but will include any asphalt paved areas immediately adjacent to and adjoining such concrete apron or ramp area), (iii) trash enclosure areas immediately adjacent to, and used exclusively by, a particular Store, or (iv) the outdoor terrace area, courtyards and any guest amenities located on the NYLO Parcel.

"Common Area Expenses" is defined in Section 8.2 below.

"Common Area Fund" is defined in Section 8.6 below.

"Common Elements" is defined in Paragraph "E" of the Recitals above.

"Condemnation" is defined in Section 12.1 below.

"Condominium" is defined in Paragraph "E" of the Recitals above.

"Condominium Declaration" is defined in Paragraph "E" of the Recitals above.

"Condominium Parcel" is defined in Paragraph "B" of the Recitals above.

"Control Area" means either of the Penney Control Area or the Von Maur Control Area, as the context requires or permits. "Control Areas" means both the Penney Control Area and the Von Maur Control Area.

"Control Parcel" means the parcels of land more particularly described in Exhibit "A-7" attached hereto and depicted on Exhibit "B-3" Site Plan; provided, however, notwithstanding the legal description included in Exhibit "A-7" attached hereto, the Control Parcel shall not include the Hotel Adjacent Parking Area or any portion thereof.

"Defaulting Owner" is defined in Section 16.1 below.

"Default Rate" is defined in Section 16.2 below.

"Design Criteria" shall mean Developer's design criteria handbook, which may be revised or amended from time to time by Developer, which shall be provided by Developer to any Owner upon written request; provided, however, any modification, amendment and/or supplement to the Design Criteria that includes: (1) modifications or changes related to any Common Area located in the Penney Control Area or to the Penney Store shall require the prior written approval of the Penney Owner, which may be withheld by the Penney Owner in its sole and absolute discretion, (2) modifications or changes related to any Common Area located in the Von Maur Control Area or to the Von Maur Store shall require the prior written approval of the Von Maur Owner, which may be withheld by the Von Maur Owner in its sole and absolute discretion, (3) modifications or changes related to any Common Area located in the NYLO

Parcel or the Hotel Adjacent Parking Area or to the NYLO Parcel shall require the prior written approval of the NYLO Owner, which may be withheld by the NYLO Parcel Owner in its sole and absolute discretion.

"Developer" as used in this Declaration shall, subject to Article XIII, collectively refer to 135 Metcalf, L.L.C., an Iowa limited liability company, and State Line, LLC, an Iowa limited liability company, and each successor to such parties as Owner of the Control Parcel.

"Developer Parcels" is defined in Paragraph **"F"** of the Recitals above.

"Developer Property" is defined in Paragraph **"B"** of the Recitals above.

"Developer Stores" shall mean the structures and improvements constructed and contained within the Developer Parcels.

"Drop-Off Area" is defined in Section 18.3 below.

"Discount Department Store" shall mean a discount department store or any kind of outlet or other store selling discounted, defective, second hand or out of date merchandise or merchandise in a promotional or discount format. As of the date hereof, Discount Department Stores include, but are not limited to, Target, K-Mart, Wal-Mart, Shopko, TJ Maxx, Gordmans or Marshalls.

"Environmental Laws" shall mean and include all federal, state and local environmental, wetlands, health and safety statutes, regulations, ordinances, codes, rules, decrees and other governmental restrictions and requirements relating to or regulating the waters of the United States, stream realignment or relocation, or water quality or relating to the existence, treatment, generation, storage, release, transportation, remediation management, regulation or disposal of pollutants, water pollutants or process waste water, oil and gasoline products, or otherwise relating in any way to the environment or any Hazardous Materials, including, but not limited to: (i) CERCLA; (ii) the Resource Conservation and Recovery Act of 1976 (42 USC Sec. 6901, et seq.); (iii) the Hazardous Materials Transportation Act (49 USC Sec. 1801, et seq.); (iv) the Clean Air Act (42 USC Sec. 7401, et seq.); (v) the Safe Drinking Water Act (21 USC Secs. 201 and 300, et seq.), and the Clean Water Act (33 USC Sec. 1251, et seq.); (vi) the National Environmental Policy Act of 1969 (42 USC Sec. 4321); (vii) the Superfund Amendment and RE-Authorization Act of 1986 (42 USC Sec. 960, et seq.); (viii) all rules and regulations of the United States Environmental Protection Agency; and (ix) all rules and regulations of any other federal, state or local department, board, agency or entity having jurisdiction over any portion of the Entire Premises with regard to environmental, wetlands, health and safety matters, the waters of the United States, stream realignment or relocation, or water quality, as any of the foregoing have been, or are hereafter, amended.

"Estimated Common Area Expenses" is defined in Section 8.4 below.

"Estimated Statement" is defined in Section 8.4 below.

"Expense Year" shall mean each calendar year, or portion thereof, in which any portion of the Term falls, through and including the calendar year in which the Term expires.

"Expiration Date" is defined in Article XI below.

"Floor Area" shall mean the gross number of square feet of floor space within a specified area (e.g., the Shopping Center, a building, specific leased premises), from time to time, of all floors in such structure, whether roofed or not, whether or not actually occupied, including basement space and subterranean areas, measured from the exterior faces or the exterior lines of the exterior walls (including basement wall) and all permanent Outdoor Sales Areas, except that, as to any portion of a Parcel that contains a unit within the Condominium, only the gross number of square feet of floor space within the unit owned by such Owner shall be included in the calculation of Floor Area relative to such Owner. The term **"Floor Area"** shall not include any of the following:

(a) The upper levels of any multi-deck stock areas created for convenience to increase the usability of space for stock purposes.

(b) Areas, whether physically separated or whether otherwise required by building codes, which are used exclusively to house mechanical, electrical, telephone, telecommunications, and HVAC equipment, and other such building operating equipment.

(c) All interior or exterior truck loading areas, truck tunnels, and truck parking, turn around and dock areas and ramps.

(d) All Common Area (it being understood that, without limitation, the area of the Parking Unit is not considered Floor Area).

(e) Mezzanines and any interior second story not open to customers and incidental to ground floor retail operations.

(f) The outdoor terrace area, outdoor courtyards, guest amenities and guest rooms located on the NYLO Parcel.

"Hazardous Material" shall mean (i) any substance now or hereafter defined as a "hazardous substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC §9601, et seq.) ("CERCLA"), (ii) petroleum, petroleum products, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas, natural gas, and (iii) any other substance, material or product addressed under any Environmental Law or otherwise deemed to be hazardous, harmful, dangerous, toxic, or a pollutant.

"Hotel" shall mean a transient lodging facility which shall consist of no more than one hundred sixty-five (165) hotel rooms in a five story building with a maximum total gross area of 87,000 square feet and a height of approximately sixty-five (65) feet, including no more than 5,000 square foot interior restaurant and bar with no more than a 5,000 square foot outdoor terrace that can accommodate food and beverage services as well as special functions, a +/- 2,000 square foot gym including his and her changing rooms and steam rooms, and no more than 3,000 square feet of meeting space; provided, however, nothing herein shall require the Hotel to have all of the features/amenities described in this sentence. For the first fifteen (15) years following the Effective Date, the Hotel may only be operated as either: (1) a NYLO branded prototypical hotel or (2) a branded or independent limited service and/or select service hotel that is operated and maintained at minimum operational and physical plant standards consistent with Marriott Courtyard, Hilton Garden Inn, Hyatt Place, Aloft or Hampton Inn hotels in similarly situated markets, as such standards exist as of the Effective Date hereof, normal wear and tear excepted (the "Hotel Standards"); provided, however, in no event shall either Hotel referenced in items (1) and (2) of this sentence be operated as a "budget" or "economy" hotels or motels (e.g. Motel 6, Microtel, Budgetel, Clarion).

"Hotel Adjacent Parking Area" shall mean those parking spaces and areas on the Developer Parcel, as identified on Exhibit "B-6" Site Plan, as more fully described in Section 18.5.

"Hotel Parking Area" shall mean those parking spaces and areas on the NYLO Parcel that are subject to NYLO's Pre-emption Rights (as defined in Section 18.4), as identified on Exhibit "B-6" Site Plan. The Hotel Parking Area shall consist of an area large enough to park at least 60 vehicles in parking spaces with a minimum width of at least nine feet (9').

"Hotel Use" shall mean a Hotel which is used as a transient lodging facility with pedestrian and vehicular traffic at all hours of any given day, which Hotel, when used in the manner it was intended, taking into account normal and customary use of similar lodging facilities, may from time to time emit certain noise (e.g., music, crowd noise) incidental to the operation of such Hotel, including but not limited to, the restaurant and bar (which includes an outdoor terrace), meeting facilities and an exercise room/gym. Hotel Use shall include the selling of mattresses, compact disks, clothing, food, beverage (including alcoholic beverages), coffee, art work, books, videos, furniture, terry, linens, bedding accessories, sundries, meeting space, or any other products sold as an incidental component of the primary business of the NYLO Parcel as a Hotel, or sold in connection with the operation within the Hotel of a restaurant and bar facility or gift shop, provided that the primary business on the NYLO Parcel is a Hotel.

"Maximum Floor Area" shall mean the maximum Floor Area, if any designated, that can be located within a Building Area, as designated on the Exhibit "B-7" Site Plan, as the same may from time to time be modified by Developer on the Developer Parcels in its sole discretion without joinder of any other party, subject to the restrictions contained in Sections 4.4, 4.5 and 13.5; provided, however, that: (1) Developer shall not modify the Maximum Floor Area on any Parcel located within the Von Maur Control Area without the Von Maur Owner's prior written approval (which shall be in the Von Maur Owner's sole and absolute discretion), (2) Developer shall not establish or modify (if subsequently established) any Maximum Floor Area on any Parcel located within the Penney Control Area without the Penney Owner's prior written approval (which shall be in the Penney Owner's sole and absolute discretion), and (3) Developer shall not establish or modify (if subsequently established) any Maximum Floor Area

on the NYLO Parcel or Hotel Adjacent Parking Area without the NYLO Owner's prior written approval (which shall be in the NYLO Owner's sole and absolute discretion).

"Mortgagee" shall mean a mortgagee, or trustee and beneficiary under a Mortgage (as hereinafter defined), and to the extent applicable, a fee owner or lessor or sublessor of any Parcel which is the subject of a lease under which any Owner becomes a lessee in a so-called **"Sale and Leaseback"** or **"Assignment and Subleaseback"** transaction. The term **"Mortgage"** means any first mortgage, indenture of first mortgage, or first deed of trust of the interest, whether fee or leasehold, of an Owner in a Parcel and, to the extent applicable, a **"Sale and Leaseback"** or **"Assignment and Subleaseback"** transaction as herein contemplated.

"Non-Defaulting Owner" is defined in Section 16.1 below.

"Normal Business Hours" shall mean the period each day between 9:00 a.m. and 11:00 p.m. (except for Sundays, as to which **"Normal Business Hours"** shall mean the period between 9:00 a.m. and 7:00 p.m.).

"NYLO" as used in this Declaration means Overland Park Loft Hotel LLC, a Delaware limited liability company, and its successors and assigns. Notwithstanding the foregoing, if Overland Park Loft Hotel LLC shall not succeed Developer as Owner of the NYLO Parcel, then in such case all references to **"NYLO"** herein shall mean instead Developer.

"NYLO Owner" shall mean the Owner from time to time of the NYLO Parcel.

"NYLO Parcel" is defined in Paragraph **"B"** in the Recitals above, and includes the Hotel, the Hotel Parking Area and the Drop-Off Area.

"NYLO Pre-Emption Rights" is defined in Section 18.4 below.

"NYLO Separate Agreement" shall mean the Separate Agreement, if any, between Developer and NYLO contemplated by this Declaration.

"Official Records" shall mean the land records of Johnson County, Kansas.

"Operator" is defined in Section 8.1 below.

"Outdoor Sales" shall mean any use by a Permittee for temporary or permanent sales, displays, and/or customer seating, which areas are located outside of the structure of such Permittee's Store. Outdoor Sales are subject to Developer's approval and are subject to the limitations set forth in Section 4.3 below.

"Outlots" shall mean those lots depicted as such on the Exhibit **"B-4"** Site Plan. Subject to the restrictions contained in Sections 4.4, 4.5 and 13.5 below (and except as may otherwise be provided to the contrary in any applicable Separate Agreement), Developer reserves the right to modify the size and configuration of the Outlots from time to time as determined by the Developer without approval of any other Owner.

"Overall Common Area Obligations" shall mean the obligations of Developer hereunder pertaining to the Common Area.

"Overall Maximum Floor Area" shall mean the maximum Floor Area that can be located within the Shopping Center Property, as designated on the Exhibit **"B-7"** Site Plan, as the same may from time to time be modified by Developer in its sole discretion without joinder of any other party; provided, however, that Developer shall not increase the Overall Maximum Floor Area without the prior written approval of Von Maur Owner and Penney Owner, which approval shall be in each party's sole and absolute discretion.

"Owner" and **"Owners"** as used in this Declaration shall initially mean (i) Commerce Bank, N.A. with respect to the Commerce Bank Parcel and (ii) Developer with respect to the remainder of the Shopping Center Property until Developer, subject to Article XIII, has transferred fee title in and to a Parcel(s) to another Person; and thereafter, as to the Parcel so transferred, shall mean the successor or successors to such Developer as so determined in accordance with the provisions of such Article XIII. It is recognized the Developer anticipates as of the date hereof that the Penney Parcels will be conveyed to Penney as Owner thereof, the NYLO Parcel will be conveyed to NYLO as Owner thereof and the Von Maur Parcel will be conveyed to Von Maur as the Owner thereof.

"Parcel" or **"Parcels"** shall mean the Developer Parcels (as may be further subdivided and including as a separate Parcel, without limitation, the Small Shops Unit), the Commerce

Bank Parcel, the Von Maur Parcel, the NYLO Parcel and/or the Penney Parcels, as the context may require. There shall be no further subdivision of either the Von Maur Parcel, the NYLO Parcel or the Penney Parcels (which Penney Parcels shall be considered one Parcel for purposes hereof) without the consent of Developer. After the improvements are constructed on the Parcels and the development of the Shopping Center is complete, there shall be no further subdivision inside the Ring Road without the consent of the Owners of the Von Maur Parcel and the Penney Parcels, which consent shall not be unreasonably withheld, conditioned or delayed.

"Parking Area" shall mean those portions of the Common Area used for the parking of motor vehicles, including incidental and interior roadways, pedestrian stairways, walkways, curbs and landscaping within or adjacent to areas used for parking of motor vehicles, together with all improvements to the Common Area which at any time are erected thereon. Without limitation, the Parking Area includes (i) those portions of the Common Area described in the preceding sentence which are located within the Parking Unit, (ii) the Hotel Parking Area and (iii) the Hotel Adjacent Parking Area.

"Parking Unit" is defined in Paragraph "E" of the Recitals above.

"Penney" as used in this Declaration means J.C. Penney Properties, Inc., a Delaware corporation, and its successors and assigns. Notwithstanding the foregoing, if J.C. Penney Properties, Inc. shall not succeed Developer as Owner of the Penney Parcels, then in such case all references to "Penney" herein shall mean instead Developer.

"Penney Control Area" shall mean that portion of the Shopping Center which is identified on the Exhibit "B-2" Site Plan as the "Penney Control Area." The Penney Control Area shall not include the Von Maur Parcel, the NYLO Parcel or the Hotel Adjacent Parking Area.

"Penney Height Control Area" shall mean that portion of the Shopping Center which is identified on the Exhibit "B-2" Site Plan as the "Penney Height Control Area."

"Penney Owner" shall mean the Owner from time to time of the Penney Parcels.

"Penney Parcels" is defined in Paragraph "F" of the Recitals above.

"Penney Parking Access Way" shall mean that certain access way shown and designated as such on Exhibit "B-5" Site Plan.

"Penney Parking Parcel" is defined in Paragraph "B" of the Recitals above.

"Penney Property" is defined in Paragraph "F" of the Recitals above.

"Penney Separate Agreement" shall mean the Separate Agreement between Developer and Penney contemplated by this Declaration.

"Penney Store" shall mean the structure constructed and contained within the Penney Unit included within the Penney Parcels, which shall be one (1) story containing approximately 104,000 square feet of Floor Area, and appurtenant improvements, including, but not limited to, loading docks, loading ramps and other facilities to be constructed on the Penney Parcels.

"Penney Unit" is defined in Paragraph "E" of the Recitals above.

"Permittees" shall mean the Owners, all Persons from time to time entitled to the use and occupancy of any Floor Area in the Shopping Center under any lease, deed or other arrangement whereunder such Person has acquired a right to the use and occupancy of any Floor Area in the Shopping Center, and their respective officers, directors, employees, agents, contractors, customers, visitors, invitees, licensees and concessionaires.

"Person" or **"Persons"** shall mean and include any individual, partnership, firm, association, joint venture, corporation, or any other form of business entity.

"Project Architect" shall mean Slaggie Architects, Inc., or such other architect or architects duly licensed to practice in the State of Kansas, as may from time to time be designated by Developer.

"Real Property Taxes" is defined in Section 14.1 below.

"Related Corporation" shall mean a corporation, partnership, or other business entity, which, directly or indirectly, controls, is controlled by, or is under common control with, another corporation, partnership, or other business entity. If more than fifty percent (50%) percent of the

voting stock of a corporation shall be owned by another corporation or by a partnership or other business entity, the corporation whose stock is so owned shall be deemed to be controlled by the corporation, partnership, or business entity owning such stock.

"Ring Road" shall mean the outer perimeter/boundary drive of the Shopping Center and the lateral roads connecting the outer perimeter/boundary drive to adjoining public streets located in the areas shown on Exhibit **"B-5"** Site Plan and as same may exist from time to time in accordance with and subject to the terms of this Declaration.

"Rules and Regulations" are defined in Section 19.3 below.

"Separate Agreement" shall mean either or all, as the context requires or permits, of the following (i) that certain Separate Agreement entered into or to be entered into by and between Von Maur and Developer, (ii) that certain Separate Agreement entered into or to be entered into by and between NYLO and Developer and (iii) that certain Separate Agreement entered into or to be entered into by and between Penney and Developer. **"Separate Agreements"** shall mean, collectively, each of the Separate Agreement with Von Maur, the Separate Agreement with NYLO and the Separate Agreement with Penney.

"Shopping Center" shall mean the property consisting of the Developer Parcels, the Von Maur Parcel, the NYLO Parcel, the Penney Parcels and the Commerce Bank Parcel. For purposes of this Declaration, the Shopping Center shall not include those Outlots identified on Exhibit **"B-4"** Site Plan as **"Non-Shopping Center Parcels."**

"Shopping Center Property" is defined in Paragraph **"A"** of the Recitals above.

"Sign Criteria" shall mean the criteria for all signs within the Shopping Center in the form attached hereto as Exhibit **"D"**.

"Site Plan" shall mean the Site Plan prepared by the Project Architect and attached hereto as Exhibits **"B-1"**, **"B-2"**, **"B-3"**, **"B-4"**, **"B-5"**, **"B-6"** and **"B-7"** and incorporated herein by this reference. Exhibits **"B-1"** through **"B-7"** (excluding Exhibit **"B-6-1"**) are identical with the exception of the depiction thereon of the items identified in parenthesis next to each such Site Plan as set forth in Section 19.25.

"Small Shops Unit" is defined in Paragraph **"E"** of the Recitals above.

"Statement" is defined in Section 8.5 below.

"Store" or **"Stores"** shall mean the building(s), respectively, housing the Von Maur Store, as designated on the Site Plan, and/or the Penney Store, as designated on the Site Plan, and/or the Developer Stores, as designated on the Site Plan, as the context may appropriately require, and shall mean, as to the NYLO Parcel and as the context requires or permits, the Hotel.

"Successor Corporation" shall mean a corporation or other business entity into or with which another corporation or other business entity shall be merged or consolidated or to which all or substantially all of the assets of such other corporation or other business entity shall be transferred.

"Term" is defined in Article XI below.

"Transfer" means a conveyance by way of sale, assignment, lease, grant or transfer, including, without limitation, the sale portion of a **"Sale and Leaseback"** (as herein defined) and/or **"Assignment and Subleaseback"** (as herein defined), but excluding the making of a Mortgage.

"Transferee" means the purchaser, assignee, grantee, lessee or transferee in a particular Transfer.

"Transferor" means the seller, assignor, grantor, lessor or transferor in a particular Transfer.

"Von Maur" as used in this Declaration means Von Maur, Inc., an Illinois corporation, and its successors and assigns. Notwithstanding the foregoing, if Von Maur, Inc. shall not succeed Developer as Owner of the Von Maur Parcel, then in such case all references to **"Von Maur"** herein shall mean instead Developer.

"Von Maur Control Area" shall mean that portion of the Developer Parcels which is identified on the Exhibit "B-1" Site Plan as the "Von Maur Control Area." The Von Maur Control Area shall not include the Penney Parcels, the NYLO Parcel or the Hotel Adjacent Parking Area.

"Von Maur Operating Covenant" is defined in the Separate Agreement.

"Von Maur Owner" shall mean the Owner from time to time of the Von Maur Parcel.

"Von Maur Parcel" is defined in Paragraph "B" in the Recitals above.

"Von Maur Separate Agreement" shall mean the Separate Agreement between Developer and Von Maur contemplated by this Declaration.

"Von Maur Store" shall mean the building, which shall be two (2) stories of approximately equal square footage, containing not less than one hundred thirty thousand (130,000) and not more than one hundred fifty thousand (150,000) square feet of Floor Area in the aggregate for both floors, and appurtenant improvements, including, but not limited to, loading docks, loading ramps and other facilities to be constructed by Von Maur on the Von Maur Parcel.

ARTICLE II EASEMENTS

Developer hereby declares, establishes, creates, grants and conveys, for the benefit of each of the Parcels and the Owners thereof from time to time, the following easements in, to, over, and across the Common Area of the Shopping Center:

2.1 Parking Easements. Subject to the NYLO Pre-Emption Rights and the NYLO Owner's rights to restrict the use of the Drop-Off Area (each as defined in Article XVIII), each of the Parcels and the Owners thereof, shall have nonexclusive easements in, to, over and across the Common Area for the purpose of parking vehicles of Permittees in the Parking Areas thereon, limited, however, to purposes connected with or incidental to use of such parking for Shopping Center purposes.

2.2 Access Easements.

(a) Subject to the NYLO Pre-Emption Rights and the NYLO Owner's rights to restrict the use of the Drop-Off Area (each as defined in Article XVIII), each of the Parcels and the Owners thereof shall have nonexclusive easements in, to, over and across the Common Area, including driveways, for vehicular (including service vehicles) and pedestrian ingress and egress, and access and the right of access over established circulation roads, and ways between the public streets adjacent to the Shopping Center and any Parcel situated in the Shopping Center.

(b) Each of the Parcels and the Owners thereof shall have nonexclusive easements in, to, over and across any portion of the Ring Road and Access Roads located on a given Parcel for the purpose of ingress and egress to, from and between an Owner's Parcel and any public road or highway adjacent to the Shopping Center.

(c) Developer shall have a non-exclusive easement in, to, over and across each Parcel and the Common Area for the purpose of accessing, repairing, replacing or maintaining the Common Area.

(d) Without limiting the foregoing provisions, Penney Owner, for the benefit of the Penney Parcels, shall have a non-exclusive easement in, to, over and across the Penney Parking Access Way, for the purpose of ingress and egress to and from the Parking Unit.

Upon expiration of this Declaration, each Owner shall maintain in good repair and condition those portions of the Ring Road, Access Roads and Parking Area on its respective Parcel. In the event an Owner fails to so maintain and repair such portions of the Ring Road or Access Roads located on its Parcel, any other Owner may, after giving not less than thirty (30) days prior written notice to the Defaulting Owner (or at such earlier time as may be permitted in accordance with the provisions of Section 16.1 below), enter upon and perform such maintenance or repair on the Defaulting Owner's Parcel, unless, during such thirty (30) day period, the Defaulting Owner shall have cured such default. Notwithstanding the foregoing, the thirty (30) day cure period shall be extended for an additional period of time to the extent necessary with respect to repairs that cannot reasonably be performed within such thirty (30) day period, provided the Defaulting Owner commences to cure such default within such thirty

(30) day period and diligently prosecutes same to completion. The Defaulting Owner shall reimburse the performing Non-Defaulting Owner for its actual costs incurred within 30 days after receipt of a statement therefor accompanied by supporting information.

2.3 Utility Easements. Each of the Parcels and the Owners thereof shall have nonexclusive easements in, to, over, across and under the Common Area for the benefit of and appurtenant to each for the purposes of installation, repair, replacement and maintenance of sewers, water and gas pipes and systems, electrical power conduits, telephone conduits, lines and wires, and other public utilities beneath the ground surface at a location or locations reasonably approved in writing by (i) Developer with respect to the Developer Parcels, (ii) Von Maur Owner with respect to the Von Maur Parcel, (iii) NYLO Owner with respect to the NYLO Parcel and (iv) Penney Owner with respect to the Penney Parcels; provided that in all cases, in the performance of such installation, repair, replacement and/or maintenance: (a) adequate provision shall be made for the safety and convenience of all persons using the surface of such areas; (b) the areas and facilities (including without limitation paving and landscaping) shall be replaced or restored to the condition in which they were prior to the performance of such work by the Owner performing such work; (c) the other Owners shall be held harmless and indemnified by the Owner performing or causing to be performed such work against claims, damages and losses, including court costs and reasonable attorneys' fees arising from the performance of such work or use of such easements; (d) except in the event of an emergency, Developer and any Owner that is affected by such work shall be notified in writing not less than thirty (30) days prior to commencement of such work; (e) such work shall not conflict with other utility lines, conduits and facilities, and shall have been previously reasonably approved by all owners of such lines, conduits and facilities which are situated within 20 feet of any point of such proposed line, conduit or facility; (f) such work shall not unreasonably interfere with the normal and usual operation of the servient Owner's respective Parcel, customer parking or the Shopping Center; and (g) such work shall be scheduled in a manner intended to minimize, to the extent reasonably practicable, performance of any such work between November 1 to January 4 or during the thirty (30) day period prior to Easter, it being understood that the foregoing limitations in no way restricts performance of such work in the event of an emergency, if required by applicable governmental authorities and/or with respect to any initial construction or restoration following a casualty upon a Parcel in accordance with the terms of this Declaration. Franchises granted to public utilities for such utilities shall constitute compliance with the foregoing provisions. In addition, each Owner shall be obligated to perform such other acts, and to execute, acknowledge and/or deliver such instruments, documents and other materials as Developer or an Owner may request in order to document any such easement in a commercially reasonable manner. Any servient Owner shall have the right, upon not less than sixty (60) days' notice to the benefited Owner or Owners, at any time and from time to time, to move and relocate any such facility within such servient Owner's Parcel; provided, however, that (i) such relocation shall be made at the relocating-servient Owner's sole cost and expense, (ii) neither the relocation nor the relocated facility shall interfere with, nor increase the cost of, utility service to any benefited Owner, nor unreasonably interfere with the operation of any business being conducted on the Parcel of any benefited Owner, and (iii) such work shall otherwise comply with the terms of this Section.

2.4 Easements to Public Utilities. Nothing herein contained shall restrict or prevent an Owner from granting to any public utility, public body or other public authority easements over or under the Common Area located on its Parcel, for public utility lines and facilities, water, storm and sanitary sewer lines and conduits and facilities therefor, or for drainage or slope purposes, or for other pipe line purposes; provided that such easements do not adversely affect any Parking Area or other use of any Common Area in the Shopping Center. Any grant or other conveyance of an easement to a public utility by an Owner on its own Parcel(s) after the recording of this Declaration shall, without necessity of further recital in the conveyance instrument, be deemed to include the following conditions, covenants and restrictions to which such public utility and its successors shall be bound unless specifically stated otherwise in such instrument:

- (a) The easement is non-exclusive;
- (b) All facilities installed pursuant to the easement shall be underground, except for ground mounted transformers, fire hydrants, manholes and manhole covers which shall be flush with adjacent grade, and except as otherwise shown on plans approved by grantor;
- (c) The grantor retains the right to use the surface areas as grantor sees fit, provided and so long as such uses are not inconsistent with the easement rights herein established;

(d) The grantor reserves the right to require the grantee to relocate its facilities (and vacate the easement) to another location on the grantor's Parcel, subject to the conveyance of a similar easement, all at the grantor's cost and expense; provided that such relocation shall not be commenced (except in case of emergency) during the months of November, December or January without the prior consent of each Owner on whose Parcel such relocation will take place;

(e) The grantee shall not, in its use or installation, interfere with other installations and easements in the area; and shall protect its facilities against uses of the surface made by the grantor and others;

(f) The grantee shall make adequate provisions for the safety and convenience of all persons using the area and following installation or other work, shall replace and restore the areas and improvements (including without limitation paving and landscaping) to the condition in which they were immediately prior to performance of such installation and work;

(g) The grantee shall defend, indemnify and hold harmless grantor against all loss, liability, and costs (including reasonable attorney's fees) which may result to grantor from the negligent act or omission of grantee, its agents, employees and contractors;

(h) The grantee shall not permit any claim, lien or encumbrance to attach against the grantor's Parcel or any other Parcel or any interest therein; and

(i) No easement shall be granted to a public utility which unreasonably interferes with the construction, use and enjoyment of such Parcel or the rights granted to the Owners hereunder.

2.5 Drainage. Each of the Parcels and the Owners thereof shall have nonexclusive easements in, to, over, and through the drainage patterns and systems as are established from time to time within the Common Area, for reasonable surface drainage purposes. To the extent an Owner's Parcel includes Common Area, nothing herein shall prevent such Owner from relocating the drainage patterns established upon such Owner's Parcel provided such Owner first provides Developer with plans respecting such relocation and such relocation does not unreasonably interfere with the drainage of other Parcels within the Shopping Center or the Non-Shopping Center Parcels nor interfere with the orderly discharge of water by means of same.

2.6 Encroachment. Each of the Parcels and Owners thereof shall have nonexclusive easements in, on, over and under the Common Area for minor encroachments (together with the maintenance thereof) such as building overhangs, building support columns, canopies, eaves, foundations, slabs, footings, pillars and other minor encroachments. Neither such easements nor minor encroachments shall unreasonably (i) interfere with Developer's use or operation of the Shopping Center, (ii) interfere with the adjacent Owner's use or operation of its Parcel, (iii) restrict or limit the operation or use of any Building or other improvement constructed on the adjacent Owner's Parcel, nor (iv) limit or restrict the type of Building or other improvements that may be constructed on the adjacent Parcel and such encroachments shall be independent of the adjacent Owner's Parcel and shall not receive any structural support from any improvement located on such adjacent Parcel. Notwithstanding the foregoing, this subparagraph shall not create easements for intentional encroachments.

2.7 Execution of Documents. Each of the Owners shall be bound to execute such documents in recordable form as may be applicable and necessary to effectuate the provisions of this Article II, and any provisions of this Declaration, including, but without limitation, any documents granting easements, licenses and similar rights to utility companies and governmental bodies or agencies thereof.

2.8 Construction Easements. Developer hereby declares, establishes and creates, for the benefit of the Von Maur Parcel, NYLO Parcel and Penney Parcels, a non-exclusive easement over and across the Control Parcel for the purpose of storing materials and performing any work to the extent reasonably necessary to permit the construction, maintenance, repair, replacement, restoration or reconstruction of any and all improvements on the Von Maur Parcel, NYLO Parcel and Penney Parcels, provided that in the exercise of its easement rights granted by this Section, Von Maur Owner, NYLO Owner and Penney Owner shall not unreasonably interfere with the performance by Developer of its obligations under this Declaration or the Separate Agreements. Subject to the Separate Agreements, Developer may impose reasonable limitations on the exercise of Von Maur Owner's, NYLO Owner's and

Penney's Owner's rights under this Section, including establishing paths or areas of ingress and egress, staging areas for construction equipment and activities and hours of the day or days of the week during which Von Maur Owner, NYLO Owner and/or Penney Owner may use the easements established and created pursuant to this Section. Developer shall have the right to grant similar non-exclusive easements over the Control Parcel, subject to similar limitations contained in this Section including, but not limited to, the imposition by Developer of reasonable limitations on the exercise by any such Owner of its rights under such easement, including establishing paths or areas and ingress and egress, staging areas for construction equipment and activities and hours of the day or days of the week during which such Owner may use the easement granted pursuant to this Section so that Von Maur Owner's, NYLO's Owner's, Penney Owner's and all other Owners' business operations shall not be interfered with or interrupted.

Without limiting the provisions of Section 4.4 and 4.5 of this Declaration, no construction staging area or construction related closure of any Common Area shall be located on the Penney Parcel, the Von Maur Parcel, the NYLO Parcel or the Hotel Adjacent Parking Area without their respective consent.

2.9 Unimpeded Access Between Parcels. Subject to (i) the NYLO Pre-Emption Rights, (ii) the NYLO Owner's rights to restrict the use of the Drop-Off Area, and (iii) Developer's rights and obligations with respect to the maintenance of Common Area, it is declared and established that the Owners at all times during the Term of this Declaration shall have free access over Common Area between each Parcel and the remainder of the Shopping Center, that such access will not be impeded and that such access will be maintained in a manner consistent with the Site Plan for the Shopping Center, as same may be modified in accordance with the provisions of this Declaration.

2.10 Use by Permittees. Subject to the Rules and Regulations for the use of such areas, the use of all easements provided for in this Article, and the use of the entire Common Area will, in each instance, be nonexclusive, and for the use and benefit of all Permittees, except as otherwise expressly stated herein.

