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RICHARD N TAKECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

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DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (the **"Agreement"**) is made and entered into as of this 5th day of May, 2003, by and between 168th and Dodge, L.P., a Nebraska limited partnership (**"Developer"**), having a mailing address of c/o RED Development of West Dodge, LLC, 4717 Central, Kansas City, MO 64112, Quantum Properties, L.L.C., a Nebraska limited liability company (**"QP"**), and Quantum Properties II, L.L.C., a Nebraska limited liability company (**"QPII"**), QP and QPII are collectively referred to as "Owner, and both have a mailing address of 1925 North 120th Street, Omaha, Nebraska 68154.

RECITALS:

WHEREAS, Developer is the owner in fee of that certain real property (the **"Developer Property"**) located in Douglas County, Nebraska, more particularly described in **Exhibit A** attached hereto. Developer has subdivided, and anticipates further subdividing, the Developer Property into separate legal parcels (the **"Developer Parcels"**).

WHEREAS, Owner is the owner in fee of that certain real property located in Douglas County, Nebraska, more particularly described in **Exhibit B** attached hereto (the **"Adjacent Parcel"**). The Adjacent Parcel and Developer Parcels may sometimes be referred to collectively herein as the **"Parcels"**)

WHEREAS, Developer and Owner desire to construct or have constructed on their respective Parcels such buildings and other improvements as are consistent with the Site Plan attached hereto as **Exhibit C** and this Agreement.

WHEREAS, the Parties hereto recognize that for the optimum development and operation of the Parcels as a unified and coordinated project, it is necessary that they agree respecting certain matters, including, but not limited to, matters relating to the design and layout of facilities on, and the operation, use and restrictions on the use of, their respective Parcels, and that in the absence of such agreements neither Party hereto would be willing to undertake the development or operation of their respective Parcels, and the Parties desire that all persons or entities who acquire portions of either of the Parcels shall take subject to this Agreement in order that all development on the Parcels will be in conformity herewith.

WHEREAS, the parties hereto acknowledge and agree that substantial conflicts could develop in the future leasing and development of the Parcels and, thus, intend to reasonably resolve those conflicts by this Agreement, and further desire that the Adjacent Parcel be subject to the covenants, conditions, and restrictions hereinafter set forth;

WHEREAS, Developer has chosen HC Klover Architect as the architects for the project (hereinafter, the **"Project Architect"**).

NOW, THEREFORE, in consideration of the foregoing promises and for the purpose of establishing certain covenants and restrictions, Developer and Owner, declare that the Adjacent Parcel shall be held and/or sold and conveyed subject to the covenants and restrictions stated herein.

1. **Design and Plan Approval.** No improvements shall be constructed, erected, expanded, or altered on the Adjacent Parcel until the design and layout of any structure shall be reasonably approved by Developer and is aesthetically compatible with the improvement of the Developer Parcels. In order to produce an aesthetically compatible

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development contemplated by this Agreement, Owner 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 Parcel(s) and to consider the views of the Developer with respect thereto prior to selecting the specific materials and colors for its improvements. Owner agrees to cause its architect to work in good faith with the Project Architect or any subsequent architect, and Developer so that the buildings to be erected and constructed will be aesthetically compatible with the balance of the Developer Parcels improvements. Developer's approval of the elevation, site plan and materials shall be conclusive as to Owner's compliance with this section.

2. **Restrictions and Competition.** The parties agree that the following restrictions and covenants shall be and are binding upon the Adjacent Parcel (hereafter, the **"Protected Uses"**) and same shall hereafter run with the land, thus, passing to each successor in interest thereto:

2.1 **Office Property.** For a period of ten (10) years from January 4, 2002, without the express written consent of Developer, Parcel 1 of the Adjacent Property, as shown on **Exhibit C**, may only be used for an "office use", with minor incidental retail uses permitted, such as a newsstand of no more than 500 square feet, however, not for any other retail use.

2.2 **Excess Retail Property.** For a period of ten (10) years from January 4, 2002, Parcel 2 of the Adjacent Property, as shown on **Exhibit C**, may not be used for national brand retail typically located in a lifestyle shopping center nor shall Owner approach, solicit, or otherwise encourage or assist any of the tenants (the **"Protected Tenants"**) listed on **Exhibit D** attached hereto and made a part hereof, with respect to locating at the Adjacent Property without the express written consent of Developer, which consent may be arbitrarily withheld. Said Exhibit D lists tenants typically in a lifestyle center and those excluded for the purpose of demonstration only, provided, however, Parcel 2 of the Adjacent Property shall not be restricted with regard to leasing or selling to convenient stores, gas stations, fast food restaurants, or service providers (**"Approved Uses"**).

2.3 **Scheels Exclusive.** For a period of ten (10) years from January 4, 2004, provided a retail business primarily engaged in the sale of sporting goods and sports apparel is operating on the Developer Property, Owner will not lease, rent or permit any premises on the Adjacent Parcel to be occupied, whether by a tenant, sublessee, assignee, licensee or any other occupant, (hereinafter "User") for a purpose which includes the sale of branded athletic specific apparel and/or sporting goods or equipment (hereafter, the "Scheels Exclusive"); provided, however, the foregoing restrictions shall in no event restrict (i) a department store (as defined herein) from containing a shoe department that sells athletic shoes and (ii) one premises not to exceed (5,000) square feet which may be devoted primarily to athletic shoes such as Athletes Foot or Footlocker or (iii) any User who sells branded athletic specific apparel and/or sporting goods or equipment, provided that such User does not utilize in excess of 10% of gross leasable area of its space (including adjacent aisle space) for the sale or display of branded athletic specific apparel and/or sporting goods or equipment (considering all of such items in the aggregate). Owner agrees that provided it has the right to do so, it shall not approve a change in use which conflicts with or is in violation of the Scheels Exclusive. The foregoing restriction is intended to be for the benefit of and appurtenant to the Scheels parcel and may be directly enforced by Scheels All Sports, Inc. and/or the owner of the Scheels parcel. For purposes hereof,

"department store" shall be defined as a traditional general merchandise store occupying at least 75,000 square feet such as Sears, May Company, Marshall Fields, or Nordstrom.

2.4 **Bed, Bath & Beyond Exclusive.** The following exclusive use is hereby declared on behalf of Bed, Bath & Beyond Inc. for a period of ten (10) years from January 4, 2002: Provided Bed, Bath & Beyond is open and operating a retail business located in the Developer Parcels, Owner shall not lease, rent or occupy or permit any premises in the Adjacent Parcel to be occupied, whether by a tenant, sublessee, assignee, licensee or other occupant or itself, by a "Primary Competitor" (hereinafter defined) or a "Secondary Competitor" (hereinafter defined). For purposes hereof, a "Primary Competitor" shall mean a home store (such as, by way of illustration only, Linens 'n Things) whose primary use is the sale, rental or distribution, either singly or in any combination, of the following items (the "Exclusive Items"): linens and domestics, bathroom items, housewares, frames and wall art, window treatments, and closet, shelving and storage items; and a "Secondary Competitor" shall mean a store occupying more than five thousand (5,000) square feet of floor area whose primary use is the sale, rental or distribution, either singly or in any combination, of the Exclusive Items; provided, however, that any "Upscale Tenant" (hereinafter defined) shall not be deemed to be a Secondary Competitor. The term "Upscale Tenant" shall mean any first-class specialty retail tenant normally found in regional malls and primarily selling their respective merchandise under private labels (such as, by way of illustration only, Eddie Bauer, Williams Sonoma, Talbots and Victoria's Secret). Notwithstanding the foregoing, any tenant or subtenant of the Adjacent Parcel shall have the right to utilize its respective premises for the sale, rental or distribution of the Exclusive Items within an aggregate area (which shall include an allocable portion of the aisle space adjacent to such sales, rental and/or distribution area) not to exceed ten percent (10%) of the floor area of such tenant's or subtenant's premises. The restrictions set forth above shall not apply to a full-line national or regional: (i) department store [for example, Wal-Mart, Macy's, Target, the Jones Store or Dillards], (ii) discount club [for example, Costco, BJ's Wholesale Club, or Sam's Club], or (iii) home improvement center [for example, Home Depot or Lowe's], commonly located in first-class shopping centers in the state in which the Parcels are located, each occupying at least 80,000 square feet of floor area within the Parcels, as such stores are currently operated (as of the Effective Date of the Bed Bath & Beyond lease on the Developer Property, hereafter the "BBB Lease"). In addition, the restrictions set forth above shall not apply to the tenants operating under the tradenames "Organized Living", "Pier One Imports", "Cost Plus", "Wild Oats", as such stores are currently operated (as of the Effective Date of the BBB Lease) or to Lot 3 of the Developer Property.

2.5 **Prohibited Uses.** The Adjacent Parcel shall not be used for any of the "Prohibited Uses" detailed in Exhibit E attached hereto.

3 **Developer Requested Exclusives.** Developer may propose at any time that an exclusive favoring Developer's particular lifestyle tenant be placed of record on the Adjacent Property.

3.1 **Owner Approval or Disapproval.** Owner shall, by giving notice to Developer within thirty (30) days of receipt of a written request for approval of any such proposed exclusive use, either approve or disapprove the same and specify in detail the reason for such disapproval. In the event Owner neither approves or disapproves such requested exclusive within such period, Owner shall be deemed to have approved such proposed exclusive use.

3.2 **Criteria for Approval of Exclusive Use.** Provided that (i) the proposed exclusive use does not affect or otherwise exclude any Approved Use set forth in Section 2.2 and any existing permitted use on the Adjacent Property, (ii) that the proposed exclusive use does not apply to stores occupying less than three thousand (3,000) square feet of floor area or stores that do not utilize in excess of ten percent (10%) of its floor area for the proposed exclusive use; (iii) that the exclusive use continues only for a period of ten (10) years from January 4, 2002; (iv) that the prospective tenant of Developer requires such exclusive use language; and (v) that the prospective use is a lifestyle use , Owner shall not refuse to approve any such exclusive use.

4 **Default and Remedies.**

4.1 **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 a matter which shall put Developer or Owner into a default of another Agreement, 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.

4.2 **Entry.** Each party hereto hereby grants to the other a non-exclusive right of entry as herein after defined, in and over their respective real property (including the right to enter any buildings thereon) for the purposes reasonably necessary, to enable the other to determine that any of the terms, provisions, covenants or conditions of this Agreement are not being fully performed.

4.3 **Relief.** 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 forthwith to full and adequate relief including but not limited to any equitable relief, such as injunction and damages, and all other available legal and equitable remedies from the consequences of such breach.

4.4 **Attorney Fees.** The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, court costs and any other related expenses which shall be deemed to have accrued on the date such action was filed.

5 **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. Any notice from counsel for either party shall be deemed an official notice from such party. Notices to Owner shall be addressed to the address listed above. Notices to Developer shall be addressed to the address listed above with copies to: Mr. Michael L. Ebert, Ebert & Rehorn, 6263 N. Scottsdale Road, Suite 222, Scottsdale, AZ 85250, and to Richard B. Katz, Esq., 6299 Nall Avenue, Suite 210, Mission, Kansas 66202. Such addresses may be changed from time to time by either party hereto by serving notice as herein provided. 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 it's 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.

6 **Term.** The term of this Agreement shall be for ten (10) years. Notwithstanding any other provision however, any Exclusive shall have the term provided in the particular exclusive and if no term is provided, the Exclusive shall continue as long as the tenant for whom the Exclusive was declared remains a tenant in the Developer Parcels.

7 **Legal Representation of the Parties.** This Agreement was negotiated by the Parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party shall not apply to any construction or interpretation hereof or thereof. The Parties recognize that this Agreement was negotiated by the Katz Law Firm and the Brown & Wolff Law Firm and each waives any conflict of interest those firms may have.

8 **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.

9 **Entire Agreement.** This Agreement constitutes the entire agreement by Developer and Owner with respect to the Adjacent Parcel. 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. This Agreement shall be considered to have been executed by a person if there exists a photocopy, facsimile copy, or a photocopy of a facsimile copy of an original hereof or of a counterpart hereof which has been signed by such person. Any photocopy, facsimile copy, or photocopy of facsimile copy of this Agreement or a counterpart hereof shall be admissible into evidence in any proceeding as though the same were an original.

10 **Governing Law.** These covenants and restrictions shall be governed by and construed under the laws of Nebraska.

11 **Severability.** If any provision of this Declaration of Covenants and Restrictions or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable under applicable law, the remainder of this Declaration of Covenants and Restrictions, 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.

12 **Further Assistance.** Developer and Owner agree to perform such other acts, and to execute, acknowledge, and/or deliver subsequent to the Closing such other instruments, documents and other materials as Developer or Owner may reasonably request in order to further effectuate any of the terms and conditions, agreements, restrictions, or covenants of this Agreement.

13 **Time of Essence.** The parties agree that time is an essential element to the performance of their respective obligations hereunder.

Exhibits

Exhibit A	Legal Description of Developer Property
Exhibit B	Legal Description of Adjacent Parcel
Exhibit C	Site Plan
Exhibit D	Restricted Tenants
Exhibit E	Prohibited Uses

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

"DEVELOPER"

168TH AND DODGE, L.P., a Nebraska limited partnership

By: RED DEVELOPMENT OF WEST DODGE, LLC, a Missouri limited liability company, its general partner

By: E&R Holdings, LLC, an Arizona limited liability company, Manager

By: _____
Michael L. Ebert, Manager

"OWNER"

QUANTUM PROPERTIES, L.L.C., a Nebraska limited liability company

By: _____
Paul M. Brown, Manager

QUANTUM PROPERTIES II, L.L.C., a Nebraska limited liability company

By: _____
Paul M. Brown, Manager

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On May 7th 2003, before me, the undersigned, a Notary Public in and for said state, personally appeared Michael L. Ebert, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

AMY MC CLAUGHRY
Notary Public Arizona
Maricopa County
My Comm. Expires Mar 2, 2004

Notary Public in and for said State

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On May 5, 2003, before me, the undersigned,, a Notary Public in and for said state, personally appeared Paul M. Brown, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

GENERAL NOTARY - State of Nebraska
VALERIE A. KITTELSON
My Comm. Exp. May 22, 2005

Valeri A. Kittelson
Notary Public in and for said State

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On May 5, 2003, before me, the undersigned,, a Notary Public in and for said state, personally appeared Paul M. Brown, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

GENERAL NOTARY - State of Nebraska
VALERIE A. KITTELSON
My Comm. Exp. May 22, 2005

Valeri A. Kittelson
Notary Public in and for said State

This instrument was prepared by Richard B. Katz, The Katz Law Firm, 6299 Nall Avenue, Suite 210, Shawnee Mission, Kansas 66202.

EXHIBIT A

LEGAL DESCRIPTION OF DEVELOPER PROPERTY

Lots 1 through 10, Outlot A and Outlot B, Village Pointe, a subdivision in Douglas County, Nebraska.

EXHIBIT B

LEGAL DESCRIPTION OF PARCEL 1 OF ADJACENT PROPERTY

Lots 11 and 12, Village Pointe, a subdivision in the City of Omaha, Douglas County, Nebraska.

LEGAL DESCRIPTION OF PARCEL 2 OF ADJACENT PROPERTY

Lots 1 through 5 and Outlot A, Town Center at Pacific Springs, a subdivision in Douglas County, Nebraska.

