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Glenn Dowding
REGISTER OF DEEDS

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LLOYD J. DOWDING

SARPY COUNTY REGISTER OF DEEDS
Steven J. Stastny, Deputy
1210 GOLDEN GATE DRIVE, STE 1109
PAPILLION, NE 68046-2895
402-593-5773

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**DECLARATION OF RECIPROCAL EASEMENTS,
COVENANTS AND RESTRICTIONS**

THIS DECLARATION OF RECIPROCAL EASEMENTS, COVENANTS AND RESTRICTIONS (the "**Agreement**") is made as of the 28 day of July 2008, by **Papillion Development Settler's Creek, LLC**, a Nebraska limited liability company (hereinafter "**Developer**").

WITNESSETH:

RECITALS

A. Developer is the owner in fee simple of that certain real property located in the County of Sarpy, State of Nebraska, depicted as Lots 1, 2 (Replat 2), 2 (Replat 3), 3, 4, 5 and 6 and Outlot A (Replat 2) and Outlot A (Replat 3) on the site plan attached hereto as **Exhibit B** and incorporated herein by this reference (such property is hereafter collectively referred to as the "**Developer Property**" or the "**Shopping Center**"); and

B. Developer desires that the "Lots" (as hereinafter defined) comprising the Developer Property (as such Lots may be created, consolidated and/or otherwise reconfigured as provided in this Agreement) be developed in conjunction with each other pursuant to a general plan of improvement and further desires that the Developer Property be subject to the easements, covenants, conditions and restrictions set forth in this Agreement. A legal description of the Developer Property is attached hereto as **Exhibit A** and incorporated herein by this reference.

NOW, THEREFORE, in consideration of the foregoing promises and for the purpose of establishing certain covenants, restrictions and a uniform plan for ingress, egress, parking, common areas, utilities and drainage, Developer declares that the Lots shall be held and/or sold and conveyed subject to the covenants, restrictions and easements stated herein.

AGREEMENT

1. Definitions.

1.1. "**Architectural Features**" shall mean towers, projections and entry features on Buildings and such other features as may be deemed such by the Project Architect.

1.2. "**Building**" shall mean any building or improvement constructed on a Lot within the Shopping Center including but not limited to the main facility, any outside facility including patios and dining areas and all retaining walls constructed on a Lot.

1.3. "**Building Areas**" as used herein shall mean those portions of the Lots shown as "**Building Areas**" on **Exhibit B** or designated by Developer as "Building Areas" from time to time in the exercise of its sole and absolute discretion without the joinder of any other Party or party.

1.4. "**City**" shall mean the City of Papillion, Nebraska.

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1.5. Common Areas. For purposes of this Agreement, the phrase "**Common Area**" or "**Common Areas**" means all portions of the Lots which are not occupied, at any particular time, by Buildings, and shall include, without limitation, the parking areas, driveways, service drives and service roads, traffic islands, landscaped areas, pylon or monument signs advertising the Shopping Center (whether or not such sign[s] advertise tenants or occupants of the Shopping Center), loading and service areas, sidewalks, walkways, and such other portion or portions of the Lots, as well as any drainage facilities and lighting facilities servicing any one or more of the aforesaid areas, which shall specifically include the "Storm Basins" (as defined herein), whether on site or off site, servicing all or any of the Lots, and any access driveways, corridors, driveways, exterior boundary walls and fences, water, sanitary and storm sewer, gas, electric, telephone and other utility lines and systems, conduits and facilities, and any of the foregoing which serve the access way, the parking areas, structured parking areas, plantings, landscaped areas, truck serviceways, courts, ramps, lighting, sidewalks, and the facilities pertinent to each and all of the foregoing, all of which shall serve the Lots. Notwithstanding the foregoing, the actual loading dock(s) and trash area(s) and drive-through area(s) on any Lot which serves a particular Permittee shall not be considered Common Area.

1.6. "Design Criteria" shall mean the Developer's design criteria handbook, which may be revised, supplemented or amended from time to time by Developer, which shall be provided by Developer to any Party upon written request.

1.7. "Developer" shall mean Papillion Development Settler's Creek, LLC, or if Developer has no further ownership interest in any portion of the Developer Property, then such person or entity as Developer may designate in writing as its successor, by written notice to all Parties, shall be deemed to be the Developer.

1.8. "Finished Floor Elevation" shall mean the top of the finished floor or slab of a Building.

1.9. "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State or the United States Government. The term "**Hazardous Material**" includes, without limitation, any material or substance which is (i) defined as a "**hazardous waste**" or other hazardous material or substance under any of the laws of the state where the Lot is located, (ii) petroleum, (iii) asbestos, (iv) designated as a "**hazardous substance**" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. sec. 1317), (v) defined as a "**hazardous waste**" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. sec. 6901 et seq. (42 U.S.C. sec. 6903), as amended, or (vi) defined as a "**hazardous substance**" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. sec. 9601 et seq. (42 U.S.C. sec. 9601), as amended.

1.10. "Lot(s)" shall mean the Lots 1, 2 (Replat 2), 2 (Replat 3), 3, 4, 5 and 6, or any of them (as such Lots may be created, consolidated and/or otherwise reconfigured as provided in this Agreement).

1.11. "No Build Areas" as used herein shall mean those portions of the Lots not within the area designated by Developer as "Building Areas," which No Build Areas are hereby designated by Developer as areas upon which no Buildings or other structures (as shall be defined by Developer in its sole discretion without joinder of any other Party or party) shall be constructed. The No Build Areas shall not be changed or modified in any manner without Developer's prior written approval, which approval may be given or withheld in Developer's sole and absolute discretion, without the joinder or approval of any other Party or party.

1.12. "Outside Sales Area" shall mean any area used by a Permittee for temporary or permanent sales, displays, customer service or seating and/or storage purposes, and located outside of the Building (or portion thereof) occupied by such Permittee. Outside Sales Areas are subject to Developer's prior written approval, City regulation and applicable laws, and all limitations set forth in this Agreement (including the Rules and Regulations attached hereto as **Exhibit C**).

1.13. "Party" and **"Parties"** as used in this Agreement shall initially mean Developer, until such time as Developer has transferred fee simple title in and to any Lot or portion of any Lot, and thereafter shall mean Developer and the owner(s) from time to time of fee title to any Lot(s).

1.14. "Permittee(s)" shall mean the Parties, all persons from time to time entitled to the use and occupancy of any Building(s) (or portion thereof) on any Lot(s) pursuant to any lease, deed or other arrangement whereby such person has acquired a right to the use and occupancy of any Building (or portion thereof), and their respective officers, directors, employees, agents, tenants, subtenants, contractors, customers, visitors, invitees, licensees and concessionaires.

1.15. "Project Architect" shall mean architects duly licensed to practice in the State of Nebraska as may from time to time be designated by Developer.

1.16. "Roof Extensions" shall mean parapet walls, mechanical equipment, penthouses and screens to hide mechanical equipment and such other extensions as may be deemed such by the Project Architect.

1.17. "Site Plan" shall mean the site plan of the Shopping Center attached hereto as **Exhibit B** and incorporated herein by reference.

1.18. "State" shall mean Nebraska.

1.19. "Storm Basin" shall mean any storm drainage and detention/retention facility(ies) located on or off-site, as may exist or be created from time to time.

In addition to the definitions set forth above, there are other defined terms set forth elsewhere in this Agreement. All of the Recitals set forth above are hereby incorporated into this Agreement as though fully re-written here at length.

2. Conversion to the Common Areas. Those portions of the Building Areas on each Lot that are not from time to time designated by Developer as Building Areas under the terms of this Agreement or occupied by Buildings, shall be deemed to be part of the Common Areas for the uses permitted hereunder and shall be improved, kept, and maintained as provided herein; PROVIDED, HOWEVER, the foregoing shall not limit or otherwise restrict any Party's right to construct Buildings within any Building Area on its Lots from time to time as permitted under this Agreement.

3. Grant of Easements. Subject to the terms of this Agreement, Developer hereby grants and conveys the following non-exclusive easements appurtenant, in, to, over, and across the Common Areas on the Lots (and each of them) for the benefit and use of all Parties and the customers, contractors, invitees, licensees, tenants, and employees of all businesses and occupants of the Buildings on the Lots:

3.1. Parking Easements. A non-exclusive easement in, to, over and across the portions of Common Areas developed as parking areas for the vehicles of each Party and their respective Permittees thereon, limited, however, to purposes connected with or incidental to use of such parking for commercial retail and shopping purposes. The Parties agree not to encourage the Permittees of their respective businesses to park on property other than their respective Lots. Except to the extent required by law, no Permittee shall be charged for the right to use the Common Area.

3.2. Access Easements. A non-exclusive easement in, to, over and across the Common Areas, including driveways, perimeter roads and access ways for vehicular (including service vehicles but excluding construction vehicles, except as hereinafter provided) and pedestrian ingress and egress, and access and the right of access over established circulation elements between the public streets and perimeter roads and access ways and any Lot. The Parties agree that, except as needed in the case of construction, no barricade, fence or other like obstruction or improvement shall be erected or maintained within the perimeter roads or access ways so as to impair the free flow of vehicular traffic thereon.

3.3. Roof Overhang and Abutment Easement. A non-exclusive easement in, to, under, over and across any improvements or land immediately adjacent to any Lot, granting the right and privilege to (a) construct, reconstruct, maintain, operate and replace a roof overhang belonging, over and through a portion of the adjacent Lot and (b) for the owner of the adjacent Lot to construct improvements which abut or touch improvements constructed on adjacent Lot, as may be approved by Developer in advance. This easement shall not unreasonably (i) interfere with Developer's use or operation of the Shopping Center, (ii) interfere with the adjacent Party's use or operation of its Lot, (ii) restrict or limit the operation or use of any Building or other improvement now constructed on the adjacent Party's Lot nor (iii) limit or restrict the type of Building or other improvements that may be constructed on the adjacent Lot under said roof overhang or otherwise.

3.4. Access Easements for Shopping Center Signs. A non-exclusive easement in, to, under, over and across the Common Areas, for the installation and maintenance of the pylon or monument sign structures to be located on the Lots pursuant to the Design Criteria. In the event any Party or its respective Permittee(s) is entitled to

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maintain a sign panel or panel on such sign structure, the foregoing easement grant shall include reasonable access over, cross and upon the Common Areas to permit such Party or its Permittee(s) to install, replace, maintain and operate its sign panels on such sign structure. Developer, at its cost, shall have the right to change or relocate such sign structures within said Lots, provided that change or relocation does not materially interfere with the visibility or use of said Lots. No Lot may have a pylon without the prior written consent of Developer, which consent may be arbitrarily withheld by Developer in its sole discretion.