2.11 Unauthorized Use and Closure of Common Area. Developer hereby reserves the right to eject (or cause ejection from the Common Area of) any Person or Persons not authorized, empowered or privileged to use the Common Area pursuant to this Declaration. Each Owner shall have and is hereby reserved the right to close off the Common Area located on its Parcel for such reasonable period or periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to taking such action, the Owner intending to do so shall notify the other Owners of such intention and shall attempt to coordinate its closing with such other Owner's activities so that no unreasonable interference with the operation of the Shopping Center shall occur. Furthermore, no such closing shall occur within the period of time between November 1 of any calendar year through January 4 of the next succeeding calendar year nor during the thirty day period prior to Easter, except that any such closing may occur on Christmas Day (provided and so long as customary practice in the retail shopping center industry is for stores to be closed on Christmas Day).

2.12 Prohibition Against Granting Easements. Except as otherwise permitted herein, other than Developer, no Owner, or any Person not an Owner, shall grant any easement for the benefit of any property not within the Shopping Center.

2.13 Term of Easements. The easements set forth in Article II shall be perpetual and continue in effect following the expiration or termination of this Declaration. By taking title subject to this Declaration, each subsequent Owner shall be deemed to have ratified and to have joined in the grant of the easements set forth herein without the necessity of execution or delivery of any further instrument.

2.14 Assurances Regarding Separate Agreements. Developer represents and warrants for the benefit of Von Maur Owner and NYLO Owner that nothing in the Penney Separate Agreement diminishes any of the easement rights granted for the benefit of the Von Maur Parcel or NYLO Parcel herein. In addition, Developer represents and warrants for the benefit of Von Maur Owner and Penney Owner that nothing in the NYLO Separate Agreement diminishes any of the easement rights granted for the benefit of the Von Maur Parcel or Penney Parcels herein. Likewise, Developer represents and warrants for the benefit of NYLO Owner and Penney Owner that nothing in the Von Maur Separate Agreement diminishes any of the easement rights granted for the benefit of the NYLO Parcel or Penney Parcels herein.

**ARTICLE III
CONSTRUCTION REQUIREMENTS**

3.1 Construction Compatibility. No improvements shall be constructed, erected, expanded or altered on the Parcels until the plans and specifications for same (including, but not limited to, site layout, exterior building materials and colors, landscaping and parking layouts) have been approved in writing by Developer. Each Owner shall, during the period prior to commencement of construction, consult with the Project Architect and Developer concerning the exterior design, color treatment and exterior materials to be used in the construction, of all buildings and structures on its respective Parcel(s). Each Owner shall cause its respective architect to work in good faith with the Project Architect and Developer so that the buildings to be erected and constructed will have an overall cohesive and related architectural continuity and will be in harmony with the balance of the Shopping Center improvements. Any improvements constructed, erected, expanded or altered on the Parcels shall be in accordance with the Site Plan. In addition to the foregoing, Von Maur Owner shall have the approval rights set forth in Section 4.4 below and Penney Owner shall have the approval rights set forth in Section 4.5 below.

3.2 Performance of Construction. Each Owner shall be bound to perform all construction on its respective Parcel or Parcels, (i) in accordance with the applicable plans and specifications therefor as approved in this Declaration and, as applicable, each Owner's Separate Agreement; (ii) with due diligence and in a good and workmanlike manner, using new and/or first-class materials; (iii) in full cooperation with the other Owners to the extent necessary to effect a unified, integrated shopping center development; (iv) in accordance with all applicable laws, ordinances, rules and regulations of all governmental and quasi-governmental agencies and authorities having jurisdiction over such construction, including, but not limited to, the Americans with Disabilities Act of 1990 and all orders, rules and regulations of the National Board of Fire Underwriters or any other body now or hereafter constituted performing similar functions in the County of Johnson, State of Kansas; (v) only after having procured and paid for, so far as the same are required, all municipal and other governmental permits and authorizations of the various departments and governmental subdivisions having jurisdiction; and (vi) in accordance with the terms and provisions of this Declaration. The Owners in the performance of their construction shall not (x) cause any unnecessary or unreasonable increase in the cost of construction of any other Owner; (y) unreasonably interfere with any other construction being performed on the Shopping Center; or (z) unreasonably impair the use, occupancy or enjoyment of the Shopping Center or any part thereof as permitted or contemplated by this Declaration.

3.3 Construction Indemnities. Each Owner shall indemnify, defend, and hold harmless the other Owners from and against all claims and all costs, expenses and liabilities (including reasonable attorneys' fees) incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of any mechanic's liens, or other claims regarding materials supplied or work performed, or the death of, or any accident, injury, loss or damage whatsoever caused to, any natural Person, or to the property of any Person, as shall occur by reason of the performance of any construction by or at the request of the indemnitor, except for claims caused by the negligence or willful act or omission of the indemnitee, its licensees, concessionaires, agents, servants or employees, or any agents, servants or employees of such licensees or concessionaires where the same may occur. If any mechanic's, materialman's, or other similar lien shall at any time be filed against any part of the Shopping Center on account of any work, labor or services performed or claimed to have been performed, or on account of any materials furnished or claimed to have been furnished, for or at the direction of an Owner or anyone holding or occupying such Owner's Parcel or Store through or under such Owner, such Owner shall, without cost or expense to any other Owner, forthwith cause the same to be either (i) discharged of record by payment, bond, order of a court of competent jurisdiction, or otherwise, or (ii) contested (so long as such contest can be conducted without risk of forfeiture as to any of the easement rights and other privileges and benefits created by this Declaration), in which event any judgment or other process issued in such contest shall be paid or discharged before execution thereof.

3.4 Indemnitee to Provide Notice. The indemnitee shall give the indemnitor notice of any suit or proceeding entitling the indemnitee to indemnification pursuant to this Section and the indemnitor shall defend, at the indemnitor's cost, the indemnitee in such suit or proceeding with counsel approved by the indemnitee.

3.5 Cost of Construction. Except as otherwise set forth in this Declaration or a Separate Agreement, each Owner shall be responsible for the cost and expense of all improvements to be constructed on its Parcel.

3.6 **Safety Measures.** Each Owner shall at all times take any and all safety measures reasonably required to protect the other Owners from injury or damage caused by or resulting from the performance of its construction.

3.7 **Architects Certificates.** During the Term of this Declaration, all architects employed in connection with any construction on the Owners' respective Parcels will either be certified architects licensed to practice in the State of Kansas or will affiliate with an architect so licensed. Upon request of an Owner, the Owner to whom such request is made shall cause the architect who prepared plans and specifications for any construction on an Owner's Parcel to deliver a certificate to the Owner making the request, stating the actual Floor Area constructed (or, in the case of the Hotel or any theater properly operated within the Shopping Center, stating the number of Hotel guest rooms or the number of theater seats). Each Owner shall cause its architect, upon request, to give notice to the other Owners by a certificate stating the actual Floor Area (or number of rooms or seats) and any net change of Floor Area or rooms theretofore constructed on such Owner's Parcel; provided, however, Von Maur Owner, NYLO Owner and Penney Owner shall only be required to deliver such certificate to Developer.

ARTICLE IV SHOPPING CENTER DEVELOPMENT RESTRICTIONS

4.1 **Building Area.** No Stores or other improvements (other than Common Area) may be constructed outside the Building Areas as depicted on the Exhibit "B-7" Site Plan without Developer's written consent, which consent may be arbitrarily withheld by Developer in its sole discretion; provided, however, to the extent the Store or improvement to be constructed outside the Building Areas is located within the Penney Control Area or the Von Maur Control Area, the consent of Penney Owner or Von Maur Owner, each as to its respective Control Area, shall also be required. In addition, no Stores may exceed the Maximum Floor Area designation, if any, depicted on the Exhibit "B-7" Site Plan without Developer's written consent, which consent may be arbitrarily withheld by Developer in its sole discretion; provided, however, to the extent the Maximum Floor Area to be exceeded is located within the Penney Control Area or the Von Maur Control Area, the consent of Penney Owner or Von Maur Owner, each as to its respective Control Area, shall also be required. Notwithstanding the foregoing, the NYLO Owner shall have the right to construct an outdoor terrace area, courtyards and other guest amenities in that area labeled as the "NYLO Amenities Area" on the Exhibit "B-6" Site Plan.

4.2 **Common Area.** Except as shown on the Site Plan and as provided below, no improvements may be built or maintained in the Common Area other than parking lots, curbs, driveways, lights, sidewalks, signs, kiosks, merchandise carts, landscaping, trash receptacles or enclosures and other improvements normally found in a parking lot or common area without Developer's written consent, which consent may be arbitrarily withheld by Developer in its sole discretion and which consent, as regards the Penney Control Area or the Von Maur Control Area, cannot be given without the concurrence of Penney Owner or Von Maur Owner, each as to its respective Control Area.

4.3 **No Kiosk Area.** Within the area depicted on the Exhibit "B-4" Site Plan as the "No Kiosk Area", there shall be no kiosks, merchandise carts, push carts, vending machines, Outdoor Sales, promotional activities, selling or solicitation of any kind (including charges for admission, rides or entertainment) permitted without the written consent of Developer, which may be arbitrarily withheld in its sole discretion; provided, however, to the extent such items or activities are proposed to be placed or occur within the Penney Control Area or the Von Maur Control Area (except for any Outlots located therein), the consent of Penney Owner or Von Maur Owner shall be required with respect to their respective Control Areas, which consent may be arbitrarily withheld in their sole discretion; provided, further, to the extent such items or activities are proposed to be placed or occur within the NYLO Parcel or the Hotel Adjacent Parking Area, the consent of NYLO Owner shall be required, which consent may be arbitrarily withheld in their sole discretion. Notwithstanding the foregoing, NYLO Owner shall have the right to locate kiosks, merchandise carts, push carts, vending machines, Outdoor Sales and promotional activities in the NYLO Parcel (but not in any Parking Area located on the NYLO Parcel) without Developer's consent.

4.4 **Changes to Von Maur Control Area.** In addition to the restrictions set forth in Section 4.1, 4.2 and 4.3, neither Developer nor any other Person or Owner shall, without Von Maur Owner's express written consent, which may be withheld in its sole and absolute discretion (except as otherwise provided in this Section 4.4), do or allow any of the following within the Von Maur Control Area depicted on the Exhibit "B-1": (i) make changes to the Common Area, including, without limitation, Parking Area, No Kiosk Area (if applicable), driveways, ramps, entrances, exits, passages, stairways and other ingress and egress, landscaped areas, loading and unloading areas, and walkways; (ii) add additional Stores,

expand existing Stores, or enlarge, change, redevelop or redesign any improvements or enlarge and/or change any Building Area or Maximum Floor Area, as depicted on the Exhibit "B-7" Site Plan; (iii) use the Common Area while engaged in making additional improvements, repairs or alterations to the Shopping Center or to any adjacent land, or any portion thereof, except: (1) during construction or reconstruction of any portion of the Shopping Center (subject to the terms of this Section 4.4), and (2) as necessary to allow Developer or an Owner to fulfill its obligations with respect to maintenance, repair, replacement or rebuilding of the Common Area under this Declaration; provided, however, the construction traffic route and the staging areas for any initial construction or any total or partial reconstruction of any building or improvement, or permitted expansion thereof, located within the Von Maur Control Area (except for any Outlots located therein) and occurring after the opening of the Von Maur Store shall be subject to the approval of Von Maur Owner, not to be unreasonably withheld, delayed or conditioned; and (iv) construct or allow any structure on the Outlots located in the Von Maur Control Area to exceed twenty-five feet (25') in height, inclusive of parapets and other architectural embellishments, as measured from the finished floor elevation of such structure; provided that structures, parapets and other architectural embellishments exceeding twenty-five feet (25') shall be permitted on any such Outlot to the extent that a greater height is indicated with respect to the Outlot at issue on the Exhibit "B-1" Site Plan (so long as the height thereof shall not exceed the higher limit so noted). Further, neither Developer nor any other Person or Owner shall without Von Maur Owner's express written consent, which may be withheld in its sole and absolute discretion, (1) enlarge, change, relocate, reduce, redevelop and/or redesign any portion of the Ring Road and/or any Access Roads located within the Shopping Center; or (2) make any changes in the location, size, shape and number of street entrances (i.e. the entrances to and from the Shopping Center to Metcalf Avenue, 135th Street, 138th Street or Lamar Avenue), or the direction of traffic located within the Shopping Center.

4.5 Changes to Penney Control Area; Certain other Changes. In addition to the restrictions set forth in Section 4.1, 4.2 and 4.3, neither Developer nor any other Person or Owner shall, without Penney Owner's express written consent, which may be withheld in its sole and absolute discretion (except as otherwise provided in this Section 4.5), do or allow any of the following within the Penney Control Area depicted on the Exhibit "B-2" Site Plan: (i) make changes to the Common Area, including, without limitation, Parking Area, Penney Parking Access Way, No Kiosk Area (if applicable), driveways, ramps, entrances, exits, passages, stairways and other ingress and egress, landscaped areas, loading and unloading areas, and walkways; (ii) add additional Stores, expand existing Stores, enlarge, change, redevelop or redesign any improvements or enlarge and/or change any Building Area or Maximum Floor Area; (iii) use the Common Area while engaged in making additional improvements, repairs or alterations to the Shopping Center or to any adjacent land, or any portion thereof, except: (1) during construction or reconstruction of any portion of the Shopping Center (subject to the terms of this Section 4.5), and (2) as necessary to allow Developer or an Owner to fulfill its obligations with respect to maintenance, repair, replacement or rebuilding of the Common Area under this Declaration; provided, however, the construction traffic route and the staging areas for any initial construction or any total or partial reconstruction of any building or improvement, or permitted expansion thereof, located within the Penney Control Area and occurring after the opening of the Penney Store shall be subject to the approval of Penney Owner, not to be unreasonably withheld, delayed or conditioned; and (iv) construct or allow any structure on the Outlots located in the Penney Height Control Area, as depicted on the Exhibit "B-2" Site Plan, to exceed twenty-seven feet (27') in height, inclusive of parapets and other architectural embellishments, as measured from the finished floor elevation of such structure; provided that structures, parapets and other architectural embellishments exceeding twenty-seven feet (27') shall be permitted on any such Outlot to the extent that a greater height indicated with respect to the Outlot at issue on the Exhibit "B-2" Site Plan (so long as the height thereof shall not exceed the higher limit so noted). Further, neither Developer nor any other Person or Owner shall, without Penney Owner's express written consent, which may be withheld in its sole and absolute discretion, (1) enlarge, change, relocate, reduce, redevelop and/or redesign any portion of the Ring Road and/or any Access Roads located within the Shopping Center; or (2) make any changes in the location, size, shape and number of street entrances (i.e. the entrances to and from the Shopping Center to Metcalf Avenue, 135th Street, 138th Street or Lamar Avenue), or the direction of traffic located within the Shopping Center.

4.6 Certain Closures, Alterations, Etc. Except as otherwise prohibited herein (including without limitation, those restrictions set forth in this Article IV and in the definition of "Building Area(s)" in Article I), Developer reserves the right from time to time without notice to any Owner (except as further provided below), to close temporarily any of the Common Area in connection with the performance by Developer of its repair and maintenance obligations, provided that any such work shall, to the extent reasonably practicable, be scheduled in a manner intended to minimize interference with the ordinary conduct of business within the Shopping Center. Before taking such action, Developer shall notify Penney Owner, Von Maur

Owner and NYLO Owner as well as the Owner of the Parcel on which such temporary closure will occur as to the location, duration and extent of such repair and maintenance. In particular, but without limitation, any such closure shall be scheduled in a manner intended to minimize, to the extent reasonably practicable, performance of any such work between November 1 to January 4 or during the thirty day period prior to Easter, it being understood that the foregoing limitation in no way restricts closure in the event of an emergency, if required by applicable governmental authorities and/or with respect to any initial construction or restoration following a casualty upon a Parcel in accordance with the terms of this Declaration. Except as to Common Area on the NYLO Parcel and as otherwise prohibited herein (including without limitation, those restrictions set forth in this Article IV and in the definition of "Building Area(s)" in Article I), Developer further reserves the right from time to time without notice to any Owner (except as provided below) (i) to make changes to the Common Area, including, without limitation, driveways, ramps, entrances, exits, passages, stairways and other ingress and egress, landscaped areas, loading and unloading areas, and walkways; (ii) to add additional Stores, to expand existing stores, or to enlarge and change, redevelop, redesign any improvements or enlarge and/or change any Building Area or Maximum Floor Area; (iii) to use the Common Area while engaged in making additional improvements, repairs or alterations to the Shopping Center or to any adjacent land, or any portion thereof; and (iv) to do and perform such other acts and make such other changes in, to or with respect to the Shopping Center and Common Area or the expansion thereof as Developer may, in the exercise of sound business judgment, reasonably deem to be appropriate. Notwithstanding the foregoing, the Owners agree that any changes in the location, size, shape and number of street entrances (i.e. the entrances to and from the Shopping Center to Metcalf Avenue, 135th Street, 138th Street or Lamar Avenue), the Ring Road, the Access Roads or the direction of traffic, shall require the written consent of Von Maur Owner, Penney Owner and NYLO Owner, which consent shall be in their sole and absolute discretion.

4.7 Parking Ratio and Standards. During the entire Term of this Declaration, the Parking Area shall be maintained in accordance with the Site Plan and the requirements of the City applicable to the Shopping Center so that the overall Parking Area of the Shopping Center contains the number of parking spaces sufficient to satisfy the greater of: (1) the sum of: (x) for all Stores, a ratio of four and one-half (4.5) parking spaces for each 1,000 square feet of Floor Area located within the Shopping Center, exclusive of the Hotel and any permitted theater, (y) one (1) parking space for each lodging room in the Hotel, and (z) one (1) parking space for every three (3) seats for any theater; or (2) the number of parking spaces required by the City of Overland Park, Kansas in connection with the Shopping Center. Notwithstanding the foregoing (and without limiting the provisions of Section 4.1 of this Declaration), no Owner shall be permitted to construct a greater number of square feet of Floor Area upon such Owner's Parcel (and also, in the case of the areas devoted to theater and Hotel Use in accordance with the terms of this Declaration, a greater number of seats and/or rooms, as applicable) than the Maximum Floor Area (or number of seats or rooms) for such Parcel, unless such Owner is able, without violating any of the further terms of this Declaration (including without limitation obtaining any required approval as set forth in Sections 4.4 and 4.5), to establish additional parking spaces for such additional Floor Area (and/or seats or rooms) beyond the number of spaces on such Parcel shown on the Site Plan sufficient to satisfy the foregoing parking space requirements. The additional parking spaces shall be located upon the Parcel upon which such additional Floor Area (or number of seats or rooms) is to be constructed or upon another Parcel in reasonable proximity thereto with the written consent of the Owner thereof; provided, however, the consent of Penney Owner or Von Maur Owner shall be required in the event the proposed location of the additional parking spaces is within their respective Control Area. All parking spaces shall have a minimum width of at least nine feet (9'). Developer hereby represents and warrants that the parking requirement set forth in the first sentence of this section will be satisfied so long as parking for the Shopping Center is constructed and maintained in accordance with the Site Plan and (1) the Floor Area shall not exceed the Overall Maximum Floor Area identified on Exhibit "B-7" Site Plan; (2) there are no more than one hundred sixty-five (165) lodging rooms in the Hotel; and (3) there are no more than 280 theater seats; provided, however, this representation is not intended, and shall not be construed, to limit the number of lodging rooms or theater seats permitted under this Declaration.

4.8 Employee Parking. Developer may establish employee parking areas within the Developer Parcels for employees of the occupants of the Developer Parcels; provided, however, in no event shall Developer have the right to establish employee parking areas on a Developer Parcel sold and conveyed in fee simple to a third party unless such Developer Parcel is located within the Control Parcel. Prior to opening of the Von Maur Store, Von Maur Owner and Developer shall mutually designate a permitted area within the Von Maur Parcel to be used by Von Maur Owner's employees for parking their cars. Von Maur Owner shall use commercially reasonable efforts to cause its employees to park in such permitted employee parking area, but Von Maur Owner shall not be responsible for violation of this parking

restriction by other Permittees. Prior to opening of the Penney Store, Penney Owner and Developer shall mutually designate a permitted area within the Penney Parcels to be used by Penney Owner's employees for parking their cars. Penney Owner shall use commercially reasonable efforts to cause its employees to park in such permitted employee parking area, but Penney Owner shall not be responsible for violation of this parking restriction by other Permittees. Similarly, Developer shall use commercially reasonable efforts to cause employees of the Permittees of Developer's Parcels to have their respective employees park only in the permitted employee parking areas for such Permittee, but Developer shall not be responsible for violation of this parking restriction by other Permittees. In no event shall any Permittee allow employee parking areas anywhere on the Von Maur Parcel; provided, however, Von Maur Owner shall have the right to designate areas on the Von Maur Parcel for its employee parking. In no event shall any Permittee allow employee parking areas anywhere on the Penney Parcel; provided, however, Penney Owner shall have the right to designate areas on the Penney Parcel for its employee parking. In no event shall any Permittee allow employee parking areas anywhere on the NYLO Parcel or the Hotel Adjacent Parking Area; provided, however, the NYLO Owner shall have the right to designate areas on the NYLO Parcel or the Hotel Adjacent Parking Area for its employee parking. Each Owner shall use commercially reasonable efforts to cause its employees or the employees of the occupants of that Owner's Parcel to park in an available Parking Area that is not located near the entrance of any Stores. No Owner shall direct its employees or the employees of the occupants of that Owner's Parcel to park on an Outlot without such Outlot Owner's consent. Notwithstanding anything set forth in this Declaration to the contrary, if there is a violation of the foregoing requirement by any employee of a Permittee, Developer shall, at Developer's option, have the right but not the obligation to tow any vehicle parked in violation of the terms hereof so long as: (1) such towing is in compliance with applicable law; and (2) Developer notified the Owner associated with such employee of such violation and such violation continued uncured for five (5) days after the giving of such notice. Developer shall defend, indemnify and hold harmless all Owners against all loss, liability and costs which may result in connection with the towing of vehicles pursuant to this Section of the Declaration.

4.9 Parking Charges. No metered or other direct parking charge shall be made by any Owner on any of its land included in the Shopping Center or by their successors or assigns, it being the intention of Developer that the right to park in the Common Area shall be free of any direct charge whatsoever except as may be required by law and except that Developer or certain Permittees as provided herein may charge a fee if they provide valet parking services, provided (i) the Developer approve in writing of a designated portion of the Parking Area to be used by such valet parking services and (ii) if the parking spaces used to valet park such vehicles are to be located within the Von Maur Control Area or the Penney Control Area, Von Maur Owner and/or Penney Owner, as applicable, approve in writing of a designated portion of the Parking Area to be used by such valet parking services. Notwithstanding the foregoing, the NYLO Owner shall have the right to provide valet parking services on the Hotel Parking Area and Hotel Adjacent Parking Area for its customers. It is understood and agreed that the foregoing prohibition on direct parking charges in no way limits or abrogates the obligations of the Owners hereunder to pay Common Area Expenses as herein provided.

4.10 Roof Top Equipment; Trash Enclosures. Roof top mechanical and telecommunications equipment (including, without limitation, any antennae or satellite dishes) shall be screened from public view from adjacent public streets and highways and in a manner satisfactory to Developer. Any trash facility, except for a trash facility on the Von Maur Parcel situated as shown on the Exhibit "B-4" Site Plan, shall be screened from public view from adjacent public streets and highways on all four sides or in a manner otherwise satisfactory to Developer. The trash facility on the Von Maur Parcel shall comply with all applicable laws, ordinances and rules and regulations of all governmental agencies having jurisdiction over such matters.

4.11 Obstructions. Except as specifically depicted on the Site Plan or as may be approved in writing by the Developer in its sole discretion, no fence, division, partition, rail, or obstruction of any type or kind (excluding landscaping) shall ever be placed, kept, permitted, or maintained between the Parcels or between any subsequent division thereof or upon or along any of the common property lines of any portion thereof, except within the confines of the Building Area, and except as may be required at any time and from time to time in connection with the construction, maintenance, and repair of Common Area. Developer's right to approve a fence, division, partition, rail or obstruction of any type that is not otherwise permitted shall be subject to the following: (i) if such obstruction is located within the Von Maur Control Area, Penney Control Area and/or the NYLO Parcel or Hotel Adjacent Parking Area, the concurrence of Von Maur Owner, Penney Owner or NYLO Owner, respectively, shall also be required and (ii) Developer shall not approve an obstruction if it will unreasonably interfere with or impair use and enjoyment of the Common Area by Von Maur Owner, NYLO Owner and Penney Owner as

herein contemplated and intended. The foregoing shall be subject to the NYLO Pre-Emption Rights.

4.12 Signs. Except as set forth below, no exterior signs of any type shall be placed or maintained on any Parcel or Store unless such signage complies with the Sign Criteria attached hereto and marked Exhibit "D". Such signs, and their construction and installation, must also comply with any and all applicable government rules, laws, ordinances, regulations and statutes and any requirements of this Declaration. Any amendment to the Sign Criteria with respect to the Von Maur Control Area shall require the approval of both Von Maur Owner and Developer, which approval shall not be unreasonably withheld. Any amendment to the Sign Criteria with respect to the Penney Control Area shall require the approval of both Penney Owner and Developer, which approval shall not be unreasonably withheld. Any amendment to the Sign Criteria for Parcels not within the Von Maur Control Area or the Penney Control Area may be made by Developer in its sole discretion. However, an amendment of such Sign Criteria shall not be deemed to, nor shall it require, an amendment to this Declaration; provided, however, Developer shall provide each Owner with a copy of such amendment promptly upon its completion or adoption irrespective of whether a consent from the other Owners is required. Notwithstanding the foregoing, the signage on the Von Maur Parcel, Penney Parcels and NYLO Parcel is not subject to this Declaration and shall be subject only to ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction over the Shopping Center.

4.13 Lighting. The Owner of each Parcel and Outlot shall implement a lighting plan relative to the Common Area located on such Parcel and Outlot, and install lighting pursuant to said plan. The accent lighting, exterior building lighting and interior building lighting on each Parcel is not subject to this Declaration. The lighting plans for each Parcel and Outlot shall comply with the Lighting Criteria set forth on Exhibit "E", except for any variance or modification thereof reasonably approved by Developer (and the Penney Owner and the Von Maur Owner where required as set forth in Exhibit "E"). After completion of the lighting system on an applicable Parcel or Outlot and during the remaining Term of this Declaration, each Parcel or Outlot shall be fully illuminated each day from dusk until at least the end of Normal Business Hours. If any Owner desires to have another Owner's Common Area illuminated after Normal Business Hours, the other Owner shall illuminate such areas and facilities during such extra hours at the prior written request and at the expense of the requesting Owner, with such costs to be appropriately shared by any Owners remaining open for business during such extended business hours. For purposes of security, each Parcel and Outlot shall be illuminated during night hours following Normal Business Hours at a minimum of twenty five percent (25%) of full intensity, uniformly distributed throughout such areas. During the Term of this Declaration (and thereafter so long as the Store utilizing the following described license exists, subject to a reasonable period to permit reconstruction or replacement of such Store if the same shall be destroyed, damaged, or demolished), the Owner of each Parcel and Outlot is hereby granted an irrevocable license for the purpose of permitting the lighting from one Parcel or Outlot to incidentally shine on the adjoining Parcel or Outlot.

ARTICLE V USE RESTRICTIONS AND COVENANTS

5.1 Use in General. Subject to the limitations set forth below, the Shopping Center shall be used during the Term hereof for Hotel Use (as to the NYLO Parcel only), retail and other businesses common to first class shopping centers and mixed use developments located in the State of Kansas. None of the following uses or operations will be made, conducted or permitted on or with respect to all or any part of the Shopping Center at any time:

(a) any gas or service station or automobile service facility or car-washing establishment.

(b) any residential use, elderly care facility or nursing home, except as may be allowed pursuant to Section 5.1(dd) below.

(c) any package/carry out liquor store; provided, however, the foregoing shall not preclude (i) the sale of beer and/or wine from any upscale or gourmet wine, beer or grocery store or incidental to the operations of any other upscale retailer, or (ii) the sale of beer, wine and liquor from a full-service restaurant (including, without limitation, any such restaurant operating a micro-brewery) otherwise permitted within the Shopping Center.

(d) any noise or sound that is reasonably objectionable due to intermittence, beat, frequency, shrillness or loudness.

- (e) any obnoxious odor.
- (f) any excessive quantity of dust, dirt, or fly ash; provided however, this prohibition shall not preclude the sale of soils, fertilizers, or other garden materials or building materials in containers if incident to the operation of a home improvement or other similar store.
- (g) any fire, explosion or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks.
- (h) any assembly, manufacture, distillation, refining, smelting, agriculture or mining operations.
- (i) any mobile home or trailer court, labor camp, junkyard, mortuary, stock yard or animal raising. Notwithstanding the foregoing, (1) pet shops shall be permitted within the Shopping Center; and (2) the foregoing shall not prohibit the temporary installation of construction trailers during periods of construction, reconstruction or maintenance.
- (j) any drilling for and/or removal of subsurface substances.
- (k) any dumping of garbage or refuse, other than in enclosed receptacles intended for such purpose.
- (l) any automobile, truck, trailer or recreational vehicle sales, rental, leasing or body and fender repair operation.
- (m) any flea market and/or swap meet.
- (n) any massage parlor, adult book shop, movie house or other establishment selling or exhibiting pornographic materials or other pornographic use; provided, however, that such restrictions shall not preclude the (i) showing of films in any first rate motion picture theater operated in the Shopping Center, so long as such motion picture theater does not show any picture that has received an "NC-17" from the Motion Picture Association of America or any successor to the Motion Picture Association of America which rates motion pictures or any other pictures that are considered pornographic by the City of Overland Park, (ii) sale or rental of adult books, magazines or videos (including, without limitation, video cassettes, DVDs, laserdiscs and other like media) as an incidental part of the business of a general purpose bookstore or retailer carrying a general selection of books, magazines and video products) (such as, by way of example and without limitation, Target, Best Buy and Blockbuster Video) normally found in a first class shopping center, or (iii) massages in connection with a beauty salon, spa operation or massage therapy operation which are normally found in a first class shopping center.
- (o) any establishment selling drug related paraphernalia.
- (p) any abortion clinic or drug rehabilitation clinic.
- (q) any warehouse or industrial use.
- (r) any self-storage facility.
- (s) any establishment for the sale of guns or other firearms, provided that the foregoing shall not prevent the sale of firearms, ammunition or other items normally found in a full service sporting goods store.
- (t) any tattoo or body piercing parlor.
- (u) any public or private nuisance.
- (v) any convenience store.
- (w) any cemetery, mortuary or similar service establishment.
- (x) any roller-skating rink, bowling alley, teenage discotheque, discotheque, dance hall, video game parlor, pool room, card club, bingo parlor, facility containing gaming equipment (other than for the retail sale thereof), or carnival activities; provided, the foregoing shall not preclude (i) any restaurant or hotel otherwise properly operating

within the Shopping Center from having a dance floor for the enjoyment of its patrons therein, so long as incidental to the operation of the restaurant or hotel, (ii) use and operation of video games within restaurants or hotels otherwise permitted in the Shopping Center, so long as incidental to the operation thereof, and (iii) use and operation of an entertainment/restaurant complex, which serves food and beverages and provides an array of interactive entertainment attractions such as billiards, shuffleboard, simulators, virtual reality and traditional carnival-style amusements and games of skills (such as, by way of example and without limitation, Dave & Buster's, ESPN Zone or 810 Zone).

(y) any school, training, or educational facility, including but not limited to: beauty schools, barber colleges, nursery schools, diet centers, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, the foregoing restriction shall not (1) prohibit the operation of a Sylvan Learning Center or similar business, (2) be deemed to limit employee training by a permitted operator, or (3) limit animal training within the interior of any pet store operation otherwise permitted within the Shopping Center.

(z) any dry cleaning facilities utilizing hazardous substances or Hazardous Materials with an on-premises plant; provided, however, that nothing contained herein shall preclude a drop-off/pick-up dry cleaning business as long as no cleaning services are conducted at such location.

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

(bb) any pawn shop.

(cc) any unemployment agency, service or commission.

(dd) except with respect to the Hotel on the NYLO Parcel, any hotel, motel, or other forms of short-term or temporary living quarters, sleeping apartments or lodging rooms.

(ee) any gambling facility, casino or similar 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 or parlor.

(ff) any Discount Department Store; provided, however, as to the Penney Parcels, (1) such restriction shall cease, terminate and no longer be effective upon the earlier of: (i) fifteen (15) years after the Effective Date; (ii) the earlier termination or expiration of this Declaration as provided in Article XI hereof; or (iii) the Von Maur Store is no longer operated as a department store under the name "Von Maur" or as a department store of similar or better quality as those department stores operated as a "Von Maur" department store as of the Effective Date; and (2) in no event shall such Discount Department Store restriction be construed or implied to restrict any use of the Penney Store as a retail department store if such store is being operated under a name consisting of, or in which there appears, the word "Penney" or "JCPenney" or under the name under which a majority of Penney's retail department stores are then being operated.

(gg) any bar, tavern or nightclub; provided, however, that the foregoing shall not prohibit (i) the operation of a bar, tavern, or nightclub as a part of any restaurant being operated in the Shopping Center, so long as the sale of alcohol from such bar, tavern or nightclub does not exceed forty-five percent (45%) of such restaurant's gross sales, (ii) sale of beer, wine and liquor incidental to the operation of any first-rate theater operated in the Shopping Center in accordance with the terms of this Declaration, (iii) a so-called "wine bar" or "martini bar" or (iv) any use otherwise permitted pursuant to the terms of subsection (c) of this Section 5.1 above.