Exhibit "C"

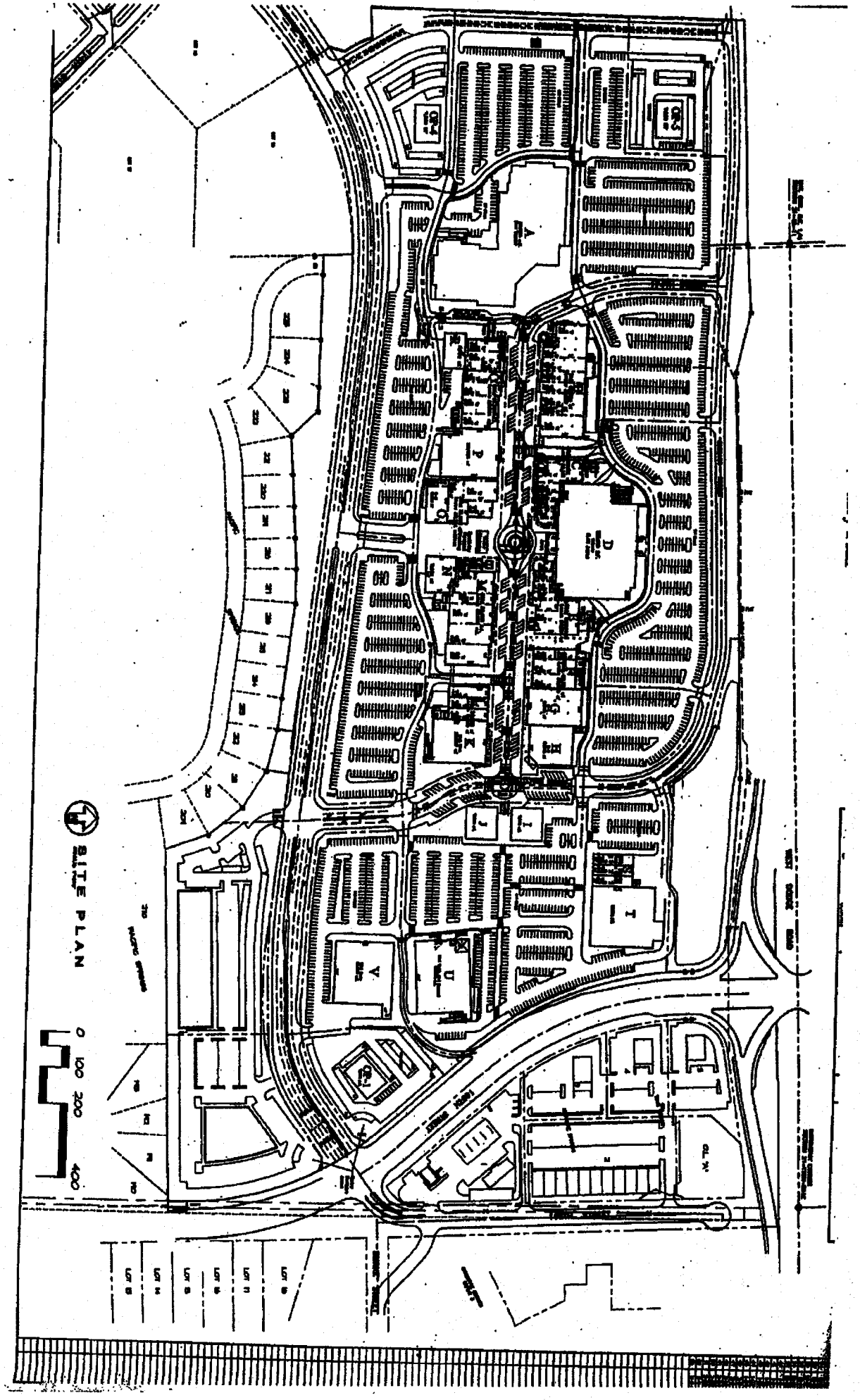

EXHIBIT D

PROTECTED TENANTS

The following list is a representation of typical lifestyle center tenants:

Abercrombie
Abercrombie & Fitch
Acorn
Adreinne Vittadini
Aeropostale
Albertsons
AMC Theatres
American Eagle
Ann Taylor Loft
Anthropologie
Apple Computer
Aveda
Banana Republic
Barnes & Noble
Bath & Body Works
Bebe
Bed, Bath & Beyond
Big Bowl
Blondies
Bombay Company
Borders
Bose
Bravo
Brighton's
Brooks Brothers
Brookstone
Buckle
Build A Bear
California Pizza Kitchen
Candleman
Casual Corner
Charlotte Russe
Cheesecake Factory
Chico's
Christopher and Banks
Claires
Coach
Coldwater Creek
Cosi
Cost Plus
Crate & Barrel
Dick's Sporting Goods
DSW

Eddie Bauer / Home
Express
Finishline
Flemings
Galyans
Gap/Gap Kids/Baby/Body
Hallmark
Harolds
Helzberg
Hollister Co.
J Crew
J Jill
Jillian's
Johnston Murphy
Jos A Banks
KB Toys
Kona Grill
Landmark Luggage
Lane Bryant
Learning Express
Lencrafters
Limited TOO
Macaroni Grill
Mikasa
Michaels
Motherhood Maternity
Nine West
Northface
Old Navy
Origins
Pacific Sunwear
Panda Express
Panera Bakery
PF Changs
Pottery Barn / Pottery Barn Kids
Sam Goody
Scheel's
Starbucks
Sunglass Hut
Talbot's
Timberland
Ulta
Victoria's Secret
Von Maur
Walking Company
White House/Black Market
Whole Foods
Williams-Sonoma
Wet Seal

[redacted]

Wild Oats
Yankee Candle
Z Gallerie

EXHIBIT E

PROHIBITED USES

As used in this Declaration of Covenants and Restrictions, the term **"Prohibited Uses"** shall mean any of the following uses:

1. Any use which emits or results in strong, unusual or offensive odors, fumes, dust or vapors, is a public or private nuisance, emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness, creates a hazardous condition, or is used in whole or in part, as for warehousing or the dumping or disposing of garbage or refuse;

2. Any operation primarily used as a storage facility and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation;

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

4. Any dumping, disposing, incineration, or reduction of garbage (exclusive of trash compactors or trash containers located near the rear of any building);

5. Any "Pornographic Use", which shall include, without limitation, a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational, or a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or "X" or unrated by the Motion Picture Rating Association, or any successor thereto; the parties hereto acknowledge and agree the sale of books, magazines and other publications by a national bookstore of the type normally located in first-class shopping centers in the State in which the Shopping Center is located (such as, for example, Borders and Barnes & Noble, as said stores currently operate) shall not be deemed a "pornographic use" hereunder; or massage parlor;

6. Any so-called "head shop", or other establishment primarily selling or exhibiting drug-related paraphernalia;

7. Any unlawful use;

8. Any pawn shop, gun shop, or tattoo parlor; and

9. Any carnival, amusement park or circus.

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RICHARD N TAKECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

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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 23 day of June, 2003, by and between 168th AND DODGE, L.P., a Nebraska limited partnership (formerly known as Brown Investment Partnership, Ltd.) (hereinafter **"Developer"**), and SCHEELS ALL SPORTS, INC., a North Dakota corporation (**"Scheels"**).

W I T N E S S E T H :

WHEREAS, Developer is the owner in fee of that certain real property located in the County of Douglas, State of Nebraska, more particularly described in **Exhibit A**, and depicted on the site plan attached hereto as **Exhibit B**; and

WHEREAS, Pursuant to a Ground Lease dated April 8, 2003, (the **"Ground Lease"**) between Developer and Scheels, Scheels is the holder of the leasehold interest in certain real property located in the County of Douglas, State of Nebraska, more particularly described in **Exhibit C** hereof and depicted on **Exhibit B** as Lot 3, hereafter referred to as the **"Scheels Lot"**. In addition, in the event Scheels purchases the Scheels Lot in accordance with an option in the Ground Lease, the parties have executed an agreement of even date herewith, which details certain obligations of the parties, hereinafter the **"Supplemental Agreement"**.

WHEREAS, Lots 1 and 2, 4 through 10, inclusive, and Outlot A and Outlot B, as depicted on the attached **Exhibit B**, are hereafter collectively referred to as the **"Developer Property"**; and

WHEREAS, the parties hereto desire that the Scheels Lot and the Developer Property (hereafter collectively, the **"Shopping Center"**) be developed in conjunction with each other pursuant to a general plan of improvement and further desire that such property be subject to the easements and the covenants, conditions, and restrictions hereinafter set forth. The real property affected by this Agreement is legally described on **Exhibit A** attached hereto.

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 and the Lot Owners declare that the Lots, shall be held and/or sold and conveyed subject to the covenants, restrictions and easements stated herein.

1. Definitions.

1.1. **"Building Envelope Areas"**, as used herein, shall mean those portions of the Lots as shown on **Exhibit B** as **"Building Envelope"** and as shall from time to time be designated by Developer in its sole discretion without joinder of any other party, provided that (a) Developer shall not unreasonably withhold or delay its consent to a request by Scheels to a modification of the Building Envelope on Lot 3, and (b) in no event shall the Building Envelope on either Lots 4, 5 and 10 be materially modified without the consent of Scheels, which consent shall not be unreasonably withheld, conditioned or delayed, and (c) Developer may not modify the Building Envelope on Lot 3.

1.2. **"City"** shall mean the City of Omaha, Nebraska.

1.3. **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, 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 Basin located on Outlot A and any other on or off site Storm Basin(s) servicing 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 and trash area on the Scheels Lot is not Common Area.

1.4. **"Design Criteria"** shall mean the Developer's design criteria handbook, which may be revised or amended from time to time by Developer, which shall be provided by Developer to any Party upon written request. With respect to the Scheels Lot only, Developer shall not revise or amend the Design Criteria without the prior consent of Scheels, which may be withheld in its sole and absolute discretion.

1.5. **"Developer"** shall mean 168th and Dodge, L.P. a Nebraska Limited Partnership, or if Developer has no further ownership in Lot 10, then, subject to Section 17 hereof, the owner of Lot 10 only, as designated by Developer in a written notice to all Lot Owners as provided herein.

1.6. **"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.

1.7. **"Lot(s)"** shall mean the Lots 1-10, Outlot A and Outlot B, or any of them.

1.8. **"Lot Owner(s)"** shall mean the owner or owners of any of the Lots, including Developer and Scheels (notwithstanding that Scheels initial interest shall be as holder of the leasehold interest under the Ground Lease) and any person or entity which shall subsequently own all or any portion of said Lots.

1.9. **"Storm Basin"** shall mean a storm detention/retention basin on Outlot A of the Developer Property, as shown on **Exhibit B** attached hereto, and any storm detention/retention basin located on or off-site, as may be created from time to time.

1.10. **"No Build Areas"** as used herein shall mean those portions of the Lots not within the area designated as Building Envelope Area, detailed on **Exhibit B**, which No Build Areas have been designated by Developer and the Lot Owners as areas upon which no buildings or structures (as shall be defined by Developer in its sole discretion without joinder of any other party) shall be constructed. The No Build Areas shall not change without Developer's written approval, which approval may be given in Developer's sole discretion without joinder or approval of any other party; provided that (a) in no event shall the No Build Areas on either Lots 4, 5 or 10 be materially changed without the consent of Scheels, which consent shall not be unreasonably withheld, conditioned or delayed, and (b) Developer shall not unreasonably withhold or delay its consent to a request by Scheels to a modification of the No Build Area on the Scheels Lot, and (c) Developer may not change the No Build Area on the Scheels Lot.

1.11. **"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, which areas are located outside of the structure of such Permittee's store. Outside Sales Areas are subject to Developer's approval and are subject to the limitations set forth in this Agreement. With regard to the Scheels Lot, Developer shall not approve any Outside Sales Areas without the prior written approval of Scheels. In the event Scheels purchases the Scheels Lot, it shall have the right to use the Outside Sales Areas on the Scheels Lot for any lawful purpose, provide such use does not violate any of the restrictions or prohibited uses contained herein.

1.12. **"Party"** and **"Parties"** or **"party"** and **"parties"** as used in this Agreement shall initially mean Developer and Scheels until such persons have transferred their respective real property interests

in and to any portion of their respective Lot(s) and thereafter shall mean the then owner of the respective real property interest.

1.13. **"Permittee(s)"** shall mean the parties, all persons from time to time entitled to the use and occupancy of floor area in the Lots under any lease, deed or other arrangement whereby such person has acquired a right to the use and occupancy of any floor area, and their respective officers, directors, employees, agents, contractors, customers, visitors, invitees, licensees and concessionaires.

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

1.15. **"State"** shall mean Nebraska.

2. **Conversion to the Common Areas.** Those portions of the Building Envelope Areas on each Lot which are not from time to time designated by Developer as Building Envelope Areas under the terms of this Agreement or occupied by buildings as from time to time are constructed by the Lot Owner, shall automatically become part of the Common Area for the uses permitted hereunder and shall be improved, kept, and maintained as provided herein. The loading dock and trash areas on the Scheels Lot shall not be deemed to be Common Areas.

3. **Grant of Easements.** Subject to the terms of this Agreement, Developer and Scheels hereby grant and convey, the following non-exclusive easements appurtenant, in, to, over, and across the Common Areas for the benefit and use of the customers, contractors, invitees, licensees, tenants, and employees of all businesses and occupants of the buildings on the Lots:

3.1. **Parking Easements.** A nonexclusive easement in, to, over and across the Common Areas for the purpose of parking vehicles of Permittees thereon, limited, however, to purposes connected with or incidental to use of such parking for commercial retail and shopping purposes. Lot Owners 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 nonexclusive 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.

3.3. **Roof Overhang Easement.** A nonexclusive easement in, to, under, over and across any improvements or land immediately adjacent to any Lot, granting the right and privilege to construct, reconstruct, maintain, operate and replace a roof overhang and exterior wall architectural features belonging, over and through a portion of the adjacent Lot. This easement shall not unreasonably (i) interfere with Developer's use or operation of the Developer Property, (ii) interfere with the adjacent Lot Owner'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 Lot Owner'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. **Scheels Easement.** Two (2) non-exclusive easements, each of which is in, to, over, under and across an area not to exceed five (5) feet in width over Lots 4 and 5 along the Scheels Lot line, for the benefit of and appurtenant to the Scheels Lot for the purposes of installation of footings for the building to be constructed on the Scheels Lot beneath the ground surface at a location or locations reasonably approved in writing by Developer (anticipated to be constructed as shown on **Exhibit I** attached hereto), provided that, 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 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) Developer 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) Lot Owners shall be consulted reasonably in advance and any proposed installation, maintenance or location changes shall require prior written approval by the affected Lot Owners, which shall not be unreasonably withheld, conditioned or delayed. In addition, Scheels and Lot Owners shall be obligated to perform such other acts, and to execute, acknowledge, and/or deliver such reasonable instruments, documents and other materials as Developer or a Lot Owner may reasonably request in order to document any such easement in a commercially reasonable manner.

3.5. **Access Easements for Shopping Center Signs.** A nonexclusive easement in, to, under, over and across the Common Areas, for the installation and maintenance of the monument signs to be located on the Lots pursuant to Developer's Design Criteria. Developer, at its cost, shall have the right to change or relocate such signs within said Lots, provided that change or relocation does not materially interfere with the visibility or use of said Lots. No Lot, other than Lots 2 and 5, may have a pylon, monument or ground sign without the prior written consent of Developer and Scheels (with respect to the Scheels Lot only).

3.6. **Utility Easements.** A nonexclusive 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 Lot Owner thereof 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 Lot Owners 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) Lot Owners 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) Lot Owners shall be consulted reasonably in advance and any proposed installation, maintenance or location changes shall require prior written approval by the affected Lot Owners, 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 Lot Owner shall be obligated to perform such other acts, and to execute, acknowledge, and/or deliver such reasonable instruments, documents and other materials as Developer or a Lot Owner may reasonably request in order to document any such easement in a commercially reasonable manner.

3.7. **Drainage.** A nonexclusive 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 shall construct access to a storm detention/retention basin on **Outlot A,** as shown on **Exhibit B** attached hereto, 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 into the Storm Basin(s) to and through the point of entry onto the City right-of-way or to any subsequent location. Notwithstanding the foregoing, Developer may not construct or install a Storm Basin on the Scheels Lot.

3.8. **Term of Easements.** The easements set forth herein shall continue in favor of the respective grantees in perpetuity.

3.9. **Developer's Rights as to Common Area.** Developer and Scheels (with respect to the Scheels Lot) hereby reserve the right to eject or cause the ejection 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 anyone, Developer and Scheels (with respect to the Scheels Lot) reserves the right to temporarily close off the Common Areas for one 24 hour day, which day must be Christmas day only, to prevent the acquisition of prescriptive rights by anyone; 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 use or the operation of the Lots shall occur.

3.10. **Prohibition Against Granting Easements.** Without Developer's express written consent (and Scheels, with respect to the Scheels Lot only), 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. No party shall grant an easement or easements over or across the Scheels Lot without the prior written consent of Scheels.

4. **Buildings.**

4.1. **Design and Plans Approval.** No improvements shall be constructed, erected, expanded, or altered on the Lots until the plans and specifications for same (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 shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible and shall in all respects be approved by Developer, such approval not to be unreasonably denied, conditioned or delayed. Except for the Scheels Easement set forth hereinabove, no building wall footings shall encroach from one Lot onto another Lot without prior written approval from Developer and Scheels (with respect to an encroachment onto the Scheels Lot only). The parties hereto specifically acknowledge that the roof of the building and exterior wall architectural features to be constructed on the Scheels Lot may encroach over the adjacent Lots and over a portion of the immediately adjacent improvements to be constructed on the Developer Property and hereby approve of such encroachment. The design and construction 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 ordinances, (ii) all restrictive covenants of record encumbering the respective Lot, and (iii) Developer's Design Criteria. No building shall have a metal exterior, provided, however, a building may have a pitched standing seam roof. In order to produce an architecturally compatible and unified development contemplated by this Agreement, each Lot Owner 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 views of the other Lot Owners with respect thereto prior to selecting the specific materials and colors for its exterior improvements. Each Lot Owner agrees to cause its respective architect to work in good faith with the Project Architect and Developer so that the buildings to be erected and constructed will have an overall cohesive and related architectural continuity and will be in harmony with the balance of the Developer Property improvements. Approval of the plans and specifications by Developer and Scheels, as applicable, shall be conclusive as to Lot Owner's compliance with this Section The Lot Owners in the performance of their construction shall not (i) cause any unnecessary or unreasonable increase in the cost of construction of the other Lot Owners or the Developer Property (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. Notwithstanding the foregoing, Developer has previously approved the Scheels plans and specifications and such plans and specifications have been approved and are acceptable with regard to all Design Criteria requirements. In the event of a casualty, Developer has agreed that Scheels may reconstruct substantially the same building without further approval by Developer.

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, and without the consent of Scheels with respect to Lots 4, 5 and 10 provided however that such consent of Scheels shall not be unreasonably conditioned, withheld or delayed.