3.5. Utility Easements. A non-exclusive easement in, to, over, and across the Common Areas for the benefit of and appurtenant to each for the purposes of installation 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 Developer, and, with respect to the Lots, at a location or locations reasonably approved by the then owner of the Lot in writing, provided that in all cases, in the performance of such work: (i) adequate provision shall be made for the safety and convenience of all persons using the surface of such areas; (ii) the areas and facilities shall be replaced or restored to the condition in which they were prior to the performance of such work; (iii) Developer and the Parties shall be indemnified and held harmless against claims, damages, and losses, including costs and attorneys' fees arising from the performance of such work or use of such easements; (iv) affected Parties shall be notified in writing by the party for whose benefit such work is performed or such use is made not less than thirty (30) days prior to commencement of such work and (v) affected Parties shall be consulted reasonably in advance and any proposed installation, maintenance or location changes shall require prior written approval by the affected Parties, which shall not be unreasonably withheld, conditioned or delayed. Franchises granted to public utilities for such utilities shall constitute compliance with the foregoing provisions. In addition, each Party shall be obligated to perform such other acts, and to execute, acknowledge, and/or deliver such reasonable instruments, documents and other materials as Developer may request in order to document any such easement in a commercially reasonable manner.

3.6. Drainage. A non-exclusive easement in, to, over, and through the drainage patterns and systems as are established from time to time within the Common Areas, for reasonable surface drainage purposes. Developer may construct access to a storm detention/retention basin, as well as to any Storm Basin, as may be created from time to time, on and/or off-site, to and through the point of entry onto the City right-of-way or to any subsequent location, taking into consideration reasonable storm drainage capacities. Developer shall have the right to designate and change the location or nature of any Storm Basin, so long as Developer provides access to and drainage facilities of an equal capacity and as shall be approved by the applicable governmental agencies. Developer hereby declares, creates and establishes a perpetual, non-exclusive right-of-way and easement to dispose of storm water to and through the point of entry onto the City right-of-way or to any subsequent location.

3.7. Term of Easements. The easements set forth herein shall constitute easements appurtenant to the Lots (and each of them), and not easements in gross, and shall continue in favor of the respective Lots in accordance with the term of this Agreement.

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3.8. Developer's Rights as to Common Area. Developer hereby reserves the right to eject or cause to be ejected from the Common Areas any persons not authorized, empowered or privileged to use the Common Areas pursuant to this Agreement. Provided there is no other means reasonably available to prevent the acquisition of prescriptive rights by any person(s) or entity, Developer reserves the right to temporarily close off the Common Areas (or portions thereof) for one 24-hour day, which day must be Christmas day only, to prevent the acquisition of prescriptive rights by any person(s) or entity; provided, however, that prior to closing off any portion of the Common Areas, as herein provided, Developer shall give written notice of its intention to do so, and shall coordinate such closing so that no unreasonable interference with the use or the operation of the Lots shall occur.

3.9. Prohibition Against Granting Easements. Without Developer's express written consent, no Party, other than Developer, shall grant an easement or easements of the type set forth in this Agreement for the benefit of any property other than the Lots.

3.10. Non-Interference. No Party, nor their Permittees, shall do anything so as to interfere with the reasonable use of the easements granted herein, except ordinary repairs which do not interfere with the operation of the businesses in the Shopping Center.

4. Buildings.

4.1. Design and Plans Approval. No Building or other improvements shall be constructed, erected, expanded, or altered on any Lot(s) until the plans and specifications for such Building or improvements (including site layout, exterior Building materials and colors, landscaping and parking layouts) have been approved in writing by Developer. Except as detailed in this Agreement, the Buildings and other improvements shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible with the architectural theme of the Shopping Center (as set forth in the Design Criteria), and shall in all respects be approved in writing by Developer, such approval not to be unreasonably withheld, conditioned or delayed. No Building wall footings shall encroach from one Lot onto another Lot without prior written approval from Developer. The design and construction on all Lots shall be first quality and in accordance with the plans approved by Developer and in complete and full compliance with (i) any and all governmental requirements and all city zoning and other ordinances, (ii) all restrictive covenants of record encumbering the respective Lot, and (iii) the Design Criteria. No Building shall have a metal exterior or roof. In order to produce an architecturally compatible and unified development contemplated by this Agreement and the Design Criteria, each Party agrees to consult with the Project Architect and Developer for a reasonable period of time concerning the exterior design, color treatment and exterior materials to be used in the construction, alteration and reconstruction of all Buildings and structures on its respective Lot(s), and to consider the input of the other Parties with respect thereto prior to selecting the specific materials and colors for its exterior improvements. Each Party agrees to cause its respective architect to work in good faith with the Project Architect and Developer so that the Buildings and other improvements to be erected and constructed on such Party's Lot(s) will have an overall cohesive and related architectural continuity and will be in harmony with the Design Criteria. Written approval of the plans and specifications by Developer shall be

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conclusive as to each Party's compliance with this Section. The Parties, in the performance of their construction, shall not (i) cause any unnecessary or unreasonable increase in the cost of construction of the other Lots, (ii) unreasonably interfere with any other construction being performed on the other Lots; or (iii) unreasonably impair the use, occupancy or enjoyment of the Lots or any part thereof as permitted or contemplated by this Agreement, or (iv) change the proposed finished floor elevations or other conditions (excluding truck docks) of the Building(s) to be erected and constructed on the Lots from that detailed on the Developer's grading plans without the express written approval of Developer, which consent may be arbitrarily withheld if such change would negatively impact any other Lot(s).

4.2. Location. No Building shall be constructed on the Lots (as either immediate development or future expansion) within the No Build Areas without the prior written consent of Developer, which consent may be arbitrarily withheld by Developer in its sole discretion.

4.3. Development of the Lots. In addition to any other restrictions herein provided and the Rules and Regulations, the specified Lots shall be developed only under the following guidelines:

4.3.1. Creation, Consolidation and Reconfiguration of Lots. Developer shall have the right, in its sole discretion, without joinder of any other Party or party, to create additional Lots within and/or consolidate and/or reconfigure 1 or more of the Lot(s) owned by Developer from time to time during the Term of this Agreement, provided that such creation, consolidation and/or reconfiguration of such Lot(s) does not: (i) materially reduce access to any Lot(s) adjacent to the Lot(s) being created, consolidated and/or reconfigured, either from adjacent public streets or access roads within the Common Areas of the Shopping Center, (ii) affect the perimeter boundaries of any Lot not owned by Developer, or (iii) prevent or materially obstruct the flow of vehicular traffic between the Lot(s) being created, consolidated and/or reconfigured and any Lot(s) adjacent thereto. Developer's Lot(s), as the same may be created, consolidated and/or reconfigured as provided herein, shall otherwise be subject to all of the terms and provisions of this Agreement.

4.3.2. Buildings on Lots, exclusive of Lot 1. Without the prior written consent of Developer, which consent may be arbitrarily withheld by Developer in its sole and absolute discretion, no Building constructed on the Lots, exclusive of Lot 1, as depicted on **Exhibit B** attached hereto, shall exceed **twenty-eight feet (28')** in height, as measured from the Finished Floor Elevation of any Building constructed on such Lot, excluding Roof Extensions and/or Architectural Features, which Roof Extensions and/or Architectural Features (i) shall not exceed an additional four (4') feet in height from such rooftop (for a total maximum height, including Roof Extensions and Architectural Features of **thirty-two feet (32')**), and (ii) shall not exceed thirty-three percent (33%) of such Building's total, aggregate exposed wall area. Additionally, all Buildings on the Lots, exclusive of Lot 1, shall be single one story structures unless otherwise approved by Developer, which consent may be arbitrarily withheld by Developer

in its sole and absolute discretion. The Floor Area of any Buildings to be constructed on any of the Lots shall be subject to the review and approval by Developer in its sole discretion, without joinder of any other party. The term **"Floor Area"** for the purpose of determining the permissible number of square feet of Building improvements which may be constructed on a Lot shall be equal to the actual number of square feet of area on the first floor of any Building or structure on such Lot intended for the exclusive use of the occupant thereof and lying within the exterior faces of the exterior walls thereof (except party walls, as to which the center line, not the exterior faces, shall be used), whether or not such space is occupied. The determination of the Floor Area of the Buildings located on a Lot for purposes of the foregoing calculation shall be made by Developer.

4.3.3. Required Minimum Parking. Unless otherwise approved by Developer, which approval shall be in Developer's sole and absolute discretion without the joinder of any other Party or party, the required minimum parking ratio for each Lot in the Shopping Center (in the aggregate) shall not be less than: (i) 4.5 parking spaces for each one thousand (1,000) square feet of Floor Area constructed on such Lot, or (ii) the number of parking spaces required pursuant to applicable laws, codes and ordinances (without variance), which parking spaces shall be of a size and nature in compliance with all governmental requirements.

4.3.4. Screening. Any rooftop equipment shall be screened from public view from adjacent public streets and highways and in a manner satisfactory to the Developer. Any trash facility shall be screened from public view from adjacent public streets and highways on all four sides in a manner satisfactory to the Developer.

4.3.5. Signs. All signs shall be in compliance with the signage criteria set forth in the Design Criteria, and in all events shall comply with any and all governmental requirements and zoning and other ordinances. Notwithstanding the foregoing, no exterior identification signs attached to any Building in the Shopping Center shall be (i) flashing, moving or audible signs, or (ii) signs employing exposed neon tubes, exposed ballast boxes or exposed transformers.

4.4. General. Any activity within the Common Area, other than its intended purpose which is to provide for ingress, egress and parking for the customers, invitees, and employees of those businesses conducted within the Shopping Center and for the servicing and supplying of such businesses, shall be permitted only so long as such activity shall not unreasonably interfere with such primary purpose. Persons using the Common Area in accordance with this Agreement shall not be charged any fee for such use, except in connection with any "Valet Service" (as defined below). The Parties agree that the Common Area shall be maintained as such and, except as otherwise permitted, shall not be fenced or otherwise obstructed and shall be kept open at all times for the free use thereof as intended. Notwithstanding the foregoing, Developer may operate, and/or may permit any Lot owner to operate, valet parking service ("**Valet Service**") on its and/or their

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respective Lot(s), and the operator of such valet service may charge a reasonable fee in connection therewith. Prior to operating any such valet service with respect to its Lot(s), each Party shall obtain Developer's prior written approval, which may be granted or withheld in Developer's sole and absolute discretion. Additionally, such approval, if granted, shall be subject to such conditions as Developer may reasonably deem appropriate (including, without limitation, restrictions regarding hours of operation of any Valet Service, additional insurance requirements in connection with Valet Service and the parking area that may be utilized in connection with such Valet Service).

4.5. Unimpeded Access Between Lots; Obstructions. The Parties covenant that at all times free access between each Lot and the adjacent contiguous Lots or public rights of way, and the use of the entire Common Area will, in each instance, be non-exclusive, and for the use and benefit of all Permittees, subject to the limitations contained herein. Except as specifically depicted on **Exhibit B** hereto or as may be approved in writing by Developer, no fence, division, partition, rail, or obstruction of any type or kind shall ever be placed, kept, permitted, or maintained between the Lots or between any subsequent division thereof or in or upon or along any of the common property lines of the Lots or the common property line of the Shopping Center, or 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 control, construction, maintenance, and repair of the Common Area.