(hh) any office use, other than: (i) office space used in connection with and ancillary to a permitted retail or Hotel Use hereunder; and (ii) retail offices providing services commonly found in a similar first-class shopping centers in Overland Park, Kansas metropolitan area (for example, financial services, real estate brokerage, insurance agency, banking, travel agency).

The use restrictions set forth in Sections 5.1(d) through (k), (n) through (p), (u) and (ee) are hereinafter collectively referred to as the "Surviving Use Restrictions".

5.2 Non-Interference With Common Area; Outdoor Sales. In order to provide for the orderly development and operation of the Shopping Center:

(a) No Owner shall cause, maintain or permit any nuisance in, on or about the Shopping Center. Developer shall be permitted to grant the right to allow any Permittee to conduct Outdoor Sales within a specified area (but outside of the No Kiosk Area), including the right to allow Permittees of the Shopping Center to conduct, from time to time (and not on a permanent basis), sales in the sidewalk areas immediately adjacent to such Permittee's Store; provided, however, (i) in no event shall any such sales, tables, merchandise or other items be located in the Von Maur Control Area without the prior written approval of Von Maur Owner, provided that restaurant patios, outdoor dining areas or outdoor seating areas shall not be prohibited by this restriction; (ii) in no event shall any such sales, tables, merchandise or other items be located in the Penney Control Area without the prior written approval of Penney Owner, provided that restaurant patios, outdoor dining areas or outdoor seating areas shall not be prohibited by this restriction; (iii) such sales shall comply with any required governmental approval; and (iv) any such sales shall not disturb more than ten (10) parking spaces at any one time and, in any case, may not result in the Shopping Center being underparked for purposes of this Declaration or otherwise materially interfere with pedestrian access and movement. No Owner shall cause or permit the solicitation of any business in the Common Area or the distribution of any handbills or advertising flyers in the Common Area.

(b) No Owner shall permit any Permittee of said Owner's Parcel to carry any merchandise or substance or to perform any activity in relation to the use of such Owner's Parcel which would (i) cause or threaten the cancellation of any insurance covering any portion of the Shopping Center or (ii) increase the insurance rates applicable to the Common Area or the Stores on the other Owner's Parcel over the rates which would otherwise apply unless such Permittee shall pay the increased insurance cost on demand.

ARTICLE VI COMPLIANCE WITH LAWS

Each Owner shall not use (and shall use its commercially reasonable efforts to prohibit its respective Permittees from so using; provided, however, such Owner shall not be responsible for any violations by its Permittees) its respective Parcel(s), or any part thereof, or any building or other improvement thereon, in violation of the laws of the United States of America, the State of Kansas, or the ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction over the Shopping Center and all covenants, conditions, and restrictions relating to the Shopping Center including, but not limited to, this Declaration, and any amendments or modifications thereto. Notwithstanding the foregoing, any Owner may refrain from complying with or causing compliance with any such law, ordinance, regulation or requirement of the United States of America, the State of Kansas and/or the local municipal or county governing body or other lawful authorities having jurisdiction over the Shopping Center so long as the validity thereof shall be contested in good faith by appropriate proceedings; provided that (a) such Owner shall defend and hold harmless the other Owners from penalties or other expenditures arising from or as a result of such non-compliance, (b) the other Owners would not be in danger of incurring any civil or any criminal penalty or liability by reason of such contest, and (c) no part of the Shopping Center would be in danger of being sold, forfeited or lost by reason of such proceedings or would be subject to the imposition of any lien as a result of a failure to comply with any such law, ordinance, regulation or requirement.

ARTICLE VII MAINTENANCE OF IMPROVEMENTS

Except as otherwise provided herein (including without limitation Developer's maintenance of the Common Area as set forth in Article VIII), each Owner shall, for the benefit of the Owners at all times during the Term of this Declaration, maintain, or cause to be maintained, the exterior of Stores and other improvements, including (without limitation) Common Area, from time to time located on such Owner's Parcel (including but not limited to, any sidewalks, curbs, landscaping and other improvements which are located between the exterior building face of such Owner's Store and the exterior curb face of the perimeter sidewalk located around such Owner's Store), in a first class condition and in good order, maintenance,

and repair consistent with similar first class shopping centers located in Johnson County, Kansas, and in accordance with Articles III and IV of this Declaration.

Notwithstanding anything to the contrary set forth in this Article, (1) Developer agrees that it will cause the perimeter sidewalks and landscaping located between such perimeter sidewalks and the Von Maur Store on the Von Maur Parcel to be insured, maintained, repaired and/or replaced as a Common Area Expense; and (2) Developer agrees that it will cause the perimeter sidewalks and landscaping located between such perimeter sidewalks and the Penney Store on the Penney Parcels to be insured, maintained, repaired and/or replaced as a Common Area Expense.

ARTICLE VIII OPERATION AND MAINTENANCE OF COMMON AREA

8.1 Maintenance of Common Area. During the Term hereof and except with respect to the maintenance of the Common Area on the Outlots pursuant to Section 8.10, Developer will do or cause to be done the following with respect to the Common Area: (i) maintain, repair and/or replace, or cause to be maintained, repaired and/or replaced, the Common Area so as to keep it in first class condition consistent with other first class shopping centers in Johnson County, Kansas, (ii) clean the Common Area and keep same free of rubbish and other hazards to persons using such area, (iii) properly light the Ring Road and any other portions of the Common Area not the responsibility of the Owners of the various Parcels in accordance with the further terms of this Declaration and (iv) maintain the landscaping within the Common Area. Such obligations shall include, without limitation, maintaining the Common Area as provided in the Rules and Regulations, providing adequate security protection services (if similarly situated shopping centers located in the Overland Park, Kansas trade market area, such as Leawood Town Center in Leawood, Kansas, are provided security protection services or if Developer otherwise determines same to be reasonably necessary or appropriate), maintaining, repairing and replacing all above and underground utilities, common utilities and other utility conduits and lines and sewers located within the Shopping Center (except within those utility easements granted to any governmental authority or utility company, which has maintenance and repair obligations thereover, and except for service drops exclusively serving improvements on a particular Parcel, rather than the Shopping Center as a whole, which service drops shall be the maintenance responsibility of the Owner utilizing same), maintain, repairing, repainting and replacing all directional/way-finding signs, maintaining, repairing and replacing all lighting facilities (including bulbs and ballasts), maintaining, repairing and replacing all irrigation systems, maintaining and replacing as necessary the plants located within the landscaped and planted areas, resurfacing and restriping all Parking Areas in the Common Area and repairing all holes or breaks in the paving in the Common Area within a reasonable time after the same appear, causing all garbage receptacles of all occupants of buildings as well as those located in the Common Area to be emptied as needed, collection and disposal of all paper and trash in all Common Area each day as needed and sweep all sidewalks, all drives adjacent to all Stores and other buildings located in the Shopping Center and the entire Parking Area as needed, and remove, and treat, ice and remove snow from the exposed areas as soon as practicable. Developer shall, to the extent reasonably practicable, endeavor in good faith to schedule any extraordinary work to be performed in accordance with the foregoing provisions in a manner intended to minimize interference with the ordinary conduct of business within the Shopping Center. In particular, but without limitation, any such extraordinary work reasonably expected to cause a temporary closing of any of the Common Area shall be scheduled in a manner intended to minimize, to the extent reasonably practicable, performance of any such work between November 1 to January 4 or during the thirty day period prior to Easter, it being understood that the foregoing limitation in no way restricts closure in the event of an emergency or if required by applicable governmental authorities. Developer will have the right to select from time to time a person or persons other than Developer to operate and maintain the Common Area or portions thereof ("**Operator**"), provided that such selection will not diminish Developer's obligations to maintain and operate the Common Area. The Owners of all Parcels within the Shopping Center (except for Von Maur Owner, NYLO Owner and Penney Owner) will be required to pay Developer's expenses in connection with maintenance of such Common Area in accordance with this Declaration. Any contributions from Penney Owner, NYLO Owner and Von Maur Owner to contribute to Developer's expenses in connection with maintenance of such Common Area shall be set forth in the Penney Separate Agreement, the NYLO Separate Agreement and the Von Maur Separate Agreement, respectively.

8.2 Definition of Common Area Expenses. "Common Area Expenses" are all sums expended or reasonably reserved by Developer or Operator for the repair, maintenance, operation, management, or replacement of the Common Area, including, but not limited to, the costs of the following: All general maintenance, operation and repairs; resurfacing; repainting; restriping; cleaning; trash, snow and ice removal; sweeping and janitorial services; repair,

maintenance and replacement of public toilets (if any), music program equipment and sound amplification equipment, paving, sidewalks, service corridors, curbs, mall areas, bike and jogging trails (if any), Shopping Center signs, sprinkler systems, planting and landscaping (including perimeter landscaping), water features, lighting and other utilities, directional signs, and other markers and bumpers; holiday and other seasonal decorations (including, but not limited to, lighting); any fire protection, lighting, storm drainage and other utilities or common utility lines; personnel to implement any of the foregoing services, including any security protection services provided in accordance with the provisions of this Declaration and the cost of security guards; all costs and expenses of on site personnel of Operator incurred in managing the Shopping Center; all costs and expenses relating to any reasonably sized property management and/or security office; all Real Property Taxes assessed for any reason and levied on improvements and land comprising said Common Area; provided, however, Common Area Expenses payable by Von Maur Owner, NYLO Owner and Penney Owner pursuant to the Separate Agreements shall not include any Real Property Taxes as such Owners shall be solely responsible for the payment of the Real Property Taxes payable with respect to their respective Parcels (including the Common Area located thereon); all personal property taxes assessed for any reason and levied on any personal property for use on the Common Area; maintenance of any retention basin(s) and related improvements serving the Shopping Center; maintenance and repair of the Access Roads; maintenance and repair of any driveways or roads adjacent to or serving the Shopping Center that, although public, may be maintained by Developer and/or Operator; the cost of capital improvements incurred in connection with the Common Area; with respect to all equipment and machinery used to maintain or operate the Common Area, any depreciation of the cost (including financing) thereof, if owned, or any rental paid therefor, if leased; the cost of necessary tools, supplies, machinery or equipment; adequate public liability insurance for Operator's operation of the Shopping Center; All Risks insurance covering the Common Area; maintenance and operation of public transit or car pooling facilities, if any; advertising and promotional expenses; and all other costs and fees necessary or beneficial in Operator's judgment for the repair, maintenance, operation, management or replacement of the Common Area. In addition, Common Area Expenses shall include an amount payable to Developer or, as applicable, Operator for supervision and maintenance of the Common Area and for accounting, bookkeeping and collection of the Common Area Expenses equal to fifteen percent (15%) of the total of the aforementioned Common Area Expenses. Developer or Operator may cause any or all of said services to be provided by an independent contractor or contractors. Common Area Expenses shall not include any costs of the initial construction of the Common Area or improvements thereon or contributions to Common Area Expenses by tenants or occupants whose space is permitted by the provisions of their respective lease(s) to be excluded from the denominator of each Owner's Allocable Share. Any Outlot Contribution received by Developer from Owners of the Outlots pursuant to Section 8.10 below shall be deducted from the Common Area Expenses.

8.3 Payment of Common Area Expenses. For every Expense Year ending or commencing within the Term, each Owner of a Parcel other than the Owner of an Outlot shall pay to Developer, in the manner provided in this Article below, an amount equal to its Allocable Share of Common Area Expenses. As used herein, an Owner's Allocable Share of the Common Area Expenses for an Expense Year shall be that portion of all Common Area Expenses which is equal to the proportion thereof which the number of square feet of Floor Area located on that Owner's Parcel bears to the total number of square feet of Floor Area then existing in the Shopping Center, exclusive of (i) the Floor Area located on the Von Maur Parcel, (ii) the Floor Area located on the Outlots, (iii) the Floor Area located on the NYLO Parcel, (iv) the Floor Area on the Penney Parcels, and (v) the Floor Area located on a Parcel in which Developer has granted a Common Area Expense Subsidies (as hereinafter defined), if any. The denominator for the purposes of this Section may be increased or decreased in the event Developer grants any Common Area Expense Subsidies for future or additional owners or tenants for the Shopping Center. Developer shall, from time to time, appropriately adjust the Allocable Share for each Owner to reflect any changes in the Floor Area of a Parcel or the Shopping Center. The Shopping Center may be developed in phases and may include different categories of uses. Further, notwithstanding the foregoing, Developer reserves the right to allocate a portion of the total Common Area Expenses and/or specific Common Area Expense items from time to time to different phases or uses or use categories as Developer may reasonably select. Nothing contained in this Declaration shall preclude Developer from entering into an agreement with an Owner that obligates such Owner to pay a lesser share of Common Area Expenses than would otherwise be required by this Declaration (a "Common Area Expense Subsidy"), it being understood that, without limitation, each of the Penney Separate Agreement, the NYLO Separate Agreement and the Von Maur Separate Agreement will or may result in a Common Area Expense Subsidy. It is further understood that nothing herein contained shall preclude an Owner from entering into agreements with one or more of its Permittees under which such Permittee(s) shall not be obligated for a proportionate share of such Owner's Allocable Share of the Common Area Expenses hereunder; provided that no such

agreement shall absolve the Owner entering into such agreement(s) of responsibility to pay the full amount of Common Area Expenses to be paid with respect to the Parcel of such Owner in accordance with the provisions of this Declaration.

8.4 Statement of Estimated Common Area Expenses. Developer shall give each Owner a yearly expense estimate statement (the "**Estimated Statement**") which shall set forth Developer's reasonable estimate of what the total amount of Common Area Expenses for the then-current Expense Year shall be and the estimated amount thereof payable by each Owner based on the Owner's Allocable Share ("**Estimated Common Area Expenses**"). The failure of Developer to timely provide an Owner with an Estimated Statement for any Expense Year shall not release that Owner from paying its Allocable Share of Common Area Expenses. An Owner shall, within thirty (30) days of its receipt of the Estimated Statement, pay monthly, an amount equal to one-twelfth (1/12) of the total Estimated Common Area Expenses set forth in the Estimated Statement. If during any Expense Year, Developer determines that Developer has underestimated the Owner's share of Common Area Expenses for such Expense Year, Developer may (but not more than twice during any Expense Year) re-estimate such Owner's Estimated Common Area Expenses and bill such Owner for any deficiency which may have accrued during such Expense Year, and thereafter the monthly installment payable by such Owner shall also be adjusted. No such mid-Fiscal Year adjustment shall preclude Developer from making the annual adjustment contemplated below.

8.5 Statement of Actual Common Area Expenses; Payment. Developer shall give to each Owner on or before the first day of April following the end of each Expense Year, a statement (the "**Statement**") which shall state the Common Area Expenses incurred or accrued for such preceding Expense Year, which shall indicate the amount of the Owner's Allocable Share thereof. Within thirty (30) days of receipt of the Statement for each Expense Year ending or commencing during the Term, the Owner shall pay the full amount of its Allocable Share of Common Area Expenses for such Expense Year, less the amounts, if any, paid during such Expense Year as Estimated Common Area Expenses. If the amounts paid as Estimated Common Area Expenses for an Expense Year exceed the amount of the Owner's obligations shown on the Statement, any such overpayment shall, at Developer's option, be delivered to said Owner by Developer with the Statement or credited against the next Estimated Common Area Expenses payable by that Owner. The failure of Developer to timely furnish the Statement for any Expense Year shall not prejudice Developer from enforcing its rights under this Article. Even though the Term has expired, when the final determination is made of an Owner's Allocable Share of Common Area Expenses for the Expense Year in which this Declaration terminates, said Owner shall, within thirty (30) days of receipt of such final Statement, pay to Developer an amount as calculated pursuant to the provisions of Section 8.3 above or in the event such final determination indicates that said Owner is entitled to a refund, such refund shall immediately be paid by Developer to that Owner. The provisions of this Article shall survive the expiration or earlier termination of the Term.

8.6 Late Payment Charge. Any amount of Common Area Expenses owed to Developer hereunder which is more than ten (10) days past due shall be subject to a late payment charge of ten percent (10%) and interest at the Default Rate. In addition, for as long as such amounts owing to Developer remain unpaid, such unpaid amounts shall bear interest at the Default Rate. Any such penalties or interest which are paid by such delinquent Parcel Owner or Owners shall be placed in a fund (the "**Common Area Fund**") which Common Area Fund shall be established and controlled by Developer and shall be utilized by Developer to pay for unrecovered costs associated with the operation of the Common Area in accordance with this Declaration. Each Owner acknowledges that the late payment of any monthly installment will cause Developer to incur certain costs and expenses not otherwise contemplated, the exact amount of such costs being extremely difficult and impractical to fix. Such costs and expenses will include, without limitation, administrative and collection costs, processing and accounting expenses and other costs and expenses necessary and incidental thereto. It is, therefore, agreed that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Developer for its loss suffered by such nonpayment. The late charge provisions contained herein are in addition to and do not diminish or represent a substitute for any or all of Developer's other rights to enforce the provisions of this Declaration.

8.7 Records of Common Area Expenses. Full, true and accurate records from which Common Area Expenses may be readily and correctly determined shall be kept by Developer at either the Shopping Center or at Developer's main offices. Within ninety (90) days after receipt of the Statement by an Owner, such Owner and its accounting personnel shall, after reasonable notice to Developer and during normal business hours, have access to Developer's books and records that relate to Common Area Expenses for the period represented by such Statement for the purpose of examining, reviewing and auditing such books and records; provided, however, that such Owner shall maintain all information contained

in Developer's books and records in strict confidence. Upon the expiration of said ninety (90) day period after an Owner's receipt of any Statement, such Owner shall not be entitled to question the accuracy of such Statement, except with respect to any Expense Year for which an audit is then in process pursuant to the provisions hereof. An Owner shall be entitled to all of its remedies under this Declaration and at law or in equity in the event of a breach by Developer of its obligation to keep accurate records with respect to Common Area Expenses.

8.8 Default of Developer/Self-Help by Von Maur Owner, NYLO Owner or Penney Owner. In the event of a default by Developer in performing the maintenance of the Common Area as required by Section 8.1 hereof, either NYLO Owner (but only with respect to Common Area located on the NYLO Parcel and the Hotel Adjacent Parking Area), Von Maur Owner or Penney Owner may provide notice of such default to Developer specifying the nature of such default and Developer shall be allowed thirty (30) days to cure such default, or if such default cannot be cured within thirty (30) days, Developer shall commence curing such default within such time and shall diligently pursue such cure to completion within a reasonable time thereafter. In the event of an emergency (including, but not limited to, Developer's failure to remove accumulated snow or ice within a reasonable time) such notice of default shall be sent by fax to Developer and Developer shall immediately cure such default or immediately commence to cure such default and diligently pursue completion of such cure within a reasonable time thereafter. In the event that Developer fails to cure such default within the requirements of this Section, either Von Maur Owner, NYLO Owner or Penney Owner may elect to perform the Common Area maintenance specified in any such notice to Developer provided under this Section and to deduct the cost and expense incurred by Von Maur Owner, NYLO Owner or Penney Owner in performing such common area maintenance from any payments due from Von Maur Owner, NYLO Owner or Penney Owner to Developer under the Separate Agreements.

8.9 Succession to Maintenance Obligations. It is understood and agreed that the obligations of Developer hereunder to maintain the Common Area and administer the provisions of this Declaration respecting Common Area Expenses payments and other Overall Common Area Obligations shall attach to and run with the title to the Control Parcel such that the Owner or Owners from time to time of the Control Parcel shall be responsible for the performance of the Overall Common Area Obligations of Developer pertaining to the Shopping Center as a whole (and not just the obligations of Developer hereunder pertaining specifically to the Developer Parcels or any one or more of same). From and after conveyance of the Control Parcel by Developer to another Person, any other Person succeeding to the Developer's interest as Owner of any of the Developer Parcels other than the Control Parcel (including, without limitation, the Outlots) shall have no liability or obligation for the performance of the Overall Common Area Obligations; provided that the foregoing shall in no way absolve any such Owner of the obligation to perform the obligations of an Owner pertaining specifically to the Parcel or Parcels of such Owner.

8.10 Outlot Maintenance/Contribution Obligations. During the Term hereof, the Owner of an Outlot shall, at its sole cost and expense, maintain or repair, or shall cause to be maintained and repaired, the Common Area located on such Outlot and keep it in first class condition and consistent with other first class shopping centers in Johnson County, Kansas, and repair, clean, keep free of rubbish and other hazards to persons using such area, properly lighted and landscaped, in the same manner as the balance of the Shopping Center is maintained in accordance with Section 8.1. In addition, for every Expense Year ending or commencing within the Term, each Owner of an Outlot shall pay to Developer or Operator, as applicable, in the manner provided in this Article below, an amount equal to Six/100th Dollars (\$0.06) per square foot of land area within such Outlot, in Constant Dollars (as hereinafter defined), commencing on the date that such Owner commences construction of vertical improvements upon such Outlot ("Outlot Contribution") toward the costs incurred by Developer in connection with the repair, maintenance, operation, management, or replacement of the Access Roads and storm water drainage systems within the Shopping Center and, to the extent separately assessed, all Real Property Taxes assessed and levied on the Access Roads and storm drainage ponds. Each Outlot Owner shall pay its Outlot Contribution in equal consecutive monthly installments on or before the first day of each month. "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 first of April of the sixth calendar year following the date of this Declaration, 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; provided that the amount so calculated, and as previously increased in accordance with the provisions hereof, may never decrease by virtue of such calculation. The "Base Index Number" shall be the level of the Index for the year this Declaration 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 a substitute index selected by the Developer of comparable statistics 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.

8.11 Default by Outlot Owner; Developer's Self Help. In the event of a default by an Owner of an Outlot in performing the maintenance of the Common Area as required by Section 8.10 hereof, Developer may provide notice of such default to the Owner specifying the nature of such default and such Owner shall be allowed thirty (30) days to cure such default, or if such default cannot reasonably be cured within thirty (30) days, such longer period as may be reasonably necessary to cure such default, provided and so long as the defaulting Owner of the Outlot shall commence curing such default within such 30-day period and shall diligently pursue such cure to completion within a reasonable time thereafter. In the event of an emergency (including, but not limited to, an Owner's failure to remove accumulated snow or ice within a reasonable time), such notice of default may, notwithstanding any contrary provision of Section 19.1 hereof, be sent by fax to the defaulting Owner and the defaulting Owner shall immediately cure such default or immediately commence to cure such default and diligently pursue completion of such cure within a reasonable time thereafter. In the event that the defaulting Owner fails to cure such default within the time frames and in accordance with the requirements of this Section, Developer may elect to perform the Common Area maintenance specified in any such notice to the defaulting Owner provided under this Section and such defaulting Owner shall immediately reimburse Developer for such cost and expense upon receipt of an invoice therefor.

ARTICLE IX RESTORATION

9.1 Von Maur Store. If, at any time during the Von Maur Operating Covenant, all or any portion of the Von Maur Store shall be damaged or destroyed by fire or other casualty, Von Maur Owner shall promptly commence the repair, replacement and rebuilding of the Von Maur Store, or the portion thereof so damaged or destroyed, and shall diligently and continuously prosecute such repair, replacement and rebuilding in accordance with the terms of this Declaration; provided, however, Von Maur Owner's obligation to repair, replace and rebuild such damage or destruction shall be limited to the lesser of: (1) ninety percent (90%) of the square feet of Floor Area in the Von Maur Store, as initially constructed; or (2) the maximum square feet of Floor Area as then permitted by applicable governmental/regulatory authority.

9.2 Developer Stores. Except with respect to Developer Stores located on the Outlots, if all or any portion of the Developer Stores shall be damaged or destroyed by fire or other casualty, the Owner(s) of such Developer Stores shall promptly commence the repair, replacement and rebuilding of the Developer Store(s), or the portion thereof so damaged or destroyed, and shall diligently and continuously prosecute such repair, replacement and rebuilding in accordance with the terms of this Declaration; provided, however, such Owner's obligation to repair, replace and rebuild such damage or destruction shall be limited to the lesser of: (1) ninety percent (90%) of the square feet of Floor Area in the Developer Stores, as initially constructed; or (2) the maximum square feet of Floor Area as then permitted by applicable governmental/regulatory authority.

9.3 Outlots. If all or any portion of an Outlot shall be damaged or destroyed by fire or other casualty, each Owner of such Outlot shall promptly remove the debris resulting from such damage or destruction and either (i) repair, replace and rebuild the Store(s) located on such Outlot, (ii) cause other buildings to be constructed on the area covered by the damage or destruction, which other buildings are similar to, compatible with and integrated with the development of the Shopping Center, (iii) cause the area covered by the damage or destruction to be razed in accordance with Section 9.8 below or (iv) cause any combination of the foregoing to occur.

9.4 Penney Store. If all or any portion of the Penney Store shall be damaged or destroyed by fire or other casualty, the Owner of the Penney Store shall, but only to the extent required under the Condominium Declaration (if any obligation exists), repair, replace and rebuild the Penney Store, or portion thereof so damaged or destroyed, and shall diligently and continuously prosecute such repair, replacement and rebuilding (to the extent required) to be performed in accordance with the terms of this Declaration and the Condominium Declaration.

9.5 **Hotel.** If all or any portion of the Hotel shall be damaged or destroyed by fire or other casualty, NYLO Owner shall promptly commence the repair, replacement and rebuilding of the Hotel, or the portion thereof so damaged or destroyed, and shall diligently and continuously prosecute such repair, replacement and rebuilding in accordance with the terms of this Declaration; provided, however, that if NYLO Owner has insured the Hotel in a reasonable amount commensurate with similarly situated hotels in like-kind markets, NYLO Owner's obligation to repair, replace and rebuild hereunder shall be limited to the extent the insurance proceeds are sufficient and made available to NYLO Owner for purposes of such repair, replacement and rebuilding, and subject to any applicable lender requirements; and provided further, that (i) NYLO Owner shall not be obligated to repair, replace and rebuild such damage or destruction in the event NYLO Owner is not able to repair, replace and rebuild at least ninety percent (90%) of the square feet of Floor Area in the Hotel, as initially constructed and (ii) NYLO Owner's obligation to repair, replace and rebuild such damage or destruction shall be limited to the extent that after such repair, replacement and/or rebuilding there shall be a minimum of ninety percent (90%) of the square feet of Floor Area in the Hotel, as initially constructed.

9.6 **Common Area.** In the event of damage or destruction of any Common Area improvement erected or placed on any Parcel, whether by fire or other casualty, the Owner of such Parcel agrees to take all such action as may be required under applicable municipal ordinances and other laws, rules and regulations with respect to any such damage or destruction and to promptly remove all debris resulting from such damage or destruction and commence, in accordance with Section 9.7 below, to repair, replace and rebuild such damaged Common Area.

9.7 **Duty to Commence and Complete Rebuilding.** Subject to Sections 9.1 through 9.6, each Owner agrees to commence any required repair, replacement and rebuilding within six (6) months after such damage or destruction, or sooner if possible, and thereafter use due diligence in order to cause any building or other improvement which such Owner is required to repair, replace and rebuild pursuant to this Article to be completed and ready for occupancy within twelve (12) months after such damage or destruction occurs (provided, however, in regards to any repair, replacement and rebuilding of Common Area, such item shall be completed within six (6) months after such damage or destruction) or as soon thereafter as is practicable under the circumstances, so long as such repair, replacement and rebuilding is diligently and continuously carried to full completion. Each Owner agrees that prior to commencing any such repair, replacement and rebuilding, such Owner shall comply with the requirements set forth in Article III of this Declaration and other applicable provisions of this Declaration with respect to construction, except as to any such requirement that may be modified under this Article. All such repaired, replaced and rebuilt Stores, Common Area and other improvements shall be repaired, replaced and rebuilt to as good a condition, to the same general appearance (or such other appearance as may be permitted in accordance with the provisions of Sections 3.1, 4.4 and 4.5 hereof) and on the same level or story as the Store, Common Area and other improvements were immediately prior to such damage or destruction.

9.8 **Clearing of Premises.** Whenever an Owner is not required to repair, replace and rebuild and elects not to repair, replace and rebuild its Store(s) that has or have been damaged or destroyed, such Owner, at its sole cost and expense, shall raze such Store(s) or such part thereof as has or have been damaged or destroyed, clear the premises of all debris, and all areas not restored to their original use shall, at the expense of such Owner, be leveled, cleared and improved with parking area of like standard and design as the Common Area of the Shopping Center unless otherwise approved by Developer. Although no transfer of ownership shall be deemed to have occurred as a result of such Owner's election not to repair, replace and rebuild its Store(s), said area shall be treated as Common Area and shall be maintained and insured by Developer as such with such costs of maintenance and insurance being Common Area Expenses until such time as said Owner may elect to rebuild thereon. In connection with Developer's maintenance of such unrestored area, Developer and Developer's employees, agents and contractors are hereby granted a license by such Owner to enter onto such unrestored area in connection with the maintenance thereof in accordance with this Declaration. Notwithstanding the provisions of this Section 9.8 to the contrary, the Owner of the Penney Store shall only be required to comply with the terms of the Condominium Declaration (in regards to razing, clearing all debris and subsequent improvements) in the event the Owner of the Penney Store is not required to repair, replace and rebuild and elects not to repair, replace and rebuild the Penney Store.

ARTICLE X INTENTIONALLY DELETED

ARTICLE XI TERM

This Declaration and each term, easement, covenant, restriction and undertaking of this Declaration shall be effective for a term ("**Term**") commencing as of the date hereof and shall terminate on the earlier of (1) June 1, 2060, (2) such date as the Owners may elect by written notice of termination executed by all of the owners and recorded in the Official Records, or (3) such earlier termination as provided pursuant to and in accordance with this Declaration (the "**Expiration Date**"); provided, however, that the Term may, as provided in the succeeding sentence, be extended beyond such Expiration Date for a maximum of three (3) independent ten (10) year terms (each, an "**Extended Term**") (for a total of thirty (30) years beyond the initial Term); provided, further that no such expiration or termination shall affect the provisions and easements hereof that by their Term survive expiration. The Owner of the Control Parcel, Von Maur Owner or Penney Owner (the "**Electing Owner**") may, prior to the expiration of the Term or then Extended Term (as applicable), deliver notice to the other Owners indicating that such Electing Owner elects to extend the Term of this Declaration for the next succeeding Extended Term. In such event, such Electing Owner shall unilaterally record a statement or other notice with the Official Records indicating such election to extend the Term of this Declaration (with such statement or notice to include evidence that such Owner elected to extend the Term of this Declaration as provided herein) within thirty (30) days of the expiration of the Term or then Extended Term (as applicable). In the event a statement or other notice is not filed with the Official Records within such thirty (30) day time period, this Declaration shall be deemed terminated. The following provisions shall survive the termination of this Declaration and shall continue in perpetuity: (i) Section 4.7 above, (ii) prohibition against obstructions in Section 4.11 above, (iii) the Surviving Use Restrictions, (iv) compliance with laws requirement set forth in Article VI, (v) rights and easements set forth in Article II and (vi) the hazardous and toxic materials provision of Article XVII.

ARTICLE XII EMINENT DOMAIN

12.1 Awards to each Owner. As between the Owners, any damage or other award resulting from or arising out of a condemnation or other taking for public or quasi-public purposes (a "**Condemnation**") of all or any portion of such Owner's Parcel(s) shall belong to such Owner without deduction therefrom for any present estate or interest of any other Owners and such other Owners hereby assign to the Owner whose Parcel was subject to the Condemnation all of such other Owner's right, title and interest in and to such damages or awards; provided, however, that the portion of any damage or award relating solely to Parking Area (Parking Area, for purposes of this Section 12.1 and 12.2 below, shall not include pedestrian stairways, walkways and landscaping adjacent to areas used for parking motor vehicles, and all improvements erected on such excluded areas) on an Owner's Parcel (whether made independently or otherwise equitably attributable thereto) shall, to the extent used by Developer for restoration of Parking Area as set forth in Section 12.2 below, be delivered to Developer and utilized as provided in Section 12.2 below. The dollar amount of the portion of any damage or award relating to Parking Area shall be jointly determined by the Owner entitled to receive the damage or award (and/or such Owner's lender) and the Developer. In the event such dollar amount is not agreed to by the above parties, they shall jointly appoint a licensed commercial real estate appraiser doing business in Overland Park, Kansas who shall determine such dollar amount. This provision shall not act to prevent any other Owner from filing for or recovering its own separate award for any loss related to its Parcel and/or Store.