4.3. **Development of the Lots.** No party other than Scheels shall have the right to modify or construct any buildings or footings or encroachments on the Scheels Lot, without the prior consent of Scheels. In addition to any other restrictions herein provided and the Rules and Regulations, the Lots shall be developed only under the following guidelines:

4.3.1. **Building Height.** Without the prior written consent of Developer, no building constructed on Lots 1, 6 or 9 shall exceed twenty-four feet (24') in height, as measured from

the mean finished elevation of the parking area of any such Lot, excluding architectural features such as parapet walls, mechanical equipment, penthouses and screens to hide mechanical equipment, which architectural features (i) shall not exceed an additional four (4) feet in height from such rooftop (for a total maximum height, including architectural features of twenty-eight feet (28'), and (ii) shall be limited to only one (1) side of the building and shall not exceed fifty percent (50%) of such building's side linear frontage. Without the prior written consent of Developer, no building constructed on the Scheels Lot shall exceed fifty feet (50') in height, as measured from the mean finished elevation of the parking area of the Scheels Lot, excluding architectural features such as parapet walls, mechanical equipment, penthouses and screens to hide mechanical equipment, which architectural features shall not exceed an additional four (4) feet in height from such rooftop (for a total maximum height, including architectural features of fifty-four feet (54'), except that the parties hereto agree and acknowledge that the entry feature of the building to be constructed on the Scheels Lot may be up to seventy feet (70') in height, subject to approval by the City. Developer's approval of Scheels plans and specifications shall be conclusive as to Scheels compliance with this Section notwithstanding a failure to comply with all requirements of this Section. Without the prior written consent of Developer, no building constructed on Lots 2, 4, 5, 7, 8 or 10, shall exceed thirty-two feet (32') in height, as measured from the mean finished elevation of the parking area of any such Lot, excluding architectural features such as parapet walls, mechanical equipment, penthouses and screens to hide mechanical equipment, which architectural features (i) shall not exceed an additional four (4) feet in height from such rooftop (for a total maximum height, including architectural features of thirty-six feet (36')) feet, and (ii) shall be limited to only one (1) side of the building and shall not exceed fifty percent (50%) of such building's side linear frontage. All buildings on the Lots 1, 6 and 9 shall be single one story structures unless otherwise approved by Developer.

4.3.2. **Building Size and Required Minimum Parking.** Unless otherwise approved by Developer, which approval shall be in Developer's sole discretion without joinder of any other party, (1) any buildings to be constructed on any of the following Lots shall not exceed the total square feet in size as hereinafter detailed, and (2) shall have the following minimum number of parking spaces, which parking spaces shall be of a size and nature in compliance with all governmental requirements. Scheels shall have approval rights over a reduction of parking spaces on Lots 5, 7 and 10 only in the event the parking ratio for the Shopping Center falls below (i) 4.5 to 1,000 square feet of building space, or (ii) that required by governmental authorities.

Lot No.	Maximum Building Sq. Ft.	Minimum Parking Spaces
1	8,000	129
Scheels Lot 3	125,000 with an additional basement of not greater than 50,000 s.f.	600
6	7,000	144
9	7,000	131

4.3.3. **Screening.** Any rooftop equipment shall be screened from public view from adjacent public streets and highways and in a manner satisfactory to the Developer and Scheels (with respect to Lots 4 and 5). 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 and Scheels (with respect to Lots 4 and 5). Developer's approval of Scheels plans and specifications shall be conclusive as to Scheels compliance with this Section.

4.3.4. **Signs.** All signs shall be in compliance with the Sign Criteria attached hereto as **Exhibit E**, and in all events shall comply with any and all governmental requirements and zoning ordinances, provided, however, that with respect to the Scheels Lot, the Developer's Sign Criteria shall apply only with respect to any exterior signage. Developer's approval of Scheels sign plans and specifications shall be conclusive as to Scheels compliance with this Section notwithstanding a failure to comply with all requirements of this Section.

4.4. **General.** Any activity within the Common Area, other than its primary purpose which is to provide for parking for the customers, invitees, and employees of those businesses conducted within the Building Envelope Areas 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. The Lot Owner(s) and Developer agree that the Common Area shall be maintained as such and shall not be fenced or otherwise obstructed and shall be kept open at all times for the free use thereof as intended.

4.5. **Unimpeded Access Between Lots, Obstructions.** The Lot Owners 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 nonexclusive, and for the use and benefit of all Permittees, subject to the limitations contained herein and in the Supplemental Agreement. Except as specifically depicted on **Exhibit B** or as may be approved in writing by the Lot Owners and the 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 Developer Property, or of any portion thereof, except within the confines of the Building Envelope 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. **Maintenance.** All maintenance of the Common Areas shall be provided by Developer in accordance with this Agreement and the Maintenance Obligations as hereinafter defined. Notwithstanding the foregoing, the Lot Owners of Lots 1, 6, and 9 (hereafter, the **"Outparcels"**) shall complete all of the Maintenance Obligations within the Building Envelope Areas on its respective Lot, which Building Envelope Areas shall be determined by Developer, in its sole discretion without joinder of any other party, during Developer's review of such Lot Owner's plans and specifications for improvements on its respective Lot, (the **"Outparcel Building Envelope Area(s)"**) and the cost of such maintenance shall be the separate responsibility of each Lot Owner. As to all Common Areas other than the Outparcel Building Envelope Areas, Developer shall complete the following maintenance (collectively the **"Maintenance Obligations"**):

5.1.1. **Parking Areas.** Maintain and properly stripe the parking areas and access areas, keeping the surfaces in a level, smooth, and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability, including any temporary repair of potholes, curb breakage, damage to parking bumpers, if any, and to any paving and thereafter the permanent repair of same; place, keep in repair, and replacing any necessary or appropriate directional signs, markers, and lines in the Shopping Center, and remove snow and ice from walkways, access ways and parking areas. Notwithstanding the foregoing, Developer shall not be required to replace or repair directional signage with respect to the operation of the Lot Owner's business on the Outparcels.

5.1.2. **Lighting.** Operate and keep in repair, and replace, where necessary, such artificial lighting facilities as shall be reasonably required, and with respect to the Scheels Lot, such lighting shall be separately metered to the Shopping Center and never be less or lower than the light level capacity originally required to be installed by Developer on the Scheels Lot;

5.1.3. **Retaining Walls.** Maintain all retaining walls in a good condition and state of repair; maintain building walls outside of the Outparcel Building Envelope Areas;

5.1.4. **Trash and Rubbish.** Empty all rubbish containers located on the respective Lots on a sufficiently regular basis and wash the same at intervals sufficient to maintain the same in a clean condition.

5.1.5. **Storm Basin.** Maintain the Storm Basin(s) whether on or off-site, including silt removal, dredging and other necessary maintenance, landscaping and any improvements erected surrounding the Storm Basin(s), or any piping or other structures required to be completed in order to drain water from the Shopping Center.

5.1.6. **Utilities.** Maintain and pay for the operation, maintenance and replacement of the utilities servicing multiple Lots and any other costs incurred in Developer's reasonable judgment, to maintain such utilities in a condition reasonably required to insure acceptable utility service. Developer shall not be liable in any way to any other party for any failure, interruption, or defect in the supply, pressure or character of water, electric energy or any other utility service furnished to the Common Areas (whether furnished by Developer or by other) by reason of any requirement, act or omission of the public utility company serving the Shopping Center with electricity, water, or other utility service, or because of necessary repairs or improvements or acts or omissions of Developer.

5.1.7. **Landscaping Maintenance.** Maintain Landscaping Areas (shown on **Exhibit G** attached hereto) including but not limited to the costs of maintenance, removal of debris, maintenance of islands, and landscaping, and any other costs incurred in Developer's reasonable judgment, to maintain such Landscaping Areas in a condition reasonably required to insure necessary aesthetics in Developer's reasonable discretion. Additionally, each Lot Owner (other than Scheels) shall reimburse Developer for the cost of the initial installation of perimeter landscaping as required by the City on such Lot Owner's Lot.

5.1.8. **Security.** Obtain security in the Lots as reasonably determined necessary by Developer. Developer shall not be liable in any way to any other party for any failure, interruption, or defect in the security provided to, or obtained for, or furnished to the Common Area (whether furnished by Developer or by other person or entity) or any acts or omissions of Developer.

5.1.9. **Sweeping and Snow Removal.** Provide for removing all snow, ice, papers, sand, debris, filth and refuse, and sweeping to the extent reasonably necessary to keep the area in a clean and orderly condition.

5.1.10. **Perimeter Roads and Access Ways Maintenance.** Maintain the Perimeter Roads and Access Ways shown on **Exhibit H** attached hereto, including but not limited to the maintenance, snow removal, sweeping, removal of debris, maintenance of islands, and landscaping, signage, street repairs, lighting and any other maintenance required in Developer's reasonable judgment, to maintain such Perimeter Roads and Access Ways in a condition reasonably required to insure acceptable access to the Lots and any necessary aesthetics.

5.1.11. **Self Help Maintenance by Developer.** Subject to the terms of the Supplemental Agreement, if Developer considers reasonably necessary any repairs, maintenance, renewals or replacements required by the provisions of this Section to be made or provided by the Lot Owners, Developer may request in writing that the Lot Owner make such repairs or perform such maintenance or provide such renewal or replacements, and, upon Lot Owner's failure or refusal to do so within ten (10) days from the date of such written request (plus such additional reasonable time as is necessary if the Lot Owner is exercising due diligence), Developer 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 (Lot Owner hereby waiving any damage caused thereby including, without limitation, any damage caused by any such third-party contractor

engaged by Developer to perform such work); thereupon, Lot Owner shall, at Developer's election, on demand pay (or reimburse Developer for) the reasonable cost thereby incurred by Developer; and in addition, if not paid within twenty (20) days of such demand, Lot Owner shall pay Developer, upon demand, interest at the annual rate of fifteen percent (15%) and a penalty of 10 cents ($.10) per each dollar expended by Developer.

5.2. **Insurance.** All insurance of the Common Areas shall be maintained by Developer, in accordance with this Agreement and the Insurance Standards set forth below. Notwithstanding the foregoing, the Lot Owners of the Outparcels shall procure insurance for the Building Envelope Areas in accordance with the Insurance Standards.

5.2.1. **Insurance Standards:**

5.2.1.1. **Approved Insurers:** Each Lot Owner shall carry (or cause to be carried) with financially responsible insurance companies meeting the standards set forth in this Section and authorized to do business in the State, commercial general liability insurance covering its legal liability in connection with claims for personal injury or death and property damage incurred upon or about its Lot(s) and within any improvements constructed on its Lot in accordance with the requirements of this Section. Developer and Scheels shall be shown as an additional insured on each Lot Owner's commercial general liability insurance for personal injury or death and property damage incurred on its Lot.

5.2.1.2. **Insurance Requirements.** All policies of insurance required under this Section shall be issued by financially responsible insurance companies qualified to do business in the State. Certificates of such policies shall be delivered to Developer (and to Scheels with respect to the general liability coverage referenced above) upon request for the same promptly after the request. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by the Lot Owner responsible for the same in a like manner and to like extent with no lapse in coverage. All public liability, property damage and other casualty policies shall be written as primary policies, not contributing with or secondary to coverage which the other Lot Owners may carry. Developer or Scheels may require increased amounts of insurance be carried by any Lot Owner pursuant to this Agreement and other reasonable types of insurance coverage in reasonable amounts may be required; provided, however, (i) no such increases shall be required more than once in every five (5) year period and (ii) in no event shall such increased amounts of insurance be in excess of that required by prudent developers of comparable first class shopping centers in the City. In addition, such coverages shall include earthquake and flood coverage if such coverage is required by Developer's lender

5.2.1.3. **Casualty Coverage.** Commencing as of the date the Lot Owner of a Lot commences construction, and thereafter for the Term of this Agreement, as herein after defined, each Lot Owner shall carry property insurance on an all risk basis on its respective improvements in an amount sufficient to avoid the effect of any coinsurance provisions of such policies and in any event in an amount not less than the full replacement value of such improvements; excluding, in each case, foundation, footing and excavation costs, with reasonable deductibles, and otherwise in accordance with the requirements set forth in this Section.

5.3. **Assessment for Costs of Developer Maintenance of Common Areas.** Developer may levy reasonable assessments against the Lot Owners, their successors and assigns, computed as detailed in Section 5.4, for their respective share of such amount as is sufficient to reimburse Developer for every cost as detailed in Sections 5.1 and 5.2 for maintenance and insurance (plus a management fee of fifteen percent [15%] of such costs) (hereafter, **"CAM Expenses"**). Each Lot Owner shall pay to Developer, its proportionate share of CAM Expenses, as hereinafter defined.

5.4. **Computation of Assessment.** Each Lot Owner's assessment (hereinafter the **"Assessment"**) shall be computed by multiplying the CAM Expense by the following:

As to the Outparcels:

Lot 1	2.81 %
Lot 6	3.34 %
Lot 9	3.97 %

As to all other Lots (other than Outlot A and Outlot B):

a fraction, the numerator of which is the square footage of building space of all buildings located on the respective Lot and the denominator of which is the total square footage of building space of all buildings located in the Shopping Center, excluding the Outparcels.

Nothing contained in this Agreement shall preclude Developer without the joinder or approval of any Lot Owner, from entering into an agreement (including, but not limited to, the Supplemental Agreement between Developer and Scheels) with a Party or preclude a Party from entering into an agreement with its Permittee(s) that obligates such Party to pay a greater or lesser share of CAM Expenses than would otherwise be required by the this Agreement or to prohibit Developer from balancing Assessments over all portions of the Lots owned by Developer.

5.5. **Payment of CAM Expenses.** Lot Owner's Assessments shall be paid in monthly installments on the first day of each calendar month in advance, in an amount reasonably estimated by Developer. Developer shall have the right, exercisable by notice from Developer to Lot Owner (other than Scheels or the Lot Owner of the Scheels Lot) at any time to require Lot Owner (other than Scheels or the Lot Owner of the Scheels Lot) to pay to Developer as Lot Owner's proportionate share of CAM Expenses a different sum of money then reasonably estimated based upon costs actually incurred as CAM Expenses. In the event Developer shall have given notice to Lot Owner of the changed amount then, commencing on the date designated by Developer and continuing for the balance of the period during the Term of this Agreement, as herein after defined, indicated by Developer, Lot Owner shall pay Developer monthly on the first day of each month, in advance, one-twelfth (1/12th) of the amount so estimated by Developer. Within ninety (90) days after the end of each calendar year, Developer shall furnish Lot Owner with a statement in reasonable detail summarizing the actual CAM Expenses for the preceding calendar year and setting forth the method by which Lot Owner's proportionate share was determined as herein provided. If the aggregate of the monthly Lot Owner's proportionate share paid by Lot Owner during any year exceeds the amount which is actually due by Lot Owner as provided herein, the difference shall be credited against the next succeeding monthly Lot Owner's proportionate share payment to be made by Lot Owner under this Section. In the event the amount paid by Lot Owner shall be less than its proportionate share, then Lot Owner shall pay the remaining balance within thirty (30) days after such notice is furnished.

5.6. **Audit.** Developer shall keep good and accurate books and records in accordance with generally accepted accounting principles concerning the operation, maintenance and repair of the Common Area and the CAM Expenses. Lot Owner and its agents shall, upon written request to Developer within two (2) years following the end of such calendar year, have the right to review, audit and copy Developer's records and computations regarding the CAM Expenses for that given year. If any statement of CAM Expenses previously furnished to Lot Owner shall be greater than one hundred ten percent (110%) of the actual CAM Expenses shown by such audit, Developer shall immediately pay Lot Owner's reasonable costs of such audit for the period audited. Should Lot Owner question the accuracy of any such costs, Lot Owner's right to dispute any such costs shall be conditioned upon payment to Developer of Lot Owner's proportionate share thereof prior to its right to contest any such costs, with an adjustment thereafter, if necessary.

6. **Real Property Taxes.** To the fullest extent possible, real estate taxes and general and special assessments (collectively, **"Real Property Taxes"**) levied and assessed against any Lot shall be separately assessed by the taxing authority and paid by the Lot Owner. Each Lot Owner 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 Lot Owner shall cause to be paid before delinquency all taxes (including sales and use taxes), assessments, license fees and public charges levied, assessed or imposed upon the business operations on its 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 Lot Owner other than Developer are assessed with property of Developer, such assessment shall be equitably divided between Developer and such other Lot Owner by Developer, after consultation with such other Lot Owner. Notwithstanding the foregoing, the Real Property Taxes assessed against Outlot A and Outlot B shall be considered CAM Expenses for the purposes of this Agreement. Developer, as the Lot Owner of Outlot A and Outlot B, shall pay such taxes as set forth herein and the costs of same shall be reimbursed to Developer by including such costs in the CAM Expenses set forth in Section 5.3 hereof.

7. **Employee Parking.** Developer and Lot Owners shall use their best efforts to cause Permittees of the Lots to have their respective employees' park only in the permitted employee parking areas for such Permittee, provided that no Permittees of the Lots, other than Permittees of the Scheels Lot, shall be permitted to designate any part of the Scheels Lot for employee parking purposes. Notwithstanding the foregoing, nothing contained herein shall prohibit the employees of Permittees of the Lots to park on the Scheels Lot.

8. **Damage or Destruction.** Subject to the Developer's obligation to maintain, replace and repair the Common Areas on the Scheels Lot as specified in the Supplemental Agreement, in the event of damage or destruction of any improvements erected or placed on any Lot, whether by fire or other casualty, the Lot Owner shall 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. Subject to the Developer's obligation to maintain, replace and repair the Common Areas on the Scheels Lot as specified in the Supplemental Agreement, the Lot Owner shall also be obligated 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 the Lot Owner 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 Lot Owner shall be liable to pay Developer upon demand, the reasonable cost and expense incurred by Developer, including interest at fifteen (15%) and a reasonable management fee not to exceed ten (10%) percent. Notwithstanding the foregoing, as to the Scheels Lot, Developer's right to place the property in a safe condition and require reimbursement from Scheels for the cost of same, as set forth above, shall apply only to the building to be constructed on the Scheels Lot. Although no transfer of ownership shall be deemed to have occurred as a result of such Party's election not to restore its store(s), said area shall be treated as Common Area and shall be maintained and insured by Developer as such with such costs of maintenance and insurance being recoverable from the Lot Owner and, if not paid within twenty (20) days of such demand, Lot Owner shall pay Developer, interest at the annual rate of fifteen percent (15%) and a penalty of 10 cents ($.10) per each dollar expended by Developer 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.