5. Maintenance and Insurance of the Shopping Center.

5.1. Standard of Maintenance. Subject to the provisions of Section 5.6 and each Lot Owner's obligation to perform the "Lot Owner Maintenance Obligations" (as defined in Section 5.2 below), Developer shall operate, maintain, keep in good repair and replace the Common Areas, in a slightly, safe and good condition comparable to the standards of other high quality retail developments in the greater Papillion, Nebraska metropolitan area and in compliance with governmental laws, rules, regulations, orders and ordinances and the provisions of this Agreement. Such operation, maintenance, repair and replacement shall include, but shall not be limited to, the following:

5.1.1. Maintaining, repairing and replacing as necessary, all sidewalks, driveways, parking areas and other paved surfaces and curbs in a smooth and evenly covered condition, including, without limitation, replacement of base, fill, surface, sealing and striping and remove snow and ice from walkways, access ways and parking areas;

5.1.2. Periodic removal of all papers, debris, refuse, dust and other substances, including vacuuming and broom sweeping to the extent necessary to keep the Common Area in a clean and orderly condition. All sweeping shall be at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Area by Permittees;

5.1.3. Maintaining, cleaning, painting, repairing and replacing as necessary, all signage identifying the shopping located on the Lots and other signage which is for the common benefit of all Parties, including directional, traffic control or

handicapped parking signs. Notwithstanding the foregoing, Developer shall not be required to replace or repair directional signage or any other signage with respect to the operation of a Party's business on the Lots;

5.1.4. Maintaining, cleaning, painting and replacing Common Area lighting facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers;

5.1.5. Maintaining and replacing all plantings, trees and shrubs in an attractive and thriving condition, trimmed and weed free; maintaining, painting and replacing landscape planters; and maintaining, repairing and replacing sprinkler and irrigation system(s);

5.1.6. Keeping the Common Area free from any obstructions, including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this Agreement;

5.1.7. Providing separately metered utilities for the Common Area;

5.1.8. Obtaining insurance which protects Developer and the Common Area against such risks (including commercial general liability insurance, all-risk or special form casualty insurance or equivalent coverages) and in such amounts as set forth in **Section 6** hereof;

5.1.9. Maintaining any Storm Basins servicing the Shopping Center or any portion thereof, and

5.1.10. Satisfying any off site maintenance and repair obligations or obligations to contribute toward the maintenance costs to which the Lots may be subject.

5.2. Responsibility of Lot Owner. Notwithstanding anything to the contrary in this Agreement, each Party shall, at such Party's sole cost and expense, maintain, repair and replace (as necessary) in a clean, sightly and safe condition and in compliance with governmental laws, rules, regulations, orders and ordinances and the provisions of this Agreement, the following Common Areas and improvements on such Lot Owner's Lot: (a) any exterior shopping/receiving dock area, (b) any truck ramp or parking area, (c) any "**recycling center**" (i.e., a recycling center for the collection of items intended for recycling, such as but not limited to newspapers, bottles and aluminum cans) approved by Developer in writing and located on its Lot, (d) any refuse, compactor or dumpster area located on its Lot, (e) any sidewalks or landscaping located within the area between the curb surrounding the Building on such Lot and the exterior of the Building located on such Lot (including the inside and outside of all glass in the doors and windows of its Building), and (f) any monument or ground sign structure(s) for the benefit of such Party located on its Lot. The obligations set forth in clauses (a) through (f) above, inclusive, are herein sometimes collectively referred to as the "**Lot Owner Maintenance Obligations.**"

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5.3. Self-Help Maintenance. If any Party (hereinafter the "**Determining Party**") considers reasonably necessary any repairs, maintenance, renewals or replacements required by the provisions of this Section to be made or provided by a defaulting Party, said Determining Party may request in writing that the defaulting Party make such repairs or perform such maintenance or provide such renewal or replacements, and, in the event such defaulting Party fails or refuses to do so within thirty (30) days from the date of such written request (plus such additional reasonable time as is necessary if the defaulting Party is exercising due diligence), the Determining Party shall have the right (but shall not be obligated), either itself or through a third-party contractor, to make such repair, perform such maintenance or, provide such renewal or replacement, thereupon, the defaulting Party shall, at the Determining Party's election, on demand pay (or reimburse the Determining Party for) the reasonable costs thereby incurred by the Determining Party; and in addition, if not paid within thirty (30) days of such demand, the defaulting Party shall pay upon demand, interest at the annual rate of the prime rate plus two percent (2%).

5.4. Common Area Maintenance Expenses. "**Common Area Maintenance Expenses**" shall mean all of the costs and expenses of every nature and kind as may be actually paid in operating, managing, equipping, lighting, repairing, insuring, decorating, replacing and maintaining the Common Area and in providing such security and other protection of the Common Area as Developer reasonably deems necessary. "Common Area Maintenance Expenses" shall include, but shall not be limited to, general maintenance and repairs; resurfacing, striping, snow and ice removal and cleaning the Common Area; maintenance, replacement and repair of landscaping and irrigation systems (including, without limitation, water features, fountains and similar decorative improvements in the Common Areas); purchase, installation, repair, removal and replacement of holiday decorations and seasonal displays; maintenance, replacement and repair of shopping center signs, directional signs, lighting and lighting systems; maintenance and repair of fire protection systems located in the Common Area, storm drainage and sanitary sewer systems (on-site and off-site), trash disposal or other utility systems; the cost of water service, electricity and other utility costs incurred in connection with the Common Area; the costs incurred for Real Estate Taxes and to maintain the Storm Basin(s), if any, the wages and related payroll costs of on site personnel employed by Developer to implement services furnished by Developer; premiums for public liability and property insurance maintained in connection with the Common Area; fees for required licenses and permits; supplies; rental of equipment; management fees under any management contract entered into by Developer relating to the maintenance, operation, repair and replacement of the Common Area not to exceed ten percent (10%) of Common Area Maintenance Expenses exclusive of Real Estate Taxes and insurance (or in lieu thereof, Developer shall be permitted to charge an administrative fee computed by multiplying the Common Area Maintenance Expenses (exclusive of Real Estate Taxes and insurance) by ten percent (10%) if Developer performs such duties); and the expenses of collecting Common Area Maintenance Expenses from the Parties.

5.5. Assessment for Costs of Developer Maintenance of Common Areas. During each calendar year (or partial calendar year, as applicable), each Party, and its respective successors and assigns, (other than Developer as to any Developer owned Lots), shall pay to Developer an assessment (hereinafter, the "**Lot Assessment**") toward the Common Area Maintenance Expenses for such calendar year. The specific obligations to

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be performed by Developer with respect to the Common Areas on each Lot, and the amount of the Lot Assessment applicable to such Lot, may be agreed to in a separate written agreement between Developer and the Owner of such Lot (without the joinder or approval of any other Party) (each such agreement, if entered into, is herein referred to as a **Separate Agreement**). In the absence of a Separate Agreement, each Lot owner shall pay as its Lot Assessment a proportionate share of the Common Area Maintenance Expense during each calendar year equal to the product obtained by multiplying: (i) the total Common Area Maintenance Expenses for such calendar year, by (ii) a fraction, the numerator of which is the number of square feet of land area in such Owner's Lot, and the denominator of which is the total number of square feet of land area in the Shopping Center (exclusive of the number of square feet of land area in any off-site detention area owned by Developer and any Lot that is separately maintained by the Owner thereof at such Owner's cost). Such Lot Assessment shall be appropriately pro rated (on a per diem basis) during any partial calendar year during which a Party owns a Lot or Lots. Nothing contained in this Agreement shall preclude a Party from entering into an agreement with its Permittee(s) that obligates such Permittee(s) to pay a greater or lesser amount towards Common Area Maintenance Expenses than would otherwise be required hereunder or pursuant to any Separate Agreement. During each calendar year, each Party shall pay its respective Lot Assessment in equal monthly installments, in advance, on the first day of each calendar month, based on Developer's estimated Common Area Maintenance Expenses for such calendar year. In the event Developer and any Party have not entered into a Separate Agreement, within 90 days after the end of each calendar year, Developer shall furnish such Party with a statement setting forth in reasonable detail the actual Common Area Operating Expenses and the Administrative Fee for the preceding calendar year and showing the calculation of such Party's Lot Assessment and the Administrative Fee for such calendar year. If the total monthly estimated payments made by such Party during such calendar year exceed the amount which is actually due from such Party, the excess shall be credited against the next succeeding monthly estimated payments of such Party's Lot Assessment. If the total estimated payments made by such Party during such calendar year are less than the actual amount due hereunder, such Party shall pay Developer the amount of such deficiency within 30 days after demand therefor by Developer. Developer shall keep full and complete books and records of the Common Area Maintenance Expenses and each Party shall have the right upon reasonable notice to examine and inspect such books and records for the purpose of verifying the accuracy of such Party's Lot Assessment. If the Lot Assessment is found to be inaccurate, then there shall be an appropriate adjustment and payment by such Party and Developer.

In the event a Party does not pay Developer all or any portion of such Party's Lot Assessment pursuant to the foregoing provisions, such unpaid portion of such Party's Lot Assessment shall constitute a lien against the defaulting Party's Lot (each Party hereby agreeing that the total amount of any unpaid Lot Assessment may be assessed as a lien against such Party's Lot, irrespective of the items for which payment is sought pursuant to such lien). Such lien shall attach and take effect only upon recordation of a claim of lien in the office of the recorder of the county of the State in which the Shopping Center is located by the Party making such claim. The claim of lien shall include the following:

5.5.1. The name of the lien claimant;

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5.5.2. A statement concerning the basis for the claim of lien and identifying the lien claimant as a Non-Defaulting Party;

5.5.3. An identification of the owner or reputed owner of the Lot or interest therein against which the lien is claimed;

5.5.4. A description of the Lot against which the lien is claimed;

5.5.5. A description of the work performed which has given rise to the claim of lien and a statement itemizing the amount thereof; and

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

5.6. Developer Assignment/Termination of Maintenance Obligations.

Developer shall have the right, from time to time, to select another person or persons, subcontractors and others, to maintain the Common Area. If Developer selects another person to maintain the Common Areas, Developer shall notify the Parties at least thirty (30) days in advance of the commencement of maintenance by such person. Developer may hire companies affiliated with it to perform the maintenance and operation of the Common Area, but only if the rates charged by such companies are competitive with those of other companies furnishing similar services in the metropolitan area in and around the Lots. Developer shall be permitted to resign its obligations as to maintenance and operation of any or all of the Lots upon thirty (30) days prior written notice (hereinafter the "**Notice of Maintenance Termination**") to all Parties at convenient and necessary times. If any period of time exists when Developer no longer has operating and maintenance responsibilities with regard to all or any portion of the Lots, each Party shall have the obligation to maintain each Party's Lot in the manner detailed in Section 5 and otherwise consistent with the provisions of this Agreement. In the event that Developer provides the Notice of Maintenance Termination, thereafter, if Developer or any other Party considers reasonably necessary any repairs, maintenance, renewals or replacements required by the provisions of Section 5.2 to be made or provided as to a specific Lot, Developer or any other Party may request in writing that the offending Party make such repairs or perform such maintenance or provide such renewal or replacements, and, upon the offending Party's failure or refusal to do so within thirty (30) days from the date of such written request (plus such additional reasonable time as is necessary if the offending Party is exercising due diligence), Developer or any other Party shall have the right (but shall not be obligated), either itself or through a third-party contractor, to make such repair, perform such maintenance or provide such renewal or replacement; thereupon, the offending Party, at Developer's or any other Party's election, on demand, shall pay or reimburse Developer or

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such other Party for the reasonable cost thereby incurred by Developer or such other Party, and in addition, if not paid within thirty (30) days of such demand, the offending Party shall pay Developer or such other Party, upon demand, interest at the prime rate plus two percent (2%).