12.2 Parking Areas. If any portion of the Parking Area within the Shopping Center shall be taken by Condemnation with the result that the Shopping Center or any Parcel thereof is not thereafter in compliance with the parking requirements described in Section 4.7 of this Declaration, Developer, after receipt of any Condemnation award or damages resulting therefrom or equitably attributable thereto, as determined in Section 12.1 above (the "**Allocable Award(s)**"), shall promptly use all of said Allocable Award to create, to the extent reasonably possible, additional surface parking facilities in the Shopping Center in order that the Shopping Center will comply with the parking ratio required in Section 4.7 of this Declaration. First priority shall be to create additional surface parking facilities as close as possible to the Parcel or Parcels which are subject to the Condemnation. Notwithstanding the foregoing, Developer shall have no obligation to restore Parking Area unless the Owner of the Parcel on which such Parking Area is to be restored approves of the location and configuration of the Parking Area to be restored (such approval not to be unreasonably withheld, delayed or conditioned) and no Owner shall be obligated to provide or permit additional Parking Area upon its Parcel in case of a Condemnation of Parking Area contemplated by this Section 12.2, unless such Owner has given its consent as to the location and layout thereof (such consent not to be unreasonably withheld, delayed or conditioned), if the Parking Area so taken by Condemnation was not

contained within such Parcel of the Owner at issue. In the event that there is not enough usable land available to restore surface parking facilities to comply with the required parking ratio, all Owners shall negotiate in good faith in an effort to agree upon an area within the Shopping Center where a parking deck could be constructed so as to replace the Parking Area lost by Condemnation, and if the Owners are able to reach such Agreement (as well as agreement on the precise location, design and cost of such parking deck), each Owner shall make available to Developer any Allocable Award paid to such Owner with respect to Condemnation of its Parking Area (to the extent not utilized for provision of replacement surface Parking Area as aforesaid) and Developer thereafter shall construct the parking deck so agreed upon, so long as same is allowed by applicable law under the circumstances, in order to comply with the required parking ratio; provided that Developer shall have no obligation to construct any such Parking Deck if the cost to Developer of constructing same (both "hard costs" and "soft costs") shall be in excess of the amount of the Allocable Awards paid to Developer, as reasonably determined by Developer, unless agreement likewise is reached among the Owners to provide for payment of the balance of the cost of such parking deck by the Owners over and above the Allocable Awards. In the event that the Allocable Awards shall be insufficient to completely restore the amount of parking required to comply with the parking ratio set out in Section 4.7 (and if the Owners have not hereafter agreed to fund the excess costs as contemplated herein), then the parking ratio set out in Section 4.7 shall be reduced to a ratio as near as possible to the requirements of Section 4.7 without the necessity for the Developer's expenditure of any additional funds. If the Condemnation damages or award attributable to the Parking Area within a Parcel are not expended by Developer to create additional surface parking facilities, and Developer, within 120 days following Developer's receipt of such damages or award, shall not have committed to construct a parking deck as provided above, the Condemnation damages or award shall be returned to the Owner of such Parcel subject to Condemnation.

12.3 Developer's Participation. Neither Developer, nor its affiliates, nor any of their directors, officers, partners, members, shareholders, employees, representatives and/or agents shall directly or indirectly initiate, instigate, encourage, recommend or direct, as opposed to defending or pursuing its rights in connection with, (collectively "**Developer's Participation**") any Condemnation, eminent domain, taking, deed in lieu of condemnation or similar proceedings (collectively, "**Taking**"), of the whole or any part of the Shopping Center, or any right or interest therein or related thereto, or any right or interest granted to Penney Owner, Von Maur Owner or NYLO Owner in this Declaration or the Separate Agreement of each such Owner (collectively "**Protected Rights**"); provided, however, that the foregoing shall not prohibit Developer's Participation in any typical right-of-way Taking that will not materially and adversely interfere with the Protected Rights or the defense thereof. In the event that any Protected Rights are subject to a Taking, and such Protected Rights do not involve the Taking of actual soil or land (*i.e.*, terra firma), if Developer's Participation was involved in such Taking, Developer, on behalf of itself and any successor Developer, agrees to the extent pertaining to any Developer Parcel to continue to be bound by, and honor, all of the provisions of this Declaration and the Separate Agreements respecting Protected Rights with regard to such Parcel, all without modification to address any such Taking, as if such covenants were personal covenants of the Owner of the Parcel at issue. For purposes hereof, "Developer's Participation" shall not be deemed to prohibit Developer from fully participating in the defense of any condemnation proceeding or the pursuit of any rights, remedies or awards available to Developer pursuant to such condemnation.

ARTICLE XIII TRANSFER OR CONVEYANCE

An Owner shall include the successors in interest to the Parcel(s) of an Owner, provided that:

13.1 Transfer of Entire Interest. In the event of the Transfer of the whole of the interest of any Owner in and to any Parcel(s) in which such Owner has an interest, without retaining any beneficial interest other than under the terms of a deed of trust or mortgage or without simultaneously acquiring a new interest by way of leasehold, life estate or other possessory interest, then the rights conferred upon such Owner shall be deemed Transferred and the obligations deemed assumed with its interest by such Transferee.

13.2 Sale Leaseback. In the event the whole of the interest of such Owner in and to the Parcel in which it has an interest is Transferred, but a new interest is created in such Owner simultaneously with such transfer by way of leasehold or similar possessory arrangement (*i.e.*, a Sale and Leaseback or Assignment and Subleaseback), or in the event such Owner shall Transfer its interest in said Parcel or any part thereof by deed of trust or other security instrument as security for indebtedness, then none of the rights or obligations conferred upon such Owner with regard to the interest Transferred shall be transferred by such Owner by virtue

of the transaction at issue, but all of the rights and obligations of such Owner shall remain in such Transferor Owner so long as it retains any possessory interest in and to said Parcel other than as a beneficiary under the terms of a deed of trust or mortgage. In the event the interest of such Owner shall cease and terminate, then upon such termination the rights and obligations (to the extent thereafter to be performed) of such Owner shall vest in the Transferor Owner's successor Transferee in accordance with this Article (but such Transferee, in such event, shall not be personally liable for the performance of any term, covenant, obligation or condition as to any matter which arose prior to the Transfer).

13.3 Multiple Ownership. In the event there shall be more than one record owner comprising the Owner of a Parcel ("**Co-Owners**"), then not less than fifty-one percent (51%) in interest of such Co-Owners shall designate one of their number to act on behalf of all of such Co-Owners in the exercise of the rights granted to an Owner under this Declaration. So long as such designation remains in effect, such designee shall be the Owner hereunder and shall have the power to bind such Parcel and such Co-Owners, and such Co-Owners shall not be deemed to be Owners. Any such designation must be in writing and served upon the other Owners by registered or certified mail, and must be recorded in the Official Records. In the absence of such written designation, the acts of the Owner whose interest is so divided with respect to the exercise of the rights vested by this instrument shall be binding upon all Co-Owners until such time as written notice of such designation is given and recorded in the Official Records. All Co-Owners shall be jointly and severally liable with respect to all the terms, obligations, covenants and conditions under this Declaration during their period of ownership (subject to Section 13.4 below).

13.4 Release. Whenever the rights and obligations conferred upon any of the Owners are vested in another Owner or Owners pursuant to the provisions of this Article, the Transferor shall be released or discharged from the obligations thereafter accruing under the terms of this Declaration, and the Transferee(s) of such interest shall be bound by the covenants and restrictions herein contained, subject to the terms herein. Notwithstanding the foregoing, no such Owner shall be so released until notice of such Transfer has been given in the manner set forth below, at which time the Transferring Owner's personal liability for unaccrued obligations shall terminate. An Owner transferring all or any portion of its interest in the Shopping Center shall give notice to the other Owners of such Transfer and shall include therein at least the following information: (i) the name and address of the new Owner; (ii) a copy of the legal description of the portion of the Shopping Center so Transferred; and (iii) a copy of the instrument evidencing such Transfer and the assumption by the Transferee as provided herein. Until notice of such Transfer is given, the Transferring Owner shall (for purposes of this Declaration only) be the Transferee's Agent.

13.5 Outlots. As of the date of this Declaration, Developer is the Owner of all of the Outlots except the Commerce Bank Property, as legally described on Exhibit "**A-1**". Notwithstanding any provision herein to the contrary, Developer acknowledges and agrees that any successor to Developer with respect to the Outlots or any of same shall be bound by all of the terms, covenants and conditions of this Declaration respecting the Outlot or Outlots owned by such Person as an "Owner", but such successor Owner: (1) shall not be entitled to exercise any self-help remedies granted herein to an Owner with respect to the Von Maur Parcel, the NYLO Parcel, the Penney Parcels or the Control Parcel; (2) shall not be deemed an Owner for purposes of providing any consent or approval that is required of an Owner hereunder (i.e., where the consent or approval of the Owners is required under the terms of this Declaration, the consent of such successor as to the Outlots or any of same shall not be required), except with respect to matters that directly and materially increase the obligations of such Owner in a manner not otherwise uniformly being applied to the other Parcels or that materially and adversely decrease the easements in favor of such Outlot hereunder; and (3) shall not be deemed an Owner for purposes of Section 19.10 of this Declaration, so long as such amendment or modification does not (i) alter any of the terms or conditions of this Declaration in such a way as to impose any materially greater obligation on or materially impair any right of an Owner or its Parcel or (ii) alter (except to the extent necessary in order for Developer to fulfill its obligations under this Declaration) the Parking Area, Ring Road or curb cuts from the Ring Road immediately adjacent to and serving such Outlot, and as depicted on the Site Plan, in such a way as to materially and adversely affect the Outlot owned by such successor.

ARTICLE XIV TAXES

14.1 Calculation and Payment of Real Property Taxes. To the fullest extent possible, real estate taxes and general and special assessments (collectively, "**Real Property Taxes**") levied and assessed against any Owner's Parcel and any Store or other improvements thereon, shall be separately assessed by the taxing authority and all Owners shall cooperate

reasonably with Developer and each other as needed to have separate tax parcel status given to each Parcel hereunder; provided, however, that nothing herein shall require Developer to obtain separate tax assessments for any Parcel, Store or other improvements. Each Owner shall pay or cause to be paid on or before the date such Real Property Taxes become delinquent, all such Real Property Taxes levied and assessed on its Parcel and any Store or other improvements thereon, except as otherwise provided herein. Such Real Property Taxes may be paid in installments where installments are permitted by the taxing authorities. In the event an Owner shall deem any Real Property Taxes (including the rate thereof or the assessed valuation of the property in question or any other aspect thereof) assessed against such Owner by the taxing authority to be excessive or illegal, such Owner shall have the right, at its own cost and expense, to contest the same by appropriate proceedings, and nothing contained in this Section 14.1 shall require such Owner to pay any such Real Property Taxes as long as the amount or validity thereof shall be contested in good faith, and in the reasonable opinion of counsel for such Owner, the Owner's Parcel and, without limitation, the easements and rights established hereby in favor of other Owners with respect thereto, shall not thereby be in danger of being forfeited. If, notwithstanding the above provisions, any Parcels shall not be separately assessed, but instead are assessed as part of a larger parcel which includes more than one Parcel hereunder, then until such time as the Parcels at issue are separately assessed, the Owners of the Parcels that are assessed together shall coordinate to make timely payment of all Real Property Taxes pertaining to such Parcels so that same will be fully paid without penalty or interest, or if a discount shall be available for early payment, prior to the last day that such discount is available (unless such Owners agree to the contrary). Any Owner not so performing as required above shall pay all interest, penalties, late charges and lost discount amounts incurred as a result of such Owner's failure to perform and shall reimburse the performing Owner for any amounts with respect thereto paid by the performing Owner. In the case of such joint assessment, the Owner of each Parcel shall be responsible for a share of the Real Property Taxes assessed and applicable solely to such Owner's Parcel, as determined by reference to the records of the applicable taxing authority, including, without limitation, any work sheets and other documents compiled by the assessor. In the event it is not possible in such fashion to determine the specific Real Property Taxes applicable to each such Parcel by reference to the foregoing records, each Owner shall pay its proportionate share of the bill for Real Property Taxes at issue, calculated as follows: (i) as to any Real Property Taxes assessed against land, each Owner shall pay such Owner's proportionate share of the Real Property Taxes assessed against the land comprising the larger parcel based on a fraction, the numerator of which shall be the number of acres (to the nearest 1/100th of an acre) in the Parcel at issue and the denominator of which shall be the total number of acres in the aggregate of all Parcels assessed in such tax bill (to the nearest 1/100th of an acre); and (ii) as to any Real Property Taxes assessed against buildings, each Owner shall pay such Owner's fair and equitable share of the Real Property Taxes assessed against all the buildings of the jointly assessed Parcels, as reasonably determined by Developer, which share shall be consistent with the assessed value of the building(s) on the Parcel at issue (if such value is available) or the assessed value of similarly situated buildings in Overland Park, Kansas to the extent the actual assessed value of the building(s) is not available.

14.2 Personal Property Taxes. In addition to Real Property Taxes, each Owner shall cause to be paid before delinquency all taxes (including sales and use taxes), assessments, license fees and public charges levied, assessed or imposed upon the business operations on its Parcel(s) as well as upon the merchandise, inventory, furniture, fixtures, equipment and other personal property of such businesses. In the event any such items of property of any Owner other than Developer are assessed with property of Developer, such assessment shall be equitably divided between Developer and such other Owner by Developer, after consultation with such other Owner, in which case the other Owner shall be responsible to pay the taxes appropriately allocated to it.

ARTICLE XV INDEMNIFICATION AND INSURANCE

15.1 Casualty Coverage. Except as otherwise provided in the Condominium Declaration in regards to the Penney Store, the Parking Unit, the Small Shops Unit and the Common Elements (of which such Condominium Declaration shall govern and control in regards to property insurance of such improvements in all events), in order to assure performance of their respective obligations under this Declaration, it is agreed that commencing as of the date any Owner commences construction with respect to its respective Parcel(s) and thereafter for the Term of this Declaration, such Owner shall carry property insurance on an all risk basis on its respective Store(s) in an amount sufficient to avoid the effect of any coinsurance provisions of such policies and in any event in an amount not less than the full replacement value of such Store(s) excluding, in each case, foundation, footing and excavation costs, with reasonable deductibles, and otherwise in accordance with the requirements set forth

in this Article. The Owner of an Outlot shall also maintain or cause to be maintained property insurance on an all risk basis covering the Common Area located on such Outlot in an amount not less than the full replacement value of the Common Area, otherwise in accordance with the requirements set forth in this Article. Except with respect to Outlots, Operator shall maintain or cause to be maintained property insurance on an all risk basis covering the Common Area in an amount not less than the full replacement value of said Common Area, otherwise in accordance with the requirements set forth in this Article. All such insurance shall be carried with financially responsible companies authorized to do business in the State of Kansas and meeting the standards set forth in this Article.

15.2 Liability Coverage. Each Owner shall carry (or cause to be carried) with insurance companies authorized to do business in the State of Kansas, commercial general liability insurance written on an occurrence basis covering its legal liability in connection with claims for personal injury or death and property damage incurred upon or about its Parcel(s) and within any Store(s) constructed on its Parcel(s) in accordance with the requirements of this Article; provided, however, that so long as Developer (or Operator, as applicable) is obligated to maintain the Common Area pursuant to the terms of this Declaration, no Owner other than Developer shall be required to maintain such liability insurance on any portion of the Common Area located on such Owner's Parcel. Similarly, Developer shall carry (or cause to be carried) with insurance companies authorized to do business in the State of Kansas, commercial general liability insurance written on an occurrence basis covering legal liability for claims for personal injury or death or property damage incurred upon or about the Common Area in accordance with the requirements of this Article. Developer shall be shown as an additional insured on each Owner's commercial general liability insurance for personal injury or death and property damage incurred upon or about its Parcel. All such commercial general liability insurance shall have minimum limits in Constant Dollars, of \$1,000,000.00 per occurrence, with an annual aggregate limit of \$2,000,000.00 for personal or bodily injury and damage to property, and an umbrella policy with an annual aggregate limit of \$5,000,000.00.

15.3 Insurance Requirements. All policies of insurance required under this Article shall be issued by reputable insurance companies. Certificates of such policies shall be delivered to any Owner requesting the same promptly after the request by any other Owner; provided, however, Von Maur Owner shall be required to provide such certificates to Developer only. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by the Owner responsible for the same in a like manner and to like extent. All commercial general liability and property damage policies (except as otherwise provided in the Condominium Declaration in regards to the Penney Store, the Parking Unit, the Small Shops Unit and the Common Elements (of which such Condominium Declaration shall govern and control in regards to property insurance of such improvements in all events) shall be written as primary policies, not contributing with or secondary to coverage which the other Owners may carry. Developer may require that increased amounts of insurance be required to be carried by any Owner pursuant to this Declaration and that such Owner also carry other reasonable types of insurance coverage in such reasonable amounts as may be determined by Developer to be appropriate; provided, however, no such increases or additional coverages shall be required more than once in every five (5) year period. Further, in no event shall (i) such increased amounts of insurance or such other types of insurance be in excess of that required by prudent developers of first comparable first class shopping centers in the state of Kansas and (ii) such coverage include terrorism, earthquake and flood coverage unless such coverage is required by Developer's lender (if applicable) and is customarily carried by similarly situated tenants in Overland Park, Kansas, and is available at commercially reasonable rates, as reasonably determined by the Owner being required to carry such additional coverage.

15.4 Indemnity - Common Area. Developer shall indemnify, defend and hold harmless the other Owners from and against all claims and all costs, expenses, and liabilities (including reasonable attorneys' fees), damages and liabilities incurred in connection with such claims, including any action or proceedings brought thereof, arising from or as a result of: the death of or any accident, injury, loss or damage whatsoever caused to any Person or to the property of any Person as may occur on or about the Common Area that is maintained by Developer pursuant to Section 8.1 by reason of an occurrence or condition on such Common Area; provided, however, an Owner shall not be entitled to such indemnity for any claims, death, accidents, injuries, loss or damages arising from or as a result of the negligent or willful act or omission of such Owner or its agents, servants, employees or contractors, including the failure of such Owner to maintain the Common Area on its Parcel if such obligation has been delegated to such Owner hereunder.

15.5 Indemnity - Parcels. Each Owner shall indemnify, defend and hold harmless the other Owners from and against all claims and all costs, expenses, and liabilities (including reasonable attorneys' fees), damages and liabilities incurred in connection with such claims,

including any action or proceedings brought thereof, arising from or as a result of: (i) the death of or any accident, injury, loss or damage whatsoever caused to any Person or to the property of any Person as may occur on or about such Owner's Parcel (except those portions of such Owner's Parcel that are Common Area that is maintained by Developer pursuant to the terms of this Declaration), by reason of an occurrence or condition on such Owner's Parcel or the improvements which may be constructed thereon or (ii) a negligent or willful act or omission of the indemnifying Owner, its agents, servants, employees or contractors; provided however, in each case referred to in (i) and (ii) above, an Owner shall not be entitled to such indemnity for any claims, death, accidents, injuries, loss or damages arising from or as a result of the negligent or willful act or omission of such Owner or its agents, servants, employees or contractors.

15.6 Waiver of Subrogation. Each Owner (the "Waiving Owner"), by accepting a deed to its Parcel, shall be deemed to have waived any rights the Waiving Owner may have against the other Owners (including but not limited to a direct action for damages) on account of any loss or damage suffered by the Waiving Owner (whether or not such loss or damage is caused by the fault, negligence or other tortious conduct, acts or omissions of the other Owners or their respective officers, directors, employees, agents, contractors or invitees), to its property, Parcel and the improvements thereon, its contents or to any other portion of the same arising from any risk covered by or which could be covered by the forms and type of property insurance required to be carried by the Owners, respectively, under Section 15.1 of this Declaration. Each Waiving Owner further, on behalf of its insurance companies insuring the property of such Waiving Owner against any such loss, waives any right of subrogation that such Waiving Owner or its insurers may have against the other Owners or their respective officers, directors, employees, agents, contractors or invitees and all rights of their respective insurance companies based upon an assignment from its insured. Each Owner shall give each such insurance company written notification of the terms of the mutual waivers contained in this Section and have said insurance policies properly endorsed, if necessary, to prevent the invalidation of such insurance coverage by reason of said waivers. The foregoing waiver shall be effective whether or not the Owners maintain the required insurance or give written notice of the waivers contained herein to their insurance companies. The provisions of this Section 15.6 are further subject to the provisions and limitations of Section 15.11 below.

15.7 Use of Proceeds. Except as otherwise provided herein, any loss covered by the insurance required to be carried by an Owner under Section 15.1 shall be adjusted with and paid by the insurance company by and to such Owner and upon receipt thereof, if the loss is in excess of \$500,000, the proceeds shall be deposited in a bank, trust or title company (selected by the respective Owner but approved by the Developer) having an office in Overland Park, Kansas, to be held in trust or escrow to be paid out for the purpose of repair, replacement or rebuilding of the damaged premises as provided in this Declaration; provided, however, in the event such Owner is not obligated to repair, replace or rebuild the damaged premises in accordance with Article IX, then the insurance proceeds shall be paid directly to Owner and shall not be required to be deposited in a bank, trust or title company. Notwithstanding any provision herein to the contrary, so long as Penney Owner is able to self insure as provided in this Declaration (and is, at the time of such loss, self insuring hereunder), Penney Owner shall not be obligated, irrespective of the amount of proceeds paid to it, to deposit such proceeds in such bank, trust or title company, and Penney Owner shall use such proceeds in accordance with the terms of this Article (if so required to rebuild, replace or rebuild). Upon presentation to the trustee or escrowee of proper material and labor bills and applicable lien waivers for such work completed and an architect certificate for completed work approving payment of such bills, the trustee or escrowee shall, as the work progresses, pay the amount of such bills to the persons, firms or corporations rendering or furnishing such labor, services or materials. After completion of the repair, replacement or rebuilding and after such bills in connection with such work have been paid in full, any remaining balance of the proceeds of such insurance shall be released and paid over by said trustee or escrowee to the Owner whose premises were so damaged. The Owner whose premises were so damaged agrees to pay all reasonable fees and charges made by the trustee or escrowee for acting as trustee or escrowee hereunder. In the event of a loss in the amount of \$500,000 or less, the proceeds shall be paid in trust to the Owner whose premises were so damaged, which proceeds shall be applied to the cost of the repair, replacement or rebuilding of such premises. The Owner for whose benefit any property insurance is carried shall be responsible for and pay the cost of repair, replacement or rebuilding not covered by such insurance proceeds, including inadequate coverage and the amount of any deductibles. Except as to the requirement to clear the premises under Section 9.8 hereof, with respect to the NYLO Parcel, the use of all insurance proceeds shall be subject to the requirements of the NYLO Owner's Mortgagee.

15.8 Additional Insurance Requirements. Anything herein to the contrary notwithstanding, it is understood and agreed that the policy or policies providing the insurance

which the Owners are obligated to maintain under the terms of Section 15.1 may be made payable to the holder of any first mortgage of the respective Owner's interest in the Shopping Center under a standard mortgagee clause, provided such Mortgagee agrees that it will, in the event of loss, hold the proceeds for payment of the costs of the repair, replacement or rebuilding (to the extent required under Article IX above) pursuant to the provisions of Section 15.7, as if it were the trustee thereunder.

15.9 Self Insurance. No Owner shall self insure except upon the consent of Developer, which consent shall not be unreasonably withheld if the tangible net worth of such Owner seeking to self-insure exceeds One Hundred Million Dollars (\$100,000,000), in Constant Dollars (as defined in Section 8.10). Any request to self-insure pursuant hereto shall be accompanied by a copy of such Owner's financial statements audited by an independent certified public accountant. Thereafter, upon request of Developer, each self-insuring Owner shall deliver such audited financial statements on an annual basis. In the event any Owner self insures in accordance with the terms of this Declaration (including, in any case, maintenance of deductibles), then notwithstanding such self insurance, the Owner electing to carry such self insurance shall pay, register, insure, defend, indemnify and otherwise provide all of the same property and commercial general liability protection and coverage called for by this Declaration hereto without loss of coverage or protection to itself or to any other Owner as if such self insured Owner were fully insured by a solvent third party insurance carrier as contemplated by this Declaration. All waivers, including but not limited to the waivers of subrogation, additional insured coverages and benefits, shall also continue and apply in all circumstances of self insurance. Reasonable deductibles shall not be considered "self-insurance" for the purposes of this Section.

15.10 Blanket Insurance. Any insurance required to be carried pursuant to this Article may be carried under a policy or policies covering other liabilities and locations of an Owner; provided, however, that such policy or policies apply to the properties required to be insured by this Article in an amount not less than the amount of insurance required to be carried by such Owner, with respect thereto, pursuant to this Article.

15.11 Insurance Exceptions for Penney and Von Maur. Notwithstanding anything to the contrary in this Declaration, at such time as J.C. Penney Properties, Inc. shall acquire title to the Penney Parcels and thereafter for so long (but only for so long) as J.C. Penney Properties, Inc., J.C. Penney Corporation, Inc., a Related Corporation or any Successor Corporation of J.C. Penney Properties, Inc. or J.C. Penney Corporation, Inc. (a "**Penney Company**") shall be the Owner of the Penney Parcels (it being understood that the provisions of this Section 15.11 are "personal" to a Penney Company and shall not inure to the benefit of any other Owner of the Penney Parcels), (x) Penney Owner shall not be required to (i) name any other Owner, nor shall any other Owner be required to name Penney Owner as additional insured for any insurance Penney Owner or such other Owner carries with respect to the Shopping Center, or (ii) furnish any Owner with any evidence of insurance or self-insurance, (y) no Owner shall be permitted to purchase any insurance on behalf of Penney Owner (and seek reimbursement thereof) in accordance with any self-help remedies granted to an Owner herein, except as otherwise provided in the Condominium Declaration in regards to the Penney Store, the Parking Unit, the Small Shops Unit and the Common Elements and (z) except as otherwise provided in the Condominium Declaration in regards to the Penney Store, the Parking Unit, the Small Shops Unit and the Common Elements (of which such Condominium Declaration shall govern and control in regards to any waiver of subrogation in all events), Penney Owner shall not be deemed to release any other Owner as to matters occurring during the period of ownership by a Penney Company for any of the losses or damages described in Section 15.6 above and, during such period and as between Penney Owner and any other Owner, such Owner shall not be deemed to waive any rights of subrogation relative to the losses or damages described in Section 15.6 above. Further notwithstanding anything to the contrary in this Declaration, at such time as Von Maur, Inc. shall acquire title to the Von Maur Parcel and thereafter for so long (but only for so long) as Von Maur, Inc. shall be the Owner of the Von Maur Parcel and thereafter for so long (but only for so long) as a Related Corporation or any Successor Corporation of Von Maur, Inc. (a "**Von Maur Company**") shall be the Owner of the Von Maur Parcel (it being understood that the provisions of this Section 15.11 are "personal" to a Von Maur Company and shall not inure to the benefit of any other Owner of the Von Maur Parcel), (x) Von Maur shall not be required to (i) name any other Owner, nor shall any other Owner be required to name Von Maur as additional insured for any insurance Von Maur or such other Owner carries with respect to the Shopping Center, or (ii) furnish any Owner with any evidence of insurance or self-insurance, (y) no Owner shall be permitted to purchase any insurance on behalf of Von Maur (and seek reimbursement thereof) in accordance with any self-help remedies granted to an Owner herein and (z) Von Maur shall not be deemed to release any other Owner (nor shall any other Owner be deemed to have released Von Maur), as to matters occurring during the period of ownership by a Von Maur Company, for any of the losses or

damages described in Section 15.6 above and, during such period and as between Von Maur and any other Owner, such Owner shall not be deemed to waive any rights of subrogation relative to the losses or damages described in Section 15.6 above.

ARTICLE XVI DEFAULT AND REMEDIES

16.1 **Notice and Cure.** A default shall occur under this Declaration if any Owner (a "Defaulting Owner") shall fail to perform any of the terms, provisions, covenants or conditions to be performed or complied with by the Defaulting Owner pursuant to this Declaration and any such failure shall remain uncured for a period of thirty (30) days after any other Owner (the "Non-Defaulting Owner") shall have served upon the Defaulting Owner written notice of such failure; provided that no default shall occur if: (i) the default is of such character as reasonably to require more than thirty (30) days to cure and the Defaulting Owner shall commence to cure such default within said thirty (30) day period and shall continuously and diligently prosecute such cure to completion after commencing such cure or (ii) a separate notice and remedy provision is specifically provided elsewhere in this Declaration for such default and the Defaulting Owner complies with and cures under said provision. Notwithstanding the foregoing, if the failure of the Defaulting Owner relates to a matter which is of an emergency nature involving immediate threat of damage or injury to persons or property then (i) the Non-Defaulting Owner, at its option, may perform any such term, provision, covenant, or condition, or make any such payment required to cure such emergency, provided that the Non-Defaulting Owner provides the Defaulting Owner with notice of such failure within 48 hours after the Non-Defaulting Owner discovers the same, (ii) the Defaulting Owner shall promptly reimburse the Non-Defaulting Owner for all such expenses and costs incurred and (iii) the Non-Defaulting Owner shall not be liable or responsible for any loss or damage resulting to the Defaulting Owner or anyone holding under or through the Defaulting Owner on account of such cure.

16.2 **Default Interest.** Interest shall accrue on sums owed by a Defaulting Owner to a Non-Defaulting Owner and shall be payable from the date any such sum first became due hereunder until paid in full, at a rate of interest (the "Default Rate") equal to the lesser of: (a) the floating rate which is equal to five percent (5%) per annum in excess of the annual rate of interest from time to time published in the Wall Street Journal as the "Prime Rate" or (b) the then maximum lawful rate of interest in Kansas applicable to the capacity of the Defaulting Owner and the nature of the debt.

16.3 **Additional Remedies.** Each Owner shall have and is hereby granted a non-exclusive right of entry and non-exclusive easements for and during the Term of this Declaration, in, over and under the Parcels of any other Defaulting Owner (excluding the right to enter any buildings or Stores thereon) for all purposes reasonably necessary, to enable the Non-Defaulting Owner (acting directly or through agents, contractors or subcontractors) to perform any of the terms, provisions, covenants or conditions of this Declaration on the part of the Defaulting Owner to be performed. In the event of a breach, or attempted or threatened breach, of any terms, provisions, covenants or conditions of this Declaration, the Non-Defaulting Owner shall be entitled forthwith to full and adequate relief by injunction, damages, and all other available legal and equitable remedies from the consequences of such breach.

ARTICLE XVII HAZARDOUS AND TOXIC MATERIALS

From the date of this Declaration, each Owner shall be responsible as to its respective Parcels, and as to all Stores and other improvements thereon, with respect to hazardous and toxic materials, to comply with the following:

17.1 **Hazardous Material.** Except as to items commonly sold or used in grocery stores or Stores having other uses permitted herein (and which are used, stored, handled and disposed of in material compliance with Environmental Laws then in effect), no Owner shall keep, store, produce, permit to be kept, stored or produced, on or about such Owner's Parcel or any improvements thereon, for use, disposal, treatment, generation, storage or sale, any substance designated as, or containing components designated as hazardous, dangerous, toxic or harmful or which may be considered a Hazardous Material and/or is subject to regulation by any Environmental Law and/or other federal, state or local law, regulation, statute or ordinance now or hereinafter enacted. In addition, the Owners agree not to release or discard any Hazardous Materials on said Owner's Parcel, or any other Parcel within the Shopping Center. Notwithstanding the foregoing, Owners may store, handle and use the following chemicals, substances or materials if they are used, stored, handled and disposed of in material compliance with Environmental Laws then in effect: (i) chemicals, substances or materials routinely used in office areas; (ii) janitorial supplies, cleaning fluids or other chemicals,

substances or materials reasonably necessary for the day-to-day operation or maintenance of the Owner's business and property or the business of any lessee of an Owner, (iii) chemicals, substances or materials reasonably necessary for the construction or repair of improvements on Owner's Parcel and (iv) fuel or other substances used in connection with a back-up electrical generator system. For so long as an Owner is the owner of its respective Parcel, such Owner shall, at such Owner's sole cost and expense, promptly comply with all Environmental Laws and/or other laws and ordinances and the orders, rules and regulations and requirements of all federal, state and municipal governments and appropriate departments, commissions, boards, and officers thereof, and the orders, rules and regulations of the Board of Fire Underwriters where the Parcel is situated, or any other body now or hereafter constituted exercising similar functions, foreseen or unforeseen, ordinary as well as extraordinary, and whether or not the same require structural repairs or alterations, which may be applicable to the Parcel or any improvements thereon, or the use or manner of use of such Parcel or improvements. Each Owner shall likewise observe and comply with the requirements of all policies of public liability, fire and all other policies of insurance at any time in force with respect to the Parcel, the improvements and equipment on the parcel or in the improvements. In addition, each Owner, at its cost and expense, shall comply with all laws, statutes, ordinances, rules and regulations of any governmental authority ("**Agency**") having jurisdiction thereof concerning environmental matters, including, but not limited to, any discharge into the air, waterways, sewers, soil or ground water of any substance or "pollutant". Upon prior reasonable notice and at times reasonably acceptable to such Owner, Developer and its agents and representatives shall have reasonable access to each Owner's Parcel and any improvements thereon for the purpose of ascertaining the nature of the activities being conducted thereon and to determine the type, kind and quantity of all products, materials and substances brought onto the Parcel(s) or any improvements thereon or made or produced thereon and if Developer or its agents shall in their inspection of the Parcel(s), damage the property then they shall restore the property to its prior condition. Each Owner, and all occupants of the Parcel or any improvements thereon claiming under Owner, shall provide to Developer copies of all manifests, schedules, correspondence and other documents of all types and kinds when filed or provided to an Agency or otherwise required to be maintained by an Agency or as such are received from any Agency. Developer and its agents and representatives shall have the right to take samples in quantity sufficient for scientific analysis of all products, materials and substances present on the Parcel(s) or in any improvements thereon, including, but not limited to, samples of products, materials or substances brought onto or made or produced on the Parcel(s) or in any improvement thereon by an Owner or an occupant claiming under an Owner or otherwise present on the Parcel or any improvements thereon. If an Owner breaches the obligations stated in this paragraph, or if the presence of Hazardous Material on the Parcel or improvements thereon caused or permitted by an Owner results in contamination of the Parcel and/or improvements, or if contamination of the Parcel or improvements by Hazardous Material otherwise occurs for which such Owner is legally liable to Developer or any other Owner for damage resulting therefrom, then such Owner shall indemnify, defend and hold Developer and any other Owner harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the period during which such Owner is the owner of such Parcel as a result of such contamination. Any Owner who is asked to "defend" Developer or another Owner shall have the right to select defense counsel. In the event the indemnified Owner desires to select its own counsel, it shall be at the indemnified Owner's sole expense and such defense shall be tendered immediately and in a manner that does not prejudice the rights of the Indemnitor. Any indemnity under the provisions of this Section shall not apply to any claims brought separately against the indemnified Owner for a separate act or omission. This indemnification of Developer and all other Owners by each Owner includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the respective Parcel. Without limiting the foregoing, if the presence of any Hazardous Materials on a Parcel caused or permitted by an Owner results in any contamination of the Parcel and/or improvements thereon, such contaminating Owner shall promptly take all actions at its sole expense as are required by applicable law to return the Parcel and/or improvements to the condition existing prior to the introduction of any such Hazardous Material. If a contaminating Owner does not promptly take such action to return the Parcel and/or improvements to its/prior condition as required, any other Owner shall have the right, but no obligation, to take such action as required by law to return the Parcel and/or improvements at issue to their prior condition, immediately following notice to such contaminating Owner by such other Owner of its intent to take such action, and such contaminating Owner shall reimburse such other Owner for any costs incurred by such other Owner in connection therewith upon submission by such other Owner to said contaminating Owner of such costs.