9. **Indemnification.**

9.1. **Construction.** Each Lot Owner, including Developer in connection with its work on the Scheels Lot, ("Indemnitor") covenants and agrees to indemnify, defend, and hold harmless Developer and the other Lot Owners ("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. The Lot Owners (each, a "Constructing Owner") shall pay all reasonable costs and expenses incurred by any other Lot Owner 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 Lot owner 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, including Developer's work on the Scheels 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 Lot Owner's construction. 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 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 (i) such Constructing Owner 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 Lot Owner 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; (ii) neither the affected Lot nor any part thereof or interest therein would be in any substantial danger of being sold, forfeited, or lost, (iii) such affected Lot owner would not be in any substantial danger of any civil or criminal liability for failure to comply therewith; and (iv) such Constructing Owner promptly notifies such affected Lot owner, 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, penalties 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 Lot owner. 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.

9.2. **Liability Coverage**.

9.2.1. **Indemnity.** Each Lot Owner hereby agrees to indemnify, defend and hold harmless Developer and all other Lot Owners 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 Lot Owner, 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 Lot Owner or Developer, whichever is seeking indemnification, or their agents, servants, employees or contractors.

9.2.2. **Waiver of Subrogation**. Each Lot Owner hereby waives (the **"Waiving Party"**) any rights the Waiving Party may have against the Developer or other Lot Owners (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 Lot Owners 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 the Developer or Lot Owners, respectively, under this Agreement. The Lot Owners hereto each, on behalf of their respective insurance companies insuring the property of such Lot Owners against any such

loss, waive any right of subrogation that such Lot Owners 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. Each Lot Owner 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, if necessary, to prevent the invalidation of such insurance coverage by reason of said waivers. The foregoing waiver shall be effective whether or not the Lot Owners maintain the required insurance or given written notice of the waivers contained herein to their insurance companies.

10. **Prohibited Uses.** The uses of the Lots shall be consistent with this Agreement and consistent with and complimentary to uses by the other permittees of the Developer Property as an upscale shopping center and unless otherwise approved by Developer in its sole discretion without joinder of any other party, Lot Owners shall limit the uses of the Lots to restaurant and food service establishments, dry cleaners, hotels and motels, banks, video rental stores, theaters, Offices (as defined below), and retail sales uses customarily found on Lots of similarly situated shopping centers. For the purposes of this Section, the term "Offices" shall mean retail offices providing services commonly found in similar first class shopping centers in the metropolitan area of the City (for example and not by way of limitation: financial services, real estate brokerage, insurance agency, banking, travel agency). Notwithstanding the foregoing sentence, none of the following uses or operations, in addition to the restrictions set forth on the attached **Exhibit D**, shall be conducted or permitted on or with respect to all or any part of the Lots unless otherwise approved by Developer and Scheels.

10.1. Any public or private nuisance.

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

10.3. 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, emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness, 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.

10.4. Any use which emits excessive quantity of dust, dirt, or fly ash; provided however, this prohibition shall not preclude the sale of soils, fertilizers, or other garden materials or building materials in containers if incident to the operation of a home improvement or other similar store.

10.5. Any use which could result in, or cause fire, explosion or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks, provided, however, in no event shall the foregoing prevent Scheels or the owner or any Permittee of the owner of the Scheels Lot from selling firearms, ammunition or other items typically found in a full service sporting goods store.

10.6. Any operation primarily used as a storage facility, or assembly, manufacture, distillation, refining, smelting, agriculture or mining operations.

10.7. Any mobile home or trailer court, auction house, labor camp, junkyard, mortuary, funeral home, stock yard or animal raising (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance). Notwithstanding the foregoing, pet shops shall be permitted.

10.8. Any drilling for and/or removal of subsurface substances.

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

10.10. Any flea market and/or swap meet or second hand or surplus store.

10.11. Any massage parlor, adult book shop, movie house or other establishment selling or exhibiting pornographic materials or other pornographic use; provided, however, that such restrictions shall not preclude the (i) showing of films in any first rate motion picture theater operated on Lot 8 of the

Developer Property, 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) sale or rental of adult books, magazines or videos as an incidental part of the business of a general purpose bookstore or video store such as Blockbuster, which is normally found in a first class shopping center.

10.12. A retail business primarily engaged in the sale of gasoline or other vehicle fuel or for the operation of a car wash business, or a gas or service station or automobile service facility.

10.13. Any tattoo parlor or any establishment selling drug related paraphernalia.

10.14. Any residential use.

10.15. Any bar, tavern or nightclub; provided, however, the foregoing shall not prohibit the operation of a bar, tavern, or nightclub as a part of any restaurant being operated on the Lots, provided that the sale of alcohol from such bar, tavern or nightclub does not exceed sixty percent (60%) of such restaurant's gross sales.

10.16. Any abortion clinic or drug rehabilitation clinic.

10.17. Any sales within an Outside Sales Area unless approved by Developer, provided, however, Scheels may use the Scheels Lot for Outside Sales Area purposes in accordance with reasonable rules and regulations promulgated by Developer. No Lot Owner or Permittee, other than Scheels or the owner of the Scheels Lot or Permittees of such owner, may use any portion of the Scheels Lot for Outside Sales Area purposes.

10.18. 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.

10.19. Any bowling alley, pool or billiard hall, or skating rink unless otherwise approved by Developer.

10.20. Any amusement or video arcade or dance hall within 200 feet of the Scheels Lot.

10.21. 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, within 200 feet of the Scheels Lot; 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.

10.22. 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.

11. **Future Subdivision.** Notwithstanding anything to the contrary contained in this Agreement, no Lot Owner, 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 Lot Owner, Developer, in its sole discretion without joinder of any other party, but subject to the terms of this Agreement and the Supplemental 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.

Notwithstanding the foregoing, Developer shall not approve of or make any change or modification to the Scheels Lot without the express written consent of Scheels.

12. **Hazardous Material.** No Lot Owner shall keep, store, produce, permit to be kept, stored or produced, on or about Lot Owner'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, Lot Owner agrees not to release or discard any Hazardous Materials on said Lot Owner's Lot, the Scheels Lot or any other Lot within the Developer Property. Notwithstanding the foregoing, Lot Owner 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 Lot Owner's business and property or the business of any lessee of an Lot Owner, (iii) chemicals, substances or materials reasonably necessary for the construction or repair of improvements on Lot Owner's Lot, and (iv) with respect to the Scheels Lot, gunpowder, ammunitions and any other items which would typically be sold at a full-service sporting goods store. Each Lot Owner covenants that so long as it is the owner of its respective Lot, at Lot Owner'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. Lot Owner shall likewise observe and comply with the requirements of all policies of public liability, fire and all other policies of insurance at any time in force with respect to the Lot, the improvements and equipment on the Lot or in the improvements. In addition, Lot Owner, at its cost and expense, shall comply with all laws, statutes, ordinances, rules and regulations of any governmental authority (**"Agency"**) having jurisdiction thereof concerning environmental matters, including, but not limited to, any discharge into the air, waterways, sewers, soil or ground water of any substance or "pollutant". Upon prior reasonable notice and at times reasonably acceptable to Lot Owner, 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. Lot Owner, and all occupants of the Lot or any improvements thereon claiming under Lot Owner, shall provide to Developer copies of all manifests, schedules, correspondence and other documents of all types and kinds when filed or provided to an Agency or otherwise required to be maintained by an Agency or as such are received from any Agency. Developer and its agents and representatives shall have the right to take samples in quantity sufficient for scientific analysis of all products, materials and substances present on the 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 Lot Owner or an occupant claiming under Lot Owner or otherwise present on the Lot or any improvements thereon. If Lot Owner breaches the obligations stated in this paragraph, or if the presence of Hazardous Material on the Lot or Improvements thereon caused or permitted by Lot Owner results in contamination of the Lot and/or improvements, or if contamination of the Lot or improvements by Hazardous Material otherwise occurs for which Lot Owner is legally liable to Developer or any other Lot Owner for damage resulting therefrom, then Lot Owner shall indemnify, defend and hold Developer and any such other Lot Owner harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the period during which such Lot Owner is the owner of such Lot as a result of such contamination. This indemnification of Developer and other Lot Owners by each Lot Owner includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the respective Lot. Without limiting the foregoing, if the presence of any Hazardous Material on the Lot caused or permitted by Lot Owner results in any contamination of the Lot and/or improvements thereon, Lot Owner 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 Lot Owner 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 Lot Owner by Developer of its intent to take such action, and Lot Owner shall reimburse Developer for any costs incurred by Developer in connection therewith upon submission by Developer to Lot Owner of such costs.

13. **Default and Remedies.**

13.1. **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 of an emergency nature involving immediate threat of damage or injury to persons or property or a failure of the Defaulting Party to remove snow from the parking areas, then (i) the Non-Defaulting Party, at is option, may perform any such term, provision, covenant, or condition, or make any such payment required to cure such emergency provided that the Non-Defaulting Party provides the Defaulting Party with notice of such failure within 24 hours after the Non-Defaulting Party discovers the same, (ii) the Defaulting Party shall promptly reimburse the Non-Defaulting Party for all such expenses and costs incurred and (iii) 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.

13.2. **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.

13.3. **Additional Remedies.** The Non-Defaulting Party may offset any sums due to the Defaulting Party (an **"Offset"**) pursuant to this Agreement or the Supplemental 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.

13.4. **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.

14. **Eminent Domain.**

14.1. **Owner's Right To Award.** Nothing herein shall be construed to give any Lot Owner any interest in any award or payment made to another Lot Owner 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.

14.2. **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.

14.3. **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.

14.4. **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.

15. **Release from Liability.** Any person or entity acquiring fee or leasehold title to Developer Property, to the Lots, or any portion of Developer Property or the Lots, or any expansion of the Developer Property, 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, except 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 Developer Property 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 Lot 10, Developer shall give notice of such Transfer to all Lot Owners and shall include therein the name and address of the Party designated as "Developer".

16. **Estoppel Certificate.** Each Party and signatory hereto hereby severally covenants that within twenty (20) 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. Any Party who is requested to give an estoppel under this Section may require, as a condition of its obligation to give the estoppel, that the Party on whose behalf the original request was made give a similar estoppel to the Party requested to give an estoppel.

17. **Rights of Successors.** The easements, restrictions, benefits, and obligations hereunder shall create mutual benefits and servitudes running with the land. 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 Lot Owner, 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 the parties hereto, including Scheels, their respective heirs, representatives, lessees, successors, and assigns. The singular number includes the plural, and the masculine gender includes the feminine and neuter.

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

19. **Term.** 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 nine-two (92) 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 Lot Owners 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 including without limitation, Paragraph 17, any amendment or modification to this Agreement shall require the written consent of Developer, Scheels 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.

20. **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 F** attached hereto, and which may be revised from time to time by Developer at its sole reasonable discretion; provided, however, that any modification to such rules and regulations which materially affects Scheels must first be approved by Scheels. Developer shall make reasonable efforts to enforce all of such rules and regulations against all Permittees.

21. **Name of Shopping Center.** Developer shall have the right at any time to change the name of the Shopping Center upon no less than ninety (90) days advance written notice to Scheels.

22. **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 effect such tenancies in the Developer Property or upon any Lot owned by Developer as Developer in the exercise of its sole business judgment.

23. **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 Lot Owner against Developer with respect to monetary damages arising hereunder shall be limited solely and exclusively to the interest of Developer in and to the Developer Property and Developer's interest in and to the Lots, and the rents, proceeds and profits therefrom, and neither Developer, nor any of its constituent partners, subpartners, members, managing members or agents, shall have any personal liability therefor, and each Lot Owner, on behalf of itself and all persons claiming by, through or under such Lot Owner, 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.

24. **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 Development of West Dodge, LLC 4717 Central Kansas City, MO 64112 Attention: Dan Lowe Facsimile: (816) 777-3501
with a copy to:	c/o	RED Development of West Dodge, LLC Ebert & Rehorn 6263 N. Scottsdale Road, Suite 222 Scottsdale, AZ 85250 Attention: Michael L. Ebert Facsimile: (480) 947-7997
and with a copy to:		Richard B. Katz, Esq. The Katz Law Firm 6299 Nall, Suite 210 Shawnee Mission, Kansas 66202 Facsimile: (913) 312-5047
Notices to Scheels:		Scheels All Sports, Inc. 3202 13th Avenue South Fargo, ND 58103-3497 Facsimile: (312) 960-5476
And with a copy to:		Steve Hickok, Esq Parsinen Kaplan Rosberg & Gotlieb 100 South Fifth Street Ste 1100 Minneapolis, MN 55402 Facsimile: (612) 333-6798

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.

25. **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.

26. **Entire Agreement.** This Agreement, the exhibits hereto (but subject to the Supplemental Agreement between Scheels and Developer) and the Ground Lease 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.

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

28. **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.

29. **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.

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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:

168th AND DODGE, L.P., a Nebraska limited partnership

By: RED DEVELOPMENT OF WEST DODGE, LLC, a Missouri limited liability company, its General Partner

By: E&R Holdings, LLC, an Arizona limited liability company, Manager

By:_____
Michael L. Ebert, Manager

SCHEELS

SCHEELS ALL SPORTS, INC., a North Dakota corporation

By: _____
Name: S.D. SCHEEL
Title: CEO

Exhibits

Exhibit A	**Legal Description of Affected Real Property**
Exhibit B	**Site Plan of Village Pointe Shopping Center**
Exhibit C	**Legal Description of Scheels Lot**
Exhibit D	**Restricted Uses**
Exhibit E	**Sign Criteria**
Exhibit F	**Rules & Regulations**
Exhibit G	**Perimeter Landscaping Area**
Exhibit H	**Perimeter Roads and Access Ways**
Exhibit I	**Scheels Easement Area**

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

Now on this 27th day of June, 2003, 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 DEVELOPMENT OF WEST DODGE, L.L.C., a Missouri limited liability company, which entity is the General Partner of 168th AND DODGE, L.P., a Nebraska limited partnership, who is personally known to me to be the same person who executed in such capacity the within instrument on behalf of said limited partnership, and who duly acknowledged the execution of the same to be the act and deed of said limited partnership.

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

Notary Public

My Commission Expires:_____

AMY MC CLAUGHRY
Notary Public Arizona
Maricopa County
My Comm. Expires Mar 2, 2004

STATE OF North Dakota)
) ss.
COUNTY OF Cass)

On 23rd June, 2003, before me, Rebecca L. Adams, a Notary Public in and for said state, personally appeared Steve D. Scheel, known to me to be the C.E.O. of SCHEELS ALL SPORTS, INC., a North Dakota corporation, and whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Rebecca L Adams
Notary Public in and for said State

REBECCA L. ADAMS
Notary Public
State of North Dakota
My Commission Expires Dec. 22, 2006

EXHIBIT A

LEGAL DESCRIPTION OF AFFECTED REAL PROPERTY
(Entire Shopping Center, including Scheels Lot)

Lots 1 through 10, Outlot A and Outlot B, Village Pointe, a subdivision in Douglas County, Nebraska.

EXHIBIT B

SITE PLAN

Reflecting, among other things, Building Envelope Areas, Scheels Parking Area, Outlot A (Storm Basin) and Outlot B

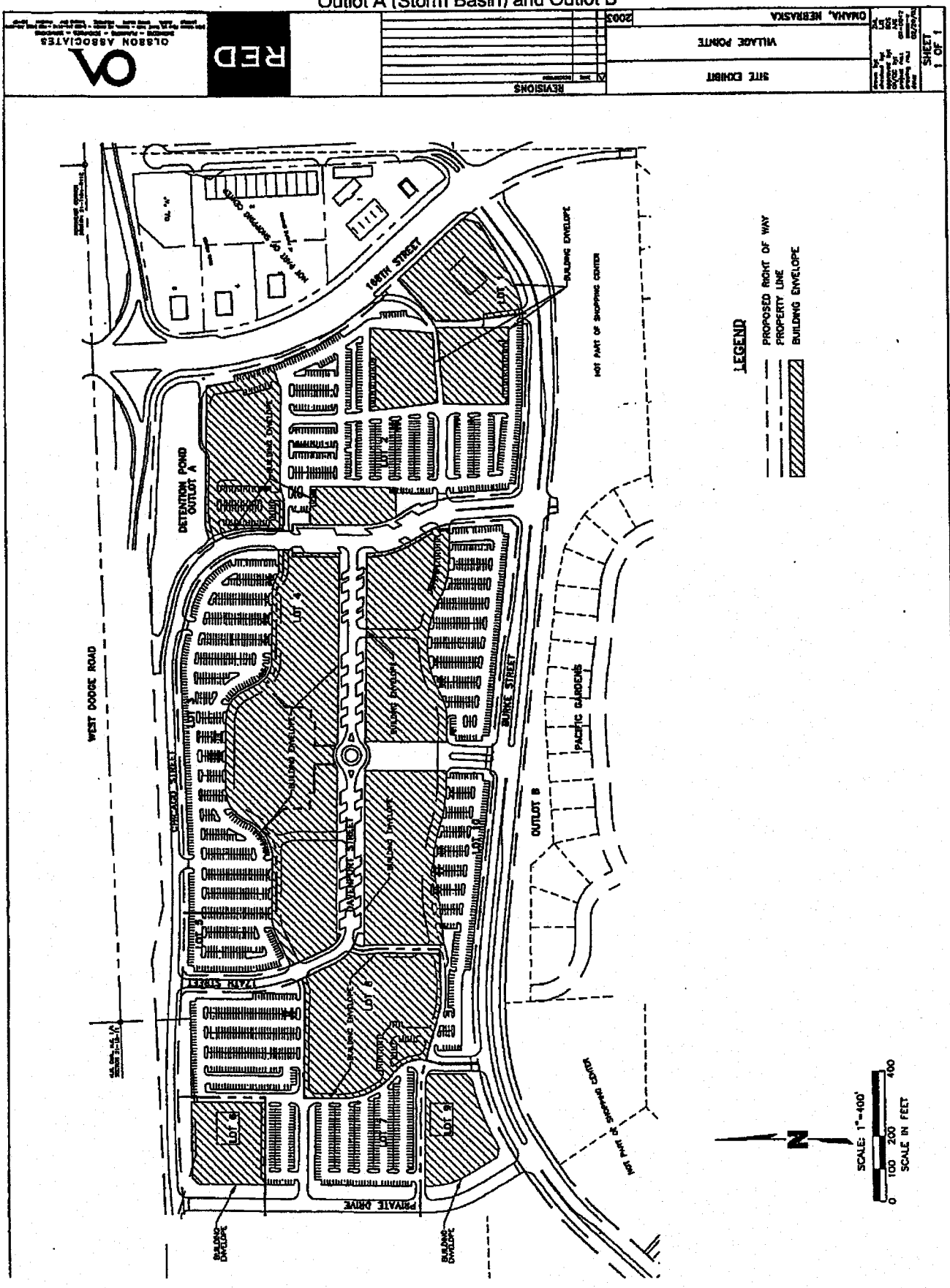


EXHIBIT C

LEGAL DESCRIPTION OF SCHEELS LOT

Lot 3, Village Pointe, a subdivision in Douglas County, Nebraska.