5.7. Subordination of Lien to Mortgagee. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust existing on the Developer Property as of the date of recording of this Agreement or which is hereafter given as collateral for the acquisition of or improvement of a Lot or Lots. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien or the personal liability of the transferor for then existing dues or assessments.

6. Insurance; Mutual Release and Waiver of Subrogation.

6.1. Insurance. Each Party, at its respective sole cost and expense, shall obtain and keep in force throughout the term of this Agreement, the following insurance with an insurance company authorized to do business in the State and which has a general policy rating of A- or better and a financial class of VII or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company is no longer available, a similar rating from a similar or successor service):

6.1.1. "Special Form Causes of Loss" Property Insurance. Property insurance using ISO forms CP0010 and CP1030 (or their equivalent) and including equipment breakdown covering all of each respective Party's plate glass, real and personal property, trade fixtures, and improvements located in, on or about such Party's respective Lot(s) (i.e., including, without limitation, all furniture, fixtures, equipment, merchandise and any other personal property located in the property) which were made and/or paid for by each respective Party, in an amount equal to the full replacement cost thereof.

6.1.2. Commercial General Liability Insurance. Commercial general liability insurance to protect against claims for bodily injury and property damage arising out of premises operations, products, and completed operations, and advertising and personal injury liability, including Dram Shop or host liquor liability (if alcoholic beverages are sold or served in, from or about each Party's respective Lot(s)), written on an occurrence basis using ISO Form CG0001 or its equivalent with no amendments to the definition of an insured contract, in limits of not less than \$1,000,000.00 inclusive per occurrence and \$1,000,000.00 annual aggregate.

6.1.3. Umbrella Liability Insurance. Umbrella liability insurance over the primary general liability and employer's liability insurance policies in limits of not less than \$5,000,000.00 inclusive per occurrence and \$5,000,000.00 annual aggregate.

6.2. Policies of Insurance - Parties. The Parties shall have the right to satisfy the insurance required by this Section by means of blanket insurance policy(ies), provided that no other loss which may also be insured by such blanket insurance shall affect the insurance coverages required hereby and further provided that such Party delivers to the other Party(ies), upon request, a certificate or certificates specifically stating that such

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coverages apply to the other Party(ies) and the Shopping Center (or such Party's Lot(s), as applicable). All policies of insurance or certificates thereof shall name the other Party(ies), its/their property manager(s), if applicable, and each Party's mortgagees, as additional insureds, as their respective interests may appear. All self-insured retentions and deductibles maintained by any Party shall be subject to Developer's approval. Any and all deductibles or coinsurance in the above described policies or inadequacy of limits for coverage shall be assumed by, for the account of, and at each Party's own risk. Upon request, each Party shall deliver to the other Party(ies) certificates evidencing the required insurance by the beginning of the term under the Agreement and, with respect to renewals of such policies, not later than 30 days prior to the end of the expiring term. All policies of insurance carried by each Party shall be primary and non-contributing in the event of any loss or damage with any insurance required to be maintained by the other Party(ies) under this Agreement. All policies and certificates shall require the insurer to notify the other Party(ies) and any mortgagee of the other Party(ies), in writing, not less than 30 days before any lapse, non-renewal or cancellation, including cancellation for nonpayment of premium, or other termination thereof and shall include a clause or endorsement denying the insurer any rights or subrogation against the other Party. Each Party reserves the right to request or receive for review certified copies of any and all insurance policies to which this Agreement is applicable. The required coverage and/or limits referred to herein shall in no way effect or limit each Party's liability with respect to its duties and obligations under this Agreement.

6.3. Mutual Release and Waiver of Subrogation. Anything in this Agreement to the contrary notwithstanding, each Party hereby releases the other Party(ies) from any liability, right of recovery, claim, action or cause of action the other Party(ies) may have on account of loss, cost, damage or expense which arises from any peril **(a)** that is or would be covered by any policy of property insurance required to be carried by the releasing Party under this Agreement (regardless of whether such insurance is actually being carried), or **(b)** that is covered by any other property insurance actually being carried by the releasing Party at the time of such accident or occurrence, regardless of the negligence of the Party(ies) being released or its agents, contractors, officers or employees, and waives any right of subrogation which might otherwise exist in or accrue to any person on account thereof, including that of the insurance carriers of the other Party. For purposes of the foregoing release and waiver of subrogation, the insurance policies identified in clauses (a) and (b) above shall be deemed to provide coverage without any deductible, self-insurance or similar amount. Each Party shall give their respective insurance carriers written notice of the terms of the above mutual waivers and the Parties' respective insurance policies shall be properly endorsed, if necessary, to prevent the invalidation of said policies by reason of such waivers.

6.4. Construction-Related Insurance. Prior to constructing any Building(s) or other improvements on its Lot(s), each Party shall comply with the following terms:

6.4.1 Architect/Engineer. Each Party shall cause all architects and engineers engaged by such Party (each a **"Professional"**) to obtain and keep in force, with an insurance company authorized to do business in the State and which has a general policy rating of A- or better and a financial class of VII or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company is no longer available, a comparable rating from a similar or successor service), a policy of professional

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liability insurance covering all liability arising out of any negligent acts or errors and omissions committed by such Professional with limits of not less than \$1,000,000.00 per claim and annual aggregate, with a retroactive date prior to the contract date. Each Professional shall maintain such policy for a minimum of 2 years after completion of work or shall obtain a 2 year extended reporting period if the policy is canceled or non-renewed.

6.4.2 Contractor. On or before entry onto any Party's Lot(s), such Party shall cause its contractor (each a "**Contractor**") to obtain and to keep in force, with an insurance company authorized to do business in the State and which has a general policy rating of A- or better and a financial class of VII or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company is no longer available, a comparable rating from a similar or successor service), until construction of the Building and related improvements are completed, the following insurance:

A. Commercial General Liability Insurance. Commercial general liability insurance to protect against claims for bodily injury and property damage arising out of premises operations, products, and completed operations, and advertising and personal injury liability, written on an occurrence basis using ISO Form CG0001 (or its equivalent) with no amendments to the definition of an insured contract, in limits of not less than \$1,000,000.00 inclusive, per occurrence, and \$1,000,000.00 annual aggregate per project, or such higher limits as Developer may require from time to time during the term of this Agreement. Completed Operations to remain in force for at least 2 years following project completion. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Developer, Developer's property manager, and all mortgagees of Developer;

B. Commercial Automobile Liability Insurance. Commercial automobile liability insurance to include contractual liability insurance for the indemnities set forth in this contract covering all owned, non-owned and hired automobiles, in limits of not less than \$1,000,000.00 combined single limit (each accident), or such higher limits as Developer may require from time to time during the term of this Agreement. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Developer, Developer's property manager, and all mortgagees of Developer;

C. Employer's Liability Insurance and Workers Compensation. Employer's Liability insurance, with minimum limits of not less than \$500,000 bodily injury each accident, \$500,000.00 bodily injury by disease policy limit and \$500,000.00 bodily injury by disease each employee, and Worker's Compensation, in form and amount as required by applicable state law. To the extent permitted by applicable law, such policy shall include a waiver of any right of subrogation of the insurers thereunder against the Developer, Developer's property manager, and all mortgagees of Developer;

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D. Umbrella Liability Insurance. Umbrella liability insurance over the primary general liability, automobile liability and employer's liability insurance policies in limits of not less than \$5,000,000.00 inclusive per occurrence, and \$5,000,000.00 annual aggregate, per project, or such higher limits as Developer may require from time to time during the term of this Agreement. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Developer, Developer's property manager, and all mortgagees of Developer;

E. Builder's Risk Insurance. Builder's Risk insurance on a "Special Form" basis (including collapse) using a completed value (non-reporting) form for full replacement cost covering all work incorporated in the Shopping Center and all materials and equipment in or about the Lot and/or Building, off site and in transit. This insurance shall include: (i) interests of the Party, Developer, Developer's property manager, all mortgagees of Developer, such Party's contractor, subcontractors and sub-subcontractors; and (ii) To the extent permitted by applicable law, a mutual release and waiver of subrogation for all parties; and

F. Insurance Changes. Developer may require, from time to time, changes or endorsements to each Party's Contractor insurance required herein.

6.5. Policies of Insurance - Contractors. Each Party's Contractor shall have the right to satisfy the insurance required by this Section by means of blanket insurance policy(ies), provided that no other loss which may also be insured by the blanket insurance shall affect the insurance coverages required hereunder and further provided that such Party's Contractor delivers to Developer a certificate specifically stating that such coverages apply to Developer, Developer's property manager, all mortgagees of Developer, the Lot, the Building, and the Shopping Center. All policies of insurance or certificates thereof, except with respect to workers compensation or professional liability, shall name the Party (i.e., Lot Owner), Developer, Developer's property manager, and all mortgagees of Developer, as additional insureds, as their respective interests may appear, including products and completed operations. All self-insured retentions and deductible amounts shall be subject to Developer's prior written approval. Any and all deductibles or coinsurance in the above-described policies or inadequacy of limits for coverage shall be assumed by, for the account of, and at each Party's Contractor's sole risk. Each Party's Contractor shall deliver to Developer certificates evidencing the required insurance prior to Contractor's entry on the Shopping Center, Lot, or Building, and with respect to renewals of such policies, not later than 30 days prior to the end of the expiring term. All policies of insurance carried by each Party's Contractor shall be primary and non-contributing in the event of any loss or damage with any insurance required to be maintained by any other Party's Contractor under the terms of this Agreement. All policies and certificates shall notify each Party named as an additional insured, Developer and any mortgagee of Developer, in writing, not less than 30 days before any lapse, non-renewal or cancellation, including cancellation for nonpayment of premium, or other termination thereof and shall include a clause or endorsement denying the insurer any rights or subrogation against such Party and Developer, Developer's property

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manager, and all mortgagees of Developer. Developer reserves the right to request and receive for review certified copies of any and all insurance policies to which this Agreement is applicable. The required coverage and or limits referred to and set forth herein shall in no way affect or limit the each Party's Contractor's liability with respect to its performance.