ARTICLE XVIII NYLO PARCEL

Notwithstanding any other provision of this Declaration, the terms of this Article XVIII shall govern the construction, development, use and parking rights with respect to NYLO Owner and the NYLO Parcel. In the event of any conflict between the other terms of this Declaration and the terms of this Article, the terms of this Article shall control.

18.1 Construction. NYLO Owner plans to construct the Hotel on the NYLO Parcel. The Hotel Use of such Hotel is expressly permitted by this Declaration. Notwithstanding any provision in this Declaration to the contrary, the NYLO Parcel may be used for a Hotel Use and so long as the Hotel is in compliance with all applicable laws relating to the operation of the Hotel, then nothing herein shall be construed to limit the Hotel Use on the NYLO Parcel, nor shall any Owner, its successors and assigns, attempt to enforce any private covenants or restrictions against the NYLO Parcel that limit or preclude the operation of the Hotel or the Hotel Use, otherwise permitted hereunder.

18.2 Use. Notwithstanding any limitations set forth in Article V of this Declaration, the following uses incidental to Hotel Use are permitted on the NYLO Parcel so long as the NYLO Parcel is used for Hotel Use:

- (a) the sale or serving of beer, wine and liquor in connection with customary operations of a Hotel (such operations to include, without limitation, restaurants and bars therein (including the courtyard area), room service and meeting and banquet facilities) without regard to any percentage of sales limitations set forth in Section 5.1(gg)(i) above;
- (b) electronic renting or showing of films, including pornographic films, in the guest rooms of the Hotel, or the sale or rental of adult or pornographic magazines in a typical magazine stand located within a sundries store, permitted bookstore or like permitted incidental use as part of the Hotel Use;
- (c) seminars or similar educational events at the Hotel;
- (d) the sale by the Hotel on the NYLO Parcel of any retail items which are commonly found in a sundry or similar type store commonly found in a hotel which are primarily intended for the use and enjoyment of hotel guests or permittees; or
- (e) a dry cleaner located within a Hotel on the NYLO Parcel and used primarily for the convenience of the guests of the Hotel, provided such facility (i) does not use perchlorethylene or similar chlorinated solvent cleaners, or (ii) employs technologies using a closed loop system.

To the extent that the provisions of this Section 18.2 relate or in any way pertain to the Surviving Use Restrictions, such provisions shall survive the termination of this Declaration and shall continue in perpetuity notwithstanding anything to the contrary contained herein.

18.3 Drop-Off Area. "Drop-Off Area" shall mean that portion of the NYLO Parcel labeled as "Drop-Off Area" on the Exhibit "B-5" Site Plan (which is considered a portion of the Common Area), for which the NYLO Owner shall be entitled to set and enforce rules concerning the use of such area which pertain to: (i) loading and unloading of vehicles, (ii) parking restrictions, (iii) drop off and pick up restrictions, (iv) bans or restrictions on buses or large vehicles, and (v) valet parking (with such valet parking being subject to the terms of this Declaration). NYLO Owner shall have the right to put up signs, block access to the Drop-Off Area and take other measures to enforce the rules set by NYLO Owner relative to the use of the Drop-Off Area as provided above. Notwithstanding anything to the contrary set forth in this Declaration, such rights granted to the NYLO Owner to set and enforce the rules concerning the Drop-Off Area shall only apply so long as a Hotel (or after fifteen (15) years from the Effective Date, any other business) is being operated on the NYLO Parcel. In the event a Hotel (or after fifteen (15) years from the Effective Date, any other business) ceases to operate on the NYLO Parcel, the NYLO Owner shall no longer have the rights to set and enforce the rules concerning the Drop-Off Area as set forth above.

18.4 NYLO Pre-Emption Rights. As long as the NYLO Parcel is used for Hotel Use, NYLO Owner, its successors and assigns, shall have the permanent right of priority to use any or all of the parking spaces in the Hotel Parking Area on a dedicated basis during the Reserved Times, as hereinafter defined (the "NYLO Pre-Emption Rights"). "Reserved Times" shall mean those days and those times when NYLO Owner reasonably determines in its discretion that some or all of the parking spaces within the Hotel Parking Area will not be, or are likely not

to be, available to NYLO Owner, its employees, invitees, agents, contractors on a first come first serve basis. NYLO Owner shall have the right to put a maximum of six (6) temporary signs, block the spaces, valet park and take other reasonable measures to keep the parking spaces within the Hotel Parking Area available to NYLO Owner, its employees, invitees, agents, contractors and successors and assigns during the Reserved Times, and, in the case of any ADA parking spaces, NYLO Owner shall have the right to use and/or restrict such spaces in any reasonable manner in order to satisfy the intent of all applicable laws, ordinances, rules and regulations of all governmental and quasi-governmental agencies and authorities having jurisdiction over such matters. Notwithstanding the foregoing, in no event shall NYLO Owner have the right to tow vehicles that are not authorized to park in the Hotel Parking Area during the Reserved Times unless (i) such vehicle remains within the Hotel Parking Area for more than 24 hours following posting of notice on such vehicle, (ii) NYLO Owner follows the procedure for towing agreed upon by Developer and NYLO Owner, and (iii) such towing is in compliance with applicable law. The NYLO Owner shall defend, indemnify and hold harmless Developer and all Owners against all loss, liability and costs which may result in connection with the towing of vehicles pursuant to this section of the Declaration. Neither Developer nor any other Owner guarantees that other parties will not park, or attempt to park, in the Hotel Parking Area during Reserved Times, and neither Developer nor any other Owner shall have any liability relating thereto.

18.5 Hotel Adjacent Parking Area. The Hotel Adjacent Parking Area shall be large enough to park no less than 120 vehicles in a portion of the Parking Area that will be located within 500 feet of the front door of the Hotel located on the NYLO Parcel. The Owners, their successors and assigns, shall have no right to restrict (including the right to charge a parking fee), reserve or impede in any way the NYLO Owner's parking rights in the Hotel Adjacent Parking Area as identified on Exhibit "B-6" Site Plan. The parties hereby acknowledge that so long as the NYLO Parcel and Hotel Adjacent Parking Area are constructed in accordance with Exhibit "B-6-1" Site Plan, the above requirements for the Hotel Adjacent Parking Area are hereby deemed to be satisfied. In addition to the foregoing, there shall be a portion (see General Parking Ratio below) of the Parking Area that shall not be reserved by or in the favor of any Person or Party such that these spaces are available at all times to any of the Owners and Permittees within the Shopping Center on a non-exclusive, non-priority, non-dedicated, first come first serve basis (the "General Parking"). At all times, the Hotel Adjacent Parking Area shall be General Parking. The Developer shall be responsible for ensuring that the Parking Area shall at all times satisfy the minimum number of parking spaces required for the Shopping Center Property by the applicable governmental authorities and that the Hotel Adjacent Parking Area and Hotel Parking Area shall at all times satisfy the minimum number of parking spaces required for the NYLO Parcel's proposed Hotel by the applicable governmental authorities. The Developer covenants that the Parking Area will, at all times, have a minimum of sixty-five percent (65%) of all of the Parking Area remain as General Parking (the "General Parking Ratio"). Notwithstanding the foregoing, this Section 18.5 is not intended to, and shall not be construed to, modify in any way the parking easements or parking requirements set forth in Section 2.1 of this Declaration. Subject to the provisions of Sections 4.4, 4.5, 4.6 and 13.5, and except for the Hotel Adjacent Parking Area, Developer shall be able to move, substitute, shift or otherwise modify the location of the General Parking within the Parking Area as long as the General Parking Ratio is maintained. Notwithstanding the foregoing, the NYLO Owner shall be subject to the provisions of Section 4.8 regarding employee parking.

ARTICLE XIX MISCELLANEOUS

19.1 Notices. All notices, approvals, consents, or requests given or made pursuant to this Declaration shall be in writing and either (i) sent by a nationally recognized overnight courier, (ii) personally delivered or (iii) sent by registered or certified mail with the postage prepaid. Notices personally delivered shall be deemed delivered on the date of delivery. Notices via overnight courier shall be deemed delivered on the business day next following deposit with such courier and certified or registered mail shall be deemed delivered four (4) business days after deposit with the U.S. Mail, as applicable. Notices to Developer shall be addressed to Developer, Attention: Mr. Jeff Johnson, 16820 Frances Street, Suite 102, Omaha, NE 68130, with a copy to Koley Jessen P.C., L.L.O., Attention: Max J. Burbach and Kendra J. Ringenberg, 1125 S. 103 Street, Suite 800, Omaha, NE 68124. Following conveyance of the Von Maur Parcel to Von Maur, notices to Von Maur shall be addressed to Von Maur at 6565 Brady Street, Davenport, Iowa 52806, Attention Chief Financial Officer. Following conveyance of the NYLO Parcel to NYLO, notices to NYLO shall be addressed to NYLO at 260 Peachtree Street N.W., Suite 2301, Atlanta, Georgia 30303, Attention General Counsel. Following conveyance of the Penney Parcels to Penney, notices to Penney shall be addressed to J.C. Penney Corporation, Inc., 6501 Legacy Drive, Plano, Texas 75024-3698, Attn: Real Estate Counsel. Such addresses may be changed from time to time by any Owner by serving notice

as herein provided to the other Owners. Notwithstanding anything to the contrary herein, any Owner may give another Owner notice of the need for emergency repairs via facsimile with confirmation of receipt and delivery of the original notice by one of the above prescribed methods. If, at the time of the sending of any notice required or permitted to be given hereunder, the interests of any recipient Owner in its Parcel shall be encumbered by a first Mortgage and the notifying Owner has been notified in writing thereof and of the name and address of the Mortgagee, a copy of said notice shall also be sent to such Mortgagee by one of the above prescribed methods at the address so given.

19.2 Binding Effect. All of the limitations, covenants, conditions, easements, and restrictions contained herein shall attach to and run with the Owners' Parcels, and shall benefit or be binding upon the successors and assigns of the respective Owners. This Declaration and all the terms, covenants and conditions herein contained shall be enforceable as equitable servitudes in favor of said Parcels and any portion thereof.

19.3 Rules and Regulations. Developer may establish and enforce reasonable rules and regulations applicable to the Common Area ("**Rules and Regulations**"). Developer hereby initially adopts the Rules and Regulations in the form of **Exhibit "C"** attached hereto. Any amendment to the Rules and Regulation with respect to (1) the Penney Control Area shall require the approval of Penney Owner, (2) the NYLO Parcel shall require the approval of NYLO Owner, (3) the Von Maur Control Area shall require the approval of Von Maur Owner, none of which approvals shall be unreasonably withheld. Further, any amendment to the maintenance standards/requirements respecting the Common Area shall require the approval of Penney Owner, NYLO Owner and Von Maur Owner, which approval shall not be unreasonably withheld.

19.4 Injunctive and Declaratory Relief. In the event of any violation or threatened violation by any Permittee of the Shopping Center (or any portion thereof) of any of the terms, covenants, conditions, and restrictions herein contained, in addition to any other remedies provided for in this Declaration, the Owners shall have the right to enjoin such violation or threatened violation and to bring an action for declaratory relief in a court of competent jurisdiction.

19.5 Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Declaration shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration, and such limitations shall not affect in any manner any of the rights or remedies which the Owners may have by reason of any breach of this Declaration.

19.6 Subdivision. Notwithstanding anything to the contrary contained in this Declaration, no Owner, other than Developer, shall have the right, without Developer's consent, to further subdivide a Parcel or add additional land to its respective Parcel or to the Shopping Center. Except as otherwise provided herein, until such time as an individual Parcel is conveyed to a successor Owner, Developer, in its sole discretion without joinder of any other party, but subject to the terms of this Declaration, reserves the right relative to Developer's Parcels only to: (i) redefine the location of a Parcel and the perimeter lot lines of said Parcel, (ii) change the configuration of parking, traffic islands and landscaping within said Parcels, (iii) adjust or make a Parcel larger or smaller; provided, however, that the consent of Von Maur Owner and Penney Owner shall be necessary as to the removal of any land from the Shopping Center (such consent not to be unreasonably conditioned, delayed or withheld), and (iv) make such other reasonable changes as shall accommodate the potential users of such Parcels and/or the Shopping Center. In the event of the addition or removal of land from the Shopping Center as provided in this Section, Developer shall have the right to amend this Declaration to reflect such change, without approval or joinder of any other party. Notwithstanding the foregoing, (i) Developer shall not approve of or make any change or modification to or directly adversely affecting the Von Maur Parcel without the express written consent of Von Maur Owner in Von Maur Owner's sole discretion, (ii) Developer shall not approve of or make any change or modification to or directly adversely affecting the Penney Parcels without the express written consent of Penney Owner in Penney Owner's sole discretion, (iii) Developer shall not approve of or make any change or modification to or directly adversely affecting the NYLO Parcel without the express written consent of NYLO Owner in NYLO Owner's sole discretion, and (iv) after the improvements are constructed on the Parcels and the development of the Shopping Center is complete, the perimeter boundary of the Control Parcel, as identified on the Site Plan, shall not be altered or modified without the express written consent of Von Maur Owner and Penney Owner.

19.7 Breach Effect on Mortgagee and Right to Cure. Subject to the notice and cure provisions provided hereinbelow, any Mortgage affecting any portion of the Shopping Center and the buildings and improvements thereon shall at all times be subject and subordinate to the terms of this Declaration; and any Mortgagee that acquires title to any Parcel,

or any part thereof, or any interest therein, by foreclosure or conveyance in lieu thereof or otherwise, shall acquire title to such Parcel subject to all of the terms of this Declaration. Breach of any of the covenants or restrictions contained in this Declaration shall not defeat or render invalid the lien of any Mortgage made in good faith, but all of the foregoing provisions, restrictions, and covenants shall be binding and effective against any Owner of any portion of the Shopping Center, or any interest therein, who acquires title by foreclosure or by deed in lieu of foreclosure or otherwise. Notwithstanding any other provision in this Declaration for notices of default, the Mortgagee of any Owner in default hereunder shall be entitled to notice of said default, in the same manner and at the same time that other notices are required to be given under this Declaration, and the same right to cure as the Owner has under this Declaration; provided, however, that said Mortgagee shall have, prior to the time of the default, notified the Owner giving said notice of default of the Mortgagee's mailing address. Giving of any notice of default or the failure to deliver a copy to any Mortgagee shall in no event create any liability on the part of the Owner so declaring a default.

19.8 Effect on Third Parties. The rights, privileges, or immunities conferred hereunder are for the benefit of the Owners and not for any third party.

19.9 No Partnership. Neither this Declaration nor any acts of the Owners respecting performance under this Declaration shall be deemed or construed by the Owners, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between or among any of the Owners under this Declaration.

19.10 Modification. Except as provided to the contrary herein, no modification, waiver, amendment, discharge, or change of this Declaration shall be valid unless the same is in writing and signed by (i) Von Maur Owner, (ii) Penney Owner, (iii) NYLO Owner, (iv) the Owner of the Control Parcel and (v) Developer so long as Developer is the Owner of at least one (1) Parcel; provided, however, that no such modification, waiver, amendment, discharge or change shall impose any materially greater obligation on or materially impair any right of an Owner or its Parcel unless such Owner has joined in the execution of such document.

19.11 Severability. In the event any term, covenant, condition, provision, or agreement contained herein is held to be invalid, void, or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the validity of enforceability of any other term, covenant, condition, provision, or agreement contained herein, each of which shall be enforced to the maximum extent permitted by law.

19.12 Governing Law. This Declaration and the obligations of the Owners hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of Kansas.

19.13 Terminology. All personal pronouns used in this Declaration, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural and vice versa.

19.14 Counterparts. This Declaration may be executed in multiple counterparts, each of which shall be deemed to be an original agreement, and all of which shall constitute one agreement.

19.15 Captions. Article and section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Declaration or any provisions hereof.

19.16 Consent. In any instance in which any Owner under this Declaration shall be requested to consent to or approve of any matter with respect to which such Owner's consent or approval is required by any of the provisions of this Declaration, such consent or approval or disapproval shall be given in writing, and shall not be unreasonably withheld, delayed or conditioned, unless the provisions of this Declaration with respect to a particular consent or approval shall expressly provide otherwise.

19.17 Estoppel Certificate. Each Owner shall issue to a requesting Owner (or to any Mortgagee, or any other Person reasonably specified by such requesting Owner), within thirty (30) days following written request of any such requesting Owner, an estoppel certificate stating: (i) whether the Owner to whom the request has been directed knows of any default under this Declaration of any other Owner, and if there are known defaults, specifying the nature thereof; (ii) whether to its knowledge this Declaration has been assigned, modified or amended in any way (or if it has, then stating the nature thereof); (iii) that to the Owner's knowledge this

Declaration as of that date is in full force and effect (or, if such be not the case, the qualifications respecting such statement). Such statements shall not subject the Owner furnishing it to any liability, notwithstanding the negligent or otherwise inadvertent failure of such Owner to disclose correct and/or relevant information. However, the Owner furnishing the certificate shall not be entitled to assert or enforce any claim against the Person to whom it is issued (or against such Person's property) which is contrary to the statements contained in the certificate and such person acted in reasonable reliance upon such statement, except to the extent that the Person against whom the claim would be asserted had actual knowledge of facts to the contrary. Any Owner who is requested to give an estoppel under this Section may require, as a condition of its obligation to give the estoppel, that the Owner on whose behalf the original request was made give a similar estoppel to the Owner requested to give an estoppel. Notwithstanding the foregoing, (i) any estoppel certificate to be delivered by Developer may be limited to the actual knowledge of the corporate officer or officers of Developer, without any investigation or duty to investigate, (ii) any estoppel certificate to be delivered by Von Maur Owner may be limited to the actual knowledge of the corporate officer or officers of Von Maur Owner, without any investigation or duty to investigate, (iii) any estoppel certificate to be delivered by Penney Owner may be limited to the actual knowledge of the corporate officer or officers of Penney Owner, without any investigation or duty to investigate, and (iv) any estoppel certificate to be delivered by NYLO Owner may be limited to the actual knowledge of the corporate officer or officers of NYLO Owner, without any investigation or duty to investigate.

19.18 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general public or for the general public or for any public purpose whatsoever, it being the intention of Developer that this Declaration shall be strictly limited to and for the purposes herein expressed. This Declaration shall in no way constitute or create rights in Persons not parties hereto or becoming Owners hereunder and shall not create obligations or responsibilities of such Persons not parties hereto or becoming Owners hereunder.

19.19 Promotional Fund. Except as may otherwise be provided in the Separate Agreements or in a separate agreement between an Owner and Developer, the Owners, other than Developer, shall be required to join a merchants association or promotional fund established by Developer and to remain a member and make an annual contribution thereto for the Term of this Declaration in the amount of One Dollar (\$1.00) per square foot of Floor Area in such Owner's Store for 2008, with an annual increase of two (2%) percent each subsequent year.

19.20 Time of Essence. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Declaration.

19.21 Entire Agreement. This Declaration and the exhibits hereto contain all the entire agreement of Developer with respect to the subject matter hereof, except for the Separate Agreements contemplated hereby. Any prior correspondence, memoranda or agreements are superseded in total by this Declaration and Exhibits hereto. The provisions of this Declaration shall be construed as a whole according to their common meaning and not strictly for or against any Owner. This Declaration has been reviewed and negotiated by Developer with Penney, NYLO and Von Maur and their respective counsel, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Declaration, or any portion hereof, or any exhibits or amendments or agreements supplementary hereto.

19.22 Excuse for Non-Performance. Each Owner shall be excused from performing any obligation or undertaking provided in this Declaration, except any obligation to pay any sums of money under the applicable provisions hereof, in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplied in the ordinary course on the open market, failure of normal transportation, strikes, lockouts, action of labor unions, condemnation, requisition, laws or orders of governmental or civil or military authorities, breach or default of any other Owner of any of its obligations hereunder, failure to obtain necessary governmental approvals or permits despite the exercise of due diligence and good faith efforts by an Owner, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such Owner, other than the lack of or inability to obtain funds or causes which were reasonably foreseeable (collectively, "Unavoidable Delays").

19.23 Separate Agreements. Concurrently with the execution of this Declaration (or, if not presently executed, prior to conveyance of a Parcel to either such party), Developer has

entered into a Separate Agreement with each of Von Maur, Penney and NYLO regarding certain financial obligations between Developer and each of Von Maur, Penney and NYLO, respectively, relating to construction costs, operating covenants and other matters with respect to this Declaration and the Shopping Center. As between Developer and Von Maur Owner, in the event of any conflict between this Declaration and the Von Maur Separate Agreement, the Von Maur Separate Agreement shall control. As between Developer and NYLO Owner, in the event of any conflict between this Declaration and the NYLO Separate Agreement, the NYLO Separate Agreement shall control. As between Developer and Penney Owner, in the event of any conflict between this Declaration and the Penney Separate Agreement, the Penney Separate Agreement shall control. No other Person shall be entitled to review the Separate Agreements without the consent of Developer and the other party to such Separate Agreement. Notwithstanding any provision in this Declaration to the contrary, the Separate Agreements do not and will not (i) affect the rights granted any Owner pursuant to Section 2.14 or any other rights granted in this Declaration, or (ii) directly or indirectly increase the costs of NYLO Owner's, Penney Owner's or Von Maur Owner's Common Area Expenses, Real Property Taxes or other costs associated with ownership of a Parcel within the Shopping Center.

19.24 Waiver of Default. No waiver of any default by any Owner to this Declaration shall be implied from any omission by any other Owner to take any action in respect of such default if such default continues or is repeated. No express written waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more written waivers of any default in the performance of any term, provision or covenant contained in this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Declaration. The consent or approval by any Owner to or of any act or request by any other Owner requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar acts or requests. The rights and remedies given to any Owner by this Declaration shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or if any other right or remedy at law or in equity which any such Owner might otherwise have by virtue of a default under this Declaration, and the exercise of one such right or remedy by any such Owner shall not impair such Owner's standing to exercise any other right or remedy.

19.25 Exhibits. The following exhibits are attached to this Declaration and hereby incorporated herein:

Exhibit "A-1"	Legal Description of Shopping Center Property
Exhibit "A-2"	Legal Description of Von Maur Parcel
Exhibit "A-3"	Legal Description of NYLO Parcel
Exhibit "A-4"	Legal Description of Penney Parking Parcel
Exhibit "A-5"	Legal Description of Condominium Parcel
Exhibit "A-6"	Legal Description of Developer Property
Exhibit "A-7"	Legal Description of Control Parcel
Exhibit "B-1"	Site Plan (with Von Maur Control Area depicted thereon)
Exhibit "B-2"	Site Plan (with Penney Control Area and Penney Height Control Area depicted thereon)
Exhibit "B-3"	Site Plan (with Control Parcel depicted thereon)
Exhibit "B-4"	Site Plan (with Outlots, Non-Shopping Center Parcels, No Kiosk Area and Von Maur Trash Facility depicted thereon)
Exhibit "B-5"	Site Plan (with Access Roads, Ring Road, Drop-Off Area and Penney Parking Access Way depicted thereon)
Exhibit "B-6"	Site Plan (with Hotel Parking Area, Hotel Adjacent Parking Area and NYLO Amenities Area depicted thereon)
Exhibit "B-6-1"	NYLO Site Plan

Exhibit "B-7"	Site Plan (with Building Areas and Maximum Floor Areas depicted thereon)
Exhibit "C"	Rules and Regulations
Exhibit "D"	Sign Criteria
Exhibit "E"	Lighting Criteria

19.26 Name of Shopping Center. The name of the Shopping Center shall be Corbin Park, and such name shall not be changed without the consent of both Penney Owner and Von Maur Owner having been first obtained, such consent not to be unreasonably withheld, delayed or conditioned; provided, however, in the event (i) a third party claims rights to the name Corbin Park and Developer, after evaluating such claim, determines in good faith that such claim has merit or (ii) if the name is required to be changed by law or judicial or governmental order, neither the consent of Penney Owner nor Von Maur Owner shall be required so long as the new name does not contain the name of another retailer or occupant of the Shopping Center. Among the various reasonable reasons Penney Owner and/or Von Maur Owner can articulate in order reasonably to withhold consent concerning a name change of the Shopping Center, it shall be reasonable for either Penney Owner or Von Maur Owner to withhold its consent if the proposed name of the Shopping Center includes the name of another retailer or occupant of the Shopping Center.

19.27 Other Tenancies. Subject to the terms of this Declaration, Developer reserves the right to effect such tenancies in the Shopping Center as Developer in the exercise of its sole business judgment shall determine to best promote the interests of the Shopping Center.

19.28 Developer Exculpation. Notwithstanding anything in this Declaration to the contrary, and notwithstanding any applicable law to the contrary, the liability of Developer hereunder (including any successor Developer hereunder) and any recourse by any Owner against Developer shall be limited solely and exclusively to the interest of Developer in and to the Shopping Center at the time, and neither Developer, nor any of its constituent partners, subpartners, members, managing members or agents, shall have any personal liability therefor, and each other Owner, on behalf of itself and all persons claiming by, through or under such Owner, hereby expressly waives and releases Developer and such partners, subpartners, members, managing members or agents from any and all personal liability.

19.29 Continuous Operation. In no event shall Developer have any liability hereunder whatsoever for the failure of any subsequent Owner or Permittee of any Parcel to continuously operate and Developer has made no representation herein whatsoever that any tenant or Parcel Owner will continuously operate. Nothing herein contained, however, shall be interpreted to affect or otherwise change any agreement (including, without limitation, any of the Separate Agreements) between Developer and Von Maur Owner, between Developer and NYLO Owner, between Developer and Penney Owner, or between Developer and any other Owner.

[Signature page to follow]

IN WITNESS WHEREOF, Developer has caused this Declaration to be executed the day and date first above written.

"DEVELOPER"

135 METCALF, L.L.C., an Iowa limited liability company

By: [Signature]
Jeffrey W. Johnson, Manager

STATE LINE, LLC, an Iowa limited liability company

By: [Signature]
Jeffrey W. Johnson, Manager

STATE OF NEBRASKA)
COUNTY OF DOUGLAS)

SS.



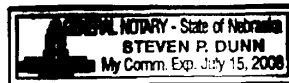
The foregoing instrument was acknowledged before me this 5th day of March, 2008, by Jeffrey W. Johnson, the Manager of 135 METCALF, L.L.C., an Iowa limited liability company under the laws of Iowa, on behalf of said company.

[Signature]
Notary Public

My Commission Expires: 7/15/08

STATE OF NEBRASKA)
COUNTY OF DOUGLAS)

SS.



The foregoing instrument was acknowledged before me this 5th day of March, 2008, by Jeffrey W. Johnson, the Manager of STATE LINE, LLC, an Iowa limited liability company under the laws of Iowa, on behalf of said company.

[Signature]
Notary Public

My Commission Expires: 7/15/08

ACKNOWLEDGMENT AND AGREEMENT OF LIEN HOLDER

Union Bank & Trust Company, as the holder of a first priority lien which encumbers the Shopping Center Property, as evidenced by those documents listed on Exhibit 1 attached hereto (collectively, the "Mortgage") hereby consents to the execution and recording of the Declaration and states, on behalf of itself and its successors and assigns, that the Mortgage shall be subject and subordinate to the terms and conditions of this Declaration so that such Declaration shall not be terminated but shall continue in effect notwithstanding any foreclosure or other acquisition of title pursuant to the Mortgage.

IN WITNESS WHEREOF, Union Bank & Trust Company has caused this Consent of Mortgagee to be signed by its duly authorized officers on its behalf, all done at Omaha, Nebraska on this 21st day of February, 2008.

UNION BANK & TRUST COMPANY

By [Signature]
Name KAREN J. CENOVIC

STATE OF NEBRASKA)

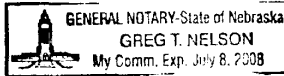
) SS

COUNTY OF DOUGLAS)

On this 21st day of February, 2008, before me, a Notary Public in and for said county and state, personally appeared Karen J. Cenovic who executed the foregoing Acknowledgement and Agreement of Lien Holder, and acknowledged before me that he was duly authorized and did execute the same as President - Omaha of Union Bank & Trust Company, a Nebraska state banking corporation, on behalf of the corporation.

GIVEN under my hand and Notarial Seal, this 21st day of February, 2008.

[Signature]
Notary Public



ACKNOWLEDGMENT AND AGREEMENT OF LIEN HOLDER

The First National Bank of Olathe, as the holder of that certain Construction Mortgage to secure an original principal indebtedness of \$9,224,000.00, and any other amounts or obligations secured thereby, dated October 12, 2007 and recorded October 16, 2007 in Book 200710, at Page 004820 of Official Records (the "Mortgage"), which encumbers a portion of the Shopping Center Property, hereby consents to the execution and recording of the Declaration and states, on behalf of itself and its successors and assigns, that the Mortgage shall be subject and subordinate to the terms and conditions of this Declaration so that such Declaration shall not be terminated but shall continue in effect notwithstanding any foreclosure or other acquisition of title pursuant to the Mortgage.

IN WITNESS WHEREOF, The First National Bank of Olathe has caused this Consent of Mortgagee to be signed by its duly authorized officers on its behalf, all done at Olathe, Kansas on this 12 day of February, 2008.

THE FIRST NATIONAL BANK OF OLATHE

By Sam Somerhalder, SVP

Name Sam Somerhalder, SVP

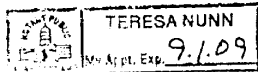
STATE OF Kansas)

) SS

COUNTY OF Johnson)

On this 12 day of Feb., 2008, before me, a Notary Public in and for said county and state, personally appeared Sam Somerhalder, who executed the foregoing Acknowledgement and Agreement of Lien Holder, and acknowledged before me that he was duly authorized and did execute the same as SVP of The First National Bank of Olathe, a Nationally Chartered Bank, on behalf of the Corporation.

GIVEN under my hand and Notarial Seal, this 12 day of Feb., 2008.



Teresa Nunn

Exhibit 1

1. A financing statement recorded April 26, 2004 in Volume 200404, Page 012364 of Official Records. (Includes other property)

Debtor: Series A Holding Co., L.L.C., a Kansas limited liability company

Secured party: Union Bank & Trust Company, a Nebraska State Banking Corporation, its successors and assigns

a.) Amendment filed November 14, 2007 in Book 200711, Page 003364.

2. A financing statement recorded April 26, 2004 in Volume 200404, Page 012365 of Official Records. (Includes other property)

Debtor: Series B Holding Co., L.L.C.

Secured party: Union Bank & Trust Company, a Nebraska State Banking Corporation, its successors and assigns

a.) Amendment filed November 14, 2007 in Book 200711, Page 003365.

3. A financing statement recorded April 26, 2004 in Volume 200404, Page 012366 of Official Records. (Includes other property)

Debtor: 135 Metcalf, L.L.C.

Secured party: Union Bank & Trust Company, a Nebraska State Banking Corporation, its successors and assigns

a.) Amendment filed November 14, 2007 in Book 200711, Page 003366.

4. A financing statement recorded April 26, 2004 in Volume 200404, Page 012367 of Official Records. (Includes other property)

Debtor: Series E Holding Co., L.L.C.

Secured party: Union Bank & Trust Company, a Nebraska State Banking Corporation, its successors and assigns

a.) Amendment filed November 14, 2007 in Book 200711, Page 003367.