EXHIBIT D

RESTRICTED USES

SCHEELS EXCLUSIVE. Provided a retail business primarily engaged in the sale of sporting goods and sports apparel is operating on the Scheels Lot, Developer and Lot Owners, shall not lease, rent or permit any other premises on any Lot (other than the Scheels Lot) to be occupied, whether by a tenant, sublessee, assignee, licensee or any other occupant, (hereinafter "User") for a purpose which includes the sale of branded athletic specific apparel and/or sporting goods or equipment (hereafter, the **"Scheels Exclusive"**); provided, however, the foregoing restrictions shall in no event restrict (i) a department store (as defined herein) from containing a shoe department that sells athletic shoes and (ii) with the approval of Developer only, one premises in the Shopping Center not to exceed five thousand (5,000) square feet which may be devoted primarily to athletic shoes such as Athletes Foot or Footlocker or (iii) any User who sells branded athletic specific apparel and/or sporting goods or equipment, provided that such User does not utilize in excess of 10% of gross leasable area of its space (including adjacent aisle space) for the sale or display of branded athletic specific apparel and/or sporting goods or equipment (considering all of such items in the aggregate). Developer and Lot Owners agree that provided they have the right to do so, they shall not approve a change in use which conflicts with or is in violation of the Scheels Exclusive. The foregoing restriction is intended to be for the benefit of and appurtenant to the Scheels Lot and may be directly enforced by Scheels All Sports, Inc. and/or the Lot Owner of the Scheels Lot. For purposes hereof, "department store" shall be defined as a traditional general merchandise store occupying at least 75,000 square feet such as Sears, May Company, Marshall Fields, or Nordstrom.

Bed Bath & Beyond

Developer and Lot Owners (as to their Lot) shall not lease, rent or occupy or permit any other premises in the Shopping Center or, with respect to Developer on any Related Land (defined in the Bed Bath Lease) to be occupied, whether by a tenant, sublessee, assignee, licensee or other occupant or itself, by a "Primary Competitor" (hereinafter defined) or a "Secondary Competitor" (hereinafter defined). For purposes hereof, a *"Primary Competitor"* shall mean a home store (such as, by way of illustration only, Linens 'n Things, Home Goods and Strouds) whose primary use is the sale, rental or distribution, either singly or in any combination, of the following items (the *"Exclusive Items"*): linens and domestics, bathroom items, housewares, frames and wall art, window treatments, and closet, shelving and storage items; and a *"Secondary Competitor"* shall mean a store occupying more than five thousand (5,000) square feet of Floor Area whose primary use is the sale, rental or distribution, either singly or in any combination, of the Exclusive Items; provided, however, that any "Upscale Tenant" (hereinafter defined) shall not be deemed to be a Secondary Competitor. The term *"Upscale Tenant"* shall mean any first-class specialty retail tenant normally found in regional malls and primarily selling their respective merchandise under private labels (such as, by way of illustration only, Eddie Bauer, Williams Sonoma, Talbots and Victoria's Secret). Notwithstanding the foregoing, any tenant, user, owner or subtenant of the Shopping Center or Related Land shall have the right to utilize its respective premises for the sale, rental or distribution of the Exclusive Items within an aggregate area (which shall include an allocable portion of the aisle space adjacent to such sales, rental and/or distribution area) not to exceed ten percent (10%) of the Floor Area of such tenant's or subtenant's premises. The restrictions set forth above shall not apply to a full-line national or regional: (i) department store [for example, Wal-Mart, Macy's, Target, the Jones Store or Dillards], (ii) discount club [for example, Costco, BJ's Wholesale Club, or Sam's Club], or (iii) home improvement center [for example, Home Depot or Lowe's], commonly located in first-class shopping centers in the state in which the Shopping Center is located, each occupying at least 80,000 square feet of Floor Area within the Shopping Center, as such stores are currently operated (as of the effective date of the Lease between Developer and Bed Bath & Beyond Inc. (hereinafter the Bed Bath Lease). In addition, the restrictions set forth above shall not apply to: (x) the tenants operating under the tradenames "Organized Living", "Pier One Imports", "Cost Plus", as such stores are currently operated (as of the effective date of the Bed Bath Lease), (y) the tenant operating under the tradename "Wild Oats", or (z) the Scheels Lot until the expiration or sooner termination of the Lease between Developer and Scheels All Sports, Inc (hereafter, the "Existing Lease"); provided, however, that if fee simple title to the Scheels Lot is acquired by Scheels All Sports, Inc. its successors or assigns, at any time during the term of said Existing Lease or simultaneously with the termination thereof, then the restrictions set forth above shall remain inapplicable to the Scheels Lot until such time during the term of the Bed Bath Lease, if ever, that the Scheels Lot or any portion thereof is acquired by Developer or an affiliate of Developer or the then-owner of Lot 2 or an

affiliate of the then-owner of Lot 2 unless the Scheels Lot is then used for a sporting goods use. Notwithstanding the foregoing sentence, the restrictions set forth above shall apply to the Scheels Lot on any earlier date on which the Scheels Lot is first bound by the use exclusive of another tenant or occupant of the Shopping Center. The exclusive rights granted to Bed, Bath & Beyond in this ECR shall inure to the benefit of any assignee of Bed, Bath & Beyond's interest in the Bed Bath Lease and to any sublessee of at least fifty percent (50%) of the Floor Area of the premises under the Bed Bath Lease (the "BBB Premises"). The exclusive rights granted to Bed, Bath & Beyond shall be conditioned upon Bed, Bath & Beyond using at least a portion of the BBB Premises for the sale, rental or distribution of some or all of the Exclusive Items (other than prior to the date Bed, Bath & Beyond is required to initially open for business or during Excused Periods as provided in the Bed Bath Lease, or for periods of time during the term of the Bed Bath Lease not exceeding one hundred eighty (180) consecutive days in each instance). Developer shall notify Bed, Bath & Beyond at least thirty (30) days prior to nullifying the exclusive rights granted to Bed, Bath & Beyond and Bed, Bath & Beyond shall have the right, at Bed, Bath & Beyond's sole option, to negate Developer's intended nullification by so utilizing all or a portion of the BBB Premises for the sale, rental or distribution of some or all of the Exclusive Items within such 30-day period The foregoing restriction is intended to be for the benefit of and appurtenant to the Bed Bath Lease and may be directly enforced by Bed Bath & Beyond Inc, the owner of Lot 2 or their successors or assigns.

EXHIBIT E

SIGN CRITERIA

SIGN CRITERIA

Building Parameters:

Small Shop Tenant -
Leaseable area 0 - 14,999 s.f.

Sub-Major Tenant
Leaseable area 15,000 – 119,999 s.f.

Major Tenant
Leaseable area 120,000 and above

Sign Types and Parameters

The following types and amounts of signs will be permitted:

1. Small Shop Tenant Sign Parameters

   - The maximum height for letters within the sign band shall be 30"
   - Signs shall not extend more than 8" beyond the face of the surface to which the sign is mounted.
   - All signs must be illuminated and shall derive light from a concealed source. No exposed lamps, globes, tubes, etc. will be permitted.
   - Signage shall be illuminated individual letters mounted to the building face. A colored or frosted Plexiglas face is required. One wall sign per façade with a maximum of two total are allowed. One additional 8" over door transom sign and one over door 8 square foot blade sign are allowed per storefront.
   - Reversed halo lighting are encouraged, and shall be reviewed on an individual basis.
   - No logos will be allowed on Tenant storefronts without prior written approval.
   - Double stacked lettering shall be allowed on an individual basis only and are subject to Landlord approval. Double stacked letters shall be a maximum 24" high individual letters and shall comfortably fit within the Landlord bulkhead as determined by the Landlord's Representative.
   - Tag lines shall be allowed on an individual basis only and are subject to Landlord approval. Any allowable tag lines shall be individual illuminated letters (no box signs) and shall not exceed 10" in height. The width of the tag, if approved, line shall not exceed the width established for the primary signage.

Sub-Major Tenant Sign Parameters

- Tenant sign area shall be on the building faces above the entrances and as part of the building design.
- The maximum height for letters in the body of the sign shall not exceed 48" in height.
- The sign areas shall not exceed ten percent (10%) of the area of the storefront.
- Maximum one sign per storefront with a maximum of (3) three.
- Signage shall be illuminated individual letters mounted to the face of the building. The use of a colored or frosted Plexiglas face is required.
- Reversed halo lighting may be acceptable, but shall be reviewed on an individual basis.

3. Major Tenant Sign Parameters

- Tenant sign area shall be on the building faces above the entrances and as part of the building design.
- The maximum height for letters in the body of the sign shall not exceed 72" in height.
- The sign areas shall not exceed ten percent (10%) of the area of the storefront.
- Maximum one sign per storefront with a maximum of (3) three.
- Signage shall be illuminated individual letters mounted to the face of the building. The use of a colored or frosted Plexiglas face is required.
- Reversed halo lighting may be acceptable, but shall be reviewed on an individual basis.

4. In-Line Restaurants

- The maximum height for letters within the sign band shall be 30"
- Signs shall not extend more than 8" beyond the face of the surface to which the sign is mounted.
- All signs must be illuminated and shall derive light from a concealed source. No exposed lamps, globes, tubes, etc. will be permitted.
- Double stacked lettering shall be allowed on an individual basis only and are subject to Landlord approval. Double stacked letters shall be a maximum 24" high individual letters and shall comfortably fit within the Landlord bulkhead as determined by the Landlord's Representative.
- Tag lines shall be allowed on an individual basis only and are subject to Landlord approval. Any allowable tag lines shall be individual illuminated letters (no box signs) and shall not exceed 10" in height. The width of the tag line, if approved, shall not exceed the width established for the primary signage.

5. Out Parcel Tenant

- The maximum height for letters in the body of the sign shall not exceed 36" in height or as allowed by Landlords Architect.
- The sign areas shall not exceed ten percent (10%) of the area of the storefront.
- A maximum of three (3) wall signs and one monument signs are allowed. Refer to "Monument Signage - Out Parcel" for monument sign information
- Signage shall be illuminated individual letters mounted on the buildings opaque background or as approved by Landlord's Architect. The use of a colored or frosted Plexiglas face is required. Colored backer panels are not allowed.

General Sign Parameters

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

- Lettering on all store signs shall be limited to business or trade name of the premises as it appears on the lease. No sign manufacturer's name, union labels, or other lettering shall be visible. Logo signs will be reviewed on an individual basis, but in general logos will not be allowed.
- No exterior sign or sign panel will be permitted to extend above any roof or parapet line.
- Any sign, notice or other graphic or video display, particularly self-illuminated signs, located within the store and which is easily visible from the shopping center.
- Manufacturers' labels, underwriters' labels, clips, brackets, or any other form of extraneous advertising attachment or lighting devices shall be fully concealed from public view. Labels installed on sign returns are not permitted.
- No exposed lamps or tubing will be permitted.
- No exposed raceways, crossovers or conduits will be permitted.
- All signage returns shall either match face color of sign or blend with adjacent building color.
- All cabinets, conductors, transformers and other equipment shall be concealed from public areas, visible fasteners will not be permitted.
- All metal letters shall be fabricated using full-welded construction, with all welds ground smooth so as not to be visible.
- Acrycap or trimcap retainers used at the perimeter of sign letter faces shall match in color and finish the face or the sides of the sign.
- Threaded rods or anchor bolts shall be used to mount sign letters, which are spaced out from the building face. Angle clips attached to letter sides will not be permitted. All mounting attachments shall be sleeved and painted.
- Except as provided herein, no advertising placards, banners, pennants, names, insignia, trademarks, or other descriptive materials shall be affixed or maintained upon the glass panes and supports of the storefront windows and doors, within 4' of the storefront, without prior written approval of the Landlord.
- Any Plexiglas sign faces shall not be clear.
- Sign illumination shall be internal and self contained.
- All electric signs and installation methods must meet UL standards and contain a UL label.
- At no time will hand-lettered, non-professional signs, or newspaper advertisements be displayed on the storefronts or within the Design Control Zone.
- Decals or other signing indicating products lines or credit card acceptability shall not be permitted on the storefront glazing other than stores operating hours.
- All illuminated signs must be turned on during the Center's normal operating hours. The use of time clocks for sign and show window lighting is required, and should be adjusted and coordinated with the shopping center.
- Lighting of signs shall be at hours as required by Landlord.

- All Out Parcel, Major, and Sub-Major Tenants will be allowed one 4'x8' temporary construction sign prior to any opening of any shopping center tenants. Coordinate location with Landlord's representative.
- Minimum height of all signage shall not be less than 80% of the maximum allowable letter height without prior written approval.
- All signage is subject to the approval of the Landlord's Architect and the local authorities.
- Tenants are required to provide a concealed access panel from within the Tenant's leasable area, if applicable, to service and install exterior building signage

Signs not Permitted

The following types of signs shall not be permitted:

- Signs such as die cut vinyl, gold or silver leaf, or paint.
- Boxed pillow or cabinet type.
- Formed plastic or injection molded plastic signs.
- Banners or pennants.
- Signature signage (window sign or sign plate indicating name of shop or good sold) in addition to primary signage.
- Cloth, paper, cardboard and similar stickers or decals around or on surfaces on the storefront, or within the Design Control Zone, without prior written approval.
- Exposed neon signs.
- Animated, moving, rotating or flashing.
- Noise making.
- Additional signage of any kind within 4' of storefront windows.
- Awning signage.

Additional Signage

Service doors to Tenant spaces throughout the project shall be standard 4", identification only (name and address number, or additional as required by local jurisdiction) and shall be installed by the Tenant. The Tenant shall not apply any signage or other wording to service doors.

- All signage must be shown to scale on the approved storefront elevation.
- All additional signage shall be submitted to the Coordinating Architect for approval.
- Any minor deviations to this criteria will be reviewed on an individual basis and subject to Landlord approval

Monument Signage -Out Parcel

A single out parcel monument sign is allowed for each out parcel. There is one monument sign allowed per Out-Parcel. The sign shall be constructed as indicated below. The actual signage shall be individually illuminated letters on an opaque background as stipulated previously in sub section "Out Parcel" of this section. All monument signs shall have required landscaping at base, subject to Landlord approval.

Monument Signage

(to follow when available)

Pylon Sign - Shopping Center

A single shopping center pylon sign will be provided by the Landlord to identify the name and location of the shopping center only. No individual tenant identification signs will be allowed on the pylon sign.

Shopping Center Pylon Sign

(to follow when available)

EXHIBIT F

RULES AND REGULATIONS

All Lots shall be governed by the following Rules and Regulations unless otherwise agreed by Developer and the owner of the Scheels Lot, their 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 or the Supplemental Agreement, the provisions of the Supplemental Agreement shall control.

1. Common Area

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 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, scaled areas, or damaged areas.

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

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 or 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. Subject to the Developer's obligations under the Supplemental Agreement, each Lot Owner shall use their diligent efforts to arrange with local police authorities to (a) patrol the Common Area on the respective Lot owned by such Lot Owner, 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. Floor Area

2.1. All floor area, 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.

2.2. All trash, refuse and waste materials shall be regularly removed from the premises of each store 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.

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 Lot Owner 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 Lot Owner.

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 Lot Owner. 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; provided, no such limitations may be imposed on the Scheels Lot without the consent of Scheels.

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 Scheels rights under this Agreement and the Supplemental Agreement, 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, and approved by Scheels with respect to the Scheels Lot.

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 "Village Pointe 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 other Lot Owners 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 and Scheels, as applicable.

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 Lot Owners 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 Lot Owner 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. Scheels shall have approval rights over all aspects of any staging which might occur on the Scheels Lot, or whether any staging areas may occur on the Scheels Lot. Such Lot Owner 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 sightly 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 or Scheels, with respect to any staging on the Scheels Lot, 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 Lot Owner'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 or Scheels and is reasonably required to minimize inconvenience in connection with the construction or development of the Lots and their respective permittees so as to avoid obstructing visibility or access from Burke Street, West Dodge Road, and 168th Street or 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 or Scheels (with respect to Scheels Lot) 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 or Scheels (with respect to Scheels Lot), 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 or Scheels (with respect to Scheels Lot) 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 or Scheels (with respect to Scheels Lot) relating to such repair and re-striping.