7. Taxes. To the fullest extent possible, real estate taxes and general and special assessments (collectively, "**Real Property Taxes**") levied and assessed against any Lot shall be separately assessed by the taxing authority and paid by the Party. Each Party, during its period of ownership, shall pay or cause to be paid on or before the date such taxes become delinquent, all such taxes levied and assessed on its Lot and any improvements thereon. Such Real Property Taxes may be paid in installments where installments are permitted by the taxing authorities. In addition to Real Property Taxes, each Party 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 Lot(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 Party other than Developer are assessed with property of Developer, such assessment shall be equitably divided between Developer and such other Party by Developer, after consultation with such other Party.

8. Employee Parking. The Parties shall use reasonable efforts to cause Permittees of the Lots to have their respective employees' park only in the permitted employee parking areas for such Permittee.

9. Damage or Destruction. In the event of damage or destruction of any improvements erected or placed on any Lot, whether by fire or other casualty, the Parties agree to take 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 take such action as is necessary to return its property and Lot to a visually acceptable, neat, safe condition. If a Party fails to remove all such debris or take such action as is necessary to place the property in a safe condition within seventy-two (72) hours following such damage or destruction, or if such debris cannot be removed or property returned to a safe condition within such 72-hour period, to commence such removal or commence such other action as necessary to return the property to a safe condition within such 72-hour period and diligently pursue same until completion, Developer shall have the right (but no obligation) to do so, whereupon such Party shall be liable to pay Developer upon demand, the reasonable cost and expense incurred by Developer, including interest at the prime rate plus two percent (2%) and a reasonable management fee not to exceed ten (10%) percent. Although no transfer of ownership shall be deemed to have occurred as a result of such Party's election not to restore any building or improvement located on its Lot, said unrestored 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 recoverable from the Party and, if not paid within thirty (30) days of such demand, such Party shall pay Developer, interest at the annual rate of the prime rate plus two percent (2%) and an administration fee not to exceed ten percent (10%) of such costs (exclusive of taxes and insurance) until such time as said Party 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 Party to enter onto such unrestored area in connection with the maintenance thereof in accordance with this Agreement.

5

10. Indemnification.

10.1. Construction. Each Party ("**Indemnitor**") covenants and agrees to indemnify, defend, and hold harmless Developer and the other Parties ("**Indemnitees**") 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 its construction activities or construction operations on a Lot. Any Party who is asked to "**defend**" Developer or another Party shall have the right to select defense counsel and such selected counsel shall be acceptable to Developer or such other Party, such approval not to be unreasonably withheld, conditioned or delayed. In the event the indemnified Party desires to select its own counsel, it shall be at the indemnified Party'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 10.1 shall not apply to any claims brought separately against the indemnified Party for a separate act or omission. The Parties (each, a "**Constructing Owner**") shall pay all reasonable costs and expenses incurred by any other Party due to damage to the other Lot arising from or related to such Constructing Owner's construction operations at such Constructing Owner's Lot. No Constructing Owner shall materially obstruct the free flow of pedestrian or vehicular traffic upon and across any other Lot during any period of construction at such Lot or at any time thereafter. During such period of construction, such Constructing Owner shall cause the driveways and roads to be maintained free of all materials and supplies arising out of or resulting from such Constructing Owner's construction and otherwise in a neat and orderly condition undisturbed from such Constructing Owner's construction operations. Any vehicle or equipment used in such construction or any materials used in such construction shall be parked or stored only on an area within such Constructing Owner's Lot. Each Constructing Owner shall defend, indemnify and hold harmless each other Party and its tenants and occupants from and against any and all loss, cost, damage, liability, claim or expense (including, without limitation, reasonable attorneys' fees and costs) arising from or relating to such Constructing Owner's construction operations. All construction operations at such Constructing Owner's Lot shall be performed in a lien-free and good and workmanlike manner, in accordance with all laws, rules, regulations and requirements and any rules and regulations promulgated by Developer with regard to such Party's construction. Each Constructing Owner and its tenants and their respective contractors and subcontractors shall be solely responsible for the transportation, safekeeping and storage of materials and equipment used in connection with such Constructing Owner's construction operations, and for the removal of waste and debris resulting therefrom. In the event any Constructing Owner's construction operations damage the condition of any portion of the Shopping Center, such Constructing Owner shall restore the Shopping Center, or part thereof, to its condition existing prior to commencement of such Constructing Owner's construction operations, including, without limitation, any filling and compacting of all excavations, repaving of paved areas and replacement of landscaping. No such construction operations shall result in a labor dispute or encourage labor disharmony.

10.1.1. Liens. No Constructing Owner shall permit or suffer any mechanic's liens claims to be filed or otherwise asserted against any other Lot in connection with such Constructing Owner's construction operations, and shall promptly discharge the same in case of the filing of any claims for liens or proceedings

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for the enforcement thereof, or in the event such Constructing Owner in good faith desires to contest the validity or amount of any mechanic's lien, such Constructing Owner shall have the right to contest the validity or amount of any such mechanic's lien, provided that such Constructing Owner either (a) bonds over any such mechanic's lien, or (b) deposits with the owner of the Lot affected by such mechanic's lien cash or a letter of credit or other security reasonably acceptable to such affected Party in an amount equal to one hundred fifty percent (150%) of the amount of said lien to insure payment and prevent any sale or forfeiture of any part of the affected Lot by reason of nonpayment; and such Constructing Owner promptly notifies such affected Party, in writing, of such contest. Any such contest shall be prosecuted with due diligence and such Constructing Owner shall promptly after the final determination thereof pay the amount of any such lien, together with all interest and other costs payable in connection therewith. Any such letter of credit deposited hereunder shall be issued by a national bank reasonably acceptable to such affected Party.

10.2. Liability Coverage.

10.2.1. Indemnity. Each Party hereby agrees to indemnify, defend and hold harmless Developer and all other Parties from and against all claims and all costs, expenses, damages and liabilities (including reasonable attorneys' fees) 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 natural person or to the property of any person as may occur on or off such Lot by reason of an occurrence or condition on such Lot or the improvements which may be constructed thereon; or (ii) a negligent act or omission of such Party, its agents, servants, employees or contractors; excepting however, in each case referred to in (i) and (ii) above, to the extent any claims, death, accidents, injuries, loss or damages arises or results from the negligent act or omission of the Party, whichever is seeking indemnification, or their agents, servants, employees or contractors. Any Party who is asked to "**defend**" Developer or another Party shall have the right to select defense counsel. In the event the indemnified Party desires to select its own counsel such selection shall be in accordance with the terms of Section 10.1. Any indemnity under the provisions of this Section 10.2 shall not apply to any claims brought separately against the indemnified Party for a separate act or omission.

10.2.2. Waiver of Subrogation. Each Party hereby waives (the "**Waiving Party**") any rights the Waiving Party may have against the Developer or other Parties (including but not limited to a direct action for damages) on account of any loss or damage suffered by the Waiving Party (whether or not such loss or damage is caused by the fault, negligence or other tortious conduct, acts or omissions of the Developer or other Parties or their respective officers, directors, employees, agents, contractors or invitees), to their respective property, respective Lots 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

4

the Parties, respectively, under this Agreement. The Parties hereto each, on behalf of their respective insurance companies insuring the property of such Parties against any such loss, waive any right of subrogation that such Parties or the respective insurers may have against the other 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. If necessary to prevent the invalidation of such insurance coverage by reason of said waivers, each Party agrees to give each such insurance company written notification of the terms of the mutual waivers contained in this Section and to have said insurance policies properly endorsed. The foregoing waiver shall be effective whether or not the Parties maintain the required insurance or given written notice of the waivers contained herein to their insurance companies.

11. Prohibited Uses. All Lots in the Shopping Center shall be used only for uses that are consistent with this Agreement and consistent with and complimentary to the uses of the other Permittees in the Shopping Center, and for such other uses as are typically found in similar first class shopping centers in the Papillion, Nebraska metropolitan area. Without limiting the foregoing, the Parties shall limit the uses conducted on their respective Lots to restaurant and food service establishments, dry cleaners, banks, video rental stores, theaters, "Offices" (as defined below) and retail uses typically found in similar first class shopping centers in the Papillion, Nebraska metropolitan area. For the purposes of this Section, the term "Offices" shall mean businesses providing services commonly found in similar first class shopping centers in the Papillion, Nebraska metropolitan area (including, by way of example only, and not by way of limitation, the following: financial services, real estate brokerage, insurance agency, bank, travel agency, medical, dental or legal services or general office use), provided that not more than a total of ten percent (10%) of the gross leasable area of the ground floor of all Buildings within the Shopping Center, in the aggregate, may be devoted to such Office uses, except with Developer's prior consent (which may be given or withheld in Developer's sole and absolute discretion). In addition to all other uses not prohibited hereunder, all Floor Area above the ground floor may be used entirely for Office purposes, at Developer's sole and absolute discretion (i.e., without the joinder or approval any other Party or party).

11.1. All Lots. Notwithstanding the foregoing set forth above in this Section, none of the following uses or operations shall be conducted or permitted on or with respect to all or any part of the Lots (the "**Prohibited Uses**") in the Shopping Center:

11.1.1. Any public or private nuisance.

11.1.2. Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness.

11.1.3. Any use which emits or results in strong, unusual or offensive odors (but not such odors as shall normally emit from restaurants) fumes, dust or vapors, is a public or private nuisance, creates a hazardous condition, or is used, in whole or in part, as or for warehousing or the dumping or disposing of garbage or refuse, other than in enclosed receptacles intended for such purpose.

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11.1.4. Any use which emits excessive quantities 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.

11.1.5. Any use which could result in, or cause, any fire, explosion or other damaging or dangerous hazard, including without limitation the storage, display or sale of explosives or fireworks; PROVIDED, HOWEVER, in no event shall the foregoing prevent any Permittee of a Party from selling firearms, ammunition or other items typically found in a full service sporting goods store; however, a gun range or any similar operation is specifically prohibited.

11.1.6. Any operation primarily used as a storage facility, or for assembling, manufacturing, distillating, refining, smelting, agriculture or mining operations.

11.1.7. Any mobile home or trailer court, auction house, labor camp, junkyard, mortuary, funeral home, stock yard, veterinary hospital or animal raising facility (except that, notwithstanding the foregoing, the provisions of this paragraph shall not prohibit the temporary use of construction trailers as approved by Developer during periods of construction, reconstruction, or maintenance). Notwithstanding the foregoing, the operation of a "PetSmart" or "Petco" (or any similar regional or national pet store) as such stores are operated from time to time (which may include, without limitation, veterinary, grooming and/or boarding services) shall be a permitted use within the Shopping Center.

11.1.8. Any drilling for and/or removal of subsurface substances (such as minerals, oil, etc.).

11.1.9. Any automobile, truck, trailer or recreational vehicle sales, rental, leasing or body and fender repair operation.

11.1.10. Any flea market and/or swap meet or surplus store; PROVIDED HOWEVER, the operation of a consignment shop such as, by way of example only and not of limitation, "**Terri's Consign & Design**" or "**2nd Swing**" (or any similar business) shall not be prohibited hereunder.

11.1.11. Any 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 (i) the 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 "**X-rating**" 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, and (ii) the sale or rental of adult books, magazines or videos as an incidental part of the business of a general

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purpose bookstore or video store such as, by way of example only and not of limitation, Blockbuster, which is normally found in a first class shopping center.