5. A mortgage to secure an original principal indebtedness of \$23,500,000.00, and any other amounts or obligations secured thereby, recorded April 26, 2004 in Volume 200404, Page 012363 of Official Records. (Includes other property)

Dated: April 22, 2004

Mortgagor: Series A Holding Co., L.L.C., a Kansas limited liability company; Series B Holding Co., L.L.C., a Kansas limited liability company; 135 Metcalf, L.L.C., an Iowa limited liability company; Series E Holding Co., L.L.C., a Kansas limited liability company

Mortgagee: Union Bank & Trust Company, a Nebraska State Banking Corporation

Exhibit "1"

- a.) Modification Agreement filed September 15, 2004 in Volume 200409, Page 005965.
- b.) Agreement filed November 18, 2005 in Volume 200511, Page 007229.
- c.) First Amendment filed August 17, 2006 in Volume 200608, Page 006727.
- d.) Second Amendment filed September 14, 2006 in Volume 200609, Page 004068.
- e.) Third Amendment filed February 23, 2007 in Volume 200702, Page 007170.
- f.) Fourth Amendment filed August 16, 2007 in Book 200708, Page 005421.
- g.) Partial Release filed November 14, 2007 in Book 200711, Page 003362.
- h.) Fifth Amendment filed December 13, 2007 in Book 200712, Page 003151.
6. A mortgage to secure an original principal indebtedness of \$12,000,000.00, and any other amounts or obligations secured thereby, recorded June 7, 2005 in Volume 200506, Page 003306 of Official Records.
- | | |
|------------|---|
| Dated: | May 31, 2005 |
| Mortgagor: | 135 Metcalf, LLC, an Iowa Limited Liability Company |
| Mortgagee: | Union Bank & Trust Company |
- a.) Assignment of Leases and Rents filed June 7, 2005 in Volume 200506, Page 003307.
- b.) First Amendment filed May 12, 2006 in Volume 200605, Page 004942.
- c.) Second Amendment filed September 14, 2006 in Volume 200609, Page 004066.
- d.) Second Amendment to Land Development Loan Agreement filed September 14, 2006 in Volume 200609, Page 004067.
- e.) Third Amendment filed February 23, 2007 in Volume 200702, Page 007171.
- f.) Fourth Amendment filed August 16, 2007 in Book 200708, Page 005420.
- g.) Partial Release filed November 14, 2007 in Book 200711, Page 003363.
- h.) Fifth Amendment filed December 13, 2007 in Book 200712, Page 003152.

Exhibit "1"

EXHIBIT "A-1"

LEGAL DESCRIPTION OF SHOPPING CENTER PROPERTY

I. COMMERCE BANK PROPERTY

LOT 12, CORBIN PARK, TENTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS.

II. 135 METCALF PROPERTY

1. TRACT A, CORBIN PARK, FIRST PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.

2. TRACT A, C, E, F, G, I, K, L, N, O AND P, CORBIN PARK, SECOND PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.

3. SOUTHERLY AND SOUTHEASTERLY HALF OF TRACT Q, CORBIN PARK, THIRD PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.

4. LOT 1, 2, 3 AND 4, CORBIN PARK, FOURTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.

5. LOT 22, CORBIN PARK, NINTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.

6. TRACTS D AND T, CORBIN PARK, TENTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.

7. LOT 24, CORBIN PARK, TWELFTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.

8. LOT 29, CORBIN PARK, THIRTEENTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.

9. ALL THAT PART OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST, IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST; THENCE NORTH 87°49'01" EAST ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 32 A DISTANCE OF 70.00 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF METCALF AVENUE; THENCE NORTH 1°54'05" WEST ALONG THE EAST RIGHT OF WAY LINE OF METCALF AVENUE A DISTANCE OF 716.69 FEET TO THE POINT OF BEGINNING, THENCE NORTH 1°54'06" WEST ALONG THE EAST RIGHT OF WAY LINE OF METCALF AVENUE A DISTANCE OF 1844.88 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF 135TH STREET; THENCE NORTH 88°07'14" EAST ALONG THE SOUTH RIGHT OF WAY LINE OF 135TH STREET A DISTANCE OF 2539.22 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF LAMAR AVENUE; THENCE SOUTH 1°56'41" EAST ALONG THE WEST RIGHT OF WAY LINE OF LAMAR AVENUE A DISTANCE OF 103.56 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG THE WEST RIGHT OF WAY LINE OF LAMAR AVENUE AND ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 2560.00 FEET, THROUGH A CENTRAL ANGLE OF 7°53'10", AN ARC DISTANCE OF 352.35 FEET TO A POINT; THENCE SOUTH 5°56'29" WEST ALONG THE WEST RIGHT OF WAY LINE OF SAID LAMAR AVENUE A DISTANCE OF 215.17 FEET TO A POINT; THENCE IN A SOUTHEASTERLY DIRECTION ALONG THE WEST RIGHT OF WAY LINE OF LAMAR AVENUE AND ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 890.00 FEET, THROUGH A CENTRAL ANGLE OF 34°34'50", AN ARC DISTANCE OF 537.15 FEET TO A POINT OF REVERSE CURVATURE; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET, THROUGH A CENTRAL ANGLE OF 93°16'32", AN ARC DISTANCE OF 40.70 FEET TO A POINT OF COMPOUND CURVATURE; THENCE

Exhibit "A-1"

ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 607.18 FEET, THROUGH A CENTRAL ANGLE OF 14°51'06", AN ARC DISTANCE OF 157.39 FEET TO A POINT; THENCE SOUTH 79°29'17" WEST A DISTANCE OF 461.23 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 635.00 FEET, THROUGH A CENTRAL ANGLE OF 37°41'13", AN ARC DISTANCE OF 417.68 FEET TO A POINT; THENCE SOUTH 41°48'04" WEST A DISTANCE OF 438.44 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 565.00 FEET, THROUGH A CENTRAL ANGLE OF 46°19'31", AN ARC DISTANCE OF 456.82 FEET TO A POINT; THENCE SOUTH 88°07'38" WEST A DISTANCE OF 46.75 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 842.31 FEET, THROUGH A CENTRAL ANGLE OF 27°54'00", AN ARC DISTANCE OF 410.16 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 645.00 FEET, THROUGH A CENTRAL ANGLE OF 27°55'40", AN ARC DISTANCE OF 314.39 FEET TO A POINT; THENCE SOUTH 88°05'54" WEST A DISTANCE OF 134.99 FEET TO THE POINT OF BEGINNING.

EXCEPT

ALL THAT PART OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST, IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST; THENCE SOUTH 88°07'14" WEST ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 32, 794.90 FEET TO A POINT; THENCE SOUTH 1°52'46" EAST, 100.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF 135TH STREET, THE POINT OF BEGINNING; THENCE SOUTH 88°07'14" WEST ALONG THE SOUTH RIGHT-OF-WAY LINE OF 135TH STREET, 485.79 FEET TO A POINT; THENCE SOUTH 1°54'23" EAST, 231.04 FEET TO A POINT; THENCE NORTH 88°05'37" EAST, 335.29 FEET TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 250.00 FEET, THROUGH A CENTRAL ANGLE OF 12°26'40", AN ARC DISTANCE OF 54.30 FEET TO A POINT; THENCE NORTH 75°38' 57" EAST, 128.21 FEET TO A POINT; THENCE NORTH 14°21'03" WEST, 19.68 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 250.00 FEET, THROUGH A CENTRAL ANGLE OF 13°04'17", AN ARC DISTANCE OF 57.03 FEET TO A POINT; THENCE NORTH 1°16'46" WEST, 61.39 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 100.47 FEET; THROUGH A CENTRAL ANGLE OF 36°35'05" AN ARC DISTANCE OF 64.15 FEET TO THE POINT OF BEGINNING.

FURTHER EXCEPT

ALL THAT PART OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST, IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST; THENCE SOUTH 1°54'06" EAST ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 32 A DISTANCE OF 1100.52 FEET TO A POINT; THENCE NORTH 88°05'54" EAST A DISTANCE OF 301.71 FEET TO THE POINT OF BEGINNING; THENCE NORTH 1°54'22" WEST A DISTANCE OF 170.31 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF 7°23'54", AN ARC DISTANCE OF 64.56 FEET TO A POINT; THENCE NORTH 9°18'16" WEST A DISTANCE OF 279.78 FEET TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 265.00 FEET, THROUGH A CENTRAL ANGLE OF 104°47'43", AN ARC DISTANCE OF 484.69 FEET TO A POINT; THENCE SOUTH 84°30'33" EAST A DISTANCE OF 234.67 FEET TO A POINT; THENCE IN A SOUTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 1200.00 FEET, THROUGH A CENTRAL ANGLE OF 7°23'50", AN ARC DISTANCE OF 154.93 FEET TO A POINT; THENCE NORTH 88°05'37" EAST A DISTANCE OF 758.18 FEET TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 250.00 FEET, THROUGH A CENTRAL ANGLE OF 12°26'40", AN ARC DISTANCE OF 54.30 FEET TO A POINT, THENCE NORTH 75°38'57" EAST A DISTANCE OF 117.17 FEET TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 1000.00 FEET, THROUGH A CENTRAL ANGLE OF 10°56'23", AN ARC DISTANCE OF 190.93 FEET TO A POINT; THENCE NORTH 86°35'20" EAST A DISTANCE OF 51.97 FEET TO A POINT; THENCE IN A SOUTHEASTERLY

Exhibit "A-1"

DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 150.12 FEET, THROUGH A CENTRAL ANGLE OF 91°30'18", AN ARC DISTANCE OF 239.75 FEET TO A POINT; THENCE SOUTH 1°54'22" EAST A DISTANCE OF 196.72 FEET TO A POINT; THENCE IN A SOUTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 400.00 FEET, THROUGH A CENTRAL ANGLE OF 13°44'53", AN ARC DISTANCE OF 95.98 FEET TO A POINT; THENCE SOUTH 15°39'14" EAST A DISTANCE OF 6.97 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 75.00 FEET, THROUGH A CENTRAL ANGLE OF 77°27'20", AN ARC DISTANCE OF 101.39 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 399.00 FEET, THROUGH A CENTRAL ANGLE OF 8°17'39", AN ARC DISTANCE OF 57.76 FEET TO A POINT; THENCE SOUTH 53°30'26" WEST A DISTANCE OF 66.06 FEET TO A POINT; THENCE SOUTH 36°29'34" EAST A DISTANCE OF 188.64 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 225.00 FEET, THROUGH A CENTRAL ANGLE OF 124°35'12", AN ARC DISTANCE OF 489.25 FEET TO A POINT; THENCE SOUTH 88°05'38" WEST A DISTANCE OF 462.75 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 150.00 FEET, THROUGH A CENTRAL ANGLE OF 45°00'00", AN ARC DISTANCE OF 117.81 FEET TO A POINT; THENCE SOUTH 43°05'38" WEST A DISTANCE OF 42.24 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 250.00 FEET, THROUGH A CENTRAL ANGLE OF 45°00'00", AN ARC DISTANCE OF 196.35 FEET TO A POINT; THENCE SOUTH 88°05'38" WEST A DISTANCE OF 506.35 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF 20°30'21", AN ARC DISTANCE OF 178.95 FEET TO A POINT; THENCE SOUTH 67°35'17" WEST A DISTANCE OF 91.73 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 170.00 FEET, THROUGH A CENTRAL ANGLE OF 119°42'52", AN ARC DISTANCE OF 355.20 FEET TO A POINT; THENCE NORTH 7°18'09" EAST A DISTANCE OF 96.50 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF 15°12'39", AN ARC DISTANCE OF 132.74 FEET TO A POINT; THENCE NORTH 7°54'30" WEST A DISTANCE OF 28.66 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF 6°00'09", AN ARC DISTANCE OF 52.38 FEET TO THE POINT OF BEGINNING.

FURTHER EXCEPT

THAT PART PLATTED AS CORBIN PARK, FIRST PLAT, SECOND PLAT, THIRD PLAT, FOURTH PLAT, FIFTH PLAT, SEVENTH PLAT, EIGHTH PLAT, NINTH PLAT, TENTH PLAT, TWELFTH PLAT AND THIRTEENTH PLAT.

III. 135 METCALF/STATE LINE PROPERTY

1. TRACT M, CORBIN PARK, SECOND PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
2. NORTHERLY AND NORTHEASTERLY HALF OF TRACT Q, CORBIN PARK, THIRD PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
3. TRACT R AND S AND LOT 17, CORBIN PARK, FIFTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
4. LOT 18 AND TRACT U, CORBIN PARK, SIXTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
5. LOT 19 AND TRACT V, CORBIN PARK, SEVENTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
6. LOT 20, CORBIN PARK, EIGHTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.

Exhibit "A-1"

7. LOTS 25, 26 AND 27, CORBIN PARK, ELEVENTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.

8. ALL THAT PART OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST, IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST; THENCE SOUTH 1°54'06" EAST ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 32 A DISTANCE OF 1100.52 FEET TO A POINT; THENCE NORTH 88°05'54" EAST A DISTANCE OF 301.71 FEET TO THE POINT OF BEGINNING; THENCE NORTH 1°54'22" WEST A DISTANCE OF 170.31 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF 7°23'54", AN ARC DISTANCE OF 64.56 FEET TO A POINT; THENCE NORTH 9°18'16" WEST A DISTANCE OF 279.78 FEET TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 265.00 FEET, THROUGH A CENTRAL ANGLE OF 104°47'43", AN ARC DISTANCE OF 484.69 FEET TO A POINT; THENCE SOUTH 84°30'33" EAST A DISTANCE OF 234.67 FEET TO A POINT; THENCE IN A SOUTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 1200.00 FEET, THROUGH A CENTRAL ANGLE OF 7°23'50", AN ARC DISTANCE OF 154.93 FEET TO A POINT; THENCE NORTH 88°05'37" EAST A DISTANCE OF 758.18 FEET TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 250.00 FEET, THROUGH A CENTRAL ANGLE OF 12°26'40", AN ARC DISTANCE OF 54.30 FEET TO A POINT; THENCE NORTH 75°38'57" EAST A DISTANCE OF 117.17 FEET TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 1000.00 FEET, THROUGH A CENTRAL ANGLE OF 10°56'23", AN ARC DISTANCE OF 190.93 FEET TO A POINT; THENCE NORTH 86°35'20" EAST A DISTANCE OF 51.97 FEET TO A POINT; THENCE IN A SOUTHEASTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 150.12 FEET, THROUGH A CENTRAL ANGLE OF 91°30'18", AN ARC DISTANCE OF 239.75 FEET TO A POINT; THENCE SOUTH 1°54'22" EAST A DISTANCE OF 196.72 FEET TO A POINT; THENCE IN A SOUTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 400.00 FEET, THROUGH A CENTRAL ANGLE OF 13°44'53", AN ARC DISTANCE OF 95.98 FEET TO A POINT; THENCE SOUTH 15°39'14" EAST A DISTANCE OF 6.97 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 75.00 FEET, THROUGH A CENTRAL ANGLE OF 77°27'20", AN ARC DISTANCE OF 101.39 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 399.00 FEET, THROUGH A CENTRAL ANGLE OF 8°17'39", AN ARC DISTANCE OF 57.76 FEET TO A POINT; THENCE SOUTH 53°30'26" WEST A DISTANCE OF 66.06 FEET TO A POINT; THENCE SOUTH 36°29'34" EAST A DISTANCE OF 188.64 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 225.00 FEET, THROUGH A CENTRAL ANGLE OF 124°35'12", AN ARC DISTANCE OF 489.25 FEET TO A POINT; THENCE SOUTH 88°05'38" WEST A DISTANCE OF 462.75 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 150.00 FEET, THROUGH A CENTRAL ANGLE OF 45°00'00", AN ARC DISTANCE OF 117.81 FEET TO A POINT; THENCE SOUTH 43°05'38" WEST A DISTANCE OF 42.24 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 250.00 FEET, THROUGH A CENTRAL ANGLE OF 45°00'00", AN ARC DISTANCE OF 196.35 FEET TO A POINT; THENCE SOUTH 88°05'38" WEST A DISTANCE OF 506.35 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF 20°30'21", AN ARC DISTANCE OF 178.95 FEET TO A POINT; THENCE SOUTH 67°35'17" WEST A DISTANCE OF 91.73 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 170.00 FEET, THROUGH A CENTRAL ANGLE OF 119°42'52", AN ARC DISTANCE OF 355.20 FEET TO A POINT; THENCE NORTH 7°18'09" EAST A DISTANCE OF 96.50 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF 15°12'39", AN ARC DISTANCE OF 132.74 FEET TO A POINT; THENCE NORTH 7°54'30" WEST A DISTANCE OF 28.66 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF 6°00'09", AN ARC DISTANCE OF 52.38 FEET TO THE POINT OF BEGINNING.

EXCEPT

Exhibit "A-1"

ALL OF THOSE PARTS PLATTED AS TRACT M, SECOND PLAT, THE NORTHERLY AND NORTHEASTERLY HALF OF TRACT Q, THIRD PLAT, LOT 17 AND TRACT R AND S, FIFTH PLAT, LOT 18, AND TRACT U, SIXTH PLAT, LOT 19 AND TRACT V, SEVENTH PLAT AND LOT 20, EIGHTH PLAT ALL IN CORBIN PARK SUBDIVISION.

FURTHER EXCEPT

ALL OF THAT PART PLATTED AS CORBIN PARK NINTH PLAT AND ALL OF THAT PLATTED AS CORBIN PARK TENTH PLAT.

FURTHER EXCEPT

LOTS 25, 26 AND 27, CORBIN PARK, ELEVENTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.

Exhibit "A-1"

EXHIBIT "A-2"

LEGAL DESCRIPTION OF VON MAUR PARCEL

LOT 17, CORBIN PARK, FIFTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK,
JOHNSON COUNTY, KANSAS

Exhibit "A-2"

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EXHIBIT "A-3"

LEGAL DESCRIPTION OF NYLO PARCEL

ALL THAT PART OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST, IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST; THENCE SOUTH 1 DEGREE 54 MINUTES 06 SECONDS EAST ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 32 A DISTANCE OF 1381.48 FEET TO A POINT; THENCE NORTH 88 DEGREES 05 MINUTES 38 SECONDS EAST A DISTANCE OF 1025.73 FEET TO A POINT ON THE EASTERLY LINE OF TRACT V, CORBIN PARK, SEVENTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, THE POINT OF BEGINNING; THENCE NORTH 1 DEGREE 54 MINUTES 22 SECONDS WEST ALONG THE EASTERLY LINE OF SAID TRACT V A DISTANCE OF 30.19 FEET TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION ALONG THE EASTERLY LINE OF SAID TRACT V AND ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 135.00 FEET, THROUGH A CENTRAL ANGLE OF 16 DEGREES 49 MINUTES 18 SECONDS, AN ARC DISTANCE OF 39.63 FEET TO A POINT; THENCE NORTH 43 DEGREES 05 MINUTES 38 SECONDS EAST A DISTANCE 262.01 FEET TO A POINT; THENCE SOUTH 46 DEGREES 54 MINUTES 22 SECONDS EAST A DISTANCE OF 183.57 FEET TO A POINT; THENCE SOUTH 43 DEGREES 05 MINUTES 38 SECONDS WEST A DISTANCE OF 42.04 FEET TO A POINT; THENCE SOUTH 46 DEGREES 54 MINUTES 22 SECONDS EAST A DISTANCE OF 174.62 FEET TO A POINT; THENCE SOUTH 43 DEGREES 05 MINUTES 38 SECONDS WEST A DISTANCE OF 20.34 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 202.00 FEET, THROUGH A CENTRAL ANGLE OF 13 DEGREES 51 MINUTES 03 SECONDS, AN ARC DISTANCE OF 48.83 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 5.00 FEET, THROUGH A CENTRAL ANGLE OF 88 DEGREES 36 MINUTES 57 SECONDS, AN ARC DISTANCE OF 7.73 FEET TO A POINT; THENCE SOUTH 31 DEGREES 40 MINUTES 16 SECONDS EAST A DISTANCE OF 19.06 FEET TO A POINT ON THE NORTHERLY LINE OF TRACT M, CORBIN PARK, SECOND PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS; THENCE IN A SOUTHWESTERLY DIRECTION ALONG THE NORTH LINE OF SAID TRACT M AND ALONG A CURVE TO THE RIGHT WHOSE INITIAL TANGENT BEARS SOUTH 58 DEGREES 19 MINUTES 44 SECONDS WEST, HAVING A RADIUS OF 226.00 FEET, THROUGH A CENTRAL ANGLE OF 29 DEGREES 45 MINUTES 54 SECONDS, AN ARC DISTANCE OF 117.41 FEET TO A POINT; THENCE SOUTH 88 DEGREES 05 MINUTES 38 SECONDS WEST ALONG THE NORTH LINE OF SAID TRACT M A DISTANCE OF 74.10 FEET TO A POINT; THENCE NORTH 1 DEGREE 52 MINUTES 09 SECONDS WEST A DISTANCE OF 30.44 FEET TO A POINT; NORTH 88 DEGREES 08 MINUTES 17 SECONDS EAST A DISTANCE OF 26.02 FEET TO A POINT; THENCE NORTH 1 DEGREE 54 MINUTES 22 SECONDS WEST A DISTANCE OF 57.44 FEET TO A POINT; THENCE NORTH 46 DEGREES 54 MINUTES 22 SECONDS WEST A DISTANCE OF 53.78 FEET TO A POINT; THENCE SOUTH 88 DEGREES 08 MINUTES 20 SECONDS WEST A DISTANCE 171.30 FEET TO THE POINT OF BEGINNING.

Exhibit "A-3"

EXHIBIT "A-4"

LEGAL DESCRIPTION OF PENNEY PARKING PARCEL

LOT 27, CORBIN PARK, ELEVENTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK,
JOHNSON COUNTY, KANSAS.

Exhibit "A-4"

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EXHIBIT "A-5"

LEGAL DESCRIPTION OF CONDOMINIUM PARCEL

LOT 26, CORBIN PARK, ELEVENTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK,
JOHNSON COUNTY, KANSAS.

Exhibit "A-5"

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Register of Deeds T20080008864
JO CO KS BK:200803 PG:002407

EXHIBIT "A-6"

LEGAL DESCRIPTION OF DEVELOPER PROPERTY

1. TRACT A, CORBIN PARK, FIRST PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
2. TRACT A, C, E, F, G, I, K, L, M, N, O AND P, CORBIN PARK, SECOND PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
3. TRACT Q, CORBIN PARK, THIRD PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
4. LOT 1, 2, 3 AND 4, CORBIN PARK, FOURTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
5. TRACT R AND S AND LOT 17, CORBIN PARK, FIFTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
6. LOT 18 AND TRACT U, CORBIN PARK, SIXTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
7. LOT 19 AND TRACT V, CORBIN PARK, SEVENTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
8. LOT 20, CORBIN PARK, EIGHTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
9. LOT 22, CORBIN PARK, NINTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
10. TRACTS D AND T, CORBIN PARK, TENTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
11. LOTS 25, 26 AND 27, CORBIN PARK, ELEVENTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
12. LOT 24, CORBIN PARK, TWELFTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
13. LOT 29, CORBIN PARK, THIRTEENTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
14. ALL THAT PART OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST, IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST; THENCE NORTH 87°49'01" EAST ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 32 A DISTANCE OF 70.00 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF METCALF AVENUE; THENCE NORTH 1°54'05" WEST ALONG THE EAST RIGHT OF WAY LINE OF METCALF AVENUE A DISTANCE OF 716.69 FEET TO THE POINT OF BEGINNING, THENCE NORTH 1°54'06" WEST ALONG THE EAST RIGHT OF WAY LINE OF METCALF AVENUE A DISTANCE OF 1844.88 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF 135TH STREET; THENCE NORTH 88°07'14" EAST ALONG THE SOUTH RIGHT OF WAY LINE OF 135TH STREET A DISTANCE OF 2539.22 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF LAMAR AVENUE; THENCE SOUTH 1°56'41" EAST ALONG THE WEST RIGHT OF WAY LINE OF LAMAR AVENUE A DISTANCE OF 103.56 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG THE WEST RIGHT OF WAY LINE OF LAMAR

Exhibit "A-6"

AVENUE AND ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 2560.00 FEET, THROUGH A CENTRAL ANGLE OF 7°53'10", AN ARC DISTANCE OF 352.35 FEET TO A POINT; THENCE SOUTH 5°56'29" WEST ALONG THE WEST RIGHT OF WAY LINE OF SAID LAMAR AVENUE A DISTANCE OF 215.17 FEET TO A POINT; THENCE IN A SOUTHEASTERLY DIRECTION ALONG THE WEST RIGHT OF WAY LINE OF LAMAR AVENUE AND ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 890.00 FEET, THROUGH A CENTRAL ANGLE OF 34°34'50", AN ARC DISTANCE OF 537.15 FEET TO A POINT OF REVERSE CURVATURE; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET, THROUGH A CENTRAL ANGLE OF 93°16'32", AN ARC DISTANCE OF 40.70 FEET TO A POINT OF COMPOUND CURVATURE; THENCE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 607.18 FEET, THROUGH A CENTRAL ANGLE OF 14°51'06", AN ARC DISTANCE OF 157.39 FEET TO A POINT; THENCE SOUTH 79°29'17" WEST A DISTANCE OF 461.23 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 635.00 FEET, THROUGH A CENTRAL ANGLE OF 37°41'13", AN ARC DISTANCE OF 417.68 FEET TO A POINT; THENCE SOUTH 41°48'04" WEST A DISTANCE OF 438.44 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 565.00 FEET, THROUGH A CENTRAL ANGLE OF 46°19'31", AN ARC DISTANCE OF 456.82 FEET TO A POINT; THENCE SOUTH 88°07'38" WEST A DISTANCE OF 46.75 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 842.31 FEET, THROUGH A CENTRAL ANGLE OF 27°54'00", AN ARC DISTANCE OF 410.16 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 645.00 FEET, THROUGH A CENTRAL ANGLE OF 27°55'40", AN ARC DISTANCE OF 314.39 FEET TO A POINT; THENCE SOUTH 88°05'54" WEST A DISTANCE OF 134.99 FEET TO THE POINT OF BEGINNING.

EXCEPT

ALL THAT PART OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST, IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST; THENCE SOUTH 88°07'14" WEST ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 32, 794.90 FEET TO A POINT; THENCE SOUTH 1°52'46" EAST, 100.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF 135TH STREET, THE POINT OF BEGINNING; THENCE SOUTH 88°07'14" WEST ALONG THE SOUTH RIGHT-OF-WAY LINE OF 135TH STREET, 485.79 FEET TO A POINT; THENCE SOUTH 1°54'23" EAST, 231.04 FEET TO A POINT; THENCE NORTH 88°05'37" EAST, 335.29 FEET TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 250.00 FEET, THROUGH A CENTRAL ANGLE OF 12°26'40", AN ARC DISTANCE OF 54.30 FEET TO A POINT; THENCE NORTH 75°38' 57" EAST, 128.21 FEET TO A POINT; THENCE NORTH 14°21'03" WEST, 19.68 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 250.00 FEET, THROUGH A CENTRAL ANGLE OF 13°04'17", AN ARC DISTANCE OF 57.03 FEET TO A POINT; THENCE NORTH 1°16'46" WEST, 61.39 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 100.47 FEET; THROUGH A CENTRAL ANGLE OF 36°35'05" AN ARC DISTANCE OF 64.15 FEET TO THE POINT OF BEGINNING.

FURTHER EXCEPT

ALL THAT PART OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST, IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST; THENCE SOUTH 1°54'06" EAST ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 32 A DISTANCE OF 1100.52 FEET TO A POINT; THENCE NORTH 88°05'54" EAST A DISTANCE OF 301.71 FEET TO THE POINT OF BEGINNING; THENCE NORTH 1°54'22" WEST A DISTANCE OF 170.31 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF 7°23'54", AN ARC DISTANCE OF 64.56 FEET TO A POINT; THENCE NORTH 9°18'16" WEST A DISTANCE OF 279.78 FEET TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 265.00 FEET, THROUGH A CENTRAL ANGLE OF 104°47'43", AN ARC DISTANCE OF 484.69 FEET TO A POINT; THENCE SOUTH 84°30'33" EAST A DISTANCE OF 234.67 FEET TO A POINT; THENCE IN A SOUTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 1200.00 FEET, THROUGH A CENTRAL ANGLE OF 7°23'50", AN ARC DISTANCE OF 154.93 FEET TO A POINT; THENCE NORTH 88°05'37" EAST A DISTANCE OF 758.18 FEET TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION ALONG A CURVE

Exhibit "A-6"

TO THE LEFT, HAVING A RADIUS OF 250.00 FEET, THROUGH A CENTRAL ANGLE OF 12°26'40", AN ARC DISTANCE OF 54.30 FEET TO A POINT, THENCE NORTH 75°38'57" EAST A DISTANCE OF 117.17 FEET TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 1000.00 FEET, THROUGH A CENTRAL ANGLE OF 10°56'23", AN ARC DISTANCE OF 190.93 FEET TO A POINT; THENCE NORTH 86°35'20" EAST A DISTANCE OF 51.97 FEET TO A POINT; THENCE IN A SOUTHEASTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 150.12 FEET, THROUGH A CENTRAL ANGLE OF 91°30'18", AN ARC DISTANCE OF 239.75 FEET TO A POINT; THENCE SOUTH 1°54'22" EAST A DISTANCE OF 196.72 FEET TO A POINT; THENCE IN A SOUTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 400.00 FEET, THROUGH A CENTRAL ANGLE OF 13°44'53", AN ARC DISTANCE OF 95.98 FEET TO A POINT; THENCE SOUTH 15°39'14" EAST A DISTANCE OF 6.97 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 75.00 FEET, THROUGH A CENTRAL ANGLE OF 77°27'20", AN ARC DISTANCE OF 101.39 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 399.00 FEET, THROUGH A CENTRAL ANGLE OF 8°17'39", AN ARC DISTANCE OF 57.76 FEET TO A POINT; THENCE SOUTH 53°30'26" WEST A DISTANCE OF 66.06 FEET TO A POINT; THENCE SOUTH 36°29'34" EAST A DISTANCE OF 188.64 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 225.00 FEET, THROUGH A CENTRAL ANGLE OF 124°35'12", AN ARC DISTANCE OF 489.25 FEET TO A POINT; THENCE SOUTH 88°05'38" WEST A DISTANCE OF 462.75 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 150.00 FEET, THROUGH A CENTRAL ANGLE OF 45°00'00", AN ARC DISTANCE OF 117.81 FEET TO A POINT; THENCE SOUTH 43°05'38" WEST A DISTANCE OF 42.24 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 250.00 FEET, THROUGH A CENTRAL ANGLE OF 45°00'00", AN ARC DISTANCE OF 196.35 FEET TO A POINT; THENCE SOUTH 88°05'38" WEST A DISTANCE OF 506.35 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF 20°30'21", AN ARC DISTANCE OF 178.95 FEET TO A POINT; THENCE SOUTH 67°35'17" WEST A DISTANCE OF 91.73 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 170.00 FEET, THROUGH A CENTRAL ANGLE OF 119°42'52", AN ARC DISTANCE OF 355.20 FEET TO A POINT; THENCE NORTH 7°18'09" EAST A DISTANCE OF 96.50 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF 15°12'39", AN ARC DISTANCE OF 132.74 FEET TO A POINT; THENCE NORTH 7°54'30" WEST A DISTANCE OF 28.66 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF 6°00'09", AN ARC DISTANCE OF 52.38 FEET TO THE POINT OF BEGINNING.

FURTHER EXCEPT

THAT PART PLATTED AS CORBIN PARK, FIRST PLAT, SECOND PLAT, THIRD PLAT, FOURTH PLAT, FIFTH PLAT, SEVENTH PLAT, EIGHTH PLAT, NINTH PLAT, TENTH PLAT, TWELFTH PLAT AND THIRTEENTH PLAT.

15. ALL THAT PART OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST, IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST; THENCE SOUTH 1°54'06" EAST ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 32 A DISTANCE OF 1100.52 FEET TO A POINT; THENCE NORTH 88°05'54" EAST A DISTANCE OF 301.71 FEET TO THE POINT OF BEGINNING; THENCE NORTH 1°54'22" WEST A DISTANCE OF 170.31 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF 7°23'54", AN ARC DISTANCE OF 64.56 FEET TO A POINT; THENCE NORTH 9°18'16" WEST A DISTANCE OF 279.78 FEET TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 265.00 FEET, THROUGH A CENTRAL ANGLE OF 104°47'43", AN ARC DISTANCE OF 484.69 FEET TO A POINT; THENCE SOUTH 84°30'33" EAST A DISTANCE OF 234.67 FEET TO A POINT; THENCE IN A SOUTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 1200.00 FEET, THROUGH A CENTRAL ANGLE OF 7°23'50", AN ARC DISTANCE OF 154.93 FEET TO A POINT; THENCE NORTH 88°05'37" EAST A DISTANCE OF 758.18 FEET TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 250.00 FEET, THROUGH A CENTRAL ANGLE OF 12°26'40", AN ARC DISTANCE OF 54.30 FEET TO A POINT, THENCE NORTH 75°38'57" EAST A DISTANCE OF 117.17 FEET TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 1000.00 FEET, THROUGH A CENTRAL ANGLE OF 10°56'23", AN ARC DISTANCE OF 190.93 FEET TO A

Exhibit "A-6"

POINT; THENCE NORTH 86°35'20" EAST A DISTANCE OF 51.97 FEET TO A POINT; THENCE IN A SOUTHEASTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 150.12 FEET, THROUGH A CENTRAL ANGLE OF 91°30'18", AN ARC DISTANCE OF 239.75 FEET TO A POINT; THENCE SOUTH 1°54'22" EAST A DISTANCE OF 196.72 FEET TO A POINT; THENCE IN A SOUTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 400.00 FEET, THROUGH A CENTRAL ANGLE OF 13°44'53", AN ARC DISTANCE OF 95.98 FEET TO A POINT; THENCE SOUTH 15°39'14" EAST A DISTANCE OF 6.97 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 75.00 FEET, THROUGH A CENTRAL ANGLE OF 77°27'20", AN ARC DISTANCE OF 101.39 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 399.00 FEET, THROUGH A CENTRAL ANGLE OF 8°17'39", AN ARC DISTANCE OF 57.76 FEET TO A POINT; THENCE SOUTH 53°30'26" WEST A DISTANCE OF 66.06 FEET TO A POINT; THENCE SOUTH 36°29'34" EAST A DISTANCE OF 188.64 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 225.00 FEET, THROUGH A CENTRAL ANGLE OF 124°35'12", AN ARC DISTANCE OF 489.25 FEET TO A POINT; THENCE SOUTH 88°05'38" WEST A DISTANCE OF 462.75 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 150.00 FEET, THROUGH A CENTRAL ANGLE OF 45°00'00", AN ARC DISTANCE OF 117.81 FEET TO A POINT; THENCE SOUTH 43°05'38" WEST A DISTANCE OF 42.24 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 250.00 FEET, THROUGH A CENTRAL ANGLE OF 45°00'00", AN ARC DISTANCE OF 196.35 FEET TO A POINT; THENCE SOUTH 88°05'38" WEST A DISTANCE OF 506.35 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF 20°30'21", AN ARC DISTANCE OF 178.95 FEET TO A POINT; THENCE SOUTH 67°35'17" WEST A DISTANCE OF 91.73 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 170.00 FEET, THROUGH A CENTRAL ANGLE OF 119°42'52", AN ARC DISTANCE OF 355.20 FEET TO A POINT; THENCE NORTH 7°18'09" EAST A DISTANCE OF 96.50 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF 15°12'39", AN ARC DISTANCE OF 132.74 FEET TO A POINT; THENCE NORTH 7°54'30" WEST A DISTANCE OF 28.66 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF 6°00'09", AN ARC DISTANCE OF 52.38 FEET TO THE POINT OF BEGINNING.