4.8. Any temporary signs shall be approved by Developer or Scheels (with respect to signs located on the Scheels Lot) 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 or Scheels (with respect to Scheels Lot) 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 or Scheels (with respect to Scheels Lot) 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 or Scheels (with respect to Scheels Lot) for any costs and expenses reasonably incurred by Developer or Scheels (with respect to Scheels Lot) in connection therewith.

EXHIBIT G

PERIMETER LANDSCAPING AREA

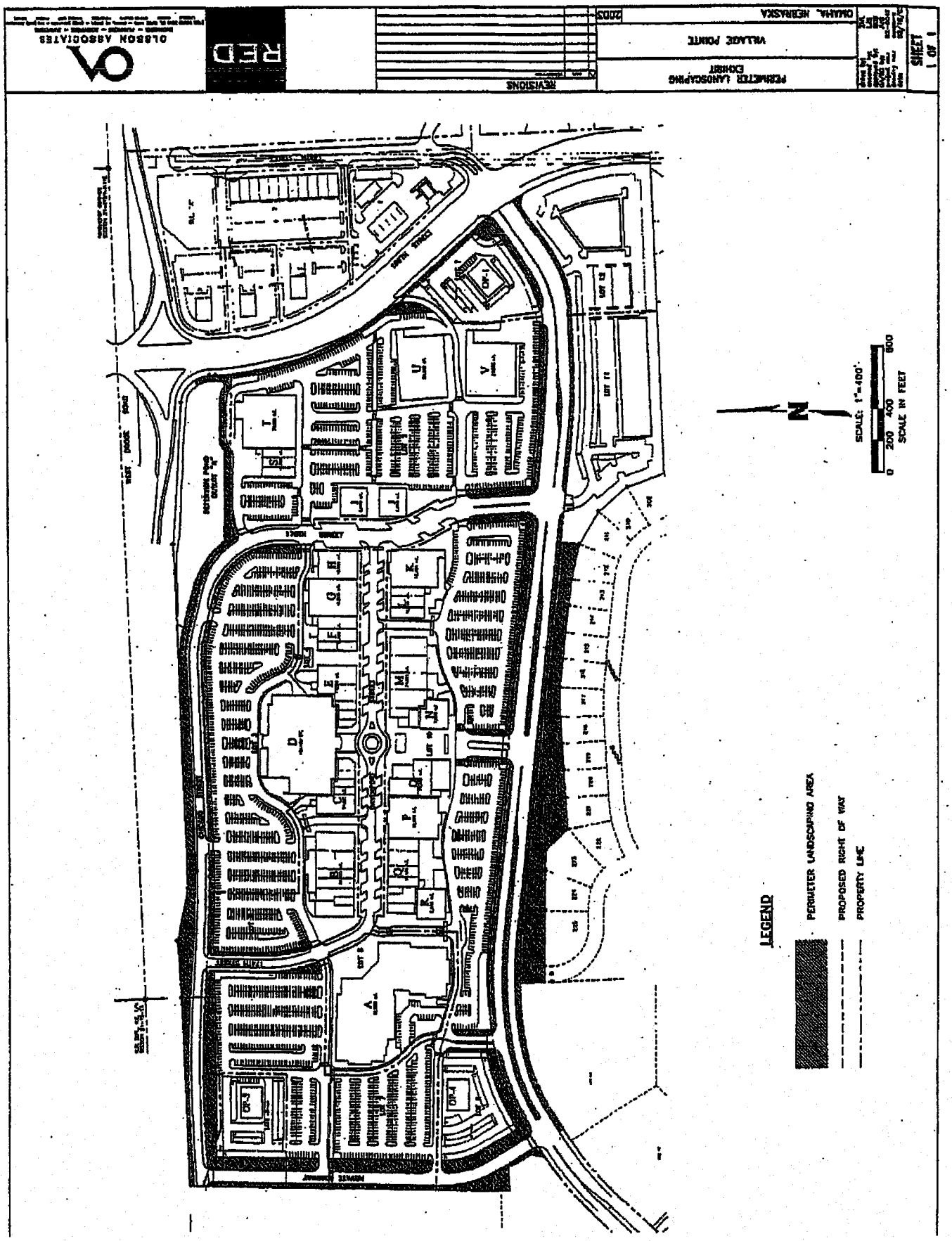


EXHIBIT H

PERIMETER ROADS AND ACCESS WAYS

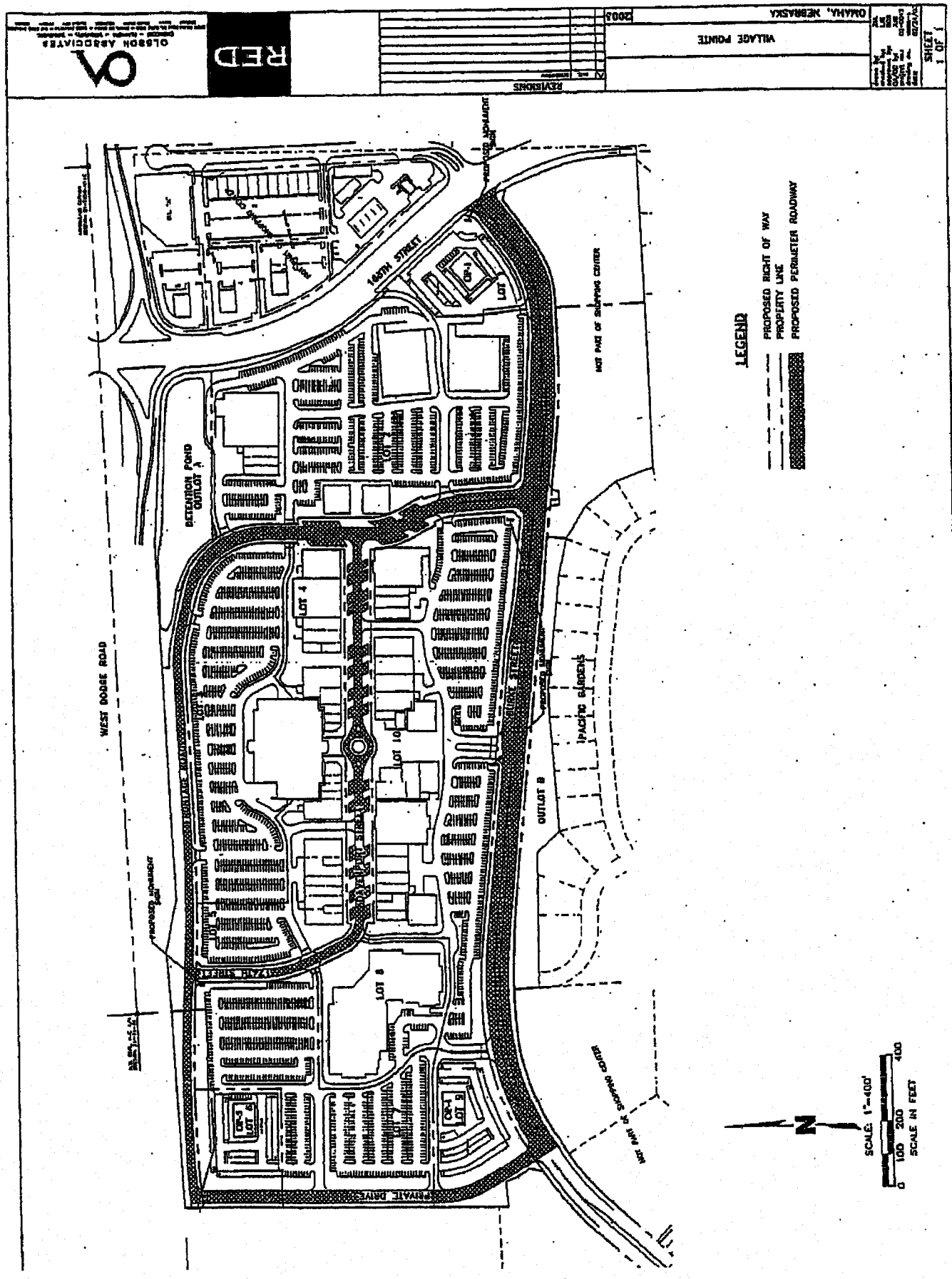
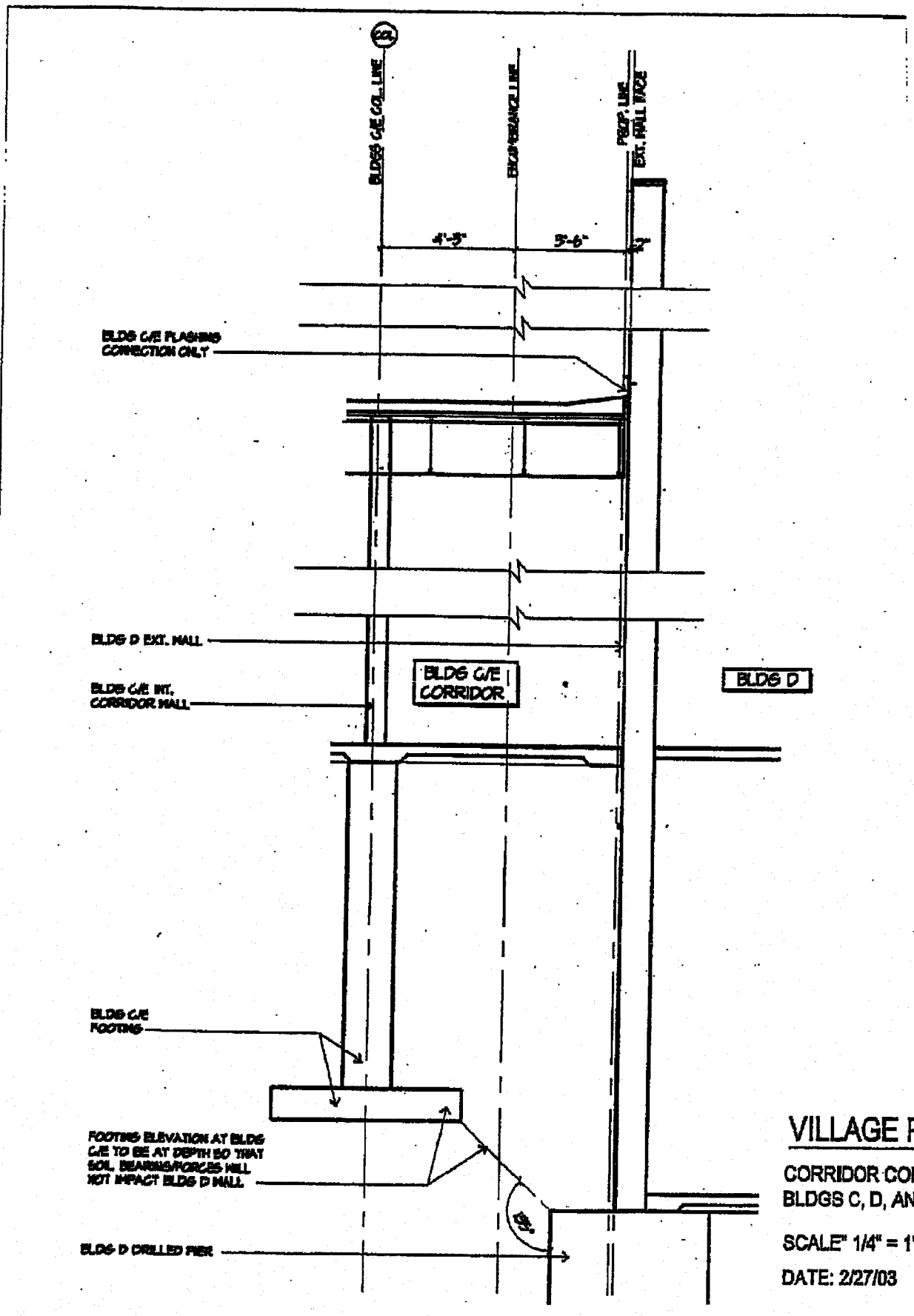


EXHIBIT I

SCHEELS EASEMENT AREA



VILLAGE POINTE

CORRIDOR CONDITION AT BLDGS C, D, AND E

SCALE" 1/4" = 1'-0"

DATE: 2/27/03

MISC 2004062134

MAY 14 2004 10:05 P 24

Misc 12750
FB See attached
24
COMP 1MS
15
DEL SCAN FV

Received - RICHARD TAKECHI
Register of Deeds, Douglas County, NE
5/14/2004 10:05:12.53
2004062134

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
168th AND DODGE, L.P.
c/o RED Development
4717 Central
Kansas City, MO 64112
Attention: Dan Lowe

FIRST AMENDMENT OF
DECLARATION OF RECIPROCAL EASEMENTS,
COVENANTS AND RESTRICTIONS

THIS FIRST AMENDMENT OF DECLARATION OF RECIPROCAL EASEMENTS, COVENANTS AND RESTRICTIONS (hereafter, the **"Amendment"**) is made as of the 10 day of May, 2004, by 168th AND DODGE, L.P., a Nebraska limited partnership, (hereafter, the **"Developer"**), having a mailing address of c/o RED Development, 4717 Central, Kansas City, MO 64112.

WITNESSETH:

WHEREAS, Developer and Scheels All Sports, Inc., a North Dakota corporation (**"Scheels"**), previously entered into a Declaration of Reciprocal Easements, Covenants and Restrictions dated June 23, 2003 and recorded on July 2, 2003 as Document No. 2003128568 (the **"ECR"**). The parties simultaneously executed the Supplemental Agreement referred to in the ECR, recorded on July 2, 2003 as Document No. 2003128564. The easements, restrictions and covenants contained therein remain in full force and effect with regard to the rights and obligations as to Developer, Scheels and any subsequent owner thereof. Except as otherwise specifically provided herein, any initial capitalized term used in this Amendment which is defined in the ECR shall have the meaning set forth in the ECR; and

WHEREAS, Developer has exercised its right to add land to, adjust and redefine portions of the Shopping Center and has replatted Lots 6, 7, 9 and 10 of Village Pointe Subdivision which right is expressly provided in the ECR and may be without the joinder of any party thereto; and

Return to:
The Katz Law Firm
Melissa Goodson
6299 Nall Avenue, #210
Shawnee Mission, KS 66202

T-0178621

-41-

WHEREAS, Developer now desires to amend the ECR to reflect the new legal description of the Shopping Center and as set forth hereinbelow.

NOW, THEREFORE, Developer declares:

1. **Location of Lots/Subdivision.** Pursuant to Section 11 of the REA, Developer has exercised its right to add additional land to the Developer Property within the Shopping Center without the joinder of any party and adjust and redefine the location of various lots within the Developer Property. Village Pointe Replat One recorded on August 29, 2003 as Document No. 2003164160, subdivided Lot 10 into three (3) separate parcels, (Lot 10A, 10B and 10C as shown on Schedule 1 attached hereto). Village Pointe Replat Two recorded on March 19, 2004 as Document No. 2004035111, incorporated approximately 1.54 acres of additional land and reconfigured Lots 6, 7 and 9 into four (4) separate parcels, (OP-2 through OP-4 and Lot 3 Replat Two, as shown on Schedule 2 attached hereto and as shown in replaced Exhibit B). Developer hereby deletes REA Exhibits A, B, G and H in their entirety and replaces same with the Exhibits A, B, G and H attached hereto to correctly reflect the legal description, lot configuration and Site Plan of the Affected Real Property.

2. **Outparcels.** The definition of "Outparcels" contained in Section 5.1 of the ECR is hereby deleted and replaced with the following:

"Lot 1 and OP-2 through OP-4, inclusive, as shown on Exhibit B attached hereto (hereafter, the "Outparcels")... "

3. **Development of OP-2 through OP-4.** Sections 4.3.1 and 4.3.2 shall be amended as follows:

3.1. The first sentence of Section 4.3.1 shall apply to OP-2 through OP-4 and all buildings on OP-2 through OP-4 shall be single one story structures unless otherwise approved by Developer.

3.2. Unless otherwise approved by Developer, which approval shall be in Developer's sole discretion without joinder of any other party, (1) any buildings to be constructed on OP-2 through OP-4 shall not exceed the total square feet in size as hereinafter detailed, and (2) shall have the following minimum number of parking spaces, which parking spaces shall be of a size and nature in compliance with all governmental requirements.

	Maximum Building Sq. Ft.	Minimum Parking Spaces
OP-2	10,000	120
OP-3	8,000	75
OP-4	8,000	80

4. **Computation of Assessment as to OP-2 through OP-4.** The computation of Assessment with regard to Lots 6 and 9 contained in Section 5.4 is hereby deleted and replaced with the following:

As to OP-2 through OP-4:

OP-2	2.10 %
OP-3	1.60 %
OP-4	1.73 %

5. **Confirmation of REA.** Except as expressly modified by this Amendment, all of the terms and provisions of the ECR shall remain unmodified and the ECR is in full force and effect.

Exhibit A.....LEGAL DESCRIPTION OF AFFECTED REAL PROPERTY
Exhibit B.....SITE PLAN
Exhibit G.....PERIMETER LANDSCAPING AREA
Exhibit H.....PERIMETER ROADS AND ACCESS WAYS

IN WITNESS WHEREOF, the undersigned has executed this Amendment of ECR the day and year first written above.