11.1.12. Intentionally deleted.

11.1.13. Any tattoo parlor or any establishment selling drug related paraphernalia or any facility the use of which is unlawful, immoral, obscene, pornographic, or which tends to create or maintain a nuisance or do any act tending to injure the reputation of the Shopping Center.

11.1.14. Intentionally deleted.

11.1.15. Any abortion clinic, blood bank or drug rehabilitation clinic.

11.1.16. Any sales within an Outside Sales Area, unless approved by Developer (in its sole and absolute discretion); provided, however, the foregoing shall not apply to the operation of any patio or outside seating area operated in connection with any restaurant or other use as approved by Developer.

11.1.17. Any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pick up and delivery by the ultimate consumer as the same may be found in a first class shopping center.

11.1.18. Any skating rink.

11.1.19. Intentionally deleted.

11.1.20. Intentionally deleted.

11.1.21. Intentionally deleted.

11.1.22. Any discotheque or dance hall.

11.1.23. Intentionally deleted.

11.1.24. Any carnival, circus or amusement park.

11.1.25. Any banquet hall; auditorium or other place of public assembly.

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

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foregoing further, the foregoing shall not prohibit the sale of lottery tickets by a Permittee incidental to the conduct of its business on such Lot.

11.1.27. No auction, fire or going out of business sales shall be conducted in the Shopping Center.

11.2. Lot 2 (Replat 3) Only. In addition to the Prohibited Uses listed in Section 11.1 above, so long as Walgreens shall be a tenant or owner of Lot 2 (Replat 2), the following additional uses or operations shall not be conducted or permitted on or with respect to all or any part of **Lot 2 (Replat 3)**, exclusively:

11.2.1. Any hotel, motel, or other forms of short-term temporary living quarters, sleeping apartments or lodging rooms.

11.2.2. Any bowling alley, pool or billiard hall; PROVIDED, HOWEVER, the foregoing shall not prohibit or restrict the operation of pool or billiards tables in a manner that is incidental to any occupant's or tenant's primary use.

11.2.3. Any health club, gymnasium, karate center or studio containing more than 3,000 square feet of Floor Area; PROVIDED, HOWEVER, the foregoing shall not prohibit or restrict the operation of any day-spa or beauty salon.

11.2.4. Any video rental store, but excluding a "Blockbuster" or another similar national retailer.

11.2.5. Any amusement or video arcade (defined as any store containing more than five (5) electronic games), but excluding (1) "Gamestop" or another similar national retailer and (2) any such operations that are an ancillary aspect (i.e., not to exceed 100 square feet of space) of a full service, sit down restaurant, or any game parlor or any other facility operated solely for entertainment purposes (such as a "laser tag" or "virtual reality" theme operation).

11.2.6. Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided however, this prohibition shall not be applicable to on-site employee training by a Permittee incidental to the conduct of its business on such Lot or to pet-training in connection with a pet shop or pet supply store.

11.2.7. Any gas or service station or automobile service facility or car-washing establishment; PROVIDED HOWEVER, the foregoing shall not prohibit the operation of any business for the installation, repair and/or servicing of stereo and other electronic equipment, or the like, in automobiles/vehicles, or any business providing "light service" (i.e., fluid changes, tire rotation, tire sales, muffler installation), such as Firestone, Bridgestone Tire, Jiffy Lube, or Valvoline.

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12. Future Subdivision. Notwithstanding anything to the contrary contained in this Agreement, no Party, other than Developer, shall have the right, without Developer's consent, to further subdivide a Lot or add additional land to a Lot or to the Shopping Center. Until such time as an individual Lot is conveyed to a successor Party, Developer, in its sole discretion without joinder of any other party, but subject to the terms of this Agreement, reserves the right to: (i) adjust, make a Lot larger or smaller, (ii) redefine the location of a Lot and the perimeter lot lines of said Lot, (iii) change the configuration of parking, traffic islands and landscaping within said Lots, (iv) add or remove land to or from said Lots, and (v) make such other reasonable changes as shall accommodate the potential users of such Lot 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 Agreement to reflect such change, without approval or joinder of any other party.

13. Hazardous Material. No Party shall keep, store, produce, permit to be kept, stored or produced, on or about such Party's Lot 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 federal, state or local law, regulation, statute or ordinance now or hereinafter enacted. In addition, the Parties agree not to release or discard any Hazardous Materials on said Party's Lot, or any other Lot within the Shopping Center. Notwithstanding the foregoing, Parties 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 Party's business and property or the business of any lessee of an Party, and (iii) chemicals, substances or materials reasonably necessary for the construction or repair of improvements on Party's Lot. Each Party covenants that so long as it is the owner of its respective Lot, at Party's sole cost and expense, it shall promptly comply with all 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 Lot 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 Lot or any improvements thereon, or the use or manner of use of such Lot or improvements. Each Party 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 Lot, the improvements and equipment on the Lot or in the improvements. In addition, each Party, 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 Party, Developer and its agents and representatives shall have reasonable access to the Developer Property 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 Lot(s) or any improvements thereon or made or produced thereon and if Developer or its agents shall in their inspection of the Lot(s), damage the property then they shall restore the property to its prior condition. Each Party, and all occupants of the Lot or any

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improvements thereon claiming under Party, 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 Lot(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 Lot(s) or in any improvement thereon by a Party or an occupant claiming under a Party or otherwise present on the Lot or any improvements thereon. If a Party breaches the obligations stated in this paragraph, or if the presence of Hazardous Material on the Lot or improvements thereon caused or permitted by a Party results in contamination of the Lot and/or improvements, or if contamination of the Lot or improvements by Hazardous Material otherwise occurs for which such Party is legally liable to Developer or any other Party for damage resulting therefrom, then such Party shall indemnify, defend and hold Developer and any other Party 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 Party is the owner of such Lot as a result of such contamination. Any Party who is asked to "**defend**" Developer or another Party shall have the right to select defense counsel. In the event the indemnified party desires to select its own counsel, it shall be at the indemnified party'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 party for a separate act or omission. This indemnification of Developer and all other Parties by each Party 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 Lot. Without limiting the foregoing, if the presence of any Hazardous Material on the Lot caused or permitted by a Party results in any contamination of the Lot and/or improvements thereon, Party shall promptly take all actions at its sole expense as are required by applicable law to return the Lot and/or improvements to the condition existing prior to the introduction of any such Hazardous Material. If a Party does not promptly take such action to return the Lot and/or improvements to its/their prior condition as required, Developer shall have the right, but no obligation, to take such action as required by law to return the Lot and/or improvements to their prior condition, immediately following notice to such Party by Developer of its intent to take such action, and such Party shall reimburse Developer for any costs incurred by Developer in connection therewith upon submission by Developer to said Party of such costs.

14. Default and Remedies.

14.1. Notice and Cure. A default shall occur under this Agreement if any Party (a "**Defaulting Party**") shall fail to perform any of the terms, provisions, covenants or conditions to be performed or complied with by the Defaulting Party pursuant to this Agreement and any such failure (except as to emergencies or as to snow removal) shall remain uncured for a period of thirty (30) days after the other party (the "**Non-Defaulting Party**") shall have served upon the Defaulting Party 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 Party shall commence to cure such default within said thirty (30) day period and shall continuously and diligently cure such

default after commencing such cure; or (ii) a separate notice and remedy provision is specifically provided elsewhere in this Agreement for such default and the Defaulting Party complies with and cures under said provision. Notwithstanding the foregoing, if the failure of the Defaulting Party relates to a matter which is (i) of an emergency nature involving immediate threat of damage or injury to persons or property; (ii) a failure of the Defaulting Party to remove snow from the parking areas; (iii) a blockage or material impairment of the easement rights, and/or (iv) the unauthorized parking of vehicles on any Lot; then (a) the Non-Defaulting Party, at its option, may perform any such term, provision, covenant, or condition, or make any such payment required to cure such default provided that the Non-Defaulting Party provides the Defaulting Party with notice of such failure within 24 hours after the Non-Defaulting Party discovers the same, (b) the Defaulting Party shall promptly reimburse the Non-Defaulting Party for all reasonable expenses and costs incurred together with interest at the prime rate, plus two percent (2%), and (c) the Non-Defaulting Party shall not be liable or responsible for any loss or damage resulting to the Defaulting Party or anyone holding the Defaulting Party on account of such cure.

14.2. Default Interest. Interest shall accrue on sums owed by a Defaulting Party to a Non-Defaulting Party 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 four percent (4%) per annum in excess of the annual rate of interest from time to time announced by the largest federally insured bank in the City (or such other bank as may reasonably be selected by Developer), as its corporate base rate or so called prime rate of interest, or (b) the then maximum lawful rate of interest in the State applicable to the capacity of the Defaulting Party and the nature of the debt. In the event a corporate base rate is not announced, and no maximum lawful rate applies, then the Default Rate shall equal eighteen percent (18%) per annum.

14.3. Additional Remedies. The Non-Defaulting Party may offset any sums due to the Defaulting Party (an "**Offset**") pursuant to this Agreement. Any Offset pursuant to the provisions of this Subsection shall not constitute a default in the payment thereof unless the Non-Defaulting Party taking such offset shall fail to pay the amount of such Offset of the Defaulting Party within thirty (30) days after final adjudication that such Offset is owing to the Defaulting Party and thus was improperly deducted. The right to Offset given in this Subsection is for the sole protection of the Non-Defaulting Party, and its existence shall not release the Defaulting Party from the obligation to perform the terms, provisions, covenants and conditions herein proved to be performed thereby or deprive the Non-Defaulting Party of any legal rights. In addition, in the event of a breach, or attempted or threatened breach, of any terms, provisions, covenants or conditions of this Agreement, the Non-Defaulting Party shall be entitled, in addition to any of the foregoing rights, to full and adequate relief by injunction, damages, and all other available legal and equitable remedies from the consequences of such breach.

14.4. Non-exclusive Right of Entry and Non-exclusive Easements. Each Party hereto hereby grants to the other a non-exclusive right of entry and non-exclusive easements for and during the Term of this Agreement, as herein after defined, in over and under their respective real property (excluding the right to enter any Buildings thereon) for all purposes reasonably necessary, to enable the Non-Defaulting Party (acting directly or through agents, contractors or subcontractors) to perform any of the terms, provisions,

covenants or conditions of this Agreement on the part of the Defaulting Party to be performed.

15. Eminent Domain.

15.1. Owner's Right To Award. Nothing herein shall be construed to give any Party any interest in any award or payment made to another Party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other Party's Lot or giving the public or any government any rights in said Lot. In the event of any exercise of eminent domain or transfer in lieu thereof any part of the Common Area, including the Lots, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the owner thereof, and no claim thereon shall be made by the owners of any other portion of the Common Areas.

15.2. Collateral Claims. All other owners of the Common Area may file collateral claims with the condemning authority for their losses which are separate and improvements taken from another owner.