EXCEPT

ALL OF THOSE PARTS PLATTED AS TRACT M, SECOND PLAT, THE NORTHERLY AND NORTHEASTERLY HALF OF TRACT Q, THIRD PLAT, LOT 17 AND TRACT R AND S, FIFTH PLAT, LOT 18, AND TRACT U, SIXTH PLAT, LOT 19 AND TRACT V, SEVENTH PLAT AND LOT 20, EIGHTH PLAT ALL IN CORBIN PARK SUBDIVISION.

FURTHER EXCEPT

ALL OF THAT PART PLATTED AS CORBIN PARK NINTH PLAT AND ALL OF THAT PLATTED AS CORBIN PARK TENTH PLAT.

FURTHER EXCEPT

LOTS 25, 26 AND 27, CORBIN PARK, ELEVENTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.

EXCEPT (the following parcels are not part of the Developer Property):

1. LOT 17, CORBIN PARK, FIFTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS.
2. LOTS 26 AND 27, CORBIN PARK, ELEVENTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS.
3. ALL THAT PART OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST, IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST; THENCE SOUTH 1 DEGREE 54 MINUTES 06 SECONDS EAST ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 32 A DISTANCE OF 1381.48 FEET TO A POINT; THENCE NORTH 88 DEGREES 05 MINUTES 38 SECONDS EAST A DISTANCE OF 1025.73 FEET TO A POINT ON

Exhibit "A-6"

THE EASTERLY LINE OF TRACT V, CORBIN PARK, SEVENTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, THE POINT OF BEGINNING; THENCE NORTH 1 DEGREE 54 MINUTES 22 SECONDS WEST ALONG THE EASTERLY LINE OF SAID TRACT V A DISTANCE OF 30.19 FEET TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION ALONG THE EASTERLY LINE OF SAID TRACT V AND ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 135.00 FEET, THROUGH A CENTRAL ANGLE OF 16 DEGREES 49 MINUTES 18 SECONDS, AN ARC DISTANCE OF 39.63 FEET TO A POINT; THENCE NORTH 43 DEGREES 05 MINUTES 38 SECONDS EAST A DISTANCE 262.01 FEET TO A POINT; THENCE SOUTH 46 DEGREES 54 MINUTES 22 SECONDS EAST A DISTANCE OF 183.57 FEET TO A POINT; THENCE SOUTH 43 DEGREES 05 MINUTES 38 SECONDS WEST A DISTANCE OF 42.04 FEET TO A POINT; THENCE SOUTH 46 DEGREES 54 MINUTES 22 SECONDS EAST A DISTANCE OF 174.62 FEET TO A POINT; THENCE SOUTH 43 DEGREES 05 MINUTES 38 SECONDS WEST A DISTANCE OF 20.34 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 202.00 FEET, THROUGH A CENTRAL ANGLE OF 13 DEGREES 51 MINUTES 03 SECONDS, AN ARC DISTANCE OF 48.83 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 5.00 FEET, THROUGH A CENTRAL ANGLE OF 88 DEGREES 36 MINUTES 57 SECONDS, AN ARC DISTANCE OF 7.73 FEET TO A POINT; THENCE SOUTH 31 DEGREES 40 MINUTES 16 SECONDS EAST A DISTANCE OF 19.06 FEET TO A POINT ON THE NORTHERLY LINE OF TRACT M, CORBIN PARK, SECOND PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS; THENCE IN A SOUTHWESTERLY DIRECTION ALONG THE NORTH LINE OF SAID TRACT M AND ALONG A CURVE TO THE RIGHT WHOSE INITIAL TANGENT BEARS SOUTH 58 DEGREES 19 MINUTES 44 SECONDS WEST, HAVING A RADIUS OF 226.00 FEET, THROUGH A CENTRAL ANGLE OF 29 DEGREES 45 MINUTES 54 SECONDS, AN ARC DISTANCE OF 117.41 FEET TO A POINT; THENCE SOUTH 88 DEGREES 05 MINUTES 38 SECONDS WEST ALONG THE NORTH LINE OF SAID TRACT M A DISTANCE OF 74.10 FEET TO A POINT; THENCE NORTH 1 DEGREE 52 MINUTES 09 SECONDS WEST A DISTANCE OF 30.44 FEET TO A POINT; NORTH 88 DEGREES 08 MINUTES 17 SECONDS EAST A DISTANCE OF 26.02 FEET TO A POINT; THENCE NORTH 1 DEGREE 54 MINUTES 22 SECONDS WEST A DISTANCE OF 57.44 FEET TO A POINT; THENCE NORTH 46 DEGREES 54 MINUTES 22 SECONDS WEST A DISTANCE OF 53.78 FEET TO A POINT; THENCE SOUTH 88 DEGREES 08 MINUTES 20 SECONDS WEST A DISTANCE 171.30 FEET TO THE POINT OF BEGINNING.

Exhibit "A-6"

EXHIBIT "A-7"

LEGAL DESCRIPTION OF CONTROL PARCEL

1. TRACT M, CORBIN PARK, SECOND PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
2. NORTHERLY AND NORTHEASTERLY HALF OF TRACT Q, CORBIN PARK, THIRD PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
3. TRACT R AND S AND LOT 17, CORBIN PARK, FIFTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
4. LOT 18 AND TRACT U, CORBIN PARK, SIXTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
5. LOT 19 AND TRACT V, CORBIN PARK, SEVENTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
6. LOT 20, CORBIN PARK, EIGHTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
7. LOTS 25, 26 AND 27, CORBIN PARK, ELEVENTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.
8. ALL THAT PART OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST, IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST; THENCE SOUTH 1°54'06" EAST ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 32 A DISTANCE OF 1100.52 FEET TO A POINT; THENCE NORTH 88°05'54" EAST A DISTANCE OF 301.71 FEET TO THE POINT OF BEGINNING; THENCE NORTH 1°54'22" WEST A DISTANCE OF 170.31 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF 7°23'54", AN ARC DISTANCE OF 64.56 FEET TO A POINT; THENCE NORTH 9°18'16" WEST A DISTANCE OF 279.78 FEET TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 265.00 FEET, THROUGH A CENTRAL ANGLE OF 104°47'43", AN ARC DISTANCE OF 484.69 FEET TO A POINT; THENCE SOUTH 84°30'33" EAST A DISTANCE OF 234.67 FEET TO A POINT; THENCE IN A SOUTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 1200.00 FEET, THROUGH A CENTRAL ANGLE OF 7°23'50", AN ARC DISTANCE OF 154.93 FEET TO A POINT; THENCE NORTH 88°05'37" EAST A DISTANCE OF 758.18 FEET TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 250.00 FEET, THROUGH A CENTRAL ANGLE OF 12°26'40", AN ARC DISTANCE OF 54.30 FEET TO A POINT; THENCE NORTH 75°38'57" EAST A DISTANCE OF 117.17 FEET TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 1000.00 FEET, THROUGH A CENTRAL ANGLE OF 10°56'23", AN ARC DISTANCE OF 190.93 FEET TO A POINT; THENCE NORTH 86°35'20" EAST A DISTANCE OF 51.97 FEET TO A POINT; THENCE IN A SOUTHEASTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 150.12 FEET, THROUGH A CENTRAL ANGLE OF 91°30'18", AN ARC DISTANCE OF 239.75 FEET TO A POINT; THENCE SOUTH 1°54'22" EAST A DISTANCE OF 196.72 FEET TO A POINT; THENCE IN A SOUTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 400.00 FEET, THROUGH A CENTRAL ANGLE OF 13°44'53", AN ARC DISTANCE OF 95.98 FEET TO A POINT; THENCE SOUTH 15°39'14" EAST A DISTANCE OF 6.97 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 75.00 FEET, THROUGH A CENTRAL ANGLE OF 77°27'20", AN ARC DISTANCE OF 101.39 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 399.00 FEET, THROUGH A CENTRAL ANGLE OF 8°17'39", AN ARC DISTANCE OF 57.76 FEET TO A POINT;

Exhibit "A-7"

THENCE SOUTH 53°30'26" WEST A DISTANCE OF 66.06 FEET TO A POINT; THENCE SOUTH 36°29'34" EAST A DISTANCE OF 188.64 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 225.00 FEET, THROUGH A CENTRAL ANGLE OF 124°35'12", AN ARC DISTANCE OF 489.25 FEET TO A POINT; THENCE SOUTH 88°05'38" WEST A DISTANCE OF 462.75 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 150.00 FEET, THROUGH A CENTRAL ANGLE OF 45°00'00", AN ARC DISTANCE OF 117.81 FEET TO A POINT; THENCE SOUTH 43°05'38" WEST A DISTANCE OF 42.24 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 250.00 FEET, THROUGH A CENTRAL ANGLE OF 45°00'00", AN ARC DISTANCE OF 196.35 FEET TO A POINT; THENCE SOUTH 88°05'38" WEST A DISTANCE OF 506.35 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF 20°30'21", AN ARC DISTANCE OF 178.95 FEET TO A POINT; THENCE SOUTH 67°35'17" WEST A DISTANCE OF 91.73 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 170.00 FEET, THROUGH A CENTRAL ANGLE OF 119°42'52", AN ARC DISTANCE OF 355.20 FEET TO A POINT; THENCE NORTH 7°18'09" EAST A DISTANCE OF 96.50 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF 15°12'39", AN ARC DISTANCE OF 132.74 FEET TO A POINT; THENCE NORTH 7°54'30" WEST A DISTANCE OF 28.66 FEET TO A POINT; THENCE IN A NORTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF 6°00'09", AN ARC DISTANCE OF 52.38 FEET TO THE POINT OF BEGINNING.

EXCEPT

ALL OF THOSE PARTS PLATTED AS TRACT M, SECOND PLAT, THE NORTHERLY AND NORTHEASTERLY HALF OF TRACT Q, THIRD PLAT, LOT 17 AND TRACT R AND S, FIFTH PLAT, LOT 18, AND TRACT U, SIXTH PLAT, LOT 19 AND TRACT V, SEVENTH PLAT AND LOT 20, EIGHTH PLAT ALL IN CORBIN PARK SUBDIVISION.

FURTHER EXCEPT

ALL OF THAT PART PLATTED AS CORBIN PARK NINTH PLAT AND ALL OF THAT PLATTED AS CORBIN PARK TENTH PLAT.

FURTHER EXCEPT

LOTS 25, 26 AND 27, CORBIN PARK, ELEVENTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, EXCEPT ANY PART TAKEN, USED OR DEDICATED FOR ROADS OR PUBLIC RIGHT OF WAYS.

EXCEPT (the following parcels are not part of the Control Parcel):

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COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 25 EAST; THENCE SOUTH 1 DEGREE 54 MINUTES 06 SECONDS EAST ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 32 A DISTANCE OF 1381.48 FEET TO A POINT; THENCE NORTH 88 DEGREES 05 MINUTES 38 SECONDS EAST A DISTANCE OF 1025.73 FEET TO A POINT ON THE EASTERLY LINE OF TRACT V, CORBIN PARK, SEVENTH PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS, THE POINT OF BEGINNING; THENCE NORTH 1 DEGREE 54 MINUTES 22 SECONDS WEST ALONG THE EASTERLY LINE OF SAID TRACT V A DISTANCE OF 30.19 FEET TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION ALONG THE EASTERLY LINE OF SAID TRACT V AND ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 135.00 FEET, THROUGH A CENTRAL ANGLE OF 16 DEGREES 49 MINUTES 18 SECONDS, AN ARC DISTANCE OF 39.63 FEET TO A POINT; THENCE NORTH 43 DEGREES 05 MINUTES 38 SECONDS EAST A DISTANCE 262.01 FEET TO A POINT; THENCE SOUTH 46 DEGREES 54 MINUTES 22 SECONDS EAST A DISTANCE OF 183.57 FEET TO A POINT; THENCE SOUTH 43 DEGREES

Exhibit "A-7"

05 MINUTES 38 SECONDS WEST A DISTANCE OF 42.04 FEET TO A POINT; THENCE SOUTH 46 DEGREES 54 MINUTES 22 SECONDS EAST A DISTANCE OF 174.62 FEET TO A POINT; THENCE SOUTH 43 DEGREES 05 MINUTES 38 SECONDS WEST A DISTANCE OF 20.34 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 202.00 FEET, THROUGH A CENTRAL ANGLE OF 13 DEGREES 51 MINUTES 03 SECONDS, AN ARC DISTANCE OF 48.83 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 5.00 FEET, THROUGH A CENTRAL ANGLE OF 88 DEGREES 36 MINUTES 57 SECONDS, AN ARC DISTANCE OF 7.73 FEET TO A POINT; THENCE SOUTH 31 DEGREES 40 MINUTES 16 SECONDS EAST A DISTANCE OF 19.06 FEET TO A POINT ON THE NORTHERLY LINE OF TRACT M, CORBIN PARK, SECOND PLAT, A SUBDIVISION IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS; THENCE IN A SOUTHWESTERLY DIRECTION ALONG THE NORTH LINE OF SAID TRACT M AND ALONG A CURVE TO THE RIGHT WHOSE INITIAL TANGENT BEARS SOUTH 58 DEGREES 19 MINUTES 44 SECONDS WEST, HAVING A RADIUS OF 226.00 FEET, THROUGH A CENTRAL ANGLE OF 29 DEGREES 45 MINUTES 54 SECONDS, AN ARC DISTANCE OF 117.41 FEET TO A POINT; THENCE SOUTH 88 DEGREES 05 MINUTES 38 SECONDS WEST ALONG THE NORTH LINE OF SAID TRACT M A DISTANCE OF 74.10 FEET TO A POINT; THENCE NORTH 1 DEGREE 52 MINUTES 09 SECONDS WEST A DISTANCE OF 30.44 FEET TO A POINT; NORTH 88 DEGREES 08 MINUTES 17 SECONDS EAST A DISTANCE OF 26.02 FEET TO A POINT; THENCE NORTH 1 DEGREE 54 MINUTES 22 SECONDS WEST A DISTANCE OF 57.44 FEET TO A POINT; THENCE NORTH 46 DEGREES 54 MINUTES 22 SECONDS WEST A DISTANCE OF 53.78 FEET TO A POINT; THENCE SOUTH 88 DEGREES 08 MINUTES 20 SECONDS WEST A DISTANCE 171.30 FEET TO THE POINT OF BEGINNING.

Exhibit "A-7"

395398.12

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Register of Deeds T20080008864
JO CO KS BK:200803 PG:002407

EXHIBIT "B-1"

SITE PLAN

(with the Von Maur Control Area depicted thereon)

Exhibit "B-1"

395398.12


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Register of Deeds T20080008864
JO CO KS BK:200803 PG:002407

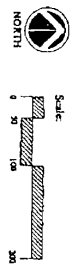
Exhibit "B-1"

Base Parapet Height = 28'
Tower Height = 32'

Base Parapet Height = 27' 6"
Tower Height = 32'

Base Parapet Height = 27'
Tower Height = 32'

 = Von Maur Control Area



CORMAC
DEVELOPMENT & LEASING
1400 PLAZA STREET, SUITE 100
OVERLAND PARK, KS 66204
P: (913) 891-4001
F: (913) 891-4001

A Site Plan Study For: CORBIN PARK

OVERLAND PARK, KANSAS

January 30, 2008

SLAGGIE
ARCHITECTS INC.
1400 PLAZA STREET, SUITE 100
OVERLAND PARK, KS 66204
P: (913) 891-4001
F: (913) 891-4001

EXHIBIT "B-2"

SITE PLAN

(with Penney Control Area and Penney Height Control Area depicted thereon)

Exhibit "B-2"

395398.12

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P: 73 of 96 03:15:06 PM
Register of Deeds T20080008864
JO CO KS BK:200803 PG:002407

Exhibit "B-2"

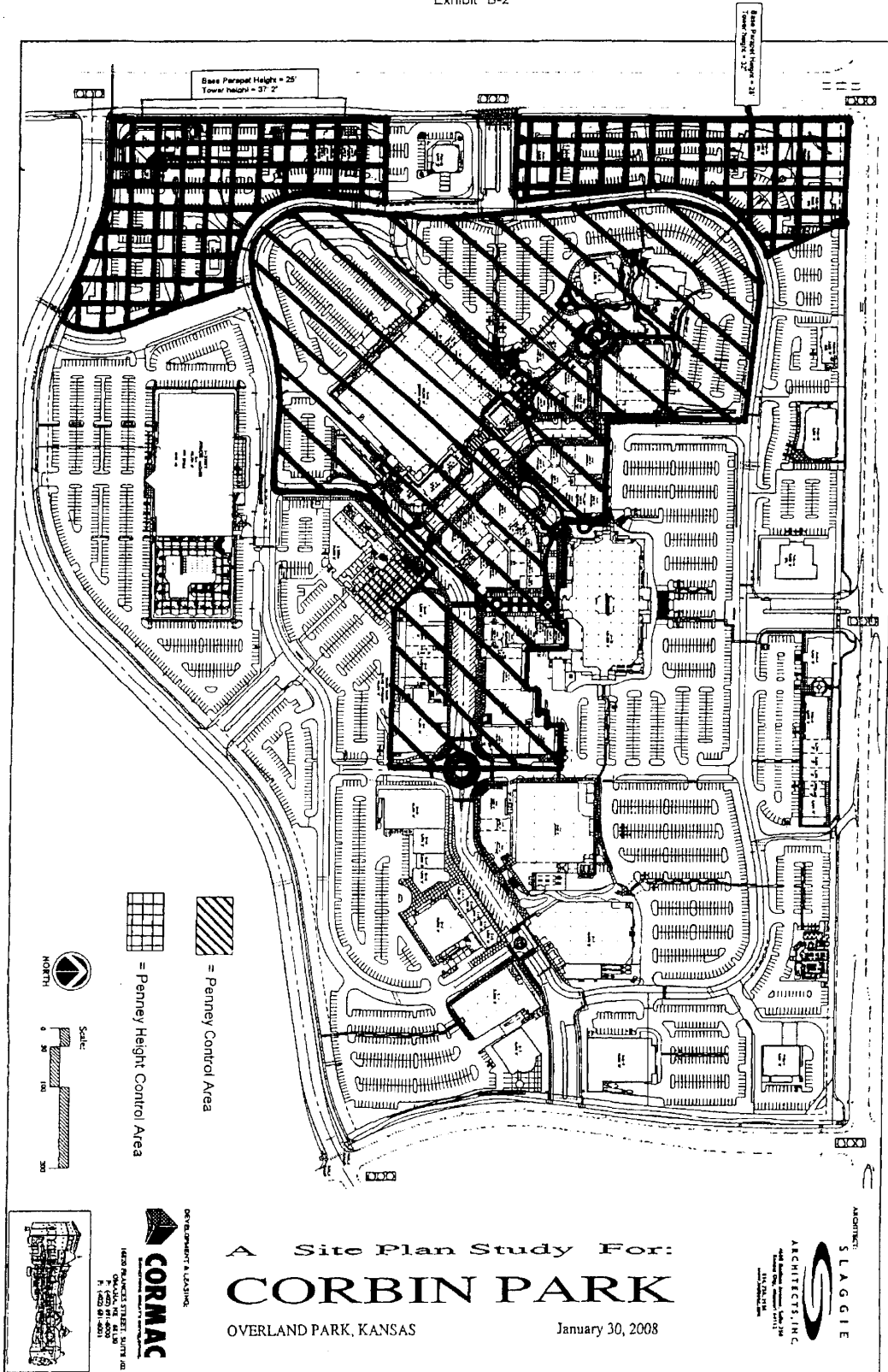


EXHIBIT "B-3"

SITE PLAN

(with Control Parcel depicted thereon)

Exhibit "B-3"

395398.12

20080307-0002407 03/07/2008
P: 75 of 96 03 15 06 PM
Register of Deeds T20080008864
JO CO KS BK:200803 PG:002407

Exhibit "B-3"

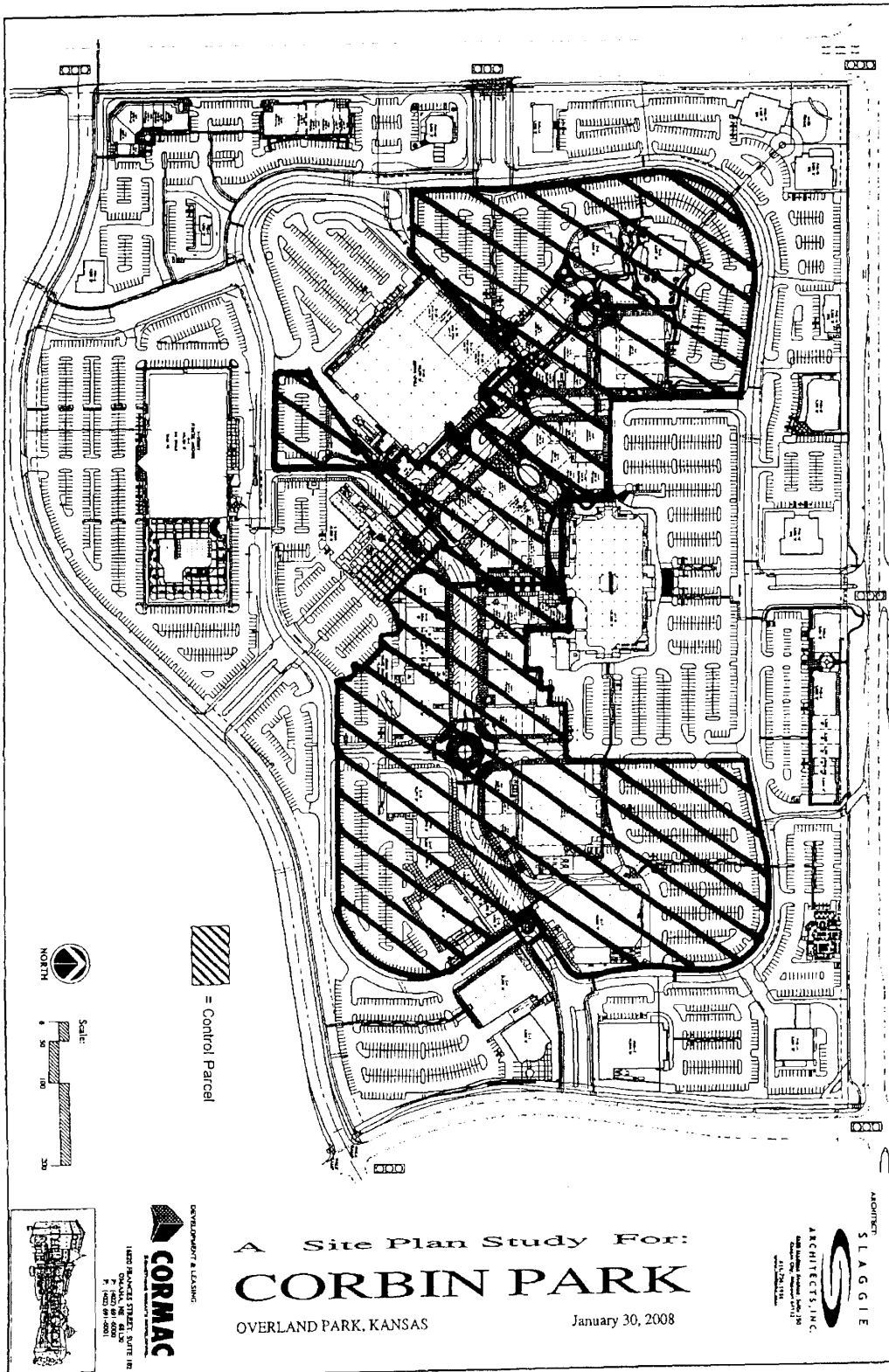


EXHIBIT "B-4"

SITE PLAN

(with Outlots, Non-Shopping Center Parcels, No Kiosk Area and Von Maur Trash Facility depicted thereon)

Exhibit "B-4"

395398.12

20080307-0002407 03/07/2008
P 77 of 96 03:15:06 PM
Register of Deeds T2008030864
JO CO KS BK:200803 PG:002407

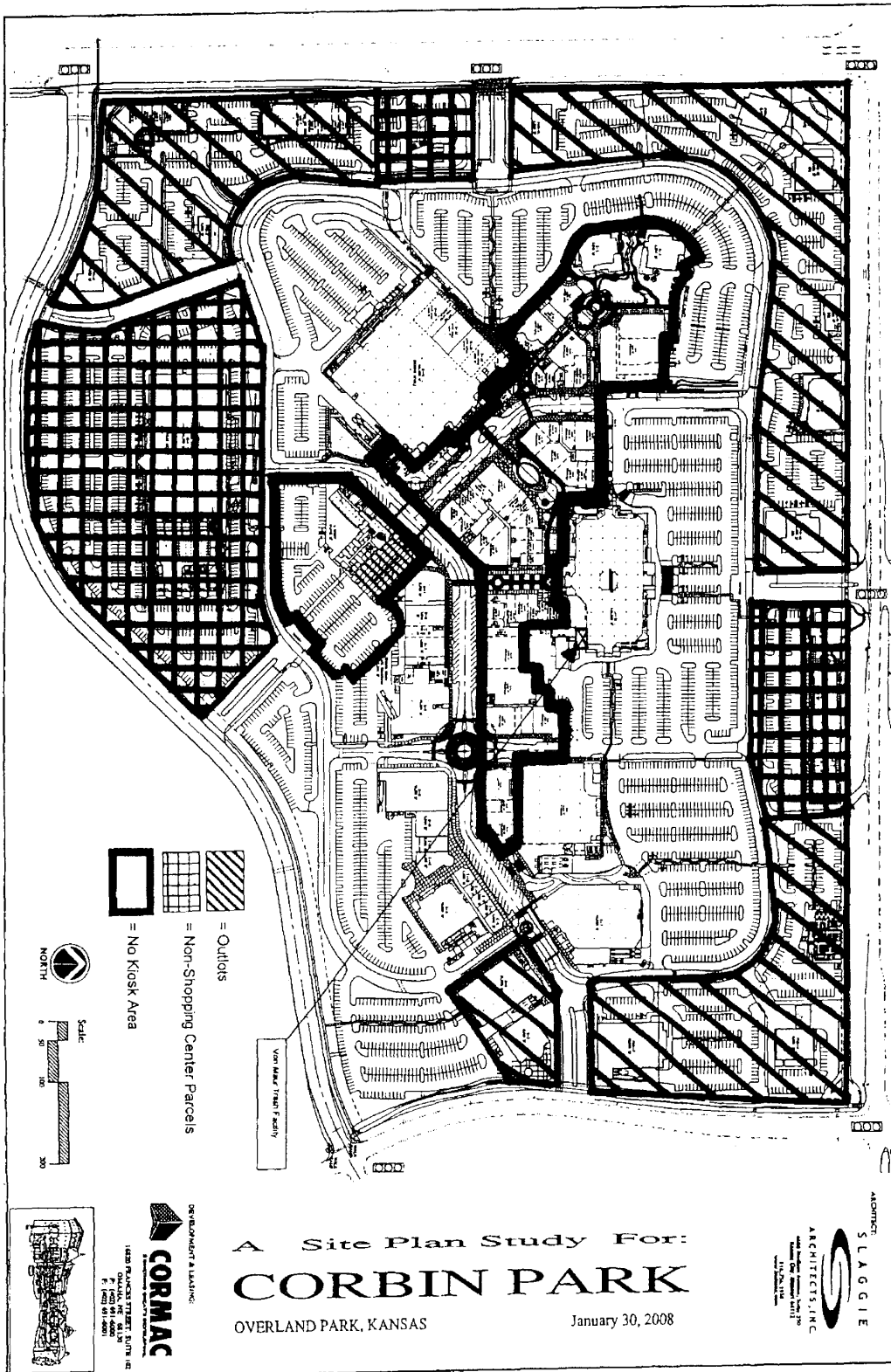


EXHIBIT "B-5"

SITE PLAN

(with Access Roads, Ring Road, Drop-Off Area and Penney Parking Access Way
depicted thereon)

Exhibit "B-5"

395398.12

20080307-0002407 03/07/2008
P. 79 of 96 03:15:06 PM
Register of Deeds T20080008864
JO CO KS BK:200803 PG:002407

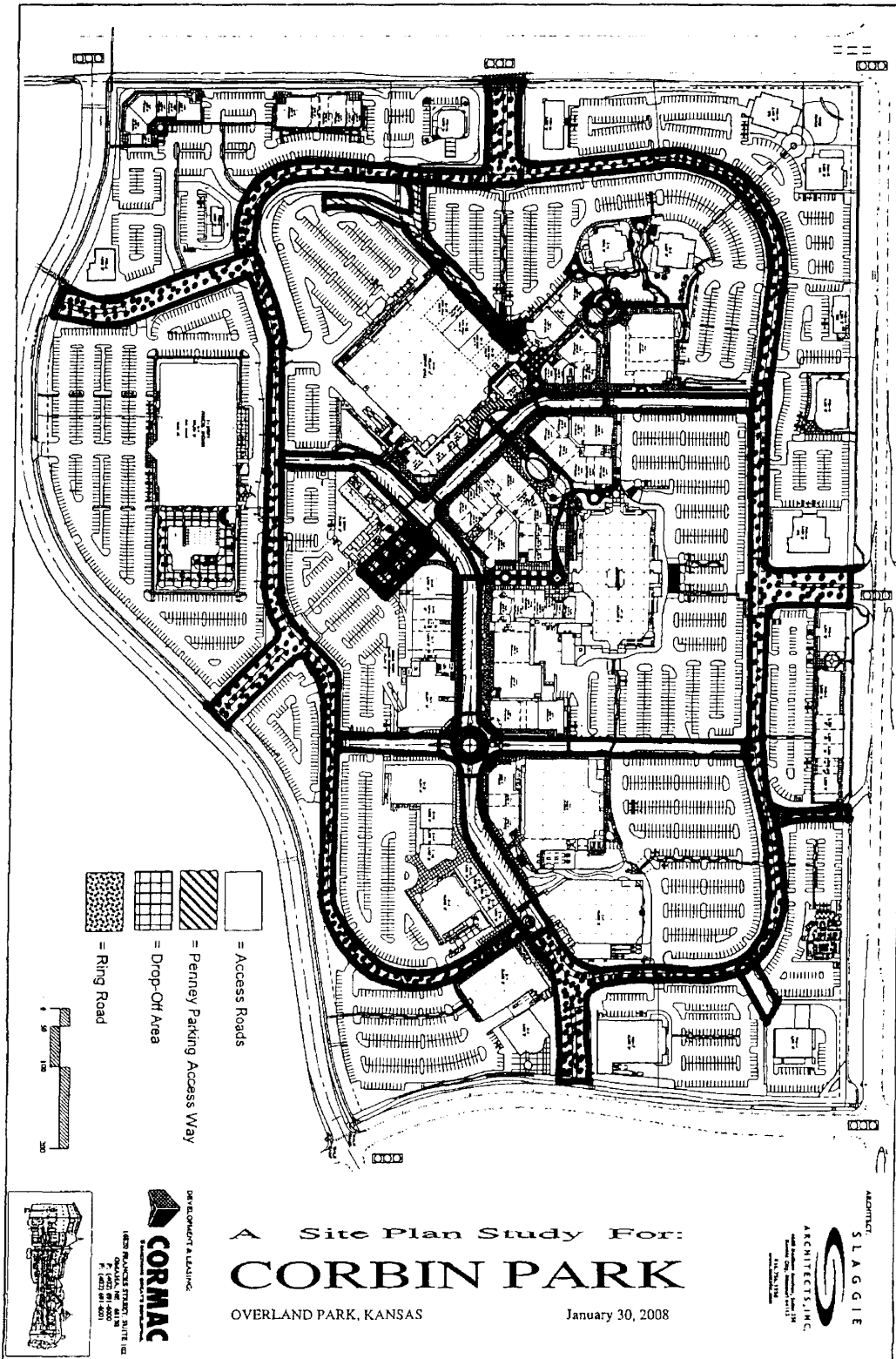


EXHIBIT "B-6"

SITE PLAN

(with Hotel Parking Area, Hotel Adjacent Parking Area and NYLO Amenities Area
depicted thereon)

Exhibit "B-6"

395398.12

20080307-0002407 03/07/2008
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Register of Deeds T20080008864
JO CO KS BK:200803 PG:002407

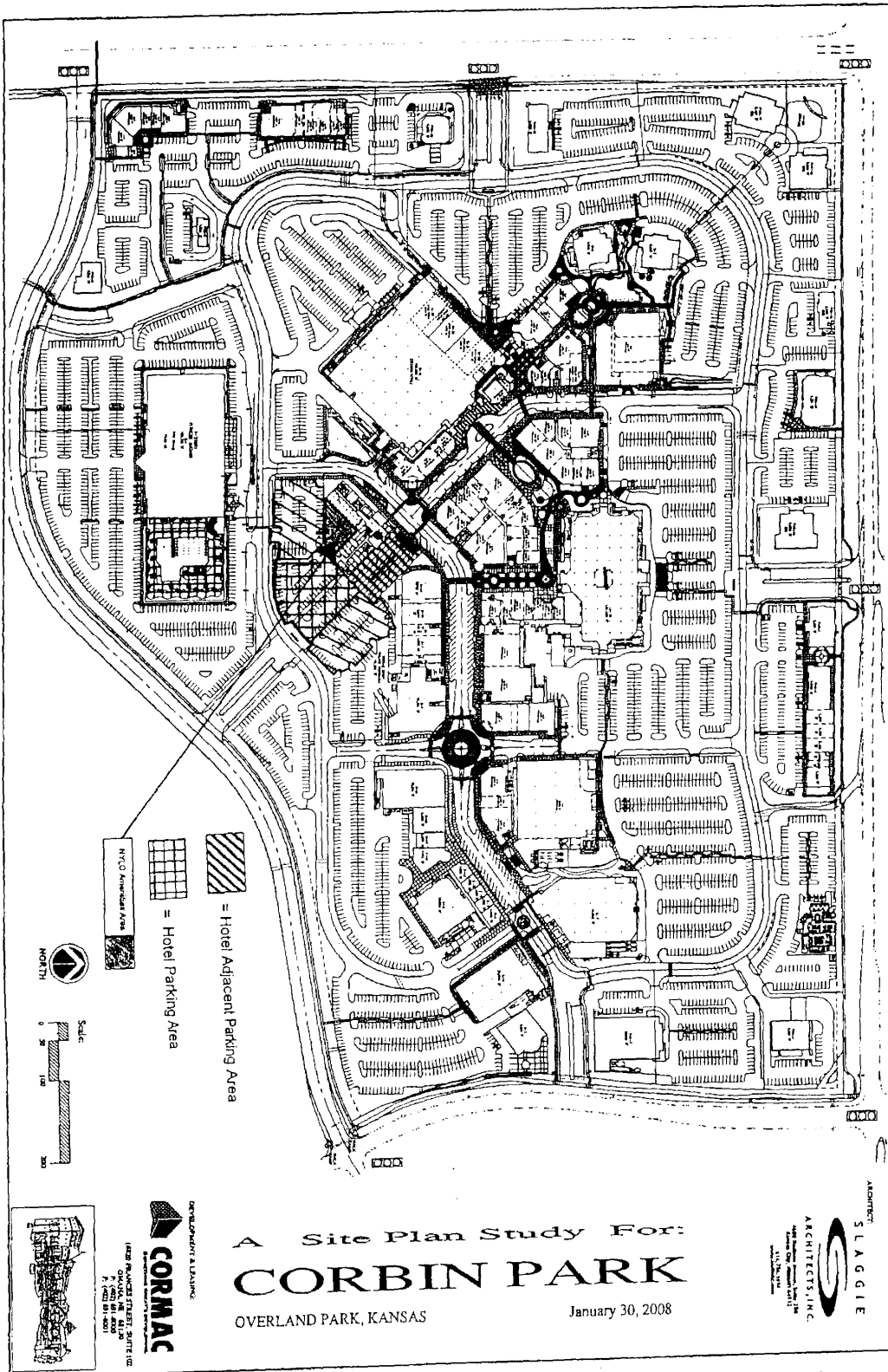


EXHIBIT "B-6-1"
NYLO SITE PLAN

Exhibit "B-6-1"

395398.12


20080307-0002407 03/07/2008
P: 83 of 96 03:15:06 PM
Register of Deeds T20080008854
JO CO KS BK:200803 PG:002407

EXHIBIT "B-7"

SITE PLAN

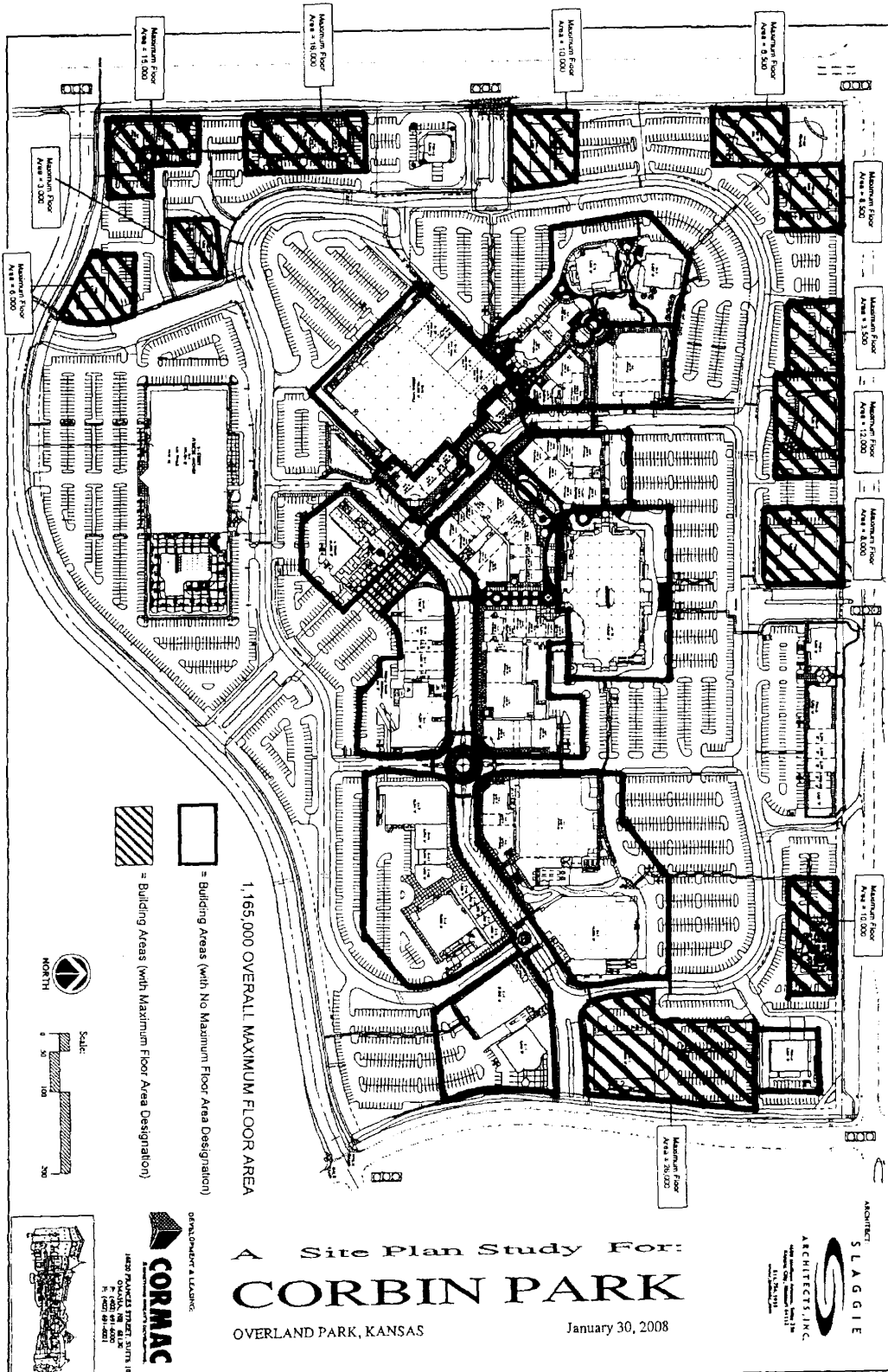
(with Building Areas depicted thereon)

Exhibit "B-7"

395398.12

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Exhibit "B-7"



A Site Plan Study For: CORBIN PARK

OVERLAND PARK, KANSAS

January 30, 2008

CORMAC
 ARCHITECTS, INC.
 1400 PLYMOUTH STREET, SUITE 100
 OVERLAND PARK, KANSAS 66204
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SLAGLE
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EXHIBIT "C"

RULES AND REGULATIONS

These Rules and Regulations are dated as of the date set forth on that certain Declaration Regarding Construction, Operation and Reciprocal Easements ("REA") made by 135 Metcalf, L.L.C., an Iowa limited liability company, and State Line, LLC, an Iowa limited liability company (collectively, "Developer"). Developer (and any other Owner to the extent applicable herein) shall not be responsible for the violation or nonperformance by any other Permittee of the Shopping Center with regard to these Rules and Regulations; provided, however, that Developer (and any other Owner to the extent applicable herein) agrees to use its commercially reasonable efforts to cause such Permittee to comply with these Rules and Regulations. Unless otherwise provided, all terms used in these Rules and Regulations shall have the same meaning as set forth in the REA. To the extent that the provisions of these Rules and Regulations are inconsistent with the provisions of the REA, the provisions of the REA shall govern and control.

A. Common Area

1. The surface of the Parking Area and sidewalks shall be maintained level, smooth and evenly covered with the type of surfacing material originally installed thereon, or such substitute thereof as shall be in all respects equal thereto in quality, appearance and durability.
2. All papers, debris, filth and refuse shall be removed from the Shopping Center, and paved areas shall be washed or thoroughly swept as required. All sweeping shall be at intervals before the Stores shall be opened for business to the public, using motor driven parking lot vacuum cleaning vehicles where feasible.
3. All trash and rubbish containers located in the Common Area for the use of Permittees shall be emptied on a sufficiently regular basis and shall be washed at intervals sufficient to maintain the same in a clean condition. In the event Developer does not provide a trash hauler for the Shopping Center, Developer shall have the right to reasonably approve of any and all trash haulers contracted by Permittees and to reasonably approve of the hours of pick-up.
4. All landscaping shall be properly maintained, including removal of dead plants, weeds and foreign matter and such replanting and replacement as the occasion may require.
5. All hard-surfaced markings shall be inspected at regular intervals and promptly repainted as the same shall become unsightly or indistinct from wear and tear, or other cause.
6. All storm drain catch basins shall be cleaned on a schedule sufficient to maintain all storm drain lines in a free-flowing condition and all mechanical equipment related to storm drain and sanitary sewer facilities shall be regularly inspected and kept in proper working order.
7. All asphalt paving shall be inspected at regular intervals and maintained in a first class condition.
8. All surface utility facilities servicing the Common Area, including, but not by way of limitation, hose bibbs, standpipes, sprinklers and domestic water lines, shall be inspected at regular intervals and promptly repaired or replaced, as the occasion may require, upon the occurrence of any defect or malfunctioning.
9. All Common Area amenities, benches, and institutional, directional, traffic and other signs shall be inspected at regular intervals, maintained in a clean and attractive surface condition and promptly repaired or replaced upon the occurrence of any defects or irregularities thereto.
10. All lamps shall be inspected at regular intervals and all lamps shall be promptly replaced when no longer properly functioning.
11. The improvements on and to the Common Area shall be repaired or replaced with materials, apparatus and facilities or quality at least equal to the quality of the materials, apparatus and facilities repaired or replaced.
12. The Common Area shall be illuminated in accordance with Exhibit "E" attached to the REA, and during the hours set forth in the REA.

Exhibit "C"

13. Developer shall use its reasonable, good faith efforts to arrange with local police authorities to (a) patrol the Common Area at regular intervals, and (b) supervise traffic direction at entrances and exits to the Shopping Center during such hours and periods as traffic conditions would reasonably require such supervision, with any cost incurred in connection therewith being a Common Area Expense. Notwithstanding the foregoing, Developer may, if Developer deems necessary, hire private security guards to increase the security in the Common Area and include the cost thereof as a Common Area Expense in accordance with Section 8.2 of the REA.

14. The Owners shall use their diligent efforts to require their respective Permittees to comply with all regulations with respect to the Common Area, including, but not by way of limitation, posted speed limits, directional markings and parking stall markings.

B. Floor Area

1. All Floor Area, including entrances and returns, doors, fixtures, windows and plate glass shall be maintained by the Owner occupying such Floor Area in a safe, neat and clean condition.

2. All trash, refuse and waste materials shall be regularly removed from the premises of each Store within the Shopping Center, and until removal shall be stored (a) in adequate containers, which containers shall be covered with lids and shall be located in areas designated by Developer so as not to be visible to the general public shopping in the Shopping Center, and (b) so as not to constitute any health or fire hazard or nuisance to any Owner.

3. Except as permitted on the NYLO Parcel, no portion of the Shopping Center shall be used for lodging purposes.

4. Except as otherwise provided in the REA, neither sidewalks nor walkways shall be used to display, store or replace any merchandise, equipment or devices.

5. No advertising medium shall be utilized which can be heard or experienced outside of the Floor Area of any Store, including, without limiting the generality of the foregoing, flashing lights, searchlights, loud speakers, phonographs, radios or television.

6. No use shall be made of the Shopping Center or any portion or portions thereof which would (a) violate any law, ordinance or regulation, (b) constitute a nuisance, (c) constitute an extra-hazardous use, or (d) violate, suspend or void any policy or policies of insurance on the Stores.

7. The Owners shall use their diligent efforts to require all trucks servicing their respective Stores to load and unload such trucks (a) prior to the hours the Shopping Center is open for business to the general public, or (b) so as not to unreasonably interfere with the operation of the other Stores within the Shopping Center.

8. Each Owner and all other Occupants shall use their diligent efforts, promptly upon receiving notice thereof, to notify Developer or Developer's designated representative, of any significant accident, loss, damage, destruction or any other situation which arises in or about their respective Stores or the Common Area which could potentially result in a claim or other action against Developer.

C. Conduct of Persons

The Owners hereto do hereby establish the following rules and regulations for the use of roadways, walkways, the Parking Area, and other common facilities provided for the use of Permittees:

1. No person shall use any roadway or walkway, except as a means of egress from or ingress to any Floor Area and the Parking Area within the Shopping Center, or adjacent public streets or such other uses as approved by the Owners. Such use shall be in an orderly manner, in accordance with the directional or other signs or guides. Roadways within the Shopping Center shall not be used at a speed in excess of fifteen (15) miles per hour and shall not be used for parking or stopping, except for the immediate loading or unloading of passengers. No walkway shall be used for other than pedestrian travel or such other uses as approved by the Owners.

2. No person shall use the Parking Area except for the parking of motor vehicles during the period of time such person or the occupants of such vehicles are customers or

Exhibit "C"

business invitees of the retail establishments within the Shopping Center. All motor vehicles shall be parked in an orderly manner within the painted lines defining the individual parking places. Subject to General Parking Ratio set forth in Article XVIII of the Declaration, during peak periods of business activity, limitations may be imposed as to the length of time for parking use. Such limitations may be made in specified areas.

3. No person shall use any utility area, truck court or other area reserved for use in connection with the conduct of business, except for the specific purpose for which permission to use such area is given.

4. No person shall, in or on any part of the Common Area:

(a) Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever, except as otherwise provided in the REA.

(b) Exhibit any sign, placard, banner, notice or other written material.

(c) Distribute any circular, booklet, handbill, placard or other material.

(d) Solicit membership in any organization, group or association or contribution for any purpose.

(e) Parade, rally, patrol, picket, demonstrate or engage in any conduct that might tend to interfere with or impede the use of any of the Common Area by any Permittee, create a disturbance, attract attention or harass, annoy, disparage or be detrimental to the interest of any of the retail establishments within the Shopping Center.

(f) Use any Common Area for any purpose when none of the establishments within the Shopping Center is open for business or employment.

(g) Throw, discard or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind.

(h) Use any sound-making device of any kind or create or produce in any manner noise or sound that is annoying, unpleasant, or distasteful to the Owners or Permittees.

(i) Deface, damage or demolish any sign, light standard or fixture, landscaping material or other improvement within the Shopping Center, or the property of customers, business invitees or employees situated within the Shopping Center.

The listing of specific items as being prohibited is not intended to be exclusive, but to indicate in general the manner in which the right to use the Common Area solely as a means of access and convenience in shopping at the retail establishments in the Shopping Center is limited and controlled by the Owners in the Shopping Center.

Any Owner shall have the right to remove or exclude from or to restrain (or take legal action to do so) any unauthorized person from, or from coming upon, the Shopping Center or any portion thereof, and prohibit, abate and recover damages arising from any unauthorized act, whether or not such act is in express violation of the prohibitions listed above. In so acting such Owner is not the agent of other Owners or tenants of the Shopping Center, unless expressly authorized or directed to do so by such Owner or tenant in writing.

D. Staging Areas

1. The staging area ("Staging Area") for each Owner and each Person entitled to use Floor Area in the Shopping Center (a "Staging Area User") shall be as reasonably located from time to time by Developer based on Developer's construction schedules and in accordance with reasonable rules and regulations which may be promulgated by Developer from time to time. The Staging Area User shall move trailers, equipment, storage facilities including, but not limited to, containers or construction materials, or items as reasonably requested by Developer to accommodate Shopping Center construction or to reasonably keep the appearance of the Shopping Center in an orderly fashion.

2. Each Staging Area User shall, during the course of its construction, routinely remove all trash and debris caused by such Staging Area User and any portion of the Shopping Center including, but not limited to, the Common Area and the adjacent streets and driveways. Each Staging Area User shall keep the Staging Area and any adjacent parking areas in a

Exhibit "C"

reasonably neat, clean and sightly condition. Each Staging Area User shall periodically sweep its Staging Area by use of a professional sweeping company.

3. Each Staging Area User shall cause its employees, or the employees of its contractors and subcontractors to park in areas reasonably designated by Developer, and in the event of a failure to control such unauthorized parking, Developer may tow violating vehicles in accordance with law.

4. After work is completed for a particular installation with respect to the Staging Area User's Store, the Staging Area User shall promptly, within forty-eight (48) hours, remove any excess materials no longer necessary for the construction of such Store.

5. All containers and trailers shall be removed from the Staging Area or parking lot as soon as practicable, but in no event later than forty-eight hours (48) hours of emptying of same (provided that the container or trailer is not required for future use after notice and approval by Developer). The Staging Area User shall move any containers which can be safely moved or rearranged as directed by Developer and is reasonably required to minimize inconvenience in connection with the construction or development of the Shopping Center and other Owners and their respective Permittees so as to avoid obstructing visibility from 135th Street.

6. In the event that a Staging Area User, or its contractors or subcontractors, damage any portions of the Shopping Center, such Staging Area User must, upon written notice from Developer, repair such damage at such Staging Area User's expense. If such Staging Area User fails to make such repairs promptly, Developer may cause repairs to be effected and will submit an invoice to the Staging Area User for any such repairs.

7. Upon receipt of written notice from Developer, the Staging Area User will promptly repair any damage caused to the Common Area or any other portion of the Shopping Center by the Staging Area User's containers, trailers and operations and shall restripe the Parking Area as necessary in those areas of repair. If the Staging Area User fails to make such repairs promptly, Developer may cause the Common Area to be reasonably repaired and restriped in the area of the repair and will submit the invoice to the Parking Area User for any such costs or expenses incurred by Developer relating to such repair and restriping.

8. Any temporary signs shall be approved by Developer prior to installation, which approval shall not be unreasonably withheld or delayed.

9. The Staging Area User shall, at its sole cost and expense, obtain and connect (and disconnect upon completion) all temporary utilities in a safe and sightly manner.

10. Promptly after completion of the portion of the construction requiring such Staging Area, the Staging Area User shall completely remove all items related in any way to the construction of its Store from the Staging Area and shall return Staging Area to the condition as hereinbefore provided.

11. If a Staging Area User fails to reasonably complete any items above, or fails to remove its containers and other items as required, Developer may request that the Staging Area User make such repairs, or perform such above-stated items and, upon the Staging Area User's failure or refusal to do so within twenty-four (24) hours, Developer shall have the right (but shall not be obligated), either itself or through a third-party contractor, to perform all the foregoing items and thereupon the Staging Area User, within ten (10) days, shall reimburse Developer for any costs and expenses reasonably incurred by Developer in connection therewith.

12. No Staging Area shall be located on the Penney Parcel, Von Maur Parcel, NYLO Parcel or Hotel Adjacent Parking Area without their respective consent.

Exhibit "C"

EXHIBIT "D"

SIGN CRITERIA

1. **Small Shop Tenant Sign Parameters (0 – 11,999 s.f.)**

- a. The maximum height for letters within the sign band shall be 30"
- b. Signs shall not extend more than 8" beyond the face of the surface to which the sign is mounted.
- c. All signs must be illuminated and shall derive light from a concealed source. No exposed lamps, globes, tubes, etc. will be permitted.
- d. Signage shall be illuminated individual letters mounted to the building face. One (1) wall sign per façade with a maximum of two (2) total are allowed if a tenant is located on an end cap.
- e. "Halo" or "backlit" signs are required.
- f. No logos will be allowed on Tenant storefronts without prior written approval.
- g. Small Shop Tenant will be required, and shall have one (1) 7-square foot blade sign per each storefront elevation. Letter height shall be a maximum of six (6) inches. Tenant shall be required to submit with signage, shop drawing submittal for approval. The blade sign design shall be located on an elevation drawing, with clear height to bottom of sign indicated. Developer encourages each Owner to create a sign bracket which is characteristic of the building vernacular.

2. **Sub-Major Tenant Sign Parameters (12,000 s.f. – 19,999 s.f.)**

- a. Tenant sign area shall be on the building faces above the entrances and as part of the building design.
- b. The maximum height for letters in the body of the sign shall not exceed 48" in height.
- c. The sign areas shall not exceed ten percent (10%) of the area of the storefront.
- d. Maximum one sign per storefront with a maximum of (3) three.
- e. Signage shall be illuminated individual letters mounted to the face of the building. The use of a colored or frosted Plexiglas face is required. Individual faces shall be fabricated from flat, smooth one-eighth inch (1/8") plexiglass. Letter returns shall be fabricated of .090 aluminum with .063 aluminum letter backs. Retainers shall be one inch (1") trimcap or the equivalent and shall match the return. All letters shall be illuminated.
- f. Reversed channel halo lighting is encouraged but shall be reviewed on an individual basis.
- g. A blade sign may be encouraged if applicable to the design of the tenant in an "in-line" configuration.
- h. All signs must be illuminated from a concealed source. No exposed lamps, globes, tubes, etc. will be permitted.

3. **Major Tenant (20,000 s.f. – 119,999 s.f.)**

- a. Tenant sign area shall be on the building storefronts above the entrances as part of the building design.
- b. The maximum height for letters in the body of the sign shall not exceed 60" in height.
- c. The sign areas shall not exceed ten percent (10%) of the area of the storefront.
- d. Maximum one sign per storefront with a maximum of (3) three.

Exhibit "D"

e. Signage shall be illuminated individual letters mounted to the face of the building. The use of a colored or frosted Plexiglas face is required. Individual faces shall be fabricated from flat, smooth one-eighth inch (1/8") plexiglass. Letter returns shall be fabricated of .090 aluminum with .063 aluminum letter backs. Retainers shall be one inch (1") trimcap or the equivalent and shall match the return. All letters shall be illuminated.

f. All signs must be illuminated from a concealed source. No exposed lamps, globes, tubes, etc. will be permitted.

g. Reversed halo lighting is encouraged but shall be reviewed on an individual basis.

4. **Anchor Tenant (120,000 s.f. and greater), including (without limitation and without regard to actual square footage thereof) the Von Maur Store, the Hotel and the Penney Store**

a. Tenant sign area shall be on the building storefronts above the entrances as part of the building design, or as otherwise permitted in respect to the Penney Store by the Penney Separate Agreement or in respect of the Von Maur Store by the Von Maur Separate Agreement, or in respect of the Hotel by the NYLO Separate Agreement.

b. The maximum height for letters in the body of the sign shall not exceed 72" in height.

c. The sign areas shall not exceed ten percent (10%) of the area of the storefront.

d. Maximum one sign per storefront with a maximum of (3) three, except that either Penney Owner, NYLO Owner or Von Maur Owner shall be entitled to signs on each of the four (4) sides of their respective Stores, if same can be permitted by applicable law at no cost or expense to the Owner of any other Parcel and without adverse impact on any such other Parcel's ability to post and maintain signage for such Parcel as contemplated by this Declaration.

e. Signage shall be illuminated individual letters mounted to the face of the building. The use of a colored or frosted Plexiglas face is required. Individual faces shall be fabricated from flat, smooth one-eighth inch (1/8") plexiglass. Letter returns shall be fabricated of .090 aluminum with .063 aluminum letter backs. Retainers shall be one inch (1") trimcap or the equivalent and shall match the return. All letters shall be illuminated.

f. All signs must be illuminated from a concealed source. No exposed lamps, globes, tubes, etc. will be permitted.

g. Reversed halo lighting is encouraged but shall be reviewed on an individual basis.

5. **Restaurant and Pad Sign Parameters**

a. Tenant sign area shall be on the building faces above the entrances and as part of the building design.

b. The maximum height for letters in the body of the sign shall not exceed 36" in height.

c. The sign areas shall not exceed ten percent (10%) of the area of the storefront.

d. Maximum one sign per storefront with a maximum of (3) three.

e. Signage shall be illuminated individual letters mounted to the face of the building. The use of a colored or frosted Plexiglas face is required. Individual faces shall be fabricated from flat, smooth one-eighth inch (1/8") plexi-glass. Letter returns shall be fabricated of .090 aluminum with .063 aluminum letter backs. Retainers shall be one inch (1") trim cap or the equivalent and shall match the return. All letters shall be illuminated.

f. Marquee Signage: Allowed one (1) per storefront in lieu of Façade sign – 15 square feet maximum, letters shall be 16" maximum; maximum of two (2) total if an endcap. Sign shall be individually illuminated letters, pin mounted to existing projected metal marquees. All exposed conduit shall be concealed from public view and painted to match marquee structure. Exposed raceways behind letters are not permitted. Marquis signage is subject to

Exhibit "D"

Developer and City review and will be approved on an individual basis and shall be treated as a primary sign.

g. One sign per building elevation with a maximum of three (3) total.

h. All signs must be illuminated from a concealed source. No exposed lamps, globes, tubes, etc. will be permitted.

i. Reversed halo lighting is encouraged but shall be reviewed on an individual basis.

6. General Sign Parameters

a. All signs must be made up of individual illuminated letters; conventional box signs will not be approved. Box signs with raised letters will be considered.

b. Lettering on all store signs shall be limited to business or trade name of the premises as it appears on the lease. No sign manufacturer's name, union labels, or other lettering shall be visible. Logo signs will be reviewed on an individual basis, but in general logos will not be allowed.

c. Tag lines shall be allowed on an individual basis only and are subject to Developer approval. Any allowable tag lines shall be individual illuminated letters (no box signs) and shall not exceed 10" in height. The width of the tag line shall not exceed the width established for the primary signage.

d. No exterior sign or sign panel will be permitted to extend above any roof line.

e. Any sign, notice or other graphic or video display, particularly self-illuminated signs, located within the store and which is easily visible from the Shopping Center is not allowed. Illuminated signs within 48" of a window are regarded as signage.

f. Manufacturers' labels, underwriters' labels, clips, brackets, or any other form of extraneous advertising attachment or lighting devices shall be fully concealed from public view.

g. No exposed lamps or tubing will be permitted.

h. No exposed raceways, crossovers or conduits will be permitted.

i. All signage returns shall be semi-gloss black enamel finish or blend with adjacent building color.

j. All cabinets, conductors, transformers and other equipment shall be concealed from public areas, visible fasteners will not be permitted.

k. All metal letters, including channel letters, shall be fabricated using full-welded construction, with all welds ground smooth so as not to be visible.

l. Acrycap or trimcap retainers used at the perimeter of sign letter faces shall match in color and finish the face or the sides of the sign.

m. Threaded rods or anchor bolts shall be used to mount sign letters, which are spaced out from the building face. Angle clips attached to letter sides will not be permitted. All mounting attachments shall be sleeved and painted, and concealed.

n. All signage whether halo illuminated or not, shall be pin mounted or building façade. Halo illuminated signage shall be pin mounted a minimum of 2" from building façade. Direct or internally illuminated signage shall be pin mounted a minimum of 1/2" and maximum of 1" from building face.

o. Except as provided herein, no advertising placards, flags, balloons, banners, pennants, names, insignia, trademarks, or other descriptive materials shall be affixed or maintained upon the glass panes and supports of the storefront windows and doors, within 4' of the storefront without prior written approval of Developer. Painted, flashing, animated, audible, revolving, or other such signs that create animation are not permitted.

p. Any Plexiglas sign faces shall not be clear.

Exhibit "D"

- q. Sign illumination shall be internal and self-contained.
- r. Non-illuminated exterior signage is allowed upon approval and receipt of a Special Event Permit from the City.
- s. All main signs are to be centered in the signage band.
- t. All electric signs and installation methods must meet UL standards and contain a UL label.
- u. At no time will hand-lettered, non-professional signs, or newspaper advertisements be displayed on the storefronts or within the Design Control Area.
- v. Decals or other signing indicating products lines or credit card acceptability shall not be permitted on the storefront glazing other than stores operating hours.
- w. All illuminated signs must be turned on during the Shopping Center's normal operating hours. The use of time clocks for sign and show window lighting is required.
- x. Lighting of signs shall be at hours as required by Developer.
- y. No logos will be allowed on storefronts without prior written approval.
- z. Double stacked lettering shall be allowed on an individual basis only and are subject to Developer approval. Double stacked letters shall be a maximum 24" high individual letters and shall comfortably fit within Developer's bulkhead as determined by Developer.
- aa. Minimum height of all signage shall not be less than 60% of the maximum allowable letter height.
- bb. All signage is subject to the approval of Developer's architect and the local authorities.
- cc. Tenant is required to provide a concealed access panel from within the Premises, if applicable, to service and install exterior building signage.

7. **Signs Not Permitted**

The following types of signs shall not be permitted:

- a. Signs such as die cut vinyl, gold or silver leaf, or paint.
- b. Boxed pillow or cabinet type.
- c. Formed plastic or injection molded plastic signs.
- d. Banners or pennants unless the City has issued a Special Event Permit.
- e. Signature signage (window sign or sign plate indicating name of shop or good sold) in addition to primary signage.
- f. Cloth, paper, cardboard and similar stickers or decals around or on surfaces on the storefront without prior written approval.
- g. "Sale" sign, "Special Announcements" sign or other advertisement of any kind on the exterior unless the City has issued a Special Event Permit.
- h. Exposed neon signs are not permitted but may be reviewed on a limited per tenant basis.
- i. Animated, moving, rotating or flashing.
- j. Noise making.
- k. Additional signage of any kind within 4' of storefront windows.
- l. Awning signage.

Exhibit "D"

m. Under no circumstances will exposed neon "open" or other text be allowed within the design control zone.

8. **Additional Signage**

a. Service doors to the Premises shall be standard 4", identification only (name and address number) and shall be installed by Tenant. Tenant shall not apply any signage or other wording to service doors.

b. All signage must be shown to scale on the approved storefront elevation.

c. All additional signage shall be submitted to Developer's representative for approval as specified in Section 2 above.

d. Any minor deviations to these criteria will be reviewed on an individual basis and subject to Developer approval.

Exhibit "D"

EXHIBIT "E"

LIGHTING CRITERIA

All exterior site lighting shall be designed, installed, modified, and maintained in strict accordance with plans and specifications submitted to and approved in writing by the Developer. Lighting and lighting system components and hardware shall be compatible and harmonious throughout the Shopping Center. Lighting shall be in keeping with the specific function or task and building type served. To the extent practical, lighting on a Parcel or Outlot shall be from concealed sources unless otherwise approved by the Developer and shall be designed to minimize glare or light flow onto adjacent structures and property.

The primary goal of the exterior illumination design and installation is to establish a sense of safety, direction, and movement. Light levels should be adequate to insure reasonable automobile and pedestrian safety, and shall have a maintained intensity at ground level and night lighting as follows: (1) Per City of Overland Park and Development Design Criteria with 0.80 total light loss factor (a) open parking areas and all sidewalks - not less than two foot candle, not greater than 6:1 average uniformity, and not greater than three foot candle average; (2) Per light levels and uniformity (contrast ratios) as established by the Illuminating Engineering Society of North America (IESNA) (a) roadways - four foot candles average, not greater than 4:1 average uniformity; (b) intersections of entrance/exitways and development roads - four foot candles average for intersections within the development (including connections to Ring Road), and not greater than 4:1 average uniformity; (c) sheltered parking areas and walkways - five foot candles average on parking surface and no greater than 10:1 average uniformity; and not less than one foot candle on walkways; and (3) 25% evenly distributed night lighting. Notwithstanding any provision in the REA to the contrary, the average intensity levels set forth in the preceding sentence shall not be modified or amended without the written consent of Penney Owner or without the written consent of Von Maur with respect to the Von Maur Control Area, or without the written consent of NYLO Owner with respect to the NYLO Parcel or Hotel Adjacent Parking Area.

Exhibit "E"