DEVELOPER:

168th AND DODGE, L.P., a Nebraska limited partnership

By: RED DEVELOPMENT OF WEST DODGE, LLC, a Missouri limited liability company, its General Partner

By: E&R Holdings, LLC, an Arizona limited liability company, Manager

By: _____
Michael L. Ebert, Manager

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On May 10th, 2004, before me, Amy McClaughry, a Notary Public in and for said state, personally appeared Michael L. Ebert, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

_____
Notary Public in and for said State

AMY MCCLAUGHRY
Notary Public, State of Arizona
Maricopa County
My Commission Expires
March 02, 2008

SCHEDULE 1

Replat One Village Pointe recorded on August 29, 2003
as Document No. 2003164160,
subdivided Lot 10 into three (3) separate parcels

MISC 2005053230

MAY 10 2005 07:57 P 16

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:
168th AND DODGE L.P.
c/o RED Development
Attn: Mike Ebert
6263 N. Scottsdale Road, Suite 330
Scottsdale, AZ 85250

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
5/10/2005 07:57:09.08

2005053230

DECLARATION OF RESTRICTIVE COVENANT

WHEREAS, under the Agreement of Sale dated February 3, 2005 (the "**Agreement**"), 168th AND DODGE L.P., a Nebraska limited partnership ("**Developer**") has agreed to sell to **LETTERMEN SPORTS FACILITIES, LLC, a Nebraska limited liability company** ("**Owner**") the premises described in the Agreement (which premises are legally described on Exhibit A attached hereto) (hereafter, the "**Premises**") and located at Village Pointe Shopping Center, in Douglas County, Nebraska (the "**Shopping Center**"), as depicted on the site plan of Village Pointe Shopping Center attached hereto as Exhibit B (the "**Site Plan**").

WHEREAS, the Agreement provides that the use of the Premises shall be restricted to certain specific uses.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and Owner covenant and agree as follows:

1. Owner agrees that the Premises shall be used only for the purposes described as follows (the "**Permitted Use**"):

   1.1 the development, construction and operation of a full service sit-down restaurant not in conflict with other restaurant exclusives granted to users in the Shopping Center and under the Trade Name **"Lettermen Sports"**, or upon notice to Seller, any other full service sit-down restaurant not in conflict with other restaurant exclusives granted to users in the Shopping Center which are in effect at the time that the Purchaser proposes to change its use to a different full service sit down restaurant use.

2. It is understood and agreed between the parties hereto that the Premises shall be used and occupied only for the Permitted Use under the Trade Name and for no other purpose or purposes without the prior written consent of Developer, which shall not be unreasonably withheld. In addition to Owner's agreement to operate only for the

MISC FEE 80.50 FB 68-40374
BKP ____ C/O ____ COMP BW
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T-0588554

-41-

Permitted Use as hereinabove provided, Owner expressly covenants and agrees that it shall not operate or permit any operation in the Premises which shall cause any of the rights of the exclusives and/or restrictions which have been negotiated to date (collectively, the "**Exclusives**") which are set forth on Exhibit C attached hereto and incorporated herein by this reference, or any then existing exclusive uses granted by Developer which affect the Premises (the "**Future Exclusives**"), to be violated, nor shall Owner cause Developer to violate any of the rights of the Exclusives or Future Exclusives. Owner agrees that it shall be bound by each of such Exclusive and/or Future Exclusive as though such exclusive were expressly applicable to Owner. In the event that Owner's use violates or causes Developer to violate any use protected by the Exclusives or Future Exclusives, or Owner fails to initially operate under the aforementioned Trade Name or for the Permitted Use hereunder, Developer shall give Owner written notice of same and Owner shall immediately cease the use of the Premises for such prohibited use within 5 days thereafter. In the event Owner fails to cease such prohibited use, or fails to commence operating under the aforestated Trade Name, then Owner agrees to indemnify, defend, and hold harmless Developer from and against any and all claims, demands, actions, causes of action, losses (including, but not limited to, loss of rents resulting from the termination by a tenant of its lease), damages, costs, and expenses, including court costs and attorneys' fees, including any cost or legal expenses of Developer in enforcing the restriction as and against Owner, and including any cost or legal expenses of Developer arising from or related to wholly or in part, the use of the Premises for any purpose prohibited or listed in Exhibit C hereto or any Future Exclusive. In the event Owner violates any of the provisions of this Section, Developer shall have all rights and remedies provided herein and in the Agreement, in addition to all rights and remedies available to Developer at law or in equity, including, but not limited to, injunctive relief.

3. This Declaration of Restrictive Covenant ("DRC") and the restrictions contained herein constitute covenants running with the land which shall bind subsequent owners and users of the Premises. This DRC may be executed in several counterparts, each of which shall be deemed an original. The signatures to this DRC may be executed and notarized on separate pages, and when attached to this DRC shall constitute one (1) complete document. This DRC shall be considered to have been executed by a Party if there exists a photocopy, facsimile copy, or a photocopy of a facsimile copy of an original hereof or of a counterpart hereof which has been signed and delivered by such Party. Any photocopy, facsimile copy, or photocopy of a facsimile fully executed and delivered copy of this DRC or a fully executed and delivered counterpart hereof shall be admissible as evidence in any proceeding as though it were an original.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Owner and Developer have caused this Agreement to be executed effective as of the latest date executed, as shown below.

"OWNER"

LETTERMEN SPORTS FACILITIES, LLC, a Nebraska limited liability company

By: _____
Name: Aaron Bilyeu
Title: Manager Member
Date of Execution: 19 APRIL 05

STATE OF NEBRASKA)
) **ss.**
COUNTY OF DOUGLAS)

Now on this 19 day of APRIL, 2005, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Aaron Bilyeu, who is personally known to me to be the same person who executed the within instrument and who duly acknowledged the execution of the same to be his free act and deed.

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

_____
Notary Public

My Commission Expires: _____

GENERAL NOTARY - State of Nebraska
SHAUN M. JAMES
My Comm. Exp. May 30, 2006

IN WITNESS WHEREOF, Owner and Developer have caused this Agreement to be executed effective as of the latest date executed, as shown below.

"DEVELOPER"

168TH AND DODGE L.P.,
A NEBRASKA LIMITED PARTNERSHIP

BY: RED DEVELOPMENT OF WEST DODGE, L.L.C, A MISSOURI LIMITED LIABILITY COMPANY, ITS GENERAL PARTNER

By: E&R Holdings, LLC,
an Arizona limited liability company,
Manager

By: _____
Michael L. Ebert, Manager
Date of Execution: _____

STATE OF ARIZONA)
) **ss.**
COUNTY OF MARICOPA)

Now on this 15th day of April, 2005 before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Michael L. Ebert, who is personally known to me to be the same person who executed the within instrument and who duly acknowledged the execution of the same to be his free act and deed.

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

_____
Notary Public

My Commission Expires: _____

AMY MCCLAUGHRY
Notary Public, State of Arizona
Maricopa County
My Commission Expires
March 02, 2008

EXHIBIT A
to Declaration of Restrictive Covenants

THE PREMISES

Lot 4 Village Pointe Replat Two, a subdivision in Douglas County, Nebraska, according to the recorded plat thereof.

Exhibit B
Site Plan

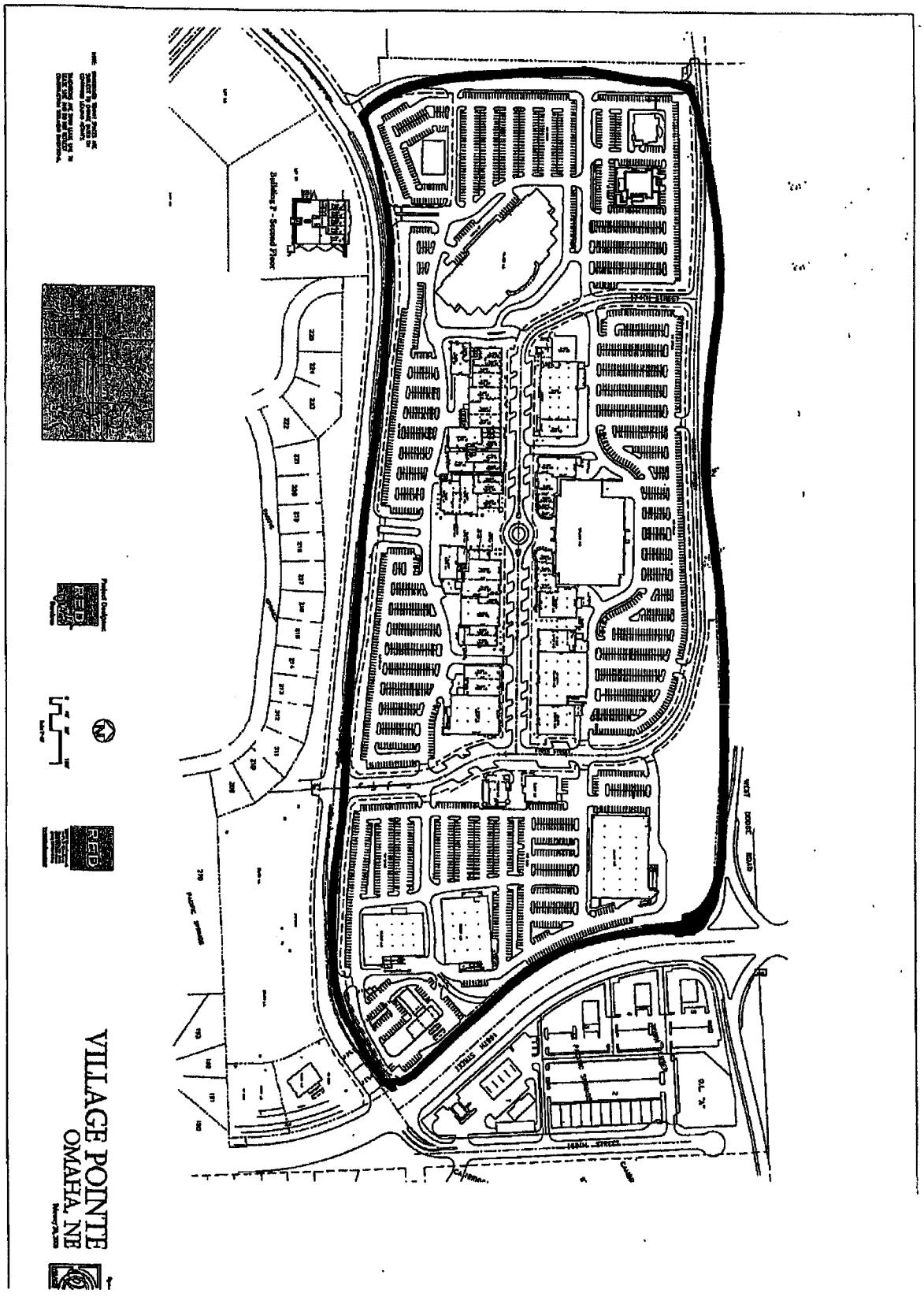

Exhibit C
Exclusives

For so long as the operative provisions of the following exclusive use restrictions shall remain in effect, Owner shall not violate the following exclusives, whether or not by their terms, the exclusive is limited to Developer's obligations. Owner agrees to be bound by the exclusive as if Owner has specifically agreed as to the Premises not to sell or allow others to sell the particular item. A violation of these Exclusives is an event of default under the Declaration of Restrictive Covenant.

Flat Top Grill

Landlord shall not ... lease space within the Shopping Center to any tenant or user whose Primary Use is the preparation and sale of Asian stir fry, including but not limited to the following restaurants: Big Bowl; Pei Wei; Stir Crazy; BD's Mongolian Barbeque; P.F. Chang's and Genghis Grill. "Primary Use" shall be defined as in excess of fifty percent (50%) of such other tenant's gross sales of food.

Cheeseburger in Paradise

Landlord will not operate or permit any other tenant in any portion of the Development to operate or permit ... (i) the operation of any other "tropical themed" restaurants in the Development or (ii) any other business in Buildings "B", "Q", and "R" to utilize live music in its premises unless such live music is incidental to its primary business. A "tropical themed" restaurant shall mean any restaurant: (i) with the word "tropical", "island", "paradise", or any variation thereof in its name or specified in its advertising or marketing efforts, or any other words that give a connotation of an island or tropical themed atmosphere in its name; (ii) where the sale of island or Caribbean food or drinks collectively constitute twenty five percent (25%) or more of its menu items (including appetizers) or twenty five percent (25%) or more of its entrée sales computed on a dollar basis; (iii) any restaurant with a menu or theme atmosphere similar to Kahunaville or Bahama Breeze; and (iv) which utilizes live music in its premises (which live music is not incidental to the business).

Bed, Bath & Beyond

Landlord shall not lease ... any other premises in the Shopping Center ... to be occupied ... by a "Primary Competitor" (hereinafter defined) or a "Secondary Competitor" (hereinafter defined). For purposes hereof, a "Primary Competitor" shall mean a home store (such as, by way of illustration only, Linens 'n Things, Home Goods and Strouds) whose primary use is the sale, rental or distribution, either singly or in any combination, of the following items (the "Exclusive Items"): linens and domestics, bathroom items, housewares, frames and wall art, window treatments, and closet, shelving and storage items; and a "Secondary Competitor" shall mean a store occupying more than five thousand (5,000) square feet of Floor Area whose primary use is the sale, rental or distribution, either singly or in any combination, of the Exclusive Items; provided, however, that any "Upscale Tenant" (hereinafter defined) shall not be deemed to be a Secondary Competitor. The term "Upscale Tenant" shall mean any first class specialty

retail tenant normally found in regional malls and primarily selling their respective merchandise under private labels (such as, by way of illustration only, Eddie Bauer, Williams Sonoma, Talbots and Victoria's Secret). Notwithstanding the foregoing, any tenant, user, owner or subtenant of the Shopping Center ... shall have the right to utilize its respective premises for the sale, rental or distribution of the Exclusive Items within an aggregate area (which shall include an allocable portion of the aisle space adjacent to such sales, rental and/or distribution area) not to exceed ten percent (10%) of the Floor Area of such tenant's or subtenant's premises.

Cold Stone

Landlord shall not ... lease space within the Shopping Center to any tenant whose Primary Use is the sale of ice cream, frozen yogurt and other related products. "Primary Use" shall be defined as in excess of twenty five percent (25%) of such other tenant's Gross Sales, as defined herein.

Scheels All Sports

Landlord shall not lease ...[to] any other premises on any Lot (other than the Scheels Lot) to be occupied, whether by a tenant ... or any other occupant, (hereinafter "User") for a purpose which includes the sale of branded athletic specific apparel and/or sporting goods or equipment (hereafter, the "Scheels Exclusive"); provided, however, the foregoing restrictions shall in no event restrict (i) a department store (as defined herein) from containing a shoe department that sells athletic shoes and (ii) with the approval of [Landlord] only, one premises in the Shopping Center not to exceed five thousand (5,000) square feet which may be devoted primarily to athletic shoes such as Athletes Foot or Footlocker or (iii) any User who sells branded athletic specific apparel and/or sporting goods or equipment, provided that such User does not utilize in excess of 10% of gross leasable area of its space (including adjacent aisle space) for the sale or display of branded athletic specific apparel and/or sporting goods or equipment (considering all of such items in the aggregate). For purposes hereof, "department store" shall be defined as a traditional general merchandise store occupying at least 75,000 square feet such as Sears, May Company, Marshall Fields, or Nordstrom.

Wild Oats

Tenant shall have the exclusive right in the Shopping Center to (i) operate a grocery store, meat, seafood or produce market, vitamins and supplements, ethnic food store, convenience store or natural or health food store, and sell meat, seafood, produce, and groceries (which shall be defined as packaged foods primarily sold for off-premises consumption), and (ii) to the extent Tenant obtains a liquor license, sell beer and wine, other than by the drink or as part of a restaurant operation. Notwithstanding the foregoing, other tenants or users may sell the exclusive use items identified above on an "incidental use" basis, other than the sale of vitamins or of packaged foods primarily sold for off premises consumption, which are expressly prohibited. "Incidental use" shall be defined as carrying less than the lesser of (i) two hundred fifty square feet or (ii) five 5% of the gross sales area of all exclusive use items combined.

Douglas Theatre

Landlord shall not permit any portion of the Shopping Center to be used as a movie theatre; provided, however, the foregoing restriction is not intended, nor shall it in any way limit the use or display of films in any other premises within the Shopping Center to assist with the sale or rental of any products or services (e.g., video monitors).

Coldwater Creek

Landlord agrees that ... so long as Coldwater Creek, Inc. is conducting as a primary business in the Premises the retail sale of goods and services relating to or containing reproductions of copyrighted material or trademarks created, owned or licensed by Coldwater Creek, Inc., or any of its affiliated or subsidiary companies, including private label and branded goods and services relating to: (a) apparel; (b) bath and body products; (c) bed linens; (d) books; (e) cards and gift wrap; (f) collectibles (porcelain, ceramics, china, coins, statues, wood, and the like); (g) footwear; (h) giftware; (i) house wares; (j) jewelry and watches; (k) packaged biscuits, cookies and confections; (l) perfume and scents; (m) posters; (n) records and compact discs, laser discs, audio cassettes, videocassette tapes; (o) toys, including plush toys and play things; and accessories related to the merchandise listed above (the items set forth in clauses (a) through (o) are sometimes hereinafter collectively referred to as the "Primary Use Products") under the trade name Coldwater Creek, Landlord will refrain from leasing any space in the Shopping Center to any future tenant or occupant for the permitted purpose of conducting as a primary business the sale of Primary Use Products bearing the brand name or logo of Coldwater Creek; provided, however, for purposes hereof, the sale of Primary Use Products as a primary business of Tenant shall mean the conduct of business by Tenant within the Premises such that:

a. seventy-five percent (75%) or more of the Gross Sales of Tenant from the Premises consist of the sale of Primary Use Products bearing the Coldwater Creek brand name, or

b. seventy-five percent (75%) of the retail floor area of the Premises is dedicated to the sale of Primary Use Products bearing the Coldwater Creek brand name.

Pier 1 Imports (US), Inc:

Landlord shall not ... lease to any other store located within the Shopping Center, for the use or purpose of selling or displaying for sale wicker or rattan furniture, decorative household furnishings of an imported nature and intended for use in sunrooms, living, dining and kitchen areas and on patios, or housewares imported from the Far East or Europe ... unless such use is incidental ... to such business. As used herein, incidental use or purpose shall mean the sale of furniture, decorative household furnishings or housewares customarily sold in Tenant's retail stores which for any one (1) such product line does not exceed ten percent (10%) of the floor area for such business. This Section ... shall not apply to ... Scheels, Bed, Bath & Beyond, Cost Plus, Border's Books, Barnes & Noble, Murellis, Unique Accents, Z Gallerie, Wild Oats, Sur La Table, Anthropologie and Linen Gallery.

Garbo's Salon & Spa, Inc.

Landlord shall not lease space within the Shopping Center to any tenant whose Primary Use is the operation of a day spa/salon. "Primary Use" shall be defined as any use which occupies more than (i) five hundred (500) square feet of gross floor area, or (ii) ten percent (10%) of such tenant/user's sales area, whichever is less. For the purposes of this exclusive, the following are excluded ... any future tenant operating as a spa and occupying two thousand (2,000) square feet or less of GLA. The preceding shall in no way limit any tenant in the Shopping Center operating as a hair salon, such as "Super Clips".

Periwinkles

Landlord shall not lease space within the Shopping Center to any tenant whose Primary Use is the retail sale of "Brighton" accessories or products. "Primary Use" shall be defined as any use which occupies more than (i) five hundred (500) square feet of gross floor area, or (ii) ten percent (10%) of such tenant/user's sales area, whichever is less. For the purposes of this exclusive, any future tenant occupying four thousand (4,000) square feet or more of GLA shall be excluded.

DSW

For so long as Tenant is open and operating its business in the Leased Premises primarily for the sale of shoes, Landlord will not lease any space within the Center or permit any space within the Center to be used by any person, persons, partnership or entity who devotes five percent (5%) or more of its selling area to the sale of shoes and other footwear; provided, however that the foregoing restriction shall not apply to:
(a) Any tenants that are operating prototypical stores consistent with their national operations and floor-plans may devote up to ten percent (10%) of their selling area to the sale of shoes and other footwear, provided that such tenants shall not be permitted to operate an off-price branded, self-serve shoe and/or footwear store (such as the format used by DSW, Payless Shoes and similar brands);
(b) Scheels (located in Building "D" designated on the Site Plan) and any assignee or successor-in-interest of Scheels that is then operating in substantially all of Building "D";
(c) Those certain "Retail Fashion Tenants" (excluding any such tenants' subtenants, assignees, licensees and/or successors) identified below as "Retail Fashion Tenants", so long as such retail fashion tenants are operating prototypical stores consistent with the terms of their leases and consistent with the majority of such tenants' national operations and floor-plans in the Midwestern region of the United States;
(d) Up to two (2) Center tenants each occupying less than 3,000 square feet of leasable space at the Center; and
(e) one (1) Center tenant occupying no more than 5,000 square feet of leasable space at the Center.

"Retail Fashion Tenants":

1. Anthropologie
2. Coldwater Creek
3. Chico's

4. White House/Black Market
5. Banana Republic
6. Jos A Bank
7. OshKosh
8. Christopher & Banks
9. Limited Too
10. Ann Taylor/Ann Taylor Loft
11. Talbot's
12. Gap/Gap Kids
13. Victoria's Secret
14. Brighton's
15. Aeropostale
16. Abercrombie and Fitch/Abercrombie
17. JCrew

Scooter's Java Express

Subject to the provisions of the Lease, Landlord will not lease any space in Buildings C, E or M in the Shopping Center "primarily" (as defined below) for the sale of fresh-brewed specialty coffee and/or espresso drinks. The term "primarily" shall mean the tenant or occupant of such premises utilizes more than fifty percent (50%) of such premises for the sale of fresh-brewed specialty coffee and/or espresso drinks. Notwithstanding anything in this Lease to the contrary, the foregoing exclusive shall not apply to or be binding upon (a) any existing tenant or any party who has previously executed a lease, sublease or other agreement for occupancy in the Shopping Center; (b) any tenant or occupant which provides fresh-brewed specialty coffee to its customers free of charge; (c) any tenant over 20,000 square feet; or (d) any full service sit-down restaurant.

Funny Bone Comedy Club

Provided Tenant is fully open, staffed and operating its business for the Permitted Use in all portions of the Premises, Landlord shall not lease space within the Shopping Center to any tenant whose Primary Use is the operation of a comedy club.

Archiver's

Landlord will not lease any space in the Shopping Center primarily for the sale of any or all of the following: photo albums, scrapbooks, scrapbook supplies, decorative and specialty papers generally used for craft purposes (however, the foregoing shall not restrict the sale of specialty paper generally used for writing purposes and not for craft purposes), rubber stamps or photograph storage and organizational products.

Kona Grill

Landlord shall not for the Term of this Lease lease space within the Shopping Center to any restaurant tenant whose Primary Use is the preparation and sale of sushi or which has a free-standing sushi bar. "Primary Use" shall be defined as (x) in excess of twenty-five percent (25%) of such other tenant's gross sales of sushi or (y) the operation of a free-standing sushi bar. For the purposes of Tenant's Exclusive, the following are excluded: (i) any tenant over 25,000 square feet of Floor Area, whether or not presently leasing or occupying the Shopping Center; and (ii) any tenant or user in the Shopping Center who has previously executed a lease or agreement, and any successor or assign or similar concept of the foregoing.

Best Buy

Subject to existing tenant's within the Shopping Center, Landlord shall not permit any person or entity other than Tenant in space leased directly or indirectly from Landlord in the Shopping Center, as its primary business to sell, rent, service and/or warehouse (and, if applicable, install in motor vehicles) the following product categories (the "Tenant's Exclusive Use Items"): electronic equipment or appliances (including, without limitation, televisions, stereos, radios and dvd or video machines); major household appliances (including, without limitation, refrigerators, freezers, stoves, microwave ovens, dishwashers, washers and dryers); personal computers and peripherals, computer software; car radios, stereos, tape decks or phones; entertainment software, including compact discs, music videos, dvds and prerecorded tapes; accessories and connectors for products normally sold by Tenant (including, without limitation, cable connectors, surge protectors, cables, wires and batteries); telephones, telecopy, facsimile and photocopy machines; photographic cameras or equipment; office equipment, supplies or furniture; any substitutes for or items which are a technological evolution of the foregoing items, without Tenant's prior written consent, which may be granted or withheld in Tenant's sole and absolute discretion. Notwithstanding anything to the contrary, other tenants or users may sell Tenant's Exclusive Use Items identified above on an "Incidental Use" basis. "Incidental Use" shall mean the lesser of five percent (5%) of any such tenants' or users' Floor Area or 500 square feet devoted to the sale and display of Exclusive Use Items, but any Incidental Use shall be entitled to occupy a minimum of 150 square feet of Floor Area, and with respect to a tenant or user occupying twenty thousand (20,000) square feet or more, not more than ten percent (10%) of such tenants' or users' square footage may be devoted to the sale and display of Exclusive Use Items. In addition to the foregoing, Tenant shall have the right to (a) non-exclusively sell books, magazines and sporting equipment, (b) sell gourmet and other food items in support of and incidental to the foregoing product categories, and (c) use up to seven percent (7%) of the Premises for a non-alcoholic beverage kiosk or bar, including seating area, with food, snack and bakery items incidental thereto, all categories in (a) (b) and (c) subject to and in accordance with restrictions set forth in the REA and further provided that such use shall not violate the Prohibited Uses or the Exclusives.

Johnny's Italian Steakhouse

Landlord shall not, for the Term of this Lease, lease, sublease or otherwise operate or contract, by sale, conveyance or otherwise, space within the Shopping Center to any restaurant or tenant under any of the following conditions:

(a) any restaurant or tenant with over 25% of its gross sales from the sale of steaks;
(b) any restaurant or tenant with over 40% of its gross sales from the sale of Italian food;
(c) any restaurant or tenant with "steakhouse" in its name;
(d) any restaurant or tenant with "Italian" in its name, unless such tenant has less than forty percent (40%) of its gross sales from the sale of Italian food; or
the following restaurants/tenants: Biaggi's, Romano's Macaroni Grill, Olive Garden, Maggiano's Little Italy, Carrabba's Italian Grill, Outback Steakhouse, Fleming's Prime Steakhouse, Sullivan's, Morton's Steakhouse, Ruth's Chris Steakhouse, and Smith & Wolenski.

The following are excluded: (i) any restaurant or tenant over 25,000 square feet of Floor Area, (ii) any tenant or user in the Shopping Center who has executed a lease prior to this Lease, (iii) any restaurant in the Shopping Center containing 2,500 square feet of Floor Area or less, (iv) any restaurant in the Shopping Center which primarily sells pizza from its premises (v) the restaurant commonly known as the "Firebird's Rocky Mountain Grill" provided such restaurant is only located on an outparcel identified on the Site Plan as "OP-2" or "OP-4" and (vi) the Shopping Center outparcels known as "OP-1" and "OP-3".

Melting Pot

Landlord shall not lease space within the Shopping Center to any restaurant tenant whose "Primary Use" is the preparation and sale of fondue. Primary Use shall be defined as in excess of five percent (5%) of such other tenant's gross sales of fondue at the Shopping Center.

Outparcel Restriction --- "OP-4"

So long as there is being operated a "Mimi's Cafe" from that real property identified as "OP-3", which outparcel is more particularly shown on the Site Plan attached to this Lease, then the Landlord will not lease, sublease or otherwise operate or contract, by conveyance or otherwise, the real property shown as "OP-4" on the Site Plan as a restaurant containing more than 3,500 square feet in size which serves breakfast, or for operation under any of the following trade names: Houlihan's, Friday's, Ruby Tuesday, Max & Erma's, Applebee's, BJ's or Red Robin.

Modele, Inc.

Subject to the limitations and conditions set forth in its Lease, provided that Modele, LLC is the Tenant under the terms of the Lease and so long as Modele, LLC is selling women's and girl's apparel in the Premises and derives at least seventy percent (70%)

of gross sales from the sale of women's and girl's apparel (the "Primary Business") under the trade name Modele, Landlord will refrain from leasing any space in the Shopping Center to Christels, Nan C., Togs, Nouvelle Eve or She.La (the "Named Tenants") for the permitted purpose of conducting as a "Key Use" (as defined below) the retail sale of women's and girl's apparel. For purposes hereof, the retail sale of women's and girl's apparel as a "Key Use" shall mean forty percent (40%) or more of the aforementioned Named Tenants revenues are derived from the retail sale of women's and girl's apparel.

B & B Flowers, Inc.

Subject to the limitations and conditions set forth in the Lease, provided B & B Flowers, Inc. is selling fresh flowers in the Premises and derives at least fifty-percent (50%) of gross sales from fresh flowers ("Primary Business") under the trade name B's Blooms & Boutique, Landlord will refrain from leasing any space in the Shopping Center to any future tenant or occupant for the permitted purpose of conducting as a "Primary Use" (as defined below) the retail sale of fresh flowers; For purposes hereof, the retail sale of fresh flowers as a "Primary Use" shall mean twenty percent (20%) or more of any future tenant's or occupant's revenues are derived from the retail sale of fresh flowers.

Paper Bizarre & Gifts Galore

Subject to the limitations set forth in the lease, provided Tenant is the Tenant under this Lease and has not assigned or otherwise transferred its interest in this Lease or sublet the Premises or any part thereof, and so long as Tenant is selling greeting cards, invitations and stationary in the Premises and derives at least twenty-five-percent (25%) of gross sales from the sale of greeting cards, invitations and stationary (the "Primary Business") under the trade name "Paper Bizarre & Gifts" Landlord will refrain from leasing any space in the Shopping Center to any future tenant or occupant for the permitted purpose of conducting as a "Primary Use" the retail sale of greeting cards, invitations or stationary.

Finish Line

Provided Tenant is the Tenant and has not assigned or otherwise transferred its interest in the Lease or sublet the Premises or any part thereof, so long as Tenant is conducting as a primary business in the Premises the retail sale of branded athletic shoes, branded athletic and licensed clothing and sporting goods under the Trade Name, Landlord will refrain from leasing any space in the Shopping Center to any future tenant or occupant for the permitted purpose of conducting as a primary business the retail sale of "Branded Athletic Footwear and Branded Athletic Clothing" (as such term is defined below); PROVIDED, HOWEVER, the aforementioned prohibition shall not apply to (i) any tenants occupying at least 15,000 square feet of floor area, or (ii) any existing tenant whose lease would permit the sale of the foregoing items without the consent of Landlord, (iii) any outparcel or (iv) The Gap, Inc. its affiliates and subsidiaries, with respect to self-branded and/or licensed shoes and apparel only. For the purposes hereof, the retail sale of branded athletic shoes, branded athletic and licensed clothing and sporting goods as a primary business shall mean at least (x) fifty-one percent (51%)

of the sales area is used for the sale and display of branded athletic shoes, branded athletic and licensed clothing and sporting goods, or (y) fifty-one percent (51%) of the gross revenues are derived from the sale of branded athletic shoes, branded athletic and licensed clothing and sporting goods.

9 Months Maternity & Baby

Landlord agrees that during the time that 9 Months, L.L.C. is the Tenant under the terms of this Lease and has not otherwise assigned or otherwise transferred its interest in this Lease or sublet the Premises or any part thereof, and so long as 9 Months, L.L.C. is operating the Premises as a retail store selling women's maternity apparel, maternity accessories and infant apparel and derives at least seventy-five percent (75%) of gross sales from the sale of women's maternity apparel and infant apparel ("Primary Business") under the trade name "9 Months Maternity & Baby", Landlord will refrain from leasing space in the Shopping Center to: (1) Mimi's, Motherhood, In Due Time, Blossom, Due Maternity, 9 Maternity, Glow, Belly, Chic Mama, OH! Baby, Glow Girl, Bloom, Mom & Me, Twos Company, Pickles & Ice Cream, and Pea in the Pod for a period of 60 months after the Commencement Date; and (2) Babystyle for a period of 36 months after the Commencement Date, however, if Tenant is obligated to pay Percentage Rent under the terms of this Lease upon expiration of such 36 month period then Landlord's obligation to refrain from leasing space in the Shopping Center to Babystyle shall extend to 60 months after the Commencement Date; provided, however: (i) the terms and provisions of this section shall not apply to nor be of any force or effect with respect to (a) any existing tenant or occupant of the Shopping Center (i.e. any tenant or occupant under an executed lease or occupancy or purchase agreement), or any successor, assignee or sublessee of such existing tenant or occupant, for so long as any such existing tenant's lease or any renewal, extension or replacement (in connection with a bankruptcy or leasehold mortgage foreclosure proceeding) thereof, or any such existing occupant's occupancy agreement, is in effect, or to the premises demised thereunder, (b) any future tenant or occupant of the Shopping Center leasing or occupying more than 15,000 square feet of space in the Shopping Center; (c) any outparcel or free-standing building; or (d) The Gap, Inc., it's successors, assigns and affiliates; (ii) the terms of this section shall expire without further act of the parties upon the occurrence of an Event of Default on the part of Tenant under this Lease or if Landlord rightfully terminates 9 Months, L.L.C.'s right to possession of the Premises (with or without a termination of the Lease) or if 9 Months, L.L.C. fails to sell, as a Primary Business, maternity apparel or infant apparel for a period of thirty (30) days.

Tin Star

Landlord agrees that during the time that Cutch, Inc. is the Tenant under the terms of this Lease and has not otherwise assigned or otherwise transferred its interest in this Lease or sublet the Premises or any part thereof, and so long as Cutch, Inc. is operating as a fast casual Southwest/Mexican grill style restaurant ("Primary Business") under the trade name "Tin Star", Landlord will refrain from leasing space in the Shopping Center to: Pepper-Jax, Julio's, Rubio's, Chipolte, Q'doba, Baja Fresh, and Moe's Southwest Grill for a period of 60 months after the Commencement Date; provided, however: (i) the terms and provisions of this section shall not apply to nor be of any force or effect with respect to (a) any existing tenant or occupant of the Shopping Center (i.e. any tenant or

occupant under an executed lease or occupancy or purchase agreement), or any successor, assignee or sublessee of such existing tenant or occupant, for so long as any such existing tenant's lease or any renewal, extension or replacement (in connection with a bankruptcy or leasehold mortgage foreclosure proceeding) thereof, or any such existing occupant's occupancy agreement, is in effect, or to the premises demised thereunder, (b) any future tenant or occupant of the Shopping Center leasing or occupying more than 15,000 square feet of space in the Shopping Center; (c) any outparcel or free-standing building; (d) the occupant of the Panchero's space shown on Exhibit A-I; or (e) The Gap, Inc., it's successors, assigns and affiliates; (ii) the terms of this section shall expire without further act of the parties upon the occurrence of an Event of Default on the part of Tenant under this Lease or if Landlord rightfully terminates Cutch, Inc.'s right to possession of the Premises (with or without a termination of the Lease) or if Cutch, Inc. fails to operate from the Premises the Primary Business for a period of thirty (30) days.