15.3. Tenant's Claim. Nothing in this paragraph shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.

15.4. Restoration of Common Areas. The owner of any portion of the Common Area so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective Lot as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other owner.

16. Release from Liability. Any person or entity acquiring fee or leasehold title to the Lots, or any portion of the Lots, or any expansion of the Shopping Center, or any portion thereof, shall be bound by this Agreement only as to the Lot or portion of the Lot acquired by such person or entity. In addition, except to the extent expressly stated in this Agreement to the contrary, such person or entity and Developer shall be bound by this Agreement only during the period such person or entity or Developer is the fee or leasehold owner, as to obligations, liabilities, or responsibilities that accrue during said period of ownership. Although persons may be released under this paragraph, the easements, covenants, and restrictions in this Agreement shall continue to be benefits to and servitudes upon said Shopping Center and the Lots running with the land. Notwithstanding the foregoing, no such Party shall be so released until notice of such Transfer has been given in the manner set forth below, at which time the Transferring Party's personal liability for unaccrued obligations shall terminate. A Party transferring all or any portion of its interest in the Shopping Center shall give notice to Developer of such Transfer and shall include therein at least the following information: (i) the name and address of the new Party; and (ii) a copy of the legal description of the portion of the Shopping Center so Transferred. Until notice of such Transfer is given, the Transferring Party shall (for purposes of this Agreement only) be the Transferee's Agent. For the purposes of this Section, "**Transfer**" means a conveyance by way of sale. In the event Developer shall transfer all of its interest in the Developer Property, Developer shall give notice of

such Transfer to all Parties and shall include therein the name and address of the Party designated as "**Developer**".

17. Estoppel Certificate. Each Party and signatory hereto hereby severally covenants that within thirty (30) days following written request of any other Party, it will issue to such other Party, or to any Mortgagee, or any other Person specified by such requesting Party, an estoppel certificate stating: (i) whether the Party or signatory to whom the request has been directed knows of any default under this Agreement, and if there are known defaults, specifying the nature thereof; (ii) whether to its knowledge this Agreement has been assigned, modified or amended in any way (or if it has, then stating the nature thereof); (iii) that to the Party's or signatory's knowledge this Agreement as of that date is in full force and effect. Such statements shall not subject the Party furnishing it to any liability, notwithstanding the negligent or otherwise inadvertent failure of such Party to disclose correct and/or relevant information. However, the Party 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.

18. Rights of Successors. The easements, restrictions, benefits, and obligations hereunder shall create mutual benefits and servitudes running with the land. All transfers or conveyances must be filed of record and a written notice must be forwarded to Developer containing such new owner's notice address and information. A transferee or successor to the interest of Developer shall take subject to Developer's approvals, lease provisions or agreements amending, modifying or adjusting a particular tenant's obligations hereunder, subsequent written agreements or releases of obligations hereunder, individual written agreements with a Party, or other written agreements or written discretionary approvals or consents of Developer permitted by this Agreement. This Agreement shall bind and inure to the benefit of Developer, to include its respective heirs, representatives, lessees, successors, and assigns. The singular number includes the plural, and the masculine gender includes the feminine and neuter.

19. Non Merger. This Agreement shall not be subject to the doctrine of merger.

20. Term/Modification. This Agreement and each term, easement, covenant, restriction and undertaking of this Agreement shall be effective as of the date hereof and will remain in effect for a term (the "**Initial Term**") of ninety (90) years (the "**Expiration Date**"). Notwithstanding the foregoing, this Agreement shall be automatically extended for successive terms of ten (10) years each unless, on or before the expiration of the Initial Term or any subsequent term of ten (10) years, one hundred percent (100%) of the then Parties and the holders of all notes secured by mortgages encumbering any of the Lots, or any part thereof, shall duly execute and file in the office of the Register of Deeds of the County in which the Shopping Center is located, a declaration wherein said owners and noteholders shall agree that said covenants, restrictions, rights and privileges shall be amended, modified or terminated in whole or in part. Except as otherwise provided herein, any amendment or modification to this Agreement shall require the written consent of Developer and the owner(s) of any Lot(s) affected by such amendment or modification. Upon such unanimous consent, said covenants, restrictions, rights and privileges may be so amended, modified or terminated as the Parties may so agree. Any and all references herein to the "**Term**" shall mean the Initial Term and any properly exercised extension thereof.

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21. Rules and Regulations. Developer may establish reasonable rules and regulations applicable to the Common Areas (the "**Rules and Regulations**"). Developer hereby initially adopts the Rules and Regulations in the form of **Exhibit C** attached hereto, and which may be revised from time to time by Developer at its sole reasonable discretion. Developer shall make reasonable efforts to enforce all of such rules and regulations against all Permittees.

22. Name of Shopping Center. Developer shall have the right at any time to change the name of the Shopping Center.

23. Other Tenancies. Subject to the terms of this Agreement, including all exhibits hereto, and subject to all applicable laws, codes and ordinances, Developer reserves the right to affect such tenancies in the Developer Property or upon any Lot owned by Developer as Developer in the exercise of its sole business judgment.

24. Developer Exculpation. It is expressly understood and agreed that notwithstanding anything in this Agreement to the contrary, and notwithstanding any applicable law to the contrary, the liability of Developer hereunder (including any successor Developer hereunder) with respect to monetary damages arising hereunder and any recourse by any Party against Developer with respect to monetary damages arising hereunder shall be limited solely and exclusively to the interest of Developer in and to the Shopping Center and Developer's interest in and to the Lots, and neither Developer, nor any of its constituent partners, subpartners, members, managing members or agents, shall have any personal liability therefor, and each Party, on behalf of itself and all persons claiming by, through or under such Party, hereby expressly waives and releases Developer and such partners, subpartners, members, managing members or agents from any and all personal liability, except for claims caused by the negligence or willful act of Developer.

25. Notices. All notices, approvals, consents, or requests given or made pursuant to this Agreement 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 date following deposit with such courier and certified or registered mail shall be deemed delivered three (3) business days after deposit with the U.S. Mail, as applicable.

Notices to Developer:

c/o RED Papillion Settler's Creek, LLC
6263 N. Scottsdale Road, Suite 330
Scottsdale, AZ 85250
Attention: Director of Legal/Leasing
Facsimile: (480) 947-7997

With copy to:

c/o RED Papillion Settler's Creek, LLC
4717 Central
Kansas City, MO 64112
Attention: General Counsel
Facsimile: (816) 777-3501

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and with a copy to:

Richard B. Katz, Esq.
The Katz Law Firm
435 Nichols Road, Second Floor
Kansas City, MO 64112
Facsimile: (816) 714-1047

Such addresses may be changed from time to time by either Party hereto by serving notice as herein provided. Notwithstanding anything to the contrary herein, any Party may give another Party notice of the exercise of any option herein granted or for the need for emergency repairs via facsimile with confirmation of receipt and deposit of the original notice in the U.S. Mail. The Parties hereto agree that if, at the time of the sending of any notice required or permitted to be given hereunder, the interests of any Party hereto in its respective property shall be encumbered by a first mortgage and the other Party hereto 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 registered or certified mail at the address so given.

26. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

27. Entire Agreement. This Agreement and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Agreement and Exhibits hereto. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any Party. This Agreement once executed and delivered, shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document. The following exhibits are attached hereto and incorporated herein by reference:

28. Governing Law. These covenants and restrictions shall be governed by and construed by the laws of the State.

29. Severability. If any provision of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable under applicable law, the remainder of this Agreement, or the application of such provision to other persons or circumstances, shall not be affected thereby, and each provision of these covenants and restrictions shall be valid and enforceable to the fullest extent permitted by law.

30. Counterparts. This Agreement may be executed in counterparts, and when taken together shall represent one original document notwithstanding the fact that all parties are not signatories to the same original document.

LIST OF EXHIBITS:

- | | |
|------------------|--|
| Exhibit A | Legal Description of Affected Real Property |
| Exhibit B | Site Plan of the Shopping Center |
| Exhibit C | Rules & Regulations |

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IN WITNESS WHEREOF, the undersigned has executed this Declaration of Reciprocal Easements, Covenants and Restrictions the day and year first written above.

Developer:

PAPILLION DEVELOPMENT SETTLER'S CREEK, LLC, A NEBRASKA LIMITED LIABILITY COMPANY

By: RED Papillion Settler's Creek, LLC, a Missouri limited liability company, Its Manager

BY: E & R HOLDINGS, LLC, an Arizona limited liability company, Its Manager

By: Michael L. Ebert
Michael L. Ebert, Manager

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

Now on this 28 day of July, 2008, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Michael L. Ebert, manager of E & R Holdings, LLC, an Arizona limited liability company, which entity is the manager of RED Papillion Settler's Creek, LLC, a Missouri limited liability company, which entity is the manager of Papillion Development Settler's Creek, LLC, a Nebraska limited liability company, who is personally known to me to be the same person who executed in such capacity the within instrument on behalf of said entity, and who duly acknowledged the execution of the same to be the act and deed of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[Signature]
Notary Public

My Commission Expires: 3/2/2012



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EXHIBIT A

LEGAL DESCRIPTION OF AFFECTED REAL PROPERTY
(Entire Shopping Center)

Lot 2 and Outlot A, SETTLERS CREEK REPLAT 2, a Subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska.

Lots 1, 2, 3, 4, 5, 6 and Outlot A, SETTLERS CREEK REPLAT 3, a Subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska.

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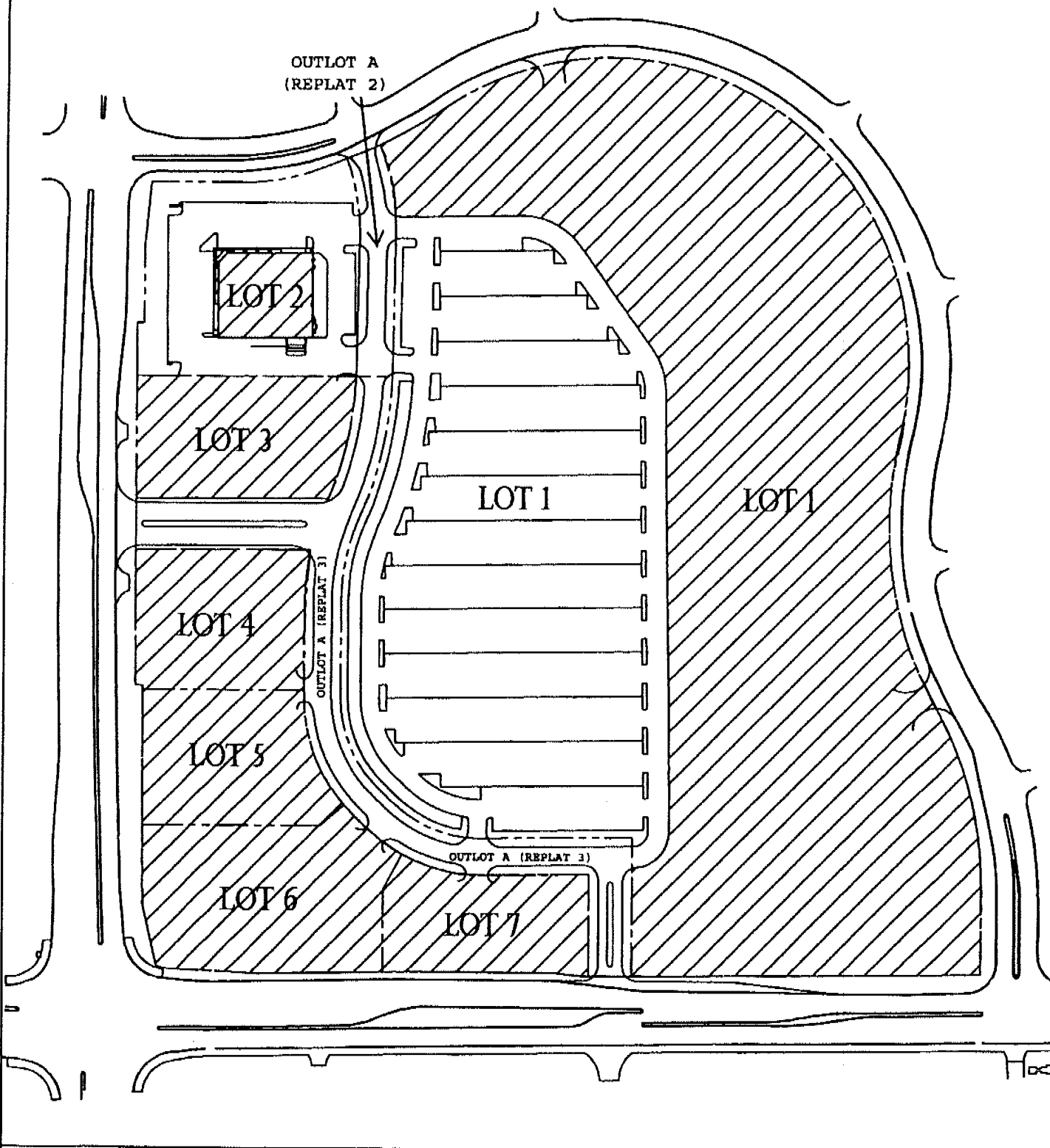
EXHIBIT B

SITE PLAN

Reflecting, among other things, Building Areas, if any, and No Build Area(s), if any

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EXHIBIT B
SITE PLAN



Recorder Note: Picture of site plan does not match filed plat. 8/14/08 DH



LEGEND

BUILDING AREAS

SETTLER'S CREEK
PAPILLION, NE
JUNE 24, 2008

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EXHIBIT C

RULES AND REGULATIONS

All Lots shall be governed by the following Rules and Regulations unless otherwise agreed by Developer, its successors or assigns. Developer shall not be responsible for the violation or nonperformance by any other Permittee of the Developer Property with regard to these Rules and Regulations; provided, however, that Developer agrees to use its 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 this Agreement. To the extent that the provisions of these Rules and Regulations are inconsistent with the provisions of this Agreement, the provisions of the Agreement shall control.

1. Common Areas. The following Rules and Regulations shall be applicable to all Common Areas in the Shopping Center:

1.1. 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.

1.2. All papers, debris, filth and refuse shall be removed from the Lots, and paved areas shall be washed or thoroughly swept as required. All parking lot sweeping shall be at intervals before the stores shall be opened for business to the public.

1.3. 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.

1.4. All landscaping shall be properly maintained, including watering, removal of dead plants, weeds and foreign matter and such replanting and replacement as the occasion may require.

1.5. 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.

1.6. 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.

1.7. All asphalt paving shall be inspected at regular intervals and maintained in a first class condition without potholes or damaged areas.

1.8. All surface utility facilities servicing the Common Area, including, but not by way of limitation, hose bibs, standpipes, sprinklers and domestic water lines, shall be inspected at regular intervals and promptly repaired or replaced, as the occasion

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may require, upon the occurrence of any defect or malfunction.

1.9. 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.

1.10. All lamps shall be inspected at regular intervals and all lamps shall be promptly replaced when no longer properly functioning.

1.11. The improvements on and to the Common Area shall be repaired or replaced with materials, apparatus and facilities of quality at least equal to the quality of the materials, apparatus and facilities repaired or replaced.

1.12. The Common Area shall be illuminated in such areas as the Developer shall reasonably determine, at least during such hours from dusk to Midnight, and as any of the stores shall be open for business to the public, and for a reasonable period thereafter, in order to permit safe ingress to and egress from the Lots by Permittees, and shall also be illuminated during such hours of darkness and in such manner as will afford reasonable security for the stores.

1.13. Each Party shall use their diligent efforts to arrange with local police authorities to (a) patrol the Common Area on the respective Lot owned by such Party, at regular intervals, and (b) supervise traffic direction at entrances and exits to the Lots during such hours and periods as traffic conditions would reasonably require such supervision. 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 CAM Expense in accordance with this Agreement.

1.14. The Parties 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.

1.15. Other than Outdoor Sales Areas approved pursuant to the terms hereof, all of the Common Area shall be maintained free from any obstructions not required, including the prohibition of the sale or display of merchandise outside the exterior walls of Buildings within the Lots, including those within any recessed area.

2. Buildings and Adjacent Areas. The following Rules and Regulations shall be applicable to all Buildings and all areas adjacent thereto in the Shopping Center:

2.1. All Buildings, including entrances and returns, doors, fixtures, windows and plate glass shall be maintained by the party occupying such floor area in a safe, neat and clean condition.

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2.2. All trash, refuse and waste materials shall be regularly removed from each Building within the Lots, 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, and (b) so as not to constitute any health or fire hazard or nuisance to any party.

2.3. Neither sidewalks nor walkways shall be used to display, store or replace any merchandise, equipment or devices, without the express written consent of Developer, which consent may be arbitrarily withheld by Developer in its sole discretion.

2.4. No use shall be made of the Lots 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 located thereon.

2.5. The Parties 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 Lots are open for business to the general public, or (b) so as not to unreasonably interfere with the operation of the other stores within the Lots.

2.6. Each party and all other occupants shall use their diligent efforts, promptly upon receiving notice thereof, to notify each Party and Developer or their respective 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 or such Party.

2.7. No Party, nor any other occupant, shall display flashing lights or neon "open signs" within their premises that are visible from the Common Areas of the Shopping Center.

3. Conduct of Persons. The Parties do hereby establish the following rules and regulations for the use of roadways, walkways, the parking areas, and other common facilities provided for the use of Permittees:

3.1. No person shall use any roadway or walkway, except as a means of egress from or ingress to any area within the Lots or adjacent public streets or such other uses as reasonably approved by the Developer and any affected Party. 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 Developer. The foregoing regulation is not intended to prohibit Permittees from use of Developer approved cart corral locations within the Shopping Center.

3.2. No person shall use the parking areas except for the parking of motor

vehicles during the period of time such person or the occupants of such vehicles are customers or business invitees of the retail establishments within the Lots. All motor vehicles shall be parked in an orderly manner within the painted lines defining the individual parking places. 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.

3.3. 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.

3.4. Subject to governmental laws, rules and regulations, no person shall, in or on any part of the Common Area:

3.4.1. Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever, except as approved in writing by the Developer.

3.4.2. Exhibit any sign, placard, banner, notice or other written material.

3.4.3. Distribute any circular, booklet, handbill, placard or other material.

3.4.4. Solicit membership in any organization, group or association or contribution for any purpose.

3.4.5. 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 Lots.

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

3.4.7. 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.

3.4.8. 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 Parties or Permittees of the Lots.

3.4.9. Deface, damage or demolish any sign, light standard or fixture, landscaping material or other improvement within the Lots or the property of customers, business invitees or employees situated within the Lots.

3.5. 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 located within the Lots is limited and controlled by the Developer.

3.6. Any party 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 Lots 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 party is not the agent of the Developer, other Parties or of tenants of the Lots, unless expressly authorized or directed to do so by such party in writing.

4. Staging Areas for Construction

4.1. Staging Areas. The staging area ("**Staging Area**") for each Party 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. Such Party shall move trailers, equipment, storage facilities including, but not limited to, containers or construction materials, or items as reasonably requested by Developer to accommodate all construction or to reasonably keep the appearance of the Shopping Center in an orderly fashion.

4.2. Each Staging Area user shall, during the course of its construction, routinely remove all trash and debris caused by such Staging Area user to the Staging Area and any portion of the Lots 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 reasonably neat, clean and slightly condition. Each Staging Area user shall periodically sweep its Staging Area by use of a professional sweeping company.

4.3. Each Staging Area user shall cause its employees, or the employees of its contractors and subcontractors to park in areas reasonably designated by Developer, with respect to any staging on their respective Lot(s), and in the event of a failure to control such unauthorized parking, Developer may tow violating vehicles in accordance with law.

4.4. After work is completed for a particular installation with respect to the Party'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.

4.5. 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

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development of the Lots and their respective Permittees so as to avoid obstructing visibility or access from any public rights of way.

4.6. In the event that a Staging Area user, or its contractors or subcontractors, damage any portions of the Lots, 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.

4.7. Upon receipt of written notice from Developer, the Staging Area user will promptly repair any damage caused to any portion of the Lots by the Staging Area user's containers, trailers and operations and shall re-stripe 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 damaged area to be reasonably repaired and re-striped in the area of the repair and will submit the invoice to the Staging Area user for any such costs or expenses incurred by Developer relating to such repair and re-striping.

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

4.9. 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.

4.10. 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.

4.11. 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.

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2008-23219 Ap

**CONSENT AND SUBORDINATION
OF LENDER**

First National Bank of Omaha, holder of the Deed of Trust, Security Agreement and Assignment of Rents dated August 29, 2006 and filed for record August 31, 2006, as Instrument No. 2006-30028 ("Mortgage") in the real estate records of Sarpy County, Nebraska, by Papillion Development Settler's Creek, LLC, a Nebraska limited liability company, does hereby subordinate the Mortgage to the Declaration of Reciprocal Easements, Covenants and Restrictions ("ECR") as though the ECR was filed in the real estate records of Sarpy County, Nebraska, prior in time to the recording of the Mortgage in the real estate records of Sarpy County, Nebraska; and hereby consents to the terms of the ECR.

First National Bank of Omaha

ATTEST:

Pamela M. Waite
(SEAL)

Eric W. Musgjerd
By: Eric W. Musgjerd
Its: Vice President

STATE OF NEBRASKA

COUNTY OF Douglas

Before me the undersigned authority, on this day personally appeared Eric W. Musgjerd known to me to be the person whose name is subscribed to the foregoing instrument, and upon being duly sworn did state and acknowledge he/she is Vice President of First National Bank of Omaha, a national association, and that he/she executed the foregoing instrument in the capacity stated under authority of its Board of Directors and executed the foregoing document for the uses, purposes and considerations therein expressed as the free and voluntary act and deed of the corporation.

Given under my hand and seal of office this the 18th day of July, 2008.

Delores M. Micheel
Notary Public

My Commission expires:

