

After Recording Return To:

Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, CO 80202
Attention: Orlene Mitchell

BLOCK 4B SHOPPING CENTER, PROMENADE AT CASTLE ROCK

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

DATED APRIL 16, 2015

MADE BY

**PROMENADE CASTLE ROCK, LLC,
A DELAWARE LIMITED LIABILITY COMPANY**

TABLE OF CONTENTS

	Page
ARTICLE 1	
DEFINITIONS.....	2
1.1 Definitions.....	2
1.2 Gender and Number	10
ARTICLE 2	
EASEMENTS	10
2.1 Vehicular and Pedestrian Easements	10
2.2 Grant of Easements for Installation and Use of Common Utility Facilities	14
2.3 Grant of Monument Sign Easements	17
2.4 Grant of Common Driveway Easements	18
2.5 Grant of Construction Easements Footings and Foundations.....	18
2.6 Landscape Buffer Easements.....	20
2.7 General Easement	20
2.8 Abandonment of Easements	20
2.9 No Implied Dedication of Easement Areas; Right to Dedicate and Grant Easements	21
2.10 General Principles.....	22
ARTICLE 3	
DEVELOPMENT OF TOTAL PARCEL; APPROVAL OF PLANS	24
3.1 Development Standards	24
3.2 General Design Standards.....	24
3.3 Approval of Plans	25
3.4 Signs.....	28
ARTICLE 4	
CONSTRUCTION OF BUILDINGS AND IMPROVEMENTS.....	29
4.1 Construction Standards	29
4.2 Building Schedule.....	29
4.3 Safety Measures	29
4.4 Staging Areas and Temporary Easement Areas.....	29
4.5 Protection of Total Parcel	30
4.6 Indemnity; Insurance	30
4.7 Construction Deposit	32
ARTICLE 5	
USE OF TOTAL PARCEL	32
5.1 General Restrictions.....	32

TABLE OF CONTENTS
(continued)

	Page
5.2 Use of Parking Area.....	32
5.3 Rules and Regulations.....	33
5.4 Use of Common Utility Facilities.....	34
5.5 Private Utility Service.....	34
ARTICLE 6 MAINTENANCE AND REPAIR	34
6.1 Maintenance of Property.....	34
6.2 Maintenance of Common Areas and Common Facilities.....	36
6.3 Common Facility Maintenance Expenses.....	37
6.4 Maintenance Assessment.....	38
6.5 Restoration and Reconstruction.....	42
ARTICLE 7 REAL ESTATE TAXES	43
7.1 Payment of Taxes.....	43
7.2 Contest of Taxes	44
7.3 Failure to Pay Taxes.....	44
ARTICLE 8 TERM; AMENDMENT	44
8.1 Term of Declaration.....	44
8.2 Amendment of Declaration.....	44
ARTICLE 9 MISCELLANEOUS	45
9.1 Consent, Approval, Discretion and Judgment of Declarant	45
9.2 Compliance with Laws	47
9.3 Excuses For Non-Performance	47
9.4 Default.....	47
9.5 Notices	49
9.6 Declaration for Exclusive Benefit of Property Owners and Occupants	50
9.7 Table of Contents and Captions; Exhibits	50
9.8 Covenants Run With the Land.....	50
9.9 Successors.....	51
9.10 Governing Laws and Venue.....	51
9.11 No Partnership Joint Venture or Principal-Agent Relationship.....	51
9.12 Performance of Obligations	51

TABLE OF CONTENTS
(continued)

		Page
9.13	Not A Public Dedication.....	51
9.14	Litigation Expenses.....	52
9.15	Severability	52
9.16	Entire Agreement	53
9.17	Special Provisions Regarding Shopping Center Area Transfer Property	53
9.18	Property Owner Estoppel Certificate	53
9.19	Declarant Estoppel Certificate	54

EXHIBITS

Exhibit A	Site Plan
Exhibit B	Land
Exhibit C	Signage Plan
Exhibit D	Construction Requirements
Exhibit E	Prohibited Uses

BLOCK 4B SHOPPING CENTER, PROMENADE AT CASTLE ROCK

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

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (as may be amended, restated, replaced and/or supplemented, this "Declaration") is made as of the 16th day of April 2015, by Promenade Castle Rock, LLC, a Delaware limited liability company ("Declarant"), based upon the following recitals:

A. Declarant is the owner of those certain Properties of land located in the Town of Castle Rock, Douglas County, Colorado (the "Land" or the "Total Parcel"), as shown on the site plan attached hereto and made a part hereof as Exhibit A (the "Site Plan"), and as more particularly described and depicted in Exhibit B attached hereto and made a part hereof. In no event shall this Declaration apply to the residential property adjacent to the Total Parcel.

B. Declarant may sell or lease certain portions of the Land from time to time or otherwise transfer portions of the land to affiliated entities for such purposes, and Declarant intends that it and all future owners, tenants and occupants of the various portions of the Total Parcel and each of their respective successors and assigns shall own, develop, use and enjoy their respective portions of the Total Parcel (or cause the same to be owned, developed, used and enjoyed) generally in conjunction with each other in order to make integrated use of the Total Parcel as a retail shopping center to be known as the "Block 4B Shopping Center, Promenade at Castle Rock" (the "Shopping Center"), including (without limitation) strip buildings and stand-alone buildings for retail, office and other purposes to be developed in accordance with this Declaration and the other encumbrances herein described, and any other developments and improvements which may be located at any time and from time to time upon the Land. In particular, Declarant intends that, notwithstanding the separate ownership of Properties and buildings within the Land, the Shopping Center shall be developed and maintained as if it were a single building complex under unified ownership for purposes of certain matters affecting fire protection, life safety and related issues, as more particularly described below.

C. The Shopping Center is a part of a regional retail shopping center development to be known as "Promenade at Castle Rock" (the "Development"). The Development is subject to a major amendment (the "PD Amendment") to the Castle Pines Commercial PD (Planned Development) affecting the Development and the Shopping Center, which is authorized under Title 17 of the Castle Rock Municipal Code. Except as expressly set forth to the contrary herein, in the event of any conflict between this Declaration and the PD Amendment, the PD Amendment shall control.

D. Declarant desires to create certain rights, privileges, obligations, duties and easements and to impose certain restrictions and covenants upon the respective portions of the Total Parcel, as set forth in this Declaration, in order to ensure and facilitate the integrated ownership, use, enjoyment and development of the Total Parcel as contemplated by Declarant.

NOW, THEREFORE, Declarant hereby declares that the Total Parcel and each Property (defined below) within the Total Parcel hereafter shall be held, conveyed, encumbered, leased, used, developed, occupied, altered, and improved subject to the terms and provisions set forth in this Declaration, and further declare as follows:

ARTICLE 1

DEFINITIONS

1.1 **Definitions.** As used in this Declaration, capitalized terms that are not otherwise defined herein shall have the following meanings:

(a) **Block 4A Shopping Center.** "Block 4A Shopping Center" means the Block 4A Shopping Center adjacent to the Shopping Center created by that certain Block 4A Shopping Center, Promenade at Castle Rock, Declaration of Easements, Covenants, and Restrictions, recorded in the Office of the Clerk and Recorder of the County on April 21, 2015 at Reception No. 201502554.7

(b) **Board Declarant.** "Board Declarant" shall have the meaning set forth in Section 9.1(a).

(c) **Building.** "Building" means any permanent, above-ground structure located from time to time on the Total Parcel.

(d) **Building Area.** "Building Area" means those areas of the Total Parcel shown on the Site Plan or such additional areas as may be designated from time to time by Declarant for the location of Buildings and other above-ground improvements together with adjacent truck loading or delivery docks or areas, truck tunnels, ramps and wells, as the same shall be shown on the plans and specifications therefor which are approved by Declarant (as provided in Article 3). When a Future Building Area is improved with a Building, provided that Declarant shall have approved the same in writing, it shall automatically thereafter be deemed to be a Building Area. Any enlargement of or addition to a Building Area, either by development of Buildings and improvements on Future Building Areas or as additional Buildings and improvements allowed hereunder, shall be included in the definition of Building Area for purposes of this Declaration, provided that such development is approved by Declarant in accordance with this Declaration.

(e) **City.** "City" shall mean any municipal corporation having jurisdiction over the Total Parcel which municipality shall expressly mean, for purposes of the "City" identified in Section 9.17, the Town of Castle Rock in Douglas County, Colorado.

(f) **Claims.** "Claims" means any and all claims, liabilities, actions, losses, proceedings, damages, costs, expenses, fines, fees, judgments and amounts whether foreseen or unforeseen, suffered, sustained or incurred, including reasonable attorneys' fees (including in-house attorneys), professional fees and other costs of litigation

(g) **Common Areas.** "Common Areas" means all areas of the Total Parcel outside of the Buildings to be constructed within the Building Areas identified on the Site Plan,

together with such other areas within the Total Parcel that may hereafter be specifically designated in writing as Common Areas by Declarant, for the non-exclusive use or benefit of Declarant and the other Occupants, in common, pursuant and subject to the terms of this Declaration, including but not limited to the Shopping Center Parking Area, but excluding any Common Facilities. "Common Areas" also shall include those improvements and facilities which pertain to the function of the Common Areas, such as (without limitation) lighting systems and standards, traffic and directional signs, and traffic striping and markings that are or may be hereafter installed or located within or about the Common Areas specified above. Notwithstanding anything to the contrary contained herein, Declarant may dedicate all or any portion of the Common Areas to the appropriate governmental agency or quasi-governmental improvement district established to maintain any such portion of the Common Facilities (including, without limitation, a Metropolitan District).

(h) **Common Facilities.** "Common Facilities" shall mean the Common Utility Facilities, Sign Easement Areas (together with the Monument Signs and the utility lines serving the Monument Signs), Detention Ponds, the Shopping Center Roads (including the landscaped medians and right-of-way areas pertaining to the Shopping Center Roads), Landscape Buffers, Shopping Center Identification Signs (together with the utility lines serving the Shopping Center Identification Signs), the Shopping Center Sidewalks, and any other areas of the Total Parcel that may hereafter be specifically designated in writing as Common Facilities by Declarant. Notwithstanding anything to the contrary contained herein, Declarant may dedicate all or any portion of the Common Facilities to the appropriate governmental agency or quasi-governmental improvement district established to maintain any such portion of the Common Facilities (including, without limitation, a Metropolitan District).

(i) **Common Facility Maintenance Expenses.** "Common Facility Maintenance Expenses" shall have the meaning set forth in Section 6.3 hereof.

(j) **Common Utility Facilities.** "Common Utility Facilities" means, subject to the terms and restrictions of Section 2.1 hereof, all storm drainage facilities (including, without limitation, any catch basins), sanitary sewer systems, natural gas systems, water lines and systems, fire protection mains and fire hydrants, electrical power systems, television cable systems, if any, and telecommunication systems, which serve more than one Property and which may now or hereafter be situated in, on, under, over or outside of (but servicing) any portion of the Total Parcel. Notwithstanding anything to the contrary contained herein, Declarant, from time to time and without the consent of or notice to any Person, may replace, amend or modify the plans for the layout of Common Utility Facilities. Notwithstanding the foregoing, the term "Common Utility Facilities" shall not include any utility lines and facilities which are designed and intended to service only one Property within the Total Parcel. All utility lines servicing the Monument Signs shall be considered Common Utility Facilities. Common Utility Facilities may or may not be owned by Declarant, and/or may be owned by or dedicated to a municipal authority, utility company or utility cooperative (whether public, quasi-public or private) or governmental agency that provides the applicable utility service.

(k) **Constant Dollars.** "Constant Dollars" shall mean an adjustment made to a certain dollar amount, when and as notified by Declarant (but in no event more than once every five (5) years), by multiplying such dollar amount by a fraction the numerator of which is the

Consumer Price Index as of the date that such adjustment is being made and the denominator of which is the Consumer Price Index as of the date of this Declaration.

(l) **Consumer Price Index.** "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers (1982-1984 100), U.S. City Average All Items promulgated by the Bureau of Labor Statistics of the United States Department of Labor or, if unavailable or no longer published, a substitute index designated by Declarant and ascertainable by the general public that is intended to measure or reflect relative increases and decreases in consumer prices over time.

(m) **County.** "County" means Douglas County, Colorado, and the respective agencies thereof.

(n) **Declarant.** "Declarant" shall mean the Declarant named in the introductory paragraph of this Declaration. For so long as fee simple title to a portion of the Total Parcel is owned by (i) such Declarant, (ii) an affiliate of such Declarant, or (iii) a lender of, or affiliate of a lender of, such Declarant or its' affiliates following foreclosure (or deed in lieu of foreclosure) of all or a portion of the Total Parcel, the "Declarant" shall be a Person constituting one of the foregoing, as designated by such Declarant or its successor-in-interest. Thereafter, once fee simple title to the Total Parcel is not owned by a Person described in items (i), (ii), or (iii), all Property Owners jointly shall automatically be designated the "Declarant," with the rights and obligations of Declarant hereunder to be exercised and discharged in accordance with Section 9.1 below). Any action, approval or designation required or desired to be undertaken or made by Declarant pursuant to the terms of this Declaration may be undertaken or made by Declarant alone, and the same shall be binding upon all other Property Owners. Grants, covenants, declarations and reservations of "Declarant" pursuant to the terms of this Declaration shall be deemed to be made by Declarant alone, and shall not require the consent or approval of any other Property Owner, subject to the provisions of Section 9.1 below regarding the Board Declarant.

(o) **Detention Ponds.** "Detention Ponds" means collectively, one or more detention ponds on-site or off-site that are utilized by or benefit the Shopping Center, including any Detention Pond shown on the Site Plan, as amended from time to time, and its related facilities.

(p) **Development.** "Development" shall have the meaning set forth in Recital C hereof.

(q) **Development Master Declaration.** "Development Master Declaration" means that certain Master Declaration of Easements, Covenants, and Restrictions for the Development, recorded in the Office of the Clerk and Recorder of the County on April 16, 2015 at Reception No. 2015024611

(r) **Development Standards.** "Development Standards" shall have the meaning set forth in Section 3.1 hereof.

(s) **District Documents.** "District Documents" shall mean all documents, instruments, agreements, assignments, dedications, resolutions, indentures, ordinances and

orders, whether or not recorded, which govern the formation or operation of a Metropolitan District or the direct or indirect relationship of a Metropolitan District to the Shopping Center or Declarant.

(t) **Exempt Shopping Center Area Transfer Property.** "Exempt Shopping Center Area Transfer Property" shall have the meaning set forth in Section 9.17.

(u) **Future Building Area.** "Future Building Area" means the area, if any, designated as such on the Site Plan, as the same may be replaced, removed, relocated or supplemented from time to time by Declarant. Future Building Areas may be (but need not be) improved with Buildings from time to time. No Buildings or other above-ground structures (other than landscaping features, traffic islands, curbs and sidewalks and the like) shall be located on any portion of the Total Parcel, other than Building Areas and Future Building Areas, without the prior written approval of Declarant.

(v) **Indemnifying Party.** "Indemnifying Party" shall have the meaning set forth in Section 4.6(d).

(w) **Land.** "Land" shall have the meaning set forth in Recital A above. Declarant shall have the right to add any property to the Land from time to time and, upon recordation of an appropriate amendment hereto (which need not be joined or consented to by any other Property Owner or Occupant), the land so added shall be subject to, and benefited by, the easements, covenants, terms and conditions of this Declaration. Declarant, with the written consent of Sam's, also shall have the right to remove any property from the Land and, upon recordation of an appropriate amendment thereto (which need not be joined or consented to by any Property Owner or Occupant other than the Property Owner of the subject land and Sam's), the land so removed shall be released from the easements, covenants, terms and conditions of this Declaration. Any amendment to this Declaration which adds property to the Land or removes property from the Land may add or remove "Common Areas" or "Common Facilities" hereunder, provided that such amendment shall not cause a deficit in the number of parking spaces below the number of parking spaces required to be maintained to comply with all Laws, or unreasonably impair access to any remaining portions of the Land over the remaining Common Areas.

(x) **Landscape Buffers.** "Landscape Buffers" means the portions of the Total Parcel, which generally are located adjacent to the public roadways around the perimeter of the Total Parcel and adjacent to the Shopping Center Roads. Declarant may, upon written notice to each Property Owner on whose Property Landscape Buffers may be located (which notice need not be in recordable form), expressly designate all or any portions of such Landscape Buffers as Common Facilities under this Declaration, whereupon Declarant shall assume the maintenance of the affected portions of the Landscape Buffers pursuant to Section 2.6 below.

(y) **Laws.** "Laws" means all present and future laws, acts, statutes, codes, regulations, rules, directives, ordinances and restrictions of any governmental body having jurisdiction over the Total Parcel, any portions thereof or any operations or activities conducted thereon including, without limitation, all local zoning ordinances, rules and regulations,

subdivision and/or Property map requirements, and building codes affecting the Total Parcel or any portions thereof.

(z) **Maintenance Assessments.** "Maintenance Assessments" shall have the meaning set forth in Section 6.4(a) hereof.

(aa) **Maintenance Resumption.** "Maintenance Resumption" shall have the meaning set forth in Section 6.1(a).

(bb) **Maintenance Take-Over.** "Maintenance Take-Over" shall have the meaning set forth in Section 6.1(a).

(cc) **Matters of Record.** "Matters of Record" shall mean, as to any Property or portion thereof, any documents which are currently recorded or which are recorded in the future against the applicable Property or portion thereof, including, without limitation, the Development Master Declaration.

(dd) **Metropolitan District.** "Metropolitan District" means the one or more metropolitan districts or other special districts which the Total Parcel may be included within.

(ee) **Monument Signs.** Monument Signs means those single, multi-tenant and shopping center signs identifying the Shopping Center and certain, but not every, Occupant of the Shopping Center, as solely determined by Declarant, if any, which are shown on the Signage Plan, as amended from time to time, and new or future monument signs constructed from time to time may be permitted by the City.

(ff) **Notice of Default.** "Notice of Default" shall have the meaning set forth in Section 9.4(a) hereof.

(gg) **Occupant.** "Occupant" means any Person who acquires rights by lease, deed, or other instrument or arrangement in writing to possess, own and/or occupy any Property in the Total Parcel and/or any space in any Building located upon any Property specifically. Notwithstanding anything to the contrary contained herein, mortgagees, trustees under and beneficiaries of deeds of trust, or other Persons who have such rights primarily for the purpose of securing a debt or other obligation owed to them, shall not be "Occupants" hereunder unless and until such Person becomes a "Property Owner" or a mortgagee in possession or otherwise possesses or occupies the subject Property or any portion thereof by an intentional or voluntary act of its own, whereupon the subject mortgagee, trustee, beneficiary or other Person shall be an "Occupant" hereunder.

(hh) **PD Amendment.** "PD Amendment" shall have the meaning set forth in Recital C hereof.

(ii) **Parking Area.** Subject to Sections 5.2 and 9.17 below, "Parking Area" means any area in the Common Areas which is so designated on the Site Plan or hereafter set apart or used or designated by Declarant from time to time for automobile, bus and/or other vehicular parking, including (without limitation) incidental and interior roadways, driveways, walkways, traffic islands, curbs and landscaping within or specifically servicing the areas used

for such parking, together with all improvements and Parking Structures which at any time may be constructed on such areas, but excluding the Shopping Center Roads (hereinafter defined), gasoline service areas, truck ramps, wells and truck loading or delivery areas which may happen to be located in the Parking Areas but which are operated by or which are designed to service an individual Property.

(jj) **Parking Structure.** Subject to Section 5.2 below, "Parking Structure" means a multilevel structure for common parking constructed on any existing or future Parking Area or Common Area converted to such use.

(kk) **Person.** "Person" or "Persons" means individuals, partnerships, associations, corporations, limited liability companies, land trusts and any other form of business organization, or one or more of them, as the context may require.

(ll) **Property.** "Property" means each portion of the Total Parcel that has been subdivided at the time of this Declaration or that is subsequently subdivided by the Declarant or by any Property Owner with the prior written consent of Declarant, which consent may be withheld in Declarant's sole and absolute discretion. Notwithstanding the foregoing, if any real property shall be released from this Declaration by virtue of a recorded amendment hereto, it no longer shall be deemed to be within the Property, and if any property shall be added to this Declaration by virtue of a recorded amendment hereto, Declarant shall designate in such amendment of which Property it shall be deemed a part.

(mm) **Property Owner.** "Property Owner" shall mean any Person that owns fee title to any Property within the Total Parcel and shall also mean any ground lessee of an entire Property within the Total Parcel, but solely with respect to any rights and obligations of the Property Owner hereunder that have been assigned to, and assumed in writing by, such ground lessee. Upon sale or other transfer of fee title to any Property, or upon the execution of a ground lease of any entire Property pursuant to which the lessee is to be a "Property Owner" hereunder with respect to certain rights and obligations, the transferee or lessee shall, within five (5) business days after the effective date of the transfer or lease, deliver to Declarant (in accordance with the notice provisions set forth in this Declaration) a notice (the "Transfer Notice") with a true, correct and complete copy of the recorded deed, memorandum of lease (or other document reflecting the assignment of all or a portion of the Property Owner/lessor's rights and obligations hereunder) or other transfer instrument effecting the transfer or lease, together with the following information: (i) the name of all Property Owner(s) of the Property, and the address of each for notice purposes and (ii) the name, address and telephone number of the individual(s), if any, who are authorized to represent and bind the Property Owner(s) for purposes of this Declaration. If there is more than one (1) Property Owner of any particular Property, then, unless otherwise set forth in a Transfer Notice, each of the Property Owners shall be jointly and severally liable for the performance of the duties and obligations of Property Owner(s) hereunder with respect to such Property, and each of the Property Owner(s) shall be deemed to be the agent and representative of the other Property Owners of the subject Property for purposes of this Declaration, such that Declarant shall be entitled to rely upon the undertakings, representations, consents, agreements and other writings and actions of any Person who may be a Property Owner of any such Property, without inquiry into the actual authority of such Person and

notwithstanding any conflicting writing or action by any other Property Owner of the subject Property.

(nn) **Property User.** Subject to Section 9.17, "Property User" shall mean any Person utilizing any portion of the Property comprising any part of the Total Parcel for the conduct of business thereon, including, without limitation, any Occupant, Property Owner, or any other Person acquiring any right by lease, deed or other arrangement in writing to possess, own or occupy any Property in the Total Parcel and/or any space in any Building located upon any Property.

(oo) **Proportionate Share.** "Proportionate Share" shall have the meaning set forth in Section 6.4(d)(i) hereof.

(pp) **Resumption Notice.** "Resumption Notice" shall have the meaning set forth in Section 6.1(a).

(qq) **Sam's.** "Sam's" shall mean Sam's West, Inc., an Arkansas corporation, and any affiliate thereof.

(rr) **Shopping Center.** "Shopping Center" shall have the meaning set forth in Recital B hereof.

(ss) **Shopping Center Agreements.** "Shopping Center Agreements" means any and all unrecorded agreements or other documents to which Declarant and any governmental or quasi-governmental entity or quasi-municipal corporation are parties that are related to the development of the Total Parcel or portions thereof.

(tt) **Shopping Center Area Transfer.** "Shopping Center Area Transfer" shall have the meaning set forth in Section 9.17.

(uu) **Shopping Center Area Transfer Property.** "Shopping Center Area Transfer Property" shall have the meaning set forth in Section 9.17.

(vv) **Shopping Center Identification Signs.** "Shopping Center Identification Signs" means those signs, including any walls or other architectural features to which signage identifying the Shopping Center is attached, so identified on the Site Plan and/or the Signage Plan to the extent located on the Total Parcel.

(ww) **Shopping Center Parking Area.** Subject to Sections 5.2 and 9.17 below, "Shopping Center Parking Area" shall mean that portion of the Parking Area which is now or hereafter may be located within the Shopping Center.

(xx) **Shopping Center Roads.** "Shopping Center Roads" shall mean the roadways, drive aisles, streets and adjacent right-of-way areas (and the improvements thereon) located on the Total Parcel, as shown on the Site Plan and labeled as Shopping Center Roads, as the same may be replaced, relocated or otherwise modified from time to time by Declarant. Notwithstanding anything to the contrary contained herein, Declarant may dedicate all or any portion of the Shopping Center Roads to the appropriate governmental or quasi-governmental

agency or quasi-municipal corporation established to maintain any such portion of the Shopping Center Roads (including, without limitation, a Metropolitan District) for public roadway purposes and, upon proper acceptance thereof, and subject to the provisions of Section 9.17 with respect to any conveyance thereof to a Metropolitan District, the subject Shopping Center Roads (or portion thereof) automatically shall cease to be covered by this Declaration, except as otherwise provided herein.

(yy) **Shopping Center Sidewalks.** "Shopping Center Sidewalks" means those sidewalks which are located or to be located on the Total Parcel adjacent to any Shopping Center Roads.

(zz) **Sign Criteria.** "Sign Criteria" means sign criteria promulgated by Declarant, as may be amended or modified from time to time by Declarant.

(aaa) **Sign Easement Areas.** "Sign Easement Areas" shall mean those areas (if any) located on the Total Parcel and designated for pylon signs, vehicular directional signs, Monument Signs or Development Identification Signs on the Site Plan or the Signage Plan.

(bbb) **Signage Plan.** "Signage Plan" means the signage plan attached hereto as Exhibit C, as may be amended or modified from time to time by Declarant.

(ccc) **Site Plan.** "Site Plan" shall have the meaning set forth in Recital A above. Notwithstanding anything to the contrary contained herein, Declarant, from time to time and without the consent of or notice to any Person, may replace, amend or modify the Site Plan, and upon such replacement, amendment or modification, the replacement Site Plan (including, without limitation, the enlargement or contraction of the Shopping Center and the construction, removal, relocation or reconfiguration of any and all Buildings and improvements on the Total Parcel) or the amended or modified Site Plan shall be effective to the same extent as if initially attached hereto and made a part hereof as Exhibit A.

(ddd) **Take-Over Notice.** "Take-Over Notice" shall have the meaning set forth in Section 6.1(a).

(eee) **Total Parcel.** "Total Parcel" shall have the meaning set forth in Recital A above, Declarant shall have the right to add any property to the Total Parcel from time to time and, upon recordation of an appropriate amendment hereto (which need not be joined or consented to by any other Property Owner or Occupant), the land so added shall be subject to, and benefited by, the easements, covenants, terms and conditions of this Declaration. Declarant, with the written consent of Sam's, also shall have the right to remove any land from the Total Parcel and, upon recordation of an appropriate amendment thereto (which need not be joined or consented to by any Property Owner or Occupant other than the Property Owner of the subject land and Sam's), the land so removed shall be released from the easements, covenants, terms and conditions of this Declaration. Any amendment to this Declaration which adds property to the Total Parcel or removes land from the Total Parcel may add or remove "Common Areas" or "Common Facilities" hereunder, provided that such amendment shall not cause a deficit in the number of parking spaces below the number of parking spaces required to be maintained to

comply with all Laws, or unreasonably impair access to any remaining portions of the Total Parcel over the remaining Common Areas.

(fff) **Vehicular Easement Areas.** "Vehicular Easement Areas" shall have the meaning set forth in Section 2.1(d)(ii) hereof.

(ggg) **Wal-Mart.** "Wal-Mart" shall mean Wal-Mart Real Estate Business Trust, a Delaware statutory trust, Wal-Mart Stores, Inc., a Delaware corporation, and any affiliate of either.

(hhh) **Work.** "Work" means all construction, alteration, repair, restoration and reconstruction work undertaken or proposed to be undertaken on any portion of the Total Parcel on or after the date hereof, including, without limitation, any changes in grade elevations and/or storm drainage facility configuration, any change or redesign of parking and drive aisles, and any design, installation, alteration or change of the exterior appearance, finish material, color or texture of any improvement.

1.2 **Gender and Number.** Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

ARTICLE 2

EASEMENTS

2.1 Vehicular and Pedestrian Easements.

(a) Grant of Shopping Center Road Easements.

(i) Subject to Section 9.17 below, Declarant hereby grants, creates, declares and reserves a perpetual, non-exclusive easement, for the benefit of the Total Parcel and all portions thereof in, on and over the Shopping Center Roads for the purpose of vehicular and pedestrian access and for ingress and egress to, from and between the Properties within the Total Parcel and each portion thereof and the public streets and highways abutting and adjacent to the Total Parcel. In connection with the easement granted hereunder, Declarant shall have the right, in its sole discretion, to make (or allow to be made) as many curb cuts onto the Shopping Center Roads as it may deem necessary, in whatever locations on the Total Parcel it deems appropriate, provided that such curb cuts shall be located in a manner which will not unreasonably interfere with the safe and unimpeded use of the Shopping Center Roads as contemplated under this Declaration. No Property Owner or Occupant (other than Declarant) shall make, construct or use any curb cut(s) from its Property onto the Shopping Center Roads adjacent thereto unless such curb cut(s) are approved in writing by Declarant, and then subject to any terms or conditions that Declarant may reasonably impose.

(ii) Nothing contained in this Section 2.1(a) shall be construed as restricting or prohibiting Declarant from (1) granting any additional easement rights over the Shopping Center Roads to any Persons including, without limitation, those benefited by the easements created under this Section 2.1(a), or for the benefit of any property not included

within the Total Parcel, or (2) using the ground below and/or the air space above the Shopping Center Roads for any purpose (including, without limitation, the construction and use of bridges, supports for above-ground transportation facilities, tunnels, buildings, or other structures and the location of utility facilities), provided that the same does not materially interfere with the use of the Shopping Center Roads for their intended purposes.

(iii) The provisions of this Section 2.1(a) shall survive the expiration or sooner termination of this Declaration and shall continue in perpetuity, unless (1) otherwise agreed to by all of the Property Owners; or (2) as to any portion of the Shopping Center Roads that shall be lawfully dedicated and accepted as a public roadway or which may become subject to a Shopping Center Area Transfer or exclusive easement, in which latter case, subject to Section 9.17, such portion automatically shall be released from the provisions hereof upon acceptance by the governmental authorities having jurisdiction thereover (including a Metropolitan District); provided, however, that in the event any portion(s) of the Shopping Center Roads are so dedicated and Declarant remains liable for the maintenance thereof or for the cost of maintenance thereof, the costs so incurred shall be Common Facility Maintenance Expenses hereunder; and further provided, that upon vacation of all or any part of the dedication, or expiration or termination of the Shopping Center Area Transfer or exclusive easement, such portion of the Shopping Center Roads shall again be subject to the provisions of this Section 2.1(a).

(b) Grant of Shopping Center Parking Area and Sidewalk Easements.

(i) Subject to Sections 5.2 and 9.17 below, Declarant grants, creates, declares and reserves for itself a perpetual, non-exclusive easement, for the benefit of the Total Parcel and each Property therein and all portions thereof in, on and over the Shopping Center Parking Area and the sidewalks located or to be located on the Total Parcel (other than the Shopping Center Sidewalks, which shall be subject to the terms, provisions and easements set forth in Section 2.1(c) below) for the following purposes, but in all cases subject to this Declaration and any rules, regulations or restrictions adopted by Declarant pursuant hereto: (A) in the case of the Shopping Center Parking Area, (1) vehicular and pedestrian ingress to and egress from each Property within the Total Parcel and the remainder thereof, (2) parking of motor vehicles (provided, that no cross-parking easement shall exist with respect to the Property owned or occupied by Sam's or Wal-Mart, on the one hand, and the other Properties within the Shopping Center, on the other hand), (3) vehicular passage and circulation and (4) the construction of any Parking Structure; and (B) in the case of sidewalks, (1) pedestrian ingress and egress to, from and between each Property within the Total Parcel and the remainder thereof, and (2) unobstructed pedestrian passage and circulation.

(ii) Neither Declarant nor the Property Owner of any Property within the Total Parcel shall construct or cause to be constructed any Buildings or improvements in any area if and to the extent that such construction would (A) result in a reduction in the number of parking spaces in the Total Parcel or any Property therein below the number of parking spaces required to be maintained pursuant to applicable Laws, unless Declarant in its sole discretion develops alternate parking areas which satisfy the requirements of such Laws; or (B) result in a change in the sprinklered rate of any existing Building which has been approved and constructed within a Building Area in accordance with the provisions of this Declaration.

(iii) The easements and other provisions of this Section 2.1(b) shall terminate on the date of expiration or sooner termination of this Declaration.

(iv) No Property Owner or Occupant of any Property in the Total Parcel shall construct or permit to be constructed any Buildings or other structures in the Shopping Center Parking Area located on its Property, except in the portions thereof, if any, which are expressly designated as a Building Area or a Future Building Area on the Site Plan, without the express written consent of Declarant which may be withheld in Declarant's sole discretion.

(v) No charge of any type shall be made to or collected from any Property User (and/or their tenants, licensees, invitees, employees, contractors and customers) for the right to park vehicles in the Shopping Center Parking Area, except for (1) reimbursement for such maintenance and other costs as may be provided for in any lease or other agreement with any Property User, (2) Common Facility Maintenance Expenses pursuant to Section 6.3 below and (3) Parking Structures or other specific areas which are designated from time to time by Declarant as "preferred" or otherwise restricted parking areas (or the like), provided that amounts charged shall not discriminate between Property Users or be located within prescribed "no-build areas." Nothing herein, however, shall prohibit Declarant from charging any Occupant for the lighting of the Shopping Center Parking Area after the ordinary operating hours of the Shopping Center. Further, nothing herein shall prohibit Declarant (or any Persons expressly authorized by Declarant) from providing and charging for valet parking services to patrons of the Shopping Center who wish to utilize such services.

(c) Grant of Shopping Center Sidewalk Easements, Common Area and Other Common Facility Easements.

(i) Subject to Section 9.17 below, Declarant grants, creates, declares and reserves for itself a perpetual, non-exclusive easement, for the benefit of all Properties and all portions thereof, in, on and over (1) any Shopping Center Sidewalks located or to be located from time to time on the Total Parcel, for the purpose of pedestrian access, ingress and egress to and from each Property and for unobstructed pedestrian passage and circulation, and (2) the other Common Areas of the Total Parcel which are not otherwise specifically provided for in this Article 2, for the purposes for which such Common Areas are created and designed, as designated by Declarant in writing from time to time in accordance with the terms of this Declaration, on the Site Plan or in a recorded amendment hereto.

(ii) The provisions of this Section 2.1(c) shall terminate on the date of expiration or sooner termination of this Declaration except as to portions of the Shopping Center Sidewalks or the other Common Areas or Common Facilities that shall be lawfully dedicated or subjected to a Shopping Center Area Transfer, with respect to which, subject to Section 9.17, such easements shall terminate upon such dedication and the proper acceptance thereof or when subjected to a Shopping Center Area Transfer; provided, however, that in the event any portion(s) of the Shopping Center Sidewalks or other Common Areas or Common Facilities are so dedicated or subjected to a Shopping Center Area Transfer and Declarant remains liable for the maintenance thereof or for the cost of maintenance thereof, the costs so incurred shall be Common Facility Maintenance Expenses hereunder; and further provided, that upon vacation of

all or any part of the dedication, or expiration or termination of the Shopping Center Area Transfer or exclusive easement, such portions of the Shopping Center Sidewalks or the other Common Areas or Common Facilities shall again be subject to the provisions of this Section 2.1(c).

(d) **General Principles, Restrictions and Reservations.** Notwithstanding anything to the contrary contained in Sections 2.1(a)-(c), inclusive, above, the grant of the easements under such sections shall be subject to the following terms and provisions and shall include the following rights and shall be subject to the following restriction and reservations:

(i) Each of the easements granted and created under Sections 2.1(a)-(c), inclusive, shall be effective from and after the date on which the particular portion of the Shopping Center Roads, Shopping Center Parking Area, Shopping Center Sidewalks, Common Areas and/or Common Facilities covered thereby, as applicable, to which such easement pertains is first constructed and open for use.

(ii) Neither Declarant nor any other Person shall obstruct or interfere with the free flow of (1) vehicular traffic over the Shopping Center Roads, (2) pedestrian passage and circulation over the sidewalks located or to be located on the Total Parcel, and (3) pedestrian passage and circulation over the Shopping Center Sidewalks (the Shopping Center Roads, the Shopping Center Sidewalks and sidewalks located or to be located on the Total Parcel, collectively referred to herein as the "Vehicular Easement Areas"); provided, however Declarant (and, subject to Declarant's prior written consent, any Property Owner of a Property subject to a sidewalk easement under Section 2.1(b) with respect to only sidewalks on or immediately adjacent to its Property) shall be permitted to obstruct such vehicular and pedestrian traffic, passage and circulation over and across the Vehicular Easement Areas to the extent reasonably necessary (A) for alterations, repairs, maintenance and traffic regulation and control of same, and (B) in the opinion of its counsel, to prevent the unintended dedication of the Vehicular Easement Areas for public use or the acquisition by adverse possession or eminent domain of any prescriptive rights by any Person in the same, and, in conjunction with such obstruction, Declarant (and any Property Owner) shall make all reasonable efforts to coordinate same to minimize unreasonable interference with respect to the construction or operation of the Shopping Center; (C) for the use of an outdoor seating area, provided such use complies with all of the other terms and conditions of this Declaration, including without limitation, Articles 3 and 4 hereof; and provided however, that the Occupant of the applicable Property shall be permitted to use such outdoor seating area only as specifically set forth in a lease or contract between such Occupant and the applicable Property Owner (including Declarant); and (D) for temporary sidewalk sales. With respect to outdoor seating areas and temporary sidewalk sales, unless otherwise approved by the Declarant, the Property Owner shall be solely responsible for keeping the sound level emanating from any outdoor seating areas below 60 dBA or decibels, for maintaining any outdoor seating area and area of the temporary sidewalk sale in a clean and sanitary condition, free from all waste, debris and trash. The use of the outdoor seating area and area of the temporary sidewalk sale shall be at the Property Owner's risk, and the Property Owner's insurance required pursuant to this Master Declaration shall cover such areas and shall be primary to any insurance carried by Declarant. The Property Owner agrees to indemnify Declarant, and hold it harmless, from any losses, expenses or claims, including reasonable attorneys' fees, arising out of any such outdoor seating area or sidewalk sale. Further, and

notwithstanding the foregoing, no Property Owner of any Property in the Total Parcel shall close off, obstruct or interfere with the free flow of vehicular or pedestrian traffic over any part of the Shopping Center Parking Area and/or the sidewalks subject to an easement created under Section 2.1(b) and located on or immediately adjacent to its Property in the Total Parcel unless and until such Property Owner obtains the prior written consent of Declarant and makes all reasonable efforts to coordinate such closing with the activities of the Occupants of the other Properties in the Total Parcel so that no unreasonable interference occurs with respect to the construction or operation of the Shopping Center.

(iii) Declarant (and, each Property Owner, with respect to only the Shopping Center Sidewalks located on its Property, subject to the prior written approval of Declarant) reserves the right at any time and from time to time to make changes and alterations in, and to change the location of, all or any portion of the Vehicular Easement Areas (and to relocate or reconfigure on the Total Parcel all or any portion of the Shopping Center Parking Area and/or sidewalks), and, therefore, the easements granted under this Section 2.1, as appropriate, without obtaining the consent or approval of any Property Owner or other Occupant or other Person (other than Declarant) provided that: (A) the quality of construction of the relocated roads, sidewalks, parking areas and other Common Areas or Common Facilities shall be substantially similar to or better than the portion being relocated, and (B) such relocation, change or alteration shall not unreasonably reduce or impair the overall usefulness or function of any of the easements created under this Section 2.1.

(iv) Declarant reserves the right to establish and enforce reasonable rules and regulations concerning the use of the Vehicular Easement Areas, other Common Areas, including without limitation the Shopping Center Parking Area, and other Common Facilities. Declarant may post traffic signs and/or implement other mechanisms to regulate the flow of traffic over and within the Shopping Centers Roads and the Shopping Center Parking Area. Declarant further reserves the right to, but shall not be obligated to, eject or cause to be ejected from any portion of the Vehicular Easement Areas, any other Common Areas and any other Common Facilities covered by the foregoing easements, any Persons (including, without limitation, any Occupant and the invitees, licensees, customers, guests, agents and employees of any Occupant) and such Person's vehicles and/or other personal property which, in Declarant's reasonable judgment, are in violation of the rules and regulations so established or are not properly authorized, empowered or privileged to use the Vehicular Easement Areas or such other Common Areas or Common Facilities.

2.2 Grant of Easements for Installation and Use of Common Utility Facilities.

(a) In furtherance of the development of the Common Utility Facilities and the use of the same by the Property Owners and Occupants, the following easements and rights are hereby created and reserved:

(i) Declarant hereby grants, creates, declares and reserves for itself a perpetual nonexclusive easement, for the purpose of constructing, installing, using, maintaining, replacing, repairing, operating, enlarging, locating, relocating and removing Common Utility Facilities in, on, under, over, through and across the surface of any portion of the Common Areas or Common Facilities located on each Property within the Total Parcel, together with the right of

access to the Common Utility Facilities. The easement created hereunder shall be for the benefit of Declarant and its express designees only, but not otherwise for any other Property Owners or Occupants. The specific locations of the Common Utility Facilities (and, therefore, the easements for the use of the Common Utility Facilities granted in subparagraphs (ii) below) shall be determined by Declarant, in its sole discretion; provided, however, that no Common Utility Facilities shall be located in or under any Building Area on any portion of the Total Parcel unless consented to by the applicable utility company and the owner of the affected Building.

(ii) Declarant hereby grants, creates, declares and reserves for itself and for each Property Owner, a perpetual, non-exclusive right and easement, to connect to, tap into and use any and all Common Utility Facilities that may be constructed or installed in, on, over, under, across, or adjacent to any portion of the Total Parcel provided that (A) all connections and tap-ins shall be done at the sole cost and expense of the Person making the connection or the tap-in and shall be done in accordance with the requirements of the utility company(ies) or other agency(ies) (whether public, quasi-public or private) providing the subject utility service, (B) the locations of all connections and tap-ins to such Common Utility Facilities are approved, in advance, by Declarant, (C) the Person making the connections promptly and adequately repairs all damage which may be caused by virtue thereof and shall restore the affected portions of the Total Parcel to the condition that existed prior to such connection or tap-in, (D) the Person making the connections shall not interfere unreasonably with the construction, installation or use of such Common Utility Facilities and shall provide security and other assurances satisfactory to Declarant in Declarant's sole but reasonable discretion that such connections will be completed in accordance with standards adopted from time to time by Declarant and in a good and workmanlike manner and in accordance with all applicable Laws, Matters of Record and Shopping Center Agreements; and (E) Declarant or the utility company(ies) or agency(ies) providing the applicable utility service shall have the right to ration, allocate or deny permission to connect to the subject Common Utility Facilities if necessary or desirable due to limited capacity of such facilities.

(b) Any Property Owner whose Property is subject to any easement granted under Section 2.2(a) above may, at its sole cost and expense, relocate any Common Utility Facilities installed on its Property, provided such relocation shall be performed only after thirty (30) days' prior written notice by such Property Owner of its intention to relocate such Common Utility Facilities to each Property Owner and Occupant that has tapped into and is using such Common Utility Facilities or would otherwise be affected by such relocation and provided further that such relocation: (i) shall not interfere with or diminish the utility services to any such Property Owner or Occupant (except that temporary interference with and diminutions in utility services shall be permitted if they occur during hours calculated to minimize the disturbance to each such Property Owner and Occupant, and the relocating Property Owner promptly reimburses each such Property Owner and Occupant for the actual out-of-pocket costs or pass-through costs, expenses and losses incurred by each such Property Owner and Occupant as a result of such interference or diminution, or both); (ii) shall not reduce the usefulness or function of the Common Utility Facilities involved; (iii) shall not be relocated other than underground (except to the extent permitted in Section 2.2(e) below; (iv) shall not increase the cost of utility service to any such Occupant; (v) shall be performed in such a manner so as to minimize any interference with the business operations of each such Property Owner and Occupant; (vi) shall comply with all requirements of the utility companies or agencies providing the subject utility

service; and (vii) in all events shall be undertaken only after the Person proposing to relocate the Common Utility Facilities has obtained the express written approval from Declarant as provided below and from all applicable governmental agency(ies) and/or utility company(ies) for such relocation. The Property Owner performing the relocation shall restore any Property affected to the same condition as such Property was in before the commencement of the relocation and shall minimize any interference with use of the Common Areas or other Property. Any proposed location or relocation of Common Utility Facilities also shall be subject to the prior written approval of Declarant, which shall be requested in writing no less than sixty (60) days before undertaking such activity. Such approval may be withheld or denied for any reason or for no reason at all and may be conditioned upon Declarant's receipt of adequate security from the Person proposing the location or relocation to assure the proper completion thereof.

(c) Nothing contained in this Section 2.2 shall be deemed to preclude any Property Owner from landscaping, paving, or otherwise improving the surface of the Common Areas or Common Facilities located upon its Property, provided that the same (1) is approved in writing in advance by Declarant or is shown on the Site Plan, (2) does not materially interfere with the use of the Common Areas, Common Facilities for the purposes provided herein or with access to the Common Utility Facilities installed therein, and (3) is installed, used and maintained (by and at the sole expense of the subject Property Owner, unless Declarant expressly assumes such obligations) in accordance with all conditions and restrictions imposed thereon by Declarant, including, without limitation, this Declaration and the Development Standards.

(d) Each of the easements and rights to construct and install the Common Utility Facilities granted and created under Section 2.2(a)(i) above shall be effective on the date of this Declaration. Each of the easements and rights to tap into, maintain, operate and use the Common Utility Facilities granted and created under Section 2.2(a)(ii) above shall be subject to restrictions and limitations imposed by the applicable utility companies and agencies providing the subject utility service and shall be effective on the date on which the subject Common Utility Facilities are constructed or installed and available for use. The provisions of this Section 2.2 shall survive the expiration or sooner termination of this Declaration and shall continue in perpetuity, unless otherwise agreed to by Declarant and the Property Owner of each Property in the Total Parcel that is then using the Common Utility Facilities in question.

(e) All Common Utility Facilities located or to be located on the Total Parcel, other than transformers, fire hydrants, stand pipes, manhole covers, sewage treatment facilities and storm water catch basins shall be underground unless otherwise approved by Declarant.

(f) Declarant from time to time may enter into agreement(s) for the purchase of utility services from any utility company(ies), agency(ies) (whether public, quasi-public or private) that regularly supplies such service, and each Property Owner and Occupant of Property that is affected by such agreement(s) automatically shall be bound by the terms thereof without the need to join therein. Declarant from time to time may enter into agreements for the purchase of utility service from a private or quasi-public utility cooperative (which may be owned by or affiliated with Declarant), in which event Declarant may require that the entire Shopping Center or any portion(s) thereof and each Owner and/or Occupant shall be bound by such agreements. Declarant shall have the sole right to determine which utility providers serve the Shopping Center.

(g) Each Property Owner and Occupant of the Total Parcel shall use the Common Utility Facilities in the Total Parcel only for the purposes for which they were constructed and shall not overload or use such Common Utility Facilities to excess.

2.3 Grant of Monument Sign Easements.

(a) Declarant grants, creates, declares and reserves for itself, for the benefit of the Total Parcel, a nonexclusive easement in, on, over and across the Sign Easement Areas for the purpose of constructing, installing, maintaining and replacing directional signs, traffic control signs, and signs pertaining to the Occupants, and other such similar signs and materials which are designed or intended to (i) promote the orderly traffic flow along the Shopping Center Roads, (ii) implement and enforce rules and regulations adopted from time to time by Declarant to effectuate the purposes of this Declaration, (iii) implement and display advertising and/or other design themes and information that Declarant may adopt from time to time for the Shopping Center and/or (iv) to identify Occupant(s) of the Total Parcel, if any, which Declarant permits to use the subject sign. The specific design, quantities, content and locations of such signs and other material within the Sign Easement Areas shall be determined by Declarant in its sole discretion, and such design, quantities, content and location may be amended or modified from time to time by Declarant; however, Declarant shall not have the right to modify a previously granted sign benefitting a Property Owner or its Occupant, without the consent of the Property Owner. No Property Owner, Occupant or other Person shall install or permit the installation of any signage (other than by Declarant) in the Common Areas or Common Facilities, without the express written consent of Declarant.

(b) Declarant hereby grants, declares, creates and reserves for itself a non-exclusive easement in, on, over and under the Sign Easement Areas as shown on the Signage Plan and/or Site Plan for the purpose of constructing, installing, maintaining and replacing Monument Signs and Shopping Center Identification Signs. The grant of the easement under this Section 2.3(h) shall include the right of ingress to and egress from the Sign Easement Areas upon and across any Property (other than Building Areas thereon), as well as the right to construct, install, maintain, repair and replace utility lines serving the Sign Easement Areas (which utility lines shall be located in areas (other than Building Areas) designated by Declarant). The Monument Signs and/or Shopping Center Identification Signs shall be used to identify the Shopping Center and (if Declarant in its sole discretion so elects) any Occupants and shall contain such other information that Declarant, in its sole discretion, elects to include on the Monument Signs. No Occupant or Property Owner shall have the right to place a sign panel on any Monument Sign or Shopping Center Identification Sign or impede access to any Monument Sign or Shopping Center Identification Sign unless consented to by Declarant. Notwithstanding anything to the contrary contained in this Declaration, the provisions of this Section 2.3 and the easements granted hereunder are solely for the benefit of Declarant. The specific design, quantities, content and locations of such Monument Signs and Shopping Center Identification Signs shall be determined by Declarant in its sole discretion, and such design, quantities, content and location may be amended or modified from time to time by Declarant; however, Declarant shall not have the right to modify a previously granted sign benefitting a Property Owner or its Occupant, without the consent of the Property Owner.

(c) Each of the easements granted and created under this Section shall be effective on the date of this Declaration. The provisions of this Section 2.3 shall terminate on the date of expiration or sooner termination of this Declaration; provided, however, in the event the Shopping Center is still in existence and is being operated as a shopping center at the time this Declaration expires or terminates, then the provisions of this Section 2.3 shall continue for as long as the Shopping Center remains in existence and is operated as a shopping center.

2.4 Grant of Common Driveway Easements.

(a) Declarant hereby grants, creates, declares and reserves for itself and for each Property Owner, a non-exclusive, perpetual easement for ingress and egress on, over and across all roadways and driveways located or to be located upon each Property as such roadways, driveways, entrances and exits may be designated from time to time on the Site Plan, so as to permit the free flow of pedestrian and vehicular traffic to, from and between adjoining Properties and any Shopping Center Roads adjacent thereto. Except as otherwise provided herein, no Property Owner, Occupant or other Person shall obstruct or permit the obstruction of the free flow of pedestrian or vehicular access and traffic to from across and between contiguous Properties or between Properties and the Shopping Center Roads adjacent thereto except at locations and in the manners designated by Declarant. The easements created under this Section 2.4(a) shall be for the benefit of Declarant and the Property Owners of each Property that is contiguous to a Property burdened with the easements created hereby. Nothing herein contained shall be construed so as to require Declarant to grant or permit direct access between the Shopping Center Roads and any particular Property or Properties, whether or not adjacent to the Shopping Center Roads.

(b) Each of the easements granted and created under this Section 2.4 shall be effective on the date of this Declaration. The provisions of Section 2.4(a) regarding common driveways and entrance features shall survive the expiration or sooner termination of this Declaration and shall continue in perpetuity, unless otherwise agreed to by the Property Owners of all of the Properties that are then using the particular easement areas in question.

2.5 Grant of Construction Easements Footings and Foundations.

(a) Declarant grants, creates, declares and reserves for itself and for each Property Owner, a nonexclusive easement, to the extent required in accordance with good construction practices, for the benefit of each Property, on, over and under each Property, for:

(i) The encroachment and construction, maintenance, use, repair, reconstruction rebuilding and replacement of "Common Footings," "Common Foundations" and/or "Common Walls" if and to the extent that Declarant and any other Owner of Property within the Total Parcel agree to the use of what are commonly known in the construction trade as "Common Footings," "Common Foundations" and/or "Common Walls" for their respective improvements. As a condition to the use of "Common Footings," "Common Foundations" and/or "Common Walls," Declarant and the Property Owner agreeing to the use of the same shall also agree that if all or any part of their respective improvements are destroyed and are not restored, then the Person whose improvements are destroyed shall leave in place any foundations, footings and walls (or any portions thereof) which were not destroyed if such

foundations, footings or walls were being used as Common Footings, Common Foundations or Common Walls, provided, however, that nothing in this Section 2.5 shall reduce or limit the obligations to reconstruct or restore damaged improvements in accordance with Article 6 below;

(ii) The installation, use, maintenance, repair, replacement and removal (by the owner thereof) of minor building appurtenances such as (without limitation) signs, entrances, marquees, canopies, lights and lighting devices, fire doors, awnings, alarm bells, wing walls, support and other columns, pilasters, roof flashings, eaves, roof and building overhangs, and underground footings and foundations, which may encroach from one Property onto an adjoining Property; and

(iii) Reasonable access to the facilities maintained pursuant to this Section 2.5(a). The plans and specifications for and location and extent of all easements granted under this Section 2.5(a) shall be subject to the prior approval of Declarant and the respective Property Owners affected by the same, and the plans and specifications showing the improvements specified in this Section 2.5(a), together with the specific request by the grantee of the subject easement for approval of the location and extent of the encroachment of the subject easement, shall be submitted to Declarant and the affected Property Owner in writing prior to commencing use of such easement. The approvals required pursuant to the preceding sentence shall not be unreasonably withheld or delayed, but may be conditioned upon: (A) review and approval of sufficiently detailed plans and specifications for the subject improvements, (B) the express written agreement of the benefited Property Owner to reimburse the burdened Property Owner for all increased costs of construction of the burdened Property Owner's Building due to such easement, (C) express written agreement from the benefited Property Owner to defend, indemnify and hold harmless the burdened Property User of the burdened Property Owner's Property from and against any loss, costs, damages, liens, casualties, liabilities and expenses incurred by or asserted against the burdened Property User in connection with or arising out of such easement, (D) evidence that the benefited Property Owner has obtained and will maintain adequate insurance concerning the subject easement and adequate security for its obligations hereunder, as reasonably required by Declarant or the burdened Property Owner, and (E) evidence that the grantee has obtained all applicable governmental permits for the construction of the subject improvements. Approval of the easement shall constitute: (1) designation of the portions of the Total Parcel which are to be used for such easements, and (2) agreement by the benefited Property Owner to use only those portions of the Total Parcel so designated.

(b) The cost of maintaining, repairing and reconstructing the common facilities subject to this Section 2.5 (but not the initial construction thereof, which shall be paid for by the benefited Property Owner, unless otherwise agreed in writing) shall be borne equally by the Property Owners affected by such facilities or as such Property Owners may otherwise agree; provided, however, in the event that the maintenance, repair or reconstruction of such facilities is required primarily due to the acts or omissions of one Property Owner (the "Responsible Party") (or persons acting by, through or under the Responsible Party) and not the other, the Responsible Party shall bear the entire cost of such maintenance, repair or reconstruction. Each of the easements granted and created under this Section 2.5 shall be effective with respect to a particular portion of the Total Parcel on the date that the subject improvements are installed or approved by Declarant (whichever occurs first) and shall remain in

existence so long as the Building of the benefited Property Owner (or any restoration or replacement thereof made during the term of this Declaration) remains in existence.

(c) All footings, foundations, walls and other improvements constructed from time to time on any portion of the Total Parcel shall be constructed in a good and workmanlike manner.

(d) If requested by Declarant or any Property Owner, the Property Owner(s) of any Properties that are affected by the easements granted under this Section 2.5 shall execute a suitable memorandum with such Property Owner in recordable form evidencing the specific location of and conditions pertaining to any easements granted under Section 2.5(a).

2.6 Landscape Buffer Easements. Subject to Section 9.17 below, Declarant hereby grants, creates, declares and reserves for itself a non-exclusive easement: (i) to enter upon and across each Property (other than any Building Area thereon) for the purpose of accessing the Landscape Buffers, and (ii) to install, remove, replace and/or maintain any vegetation and materials required to be installed, removed, replaced and/or maintained in the Landscape Buffers. Unless Declarant expressly designates the Landscape Buffers as "Common Facilities," under this Declaration and expressly assumes the obligation to maintain the Landscape Buffers, each Property Owner shall maintain the Landscape Buffers, if any, located on its Property in compliance with all applicable Laws, Matters of Record and Shopping Center Agreements.

2.7 General Easement. Declarant hereby reserves for itself, its successors and assigns an easement over, across, through and under the Total Parcel (other than Building Areas) to: (i) discharge Declarant's obligations under this Declaration, the Matters of Record, the Shopping Center Agreements or any of the District Documents; (ii) exercise any of Declarant's rights under this Declaration; and (iii) make Improvements within the Shopping Center or any other real property now or hereafter owned by Declarant or an affiliate of Declarant. Notwithstanding the foregoing provisions of this Section 2.7, Declarant shall not enter any Property without reasonable prior notice to the Owner thereof, except in cases of emergency.

2.8 Abandonment of Easements. Notwithstanding anything to the contrary contained herein, any of the easements granted in this Article 2 may be terminated after the expiration or termination of this Declaration by abandonment or non-use for a continual period of three (3) consecutive years, subject to the terms of this Section 2.8. If the Property Owner of the Property burdened with such easement alleges such abandonment or non-use, such Property Owner shall give written notice of such allegation by United States registered or certified mail, return receipt requested, mailed to the Property Owner of the Property benefited by such easement, stating the belief that such easement has been abandoned. If the Property Owner of any benefited Property disputes the abandonment of such easement, such Property Owner shall serve notice of such dispute by certified or registered mail upon the fee owner of the burdened Property within thirty (30) days of the receipt of notice of alleged abandonment or non use. Such notice of dispute shall (i) identify the name and address of the Person giving the notice and the legal description of the benefited Property and (ii) state the use of the easement which has been made within such three (3) year period which forms the basis of the claim of non-abandonment or continued use. If any record owner of the fee of any benefited Property shall not serve such notice of dispute upon the fee title owner of the burdened Property within said thirty (30) day

period, then with respect to such benefited Property, said easement conclusively shall be deemed abandoned and terminated, which presumption shall be binding upon all Persons having or acquiring an interest in the burdened Property or the subject benefited Property, and all such Persons shall execute all appropriate documents evidencing and confirming the same, upon request therefor. In the event that the record fee title owner of any benefited Property shall serve such notice of dispute upon the fee title owner of the burdened Property within said thirty (30) day period, such dispute may be resolved by the owner of the fee title of the burdened Property bringing an appropriate judicial action to have the easement with respect to such benefited Property declared abandoned and terminated. For the purposes of this Section 2.8 only, the address of the record fee title owner of any Property shall be deemed to be the address of the last known assessee of such Property, as shown on records of the County tax assessor's office.

2.9 No Implied Dedication of Easement Areas; Right to Dedicate and Grant Easements.

(a) Nothing contained in this Article 2 including, without limitation, the grant of any or all easements under this Article 2, shall be deemed to constitute a dedication of any Property, or any portion or portions thereof to any governmental body or agency or to the general public, it being the intention of Declarant that this Declaration shall be strictly limited to and for the purposes set forth in this Declaration. Subject to Section 9.17 below, any Property Owner may, however, extend the benefit of the easements granted under this Article 2 to each of its Occupants, but such grant shall be subject to the provisions of this Declaration.

(b) Subject to Section 9.17 below, Declarant (but no other Property Owner, except with the prior written approval of Declarant) shall have the right to dedicate and/or convey to the City, or to any other governmental entity, (or in the case of a dedication or conveyance of all or any portion of the Common Utility Facilities, to any private, public or quasi-public utility company or agency providing utility service to the Total Parcel), for public purposes and/or the purpose for which they are intended, all or any portion of the Shopping Center Roads, Shopping Center Sidewalks located or to be located on its Property, and/or the Common Utility Facilities provided that no such dedication or conveyance shall be effective unless the City or other governmental entity, or the applicable utility company or agency as the case may be, properly accepts such dedication or conveyance.

(c) Subject to Section 9.17 below, if, in connection with the dedication and/or conveyance of all or any portion of the Shopping Center Roads or the Shopping Center Sidewalks located or to be located on a Property or of the Common Utility Facilities, as provided in Section 2.9(b) above, Declarant requires any other Property Owner(s) or Occupant(s) to join in the execution of any applications, deeds, plats or other documents, then such other Property Owner(s) or Occupant(s) shall do so promptly upon request therefor. Upon any permitted dedication and/or conveyance described in Section 2.9(b), and upon proper acceptance thereof, the following easements shall terminate without the payment of any consideration to the grantee thereof or any Property Owners or Occupants or other Persons on account of the termination of such easements: (i) in the case that Shopping Center Roads and/or Shopping Center Sidewalks located or to be located on a Property are being conveyed, the easements granted under this Article 2 with respect to only the dedicated or conveyed areas; and (ii) in the case all or any portion of the Common Utility Facilities are being conveyed, the easements granted under

Section 2.2(a) to the extent of the Common Utility Facilities so dedicated or conveyed. In the event that any such dedication and/or conveyance is reversed or abandoned, the easement rights set forth in this Article 2 with respect to the subject easement areas shall automatically revive with respect thereto. Notwithstanding the foregoing provisions of this Section 2.9, in no event shall any Property Owners dedicate any Common Utility Facilities that may be located on its Property without the prior written consent of Declarant.

(d) In the event that any Person required under this Section 2.9 to join in the execution of any document fails to do so within ten (10) days of request thereof from Declarant, Declarant shall be authorized to do so as attorney-in-fact for and in the name and stead of such Person; and the power of attorney granted hereby shall be irrevocable and is coupled with an interest.

(e) If, in connection with the dedication and/or conveyance of any Shopping Center Roads, Shopping Center Sidewalks and/or Common Utility Facilities in accordance with this Section 2.9, Declarant retains the obligation to maintain or pay for the maintenance of the dedicated facilities, then the costs so incurred by Declarant shall be Common Facility Maintenance Expenses hereunder.

(f) Declarant (but no other Property Owner, except with the prior written approval of Declarant) shall have the right to grant easements to a Metropolitan District or other governmental or quasi-governmental entity over Common Areas, Common Facilities and other portions of the Total Parcel outside of Building Areas, including, without limitation the Shopping Center Roads and Parking Areas, for purposes of, among other things, operation, maintenance, maintenance, repair, management and access, and use by and for the benefit of the general public.

2.10 General Principles.

(a) Unless specifically set forth in this Declaration to the contrary, all rights, privileges and easements declared or granted under this Article 2 or elsewhere in this Declaration shall be appurtenant to the portions of the Total Parcel which are to be benefited thereby, as provided herein. Unless provided otherwise herein, all rights, privileges and easements declared or granted under this Declaration, are irrevocable and for the benefit of Declarant and its beneficiaries and their respective heirs, representatives, successors, assigns, officers, partners, employees, agents, tenants, Occupants, licensees, invitees, customers, and others claiming by or through them as the holders of interests in and to their respective Properties.

(b) All easements granted under this Declaration shall exist by virtue of this Declaration, without the necessity of confirmation by any other document. Upon the termination of any easement (in whole or in part) or its release in respect of all or any part of any Property, such easement shall be deemed to have been terminated or released without the necessity of confirmation by any other document; provided, however, that upon the request of Declarant, each Property Owner and Occupant shall sign and acknowledge a document memorializing the existence (including without limitation, the location and any conditions) or the termination or release (in whole or in part), as the case may be, of any easement, provided that the form and substance of the document is reasonably acceptable to each such Property Owner or Occupant.

(c) All easements granted under this Article 2 or elsewhere in this Declaration are superior to all present (upon the consent of Declarant's current mortgagee hereto) and future leases, sales, conveyances, transfers, assignments, contracts, mortgages, deeds of trust and other liens, encumbrances and documents in any way affecting any portion of the Total Parcel, and any Person foreclosing any such mortgage, lien or encumbrance and any Persons acquiring title or an interest in any portion of the Total Parcel as a result thereof shall acquire and hold the title to such portion subject to such easements and the covenants, agreements, conditions and restrictions declared in this Declaration and all amendments thereto.

(d) Except as otherwise provided in this Article 2, whenever any easement created under this Article 2 applies to the use of a facility in the Total Parcel which has not been constructed or installed as of the date of this Declaration (e.g., portions of the Shopping Center Roads and the Common Utility Facilities), the easement created for the use of the same shall not be effective until the particular facility to which the easement pertains is constructed or installed, and open for use. Moreover, the exact location of the subject easement shall be confined to, and defined by, the location of the facility to which it pertains after construction or installation of such facility. Relocation of any facility by Declarant with and when allowed by the terms of this Declaration shall automatically constitute a relocation of the easement granted hereunder, without the necessity of any consent or approval by the Property Owners or Occupants. Upon the reasonable request of Declarant in connection with the relocation of any facilities in accordance herewith, each Property Owner and Occupant shall join in the execution of a recordable instrument amending this Declaration and confirming the location of the relocated easements and facilities, and such instrument shall have the same effect and priority as this Declaration. In the event any Property Owner or Occupant fails to execute any instrument properly requested by Declarant within ten (10) days of Declarant's request, Declarant shall have the right, power and privilege to do so as attorney-in-fact for and in the name and stead of such Property Owner or Occupant; and the power of attorney granted hereby shall be irrevocable and is coupled with an interest.

(e) Nothing contained in this Declaration shall obligate Declarant to construct or install all or any portion of the Common Utility Facilities, the Monument Signs, the Shopping Center Roads, the Shopping Center Parking Area, the Shopping Center Sidewalks, and/or any other improvements described in this Article 2, and the granting of the easements pursuant to this Article 2 shall not be construed so as to create any such obligation on the part of Declarant.

(f) Notwithstanding the fact that Declarant is, in certain circumstances, both the grantor and the grantee of some of the rights and easements created under this Article 2, the Declarant's intent that there be no merger of its respective interests with respect to such rights and easements, it being understood and agreed that the easements created under this Article 2 are for the benefit of and appurtenant to the land within the applicable portions of the Total Parcel, and not for the benefit of any particular Person (except as may otherwise be specifically provided in this Declaration).

ARTICLE 3

DEVELOPMENT OF TOTAL PARCEL; APPROVAL OF PLANS

3.1 **Development Standards.** It is the intent of Declarant that all improvements and buildings to be constructed in the Total Parcel be designed to blend harmoniously and attractively with each other so as to provide the appearance of a unified, integrated development, and in compliance with all Matters of Record and Shopping Center Agreements. In order to further this objective, Declarant shall establish and promulgate guidelines (the "Development Standards") which shall set forth the design concepts pertaining to the development of the various Properties within the Total Parcel. Declarant shall have the right, at any time and from time to time, to amend, alter or abolish any Development Standards adopted by it. In addition, Declarant shall have the right, in its sole discretion, to permit such variances from the provisions of the Development Standards that it deems necessary or proper in connection with the development of any Property within the Total Parcel. Declarant shall have the right to enforce the provisions of the Development Standards against the Property Owners and Occupants of the Total Parcel. No Property Owner or Occupant of any portion of the Total Parcel (other than Declarant) shall have the right to enforce the provisions of the Development Standards against any other Property Owner or Occupant, or to require another Property Owner or Occupant to abide by the Development Standards, unless authorized to do so by Declarant; nor shall any Property Owner or Occupant have the right to require Declarant to enforce the provisions of the Development Standards against another Property Owner or Occupant. Furthermore, no failure by Declarant to enforce the provisions of the Development Standards against any Property Owner or Occupant, or to require a Property Owner or Occupant to comply with the Development Standards, shall be deemed to be a waiver of Declarant's right to enforce or require compliance with the Development Standards either against that particular Property Owner or Occupant or any other Property Owner or Occupant at any time, unless Declarant expressly waives the same, in writing, for a particular Property Owner or Occupant.

3.2 **General Design Standards.**

(a) The Site Plan attached hereto as Exhibit A sets forth Declarant's present intentions with regard to the location, configuration and massing of Buildings and other improvements on the Total Parcel. Declarant shall have the absolute right to make or approve such revisions or modifications to the Site Plan as it may deem necessary or desirable from time to time, subject to the provisions of this Declaration and the requirements of all applicable Laws, Declarant shall also have the authority in its sole discretion to approve or reject revisions or modifications to the Site Plan proposed by any Property Owner on a case by case basis, subject to all of the provisions of this Declaration and the requirements of all applicable governmental laws, ordinances, rules and regulations.

(b) No outside storage of any type will be permitted without the written approval of the Declarant. When such approval is given, Declarant shall have the power to require that the outside storage area shall be totally enclosed with a screen approved by the Declarant so that storage is not visible from the neighboring Properties or from any adjacent Shopping Center Roads. The foregoing restriction shall not apply during the period of any

construction or reconstruction of Buildings on any Property, provided that the Property Owner thereof complies with the provisions of Section 4.4 pertaining to construction staging areas.

(c) All open areas on each Property not occupied by Buildings and paved areas, shall be suitably graded and drained and shall be landscaped with lawns, trees and shrubs. The Development Standards shall provide for specific landscaping standards, and the Property Owners and Occupants of each Property shall comply with such standards, including, without limitation, standards applicable to Landscape Buffers.

3.3 Approval of Plans.

(a) No Building, structure, enclosure, Parking Area or facility, road, utility line, exterior lighting, landscaping, fence, wall, or other improvement of any kind shall be constructed, installed or placed upon any portion of the Total Parcel (or, once constructed, altered, added to or reconstructed in any manner affecting the structural elements, building elevations or building footprint) unless and until all plans and specifications for the same are submitted to and approved in writing by Declarant. The plans and specifications to be submitted for review by Declarant shall (i) cover such issues, topics and matters, including without limitation, plans with respect to grading, site plan, utilities, lighting, building elevations, and building and site signage, (ii) contain such details, (iii) be in such form as are required under the Development Standards. Declarant may require that such plans and specifications be submitted in phases, as provided in the Development Standards. All plans and specifications to be submitted to Declarant shall depict Buildings and improvements designed in conformity and in accordance with the Development Standards (unless Declarant agrees otherwise) and in all events in conformity with all applicable Laws, Matters of Record and Shopping Center Agreements.

(b) Declarant shall have full and complete discretion in determining whether to approve, conditionally approve or disapprove of any plans and specifications submitted to it pursuant to this Section 3.3, and may review and consider in connection therewith all matters involved with the plans and specifications, including (without limitation) engineering and design characteristics, aesthetic considerations and potential impact on neighboring Properties. Declarant will examine each submission in the context of whether it depicts high quality development consistent and compatible with the rest of the Total Parcel (or the portion thereof in which the subject Property is located). In this regard, Declarant may base its approval or disapproval on, among other things, (i) compliance with this Declaration and consistency with the Site Plan and the Development Standards, (ii) the architectural design concept, (iii) conformity and harmony of external design with the development of the Total Parcel and each neighboring Property and types of operations and uses thereof, (iv) relation of topography, grade and finished ground elevation of the Property being improved to that of each neighboring Property, (v) access between the Property and adjacent Properties, the Shopping Center Roads, and the public roadways adjacent to the Total Parcel, (vi) proper facing of main elevation with respect to nearby roads and streets, (vii) adequacy of screening of mechanical, air conditioning or rooftop installations, (viii) adequacy of fire protection and life safety systems, and (ix) compliance with all applicable Laws, Matters of Record and Shopping Center Agreements. Declarant shall not arbitrarily or unreasonably withhold its approval of any plans or specifications, but the decision of Declarant shall be final and non-appealable. Declarant shall

review all plans and specifications submitted to it pursuant to this Section 3.3 as soon as may reasonably be possible after receipt by Declarant of all of such plans and specifications and all supplemental materials and information required under this Section 3.3. In no event shall Declarant be required to review partial or piecemeal submissions, and Declarant may require strict adherence to all submission requirements prior to its review. In any case where Declarant shall conditionally approve or disapprove any plans or specifications submitted hereunder, Declarant shall send notice of such disapproval or conditional approval to the submitting Property Owner, together with a statement of the reasons therefor. In any such case, Declarant, if requested, shall make reasonable efforts to assist and advise the submitting Property Owner in the preparation of acceptable plans or specifications, at the sole cost of the submitting Property Owner. Notwithstanding anything to the contrary herein, for so long as Sam's or Wal-Mart is an Occupant of a Property or portion thereof within the Shopping Center: (i) no Building constructed on the Property shall exceed forty (40) feet in height above finished grade; provided that incidental architectural embellishments and peaks shall not be considered in the determining compliance with such restriction; (ii) no Building constructed on any portion of the Shopping Center other than the Property (or portion thereof) owned or occupied by Sam's or Wal-Mart shall (A) exceed twenty-eight (28) feet (including all mechanical improvements and architectural embellishments) in height above the mean finished elevation of the Shopping Center Parking Area, (B) exceed 5,000 square feet in area or (C) have any rooftop equipment that is not screened so as to not be visible from the mean finished elevation of the Shopping Center Parking Area; (iii) no Building(s) on the Property owned or occupied by Sam's or Wal-Mart shall be approved unless the ratio of the number of parking spaces within that portion of the Shopping Center Parking Area located thereon to every 1,000 square feet of Building area is equal to or greater than four (4.0); and (iv) no Building(s) on the Properties not owned or occupied by Sam's or Wal-Mart shall be approved unless the ratio of the number of parking spaces within that portion of the Shopping Center Parking Area located thereon to every 1,000 square feet of Building area is equal to or greater than ten (10.0), it being understood that for purposes of such calculation, the aggregate square footage of the Buildings and the aggregate number of parking spaces located on such Properties shall be applicable. For so long as Sam's or Wal-Mart is an Occupant of a Property or portion thereof within the Shopping Center, the provisions of the previous sentence may not be amended without the consent of Sam's or Wal-Mart, as applicable.

(c) No Occupant or Property Owner (other than Declarant) shall (1) submit to any governmental authority any site plans, design plans or other plans relating to its Property in the Total Parcel and/or any Buildings or other improvements to be constructed on its Property in the Total Parcel (excluding any Work related solely to the interior of a Building unless increasing the gross interior square footage thereof), or (ii) commence or perform any construction, alteration, addition, restoration or reconstruction Work on its Property (excluding any Work related solely to the interior of a Building unless increasing the gross interior square footage thereof), unless and until Declarant has reviewed and approved the plans and specifications for the same pursuant to this Section 3.3. In addition, no Occupant or Property Owner (other than Declarant) shall apply to any governmental authority for a rezoning or a zoning variance or waiver with respect to its Property, for a subdivision, re-mapping, lot line adjustment or Property map with respect to its Property or for a special use permit or conditional use permit, unless and until Declarant has approved the application of same pursuant to this Section 3.3. Declarant shall have the right to give such notices as it may deem necessary to the governing authorities having jurisdiction over the Total Parcel, to ensure that Declarant receives

notices of any applications for construction or building permits or zoning variances or changes that may be filed with respect to each Property within the Total Parcel.

(d) All Buildings and other improvements shall be constructed or installed in accordance with the plans and specifications approved by Declarant. No Buildings or other improvements shall be altered and no approved plans and specifications shall be modified in any respect pertaining to the exterior appearance or design of the subject Buildings or improvements (or any other aspect of the same which is reflected in the plans and specifications previously approved by Declarant) unless such alterations or modifications are approved, in writing, by Declarant.

(e) If any Work is not commenced within twelve (12) months from the date on which Declarant approves the plans and specifications pertaining to such Work, then the approval given pursuant to this Section 3.4 shall be deemed revoked by Declarant and ineffective, unless Declarant extends the time for commencing work in writing.

(f) Each initial submittal shall be accompanied by a \$2,500 fee (in Constant Dollars) payable to Declarant to defer the cost of its review thereof; provided, that if Declarant is the same Person as the "Declarant" under the Development Master Declaration, such fee shall be waived. Declarant shall have the right to charge additional fees for its review of any materials pursuant to this Declaration, or any actions required of Declarant in connection with any such submittal or the improvements contemplated thereby pursuant to Matters of Record, Property Agreements or otherwise, which shall be paid by the Person requesting the review and/or approval.

(g) Neither Declarant nor its partners, beneficiaries, successors or assigns, nor any officer, shareholder, director, agent, partner, employee, or representative of any such Person, shall have any liability whatsoever to any Person (i) as a result of the review of any plans or specifications as provided herein, or with respect to any defects, omissions, inconsistencies, or shortcomings contained in such plans or specifications or in any buildings, structures or improvements constructed or made in accordance with any such plans or specifications, or (ii) in connection with the performance of the duties or rights of Declarant as provided in or permitted under this Declaration. Approval by Declarant does not eliminate the need to obtain all approvals required from any public or governmental agency or authority having jurisdiction over the proposed improvements. Where there exists a potential conflict between the criteria set forth herein and any code or legal requirement, the most restrictive criteria shall apply.

(h) Approval by Declarant shall not be deemed approval of any matters by the City or any other governmental or quasi-governmental authorities. No Work requiring Declarant's approval shall be commenced on any Property unless and until the Property Owner of the subject Property delivers to Declarant a true and correct copy of the building permit therefor evidencing compliance with all applicable Laws. If a Property Owner and the City propose any equivalent or alternate methods of complying with Laws, Matters of Record or Shopping Center Agreements with respect to any Work to be performed on any Property requiring Declarant's approval, the same shall be subject to the prior written consent of Declarant, as applicable, which shall not be unreasonably withheld or delayed, and, prior to

commencing the affected Work, the Property Owner shall deliver to Declarant the City's written approval of such equivalent or alternate methods.

(i) Each Owner or Occupant shall be obligated to obtain all approvals required from any public or governmental agency or authority having jurisdiction over the proposed improvements for any Work to be performed and to comply with the regulations and guidelines for development promulgated by each such agency, which shall include the obligation to comply with the terms of any development standards created by Declarant related to development on any portion of the Total Parcel, as such standards may now exist or hereinafter be created.

3.4 Signs.

(a) Unless otherwise expressly agreed to by Declarant, no outdoor sign, nor any indoor sign visible from the Common Areas or Common Facilities or the exterior of any Building or other structure upon any Property in the Total Parcel (except the Monument Signs, the informational, directional and traffic regulation signs and other signs installed by or at the direction of Declarant), shall be erected, painted, inscribed, installed or affixed on or in any Building, structure, addition or improvement on any Property in the Total Parcel, unless and until (i) the plans and specifications for the same showing the nature, kind, shape, height, materials, color and location thereof are submitted to and approved in writing by Declarant and (ii) such sign is in conformance with the Sign Criteria. The standards for submission and review of plans and specifications under Section 3.3 above shall also be applicable with respect to the submission and review of plans and specifications for signs. For so long as Sam's or Wal-Mart own or occupy any property or portion thereof within the Shopping Center, without Sam's consent, which may be withheld in its sole discretion, and subject to Laws, (i) other than directional signage, no signs shall be located on the Common Areas or Common Facilities other than signs advertising Property Owners and Occupants and/or property owners and occupants of the Shopping Center and (ii) Sam's or Wal-Mart, as applicable, shall have the right and easement to construct, operate, maintain, repair and replace, at its' sole cost and expense, sign panels on those signs identified for such purposes in the Signage Plan.

(b) Temporary signs may be erected on any Property by builders, lenders and architects involved in the construction and design of Buildings on such Property. Any such temporary signs shall be designed in accordance with the Development Standards and the Sign Criteria, and the design, size, location and number of such temporary signs shall be subject to the prior approval of Declarant. Construction signs shall be removed within ten (10) days of substantial completion of the shell of the Building being constructed on the subject Property. No signs offering any Property or space for sale or lease shall be permitted anywhere within the Total Parcel, unless approved by Declarant.

(c) The provisions of this Section 3.4 shall apply not only to all initial signage within the Total Parcel, but also in connection with any alteration, addition, restoration or replacements of signage which is now or may hereafter be constructed, installed or maintained within the Total Parcel; provided, that in no event shall the adoption of any changes to the Sign Criteria impose an obligation on any Property Owner or Occupant to alter or remove an existing sign approved and installed pursuant to the previously adopted Sign Criteria. Each submittal to

Declarant with respect to sign approval shall be accompanied by a \$250 fee (in Constant Dollars) payable to Declarant to defer the cost of its review thereof; provided, that if Declarant is the same Person as the "Declarant" under the Development Master Declaration, such fee shall be waived.

ARTICLE 4

CONSTRUCTION OF BUILDINGS AND IMPROVEMENTS

4.1 Construction Standards. Each Property Owner shall perform its construction (which term shall include any and all alteration or reconstruction Work) of any and all Buildings, structures and improvements upon its Property in accordance with the construction requirements and standards set forth in Exhibit D attached hereto and made a part hereof which requirements and standards may be amended, changed or abolished by Declarant in their sole discretion from time to time.

4.2 Building Schedule. Prior to the commencement of Work on its Property (excluding any Work related solely to the interior of a Building unless increasing the gross interior square footage thereof), each Property Owner shall prepare and submit to Declarant, for informational purposes only, a building schedule showing the date upon which such Property Owner anticipates (i) commencement of construction of its Work, (ii) having its Building enclosed, (iii) having its Building substantially completed, (iv) completion of site paving, and (v) having its Building ready to open to the public. Periodically during the course of construction, at the request of Declarant, each Property Owner shall prepare and submit to Declarant, for informational purposes only, updated building schedules showing the status of its Work and, if there shall be any changes in said dates, the revised date or dates for each phase of construction.

4.3 Safety Measures. Each Property Owner shall at all times take any and all safety measures required under good construction practices and in compliance with all applicable OSHA standards to protect the other Occupants and Property Owners, and any and all persons performing Work on or visiting the Total Parcel, from Injury or damage caused by or resulting from the performance of its construction.

4.4 Staging Areas and Temporary Easement Areas.

(a) When performing Work, each Property Owner shall use the area on or adjacent to its Property designated by Declarant as a construction staging area (i.e., for material and equipment storage sites, office trailers and temporary improvements incidental to construction). Each Property Owner shall keep all construction equipment, vehicles and material in the designated construction staging area, and shall keep such staging area secured at all times with an adequate chain link fence or other barricade or protection device around the area as may be reasonably required by Declarant. Each Property Owner will haul off site all construction trash and concrete waste on a daily basis and deposit the same in an appropriate and designated landfill. All earthwork spoils will be removed off site and disposed of properly unless otherwise directed by Declarant.

(b) Declarant hereby grants, creates, declares and reserves for itself and for each Property Owner, the right and temporary easement to enter onto and use the unimproved portions of each Property (i.e., the portions not improved with Buildings) for use as construction staging areas or for other reasonable construction-related purposes during periods of construction on adjacent Properties. The areas, scope and duration of the easement hereby granted shall be determined by Declarant from time to time in connection with Declarant's approval of the plans and specifications for the subject Work, and shall be limited to areas, scope and duration reasonably required in accordance with customary construction practices and techniques. Any Property Owner using the easement hereby granted shall indemnify and hold harmless the Property Owner(s) and Occupant(s) of the subject easement areas, with respect to any and all liens, claims, damages, costs, claims, liabilities, suits, losses and expenses (including reasonable attorneys' fees) in any way arising out of or in connection with the use of the easements hereby granted, (subject to the limitations on the obligations of any Metropolitan District set forth in Section 4.3).

4.5 Protection of Total Parcel. In the event that any loose dust, dirt, trash or debris resulting from or attributable to any Work on any Property accumulates on any other portion of the Total Parcel, then the Property Owner of the subject Property shall be responsible for removing the same. Each Property Owner shall also be responsible for restoring to its original condition any portion of the Total Parcel (including, without limitation, the Shopping Center Roads) that may be damaged as a result of any Work on its Property.

4.6 Indemnity; Insurance.

(a) With respect to any Work to be performed hereunder, at all times until such Work is complete (as evidenced by the issuance of a final certificate of occupancy from the appropriate governmental body), and at all times during periods of reconstruction, the Property Owner on whose Property the Work is performed shall, at its own expense, maintain or cause to be maintained in full force and effect, a policy or policies of public liability insurance, fire and extended coverage insurance, replacement cost insurance, business interruption/rental loss insurance and so-called builders' risk insurance, each in form, substance and amount, and issued by insurance companies, subject to the prior written approval of Declarant. Each Property Owner shall also maintain or cause to be maintained workers' compensation insurance with respect to its employees, contractors and subcontractors, with coverage in at least the minimum amounts specified by law.

(b) Unless waived or modified by Declarant, each Property User shall at all times maintain or cause to be maintained comprehensive public liability insurance, fire and casualty insurance and such other insurance policies as Declarant may require from time to time, all in form, substance and amount, and covering such risks, and issued by such insurance companies, and containing such standard mortgagee clauses, as Declarant, in its sole discretion, shall direct from time to time. Unless waived or modified by Declarant, the public liability insurance to be maintained hereunder shall have a limit of not less than \$5,000,000 (in Constant Dollars) per occurrence (or such greater amount as reasonably may be required by Declarant from time to time) and shall be in a comprehensive general form with at least the following endorsements: (i) deleting any employee exclusion on personal injury coverage; (ii) naming Declarant and any other Person(s) designated by Declarant as additional insureds; (iii) providing

for blanket contractual liability coverage; (iv) broad form property damage coverage; (v) deleting any liquor liability exclusion; (vi) providing for employer's automobile non-ownership liability; and (vii) providing that the policies cannot be canceled or terminated without at least thirty (30) days prior written notice to each named additional insured. All such insurance shall be primary and noncontributory; shall provide that an act or omission of one of the insureds or named insureds which would otherwise void or reduce coverage shall not void or reduce coverages to the insured or other additional named insured, as the case may be; and shall afford coverage for all claims based on acts, omissions, injury and damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(c) Unless otherwise expressly agreed to by Declarant, prior to the commencement of Work on its Property and prior to commencing occupancy of any existing Buildings and as a condition to the continued occupancy of its Building, each Property Owner and Occupant shall furnish to Declarant paid certificates of the insurance required to be maintained pursuant to this Declaration. Thereafter, a certificate evidencing the above shall be furnished from time to time as requested by Declarant. In the event that Declarant is notified of the termination or pending expiration of any insurance policy required to be maintained hereunder, and/or any Property Owner or Occupant of any Property fails to furnish adequate evidence of the maintenance of insurance required to be maintained hereunder, then, in any such event, Declarant may (but shall not be obligated to) obtain and pay for, on behalf of the subject Property Owner or Occupant, the policies of insurance required hereunder; and all costs and expenses incurred by Declarant in connection therewith shall be paid by the subject Property Owner or Occupant to Declarant upon demand and, if not paid as aforesaid, shall constitute a lien against the Property of such Property Owner or Occupant, which may be foreclosed in the same manner, and which shall have the same priority, as the lien of the Maintenance Assessments, as specified in Section 6.4(e) below.

(d) Each Property Owner ("Indemnifying Party") shall indemnify, defend and hold the other Property Owners (including Declarant) harmless against and from any and all Claims incurred by such other Property Owners arising from (i) all actions or inaction of the Indemnifying Party or its Occupants and each of their employees, contractors and agents; (ii) the Property of the Indemnifying Party and (iii) Indemnifying Party's or its' Occupant's failure to comply with the provisions of this Declaration. Notwithstanding the foregoing, Notwithstanding any provisions in this Declaration to the contrary, any obligations of a Metropolitan District may be subject to the following limitations under the Colorado Constitution, and, therefore, such Metropolitan District's performance of its obligations hereunder shall be subject to and in accordance with the following provisions: (1) those found in Article X, Section 20 of the Colorado Constitution, which provides that any multiple fiscal year debt or financial obligation of the District herein shall be subject to annual appropriation; and (2) those found in Article XI, Section 1 of the Colorado Constitution, which limit the District's legal authority to Indemnify or be responsible for the liability of any private person or entity. Nevertheless, (A) any Metropolitan District subject to this Declaration agrees to be responsible hereunder to the full extent permitted by law for any Claim any other Person may have against the Metropolitan District as the result of any act or omission by the Metropolitan District or any of its officers or employees in connection with the Total Parcel or as a result of the Metropolitan District's failure to perform any of its obligations under this Declaration, excluding the acts or omissions of the Metropolitan District's officers and employees that were willful and wanton,

that did not occur during the performance of their duties, or that were not within the scope of their employment; and (B) to the extent the Metropolitan District does not pay an obligation owed by it hereunder as the result of its failure to appropriate or Indemnify for the same, such nonpayment shall nevertheless be considered a default hereunder, affording the other Persons the right to pursue all rights and remedies hereunder for the Metropolitan District's nonpayment provided any such right or remedy is not otherwise subject to the limitations in the Colorado Constitution as described above.

4.7 **Construction Deposit.** Each Property Owner will deposit a refundable security deposit with Declarant of \$10,000 (in Constant Dollars) prior to mobilizing any onsite contractors (and shall replenish such deposit if any part of it is used by Declarant for the purposes hereof). Such deposit may be commingled with other funds of Declarant. Any amounts of such deposit that are not utilized by Declarant for the purposes hereof shall be refunded once all of the Property Owner's responsibilities set forth in this Article 4 have been completed to Declarant's reasonable satisfaction. If any responsibility is not completed within 10 days of written notice from Declarant, Declarant may complete such work and deduct the costs thereof against such deposit in addition to any other rights and remedies it may have against such Property Owner set forth herein.

ARTICLE 5

USE OF TOTAL PARCEL

5.1 **General Restrictions.** Property in the Total Parcel shall be used for commercial purposes of the type normally found in a retail shopping center including, without limitation, financial institutions, service shops, restaurants, offices and retail stores, subject to Exhibit E attached hereto and made a part hereof. No Property Owner shall use or permit the use of its Property within the Total Parcel for any use or operation which is, in the reasonable opinion of Declarant, substantially inconsistent with and/or materially detrimental to the operation of the Shopping Center or the balance of the Total Parcel and/or other complementary developments. A list of uses and operations that conclusively shall be deemed to be materially detrimental to and inconsistent with the operation of the Shopping Center and the Total Parcel is set forth on Exhibit E attached hereto and made a part hereof which lists shall not be considered to be a complete list of prohibited uses and operations.

5.2 Use of Parking Area.

(a) Except as expressly authorized by Declarant, no Property Owner or Occupant shall use or permit the use of any portion of the Parking Area located or to be located on its Property for any purposes (including, without limitation, the running of tent sales, carnivals or circuses) other than pedestrian movement and the parking, circulation and passage of motor vehicles; provided, however, the foregoing provision shall not be construed so as to prohibit Declarant from having the right, and Declarant reserves and shall have the right, in its discretion, to permit any Persons (whether or not an Occupant) to use a portion of the Parking Area for temporary outdoor sales of merchandise or for storage of shopping carts or for other uses Declarant reasonably determines are appropriate for shopping centers of similar age and condition, provided that the areas devoted for the same are reasonably limited. Except as

provided in Article 2, and as permitted by Declarant, no Property Owner or Occupant shall grant any easements, leases or licenses for parking on any part of the Total Parcel for the benefit of any property not within the Total Parcel or for the benefit of any Person who is not an Occupant. Except as otherwise provided in this Declaration or pursuant to a lease or contract entered into by Declarant with any Occupant within the Total Parcel, no Property Owner or Occupant (other than Declarant and any Persons expressly authorized by Declarant) shall install, place, keep, permit or maintain any fence, barricade, kiosk or any other obstruction in, on, across or upon any portion of the Parking Area or any sidewalks located upon the Total Parcel, except as reasonably determined and/or approved by Declarant for (i) barricades and obstructions that are necessary or desirable for the orderly control of traffic flow, (ii) minor comfort or convenience facilities (e.g., mailboxes, benches, and public telephones), (iii) light poles and other items pertaining to the lighting system for the Parking Area, (iv) approved signs, (v) maintenance and/or repair undertaken in accordance with this Declaration, and (vi) such other items that Declarant may approve, provided that the same do not unreasonably interfere with the use of the Parking Area for its intended purposes. Nothing contained in this Section 5.2(a) shall be construed so as to prohibit or restrict Declarant from constructing (or causing to be constructed) any Buildings or improvements in the Future Building Area (or within any area which Declarant may hereafter designate as Future Building Area), as provided in Article 2.

(b) No charge of any type shall be made to or collected from any Property Owners or Occupants (and/or their tenants, licensees, invitees, employees, contractors and customers) for the right to park vehicles in the Parking Area, except reimbursement for such maintenance and other costs as may be provided in any lease, purchase agreement or other agreement with any Property Owner or Occupant or as otherwise expressly authorized by Declarant, except as otherwise set forth in Section 2.1 above.

(c) Subject to Section 9.17 below, Declarant may, from time to time, designate certain sections within the Shopping Center Parking Area for non-exclusive automobile parking use by the employees, agents, contractors, licensees and concessionaires of the Occupants of the Shopping Center. Each Property User shall use all reasonable efforts to require its employees and the employees of its tenants and subtenants, agents, contractors, licensees and concessionaires (if any) to use only the designated parking sections. In the absence of any designation, the Property Users shall use their reasonable efforts to have the aforementioned Persons park their vehicles in parking spaces closest to Shopping Center Roads.

5.3 Rules and Regulations. Declarant may, from time to time, adopt and enforce reasonable rules and regulations pertaining to the use of all or any portion(s) of the Common Areas and Common Facilities by Property Users and other Persons. All such rules and regulations and other matters affecting Occupants shall apply equitably and without discrimination provided however that such rules and regulations may distinguish between Property Users. The foregoing provisions shall not be deemed to preclude Declarant from adopting and enforcing rules and regulations for Property Users of any subset of Properties (or portions thereof) that do not apply to Property Users of the Total Parcel, provided that the same are applied equitably and without discrimination among the affected Property Users. In addition to all other rights and remedies available to Declarant for the enforcement of the rules and regulations established pursuant to this Declaration, including (without limitation) the right to enjoin any breach of the rules and regulations and the right to seek the specific performance of

obligations pertaining to the rules and regulations, Declarant shall have the right to impose and enforce the collection of reasonable fines for breaches of the rules and regulations. Notwithstanding anything to the contrary, non-enforcement of any rules and regulations established hereunder at any time(s) or against any particular Property Users shall not excuse or permit the noncompliance with such rules and regulations at any other time(s) or by any other Property Users, or constitute a waiver of Declarant's right to enforce same. Declarant may waive the applicability of one (1) or more rules and regulations with respect to any Property Owners or Occupants at its discretion.

5.4 Use of Common Utility Facilities. Each Property Owner and Occupant of the Total Parcel shall use the Common Utility Facilities in the Total Parcel only for the purposes for which they were constructed and shall not overload or use such Common Utility Facilities to excess. No Property Owner or Occupant shall dispose of any pollutants, contaminants, toxic wastes, hazardous substances or any other similar substances or material in the Common Utility Facilities, or elsewhere in or about the Total Parcel.

5.5 Private Utility Service. Declarant reserves the right, but shall have no obligation, to obtain and provide heat, water, gas, electricity or any other utility service to all or any portion of the Total Parcel. If and to the extent Declarant or any party so designated by Declarant shall elect to obtain and provide such utility service as aforesaid, each Property Owner and Occupant shall obtain and purchase from Declarant or such designated party all such utility service provided to such Property Owner's or Occupant's Property or space in a Building located on any Property. Such Property Owners and Occupants shall pay for any utility service provided by Declarant or such designated party within ten (10) days of receipt of a bill for same.

ARTICLE 6

MAINTENANCE AND REPAIR

6.1 Maintenance of Property.

(a) As more particularly set forth in Section 6.2, Declarant shall initially be responsible for the maintenance and repair of all Common Areas and Common Facilities on the Total Parcel and shall receive reimbursement for the costs and expenses incurred in connection therewith from each Property Owner and Occupant in accordance with this Article 6. Each Property Owner shall have the right, upon delivery of at least sixty (60) days' prior written notice to Declarant (the "Take-Over Notice") to take-over all of the maintenance and repair of the Common Areas located on such Property Owner's Property pursuant to the terms of this Section 6.1 (the "Maintenance Take-Over"). Following the effective date of the Maintenance Take-Over, as set forth in the Take-Over Notice, the Property Owner shall, except for any Common Facilities, which Declarant shall remain obligated to maintain pursuant to Section 6.2, without cost or expense to any other Property Owner or Occupant, keep and maintain, or cause to be kept and maintained, its Property (including all Common Areas located therein): (i) in good order, condition and repair (at a minimum, in accordance with the practices prevailing in the operation and maintenance of first-class mixed use, open air, regional lifestyle shopping centers in the State of Colorado); (ii) in compliance with any and all rules and regulations promulgated by Declarant from time to time; and (iii) in compliance with all applicable Laws, Matters of Record

and Shopping Center Agreements. Such maintenance may include, without limitation, cleaning, insuring, repairing, replacing, repaving, sweeping, operating, painting, removing obstructions, debris and refuse from, heating, cooling, ventilating, and lighting, as applicable, its Property, including without limitation, paved areas, lights, signals and markers, and landscaped areas thereon. Declarant shall refund to such Property Owner any portion of the Maintenance Assessments paid to Declarant covering a period of time subsequent to the effective date of the Maintenance Take-Over within thirty (30) days after the effective date of the Maintenance Take-Over. Following a Property Owner's election of Maintenance Take-Over, such Property Owner's Property shall be removed from the calculation of each remaining Property Owner's Proportionate Share of Common Facility Maintenance Expenses and each remaining Property Owner's Proportionate Share of Common Facility Maintenance Expenses shall be adjusted accordingly. Following a Maintenance Take-Over, each Property Owner shall have the right, upon delivery of at least sixty (60) days' prior written notice to Declarant (the "Resumption Notice") to have Declarant resume all of the maintenance and repair of the Common Areas located on such Property Owner's Property pursuant to Section 6.2 (the "Maintenance Resumption"). Following the effective date of the Maintenance Resumption, as set forth in the Resumption Notice, Declarant shall again be obligated to maintain and repair the Common Areas located on such Property Owner's Property pursuant to Section 6.2. Such Property Owner shall pay to Declarant any portion of the Maintenance Assessments owed to Declarant covering a period of time subsequent to the effective date of the Maintenance Resumption within thirty (30) days after the effective date of the Maintenance Resumption. Following a Property Owner's election of Maintenance Resumption, such Property Owner's Property shall be added back to the calculation of each other included Property Owner's Proportionate Share of Common Facility Maintenance Expenses and each other included Property Owner's Proportionate Share of Common Facility Maintenance Expenses shall be adjusted accordingly.

(b) In the event that any Property Owner or Occupant fails to perform or cause to be performed any of its duties or obligations provided in Section 6.1(a), and such failure is not corrected within thirty (30) days after Declarant sends written notice of such failure to such Property Owner or Occupant (or, if such failure is such that it cannot be corrected with due diligence within such thirty (30) day period, the Property Owner or Occupant commences correction of such failure within such thirty (30) day period and thereafter continuously and diligently prosecutes the same to completion as soon as practicable, but in no event more than ninety (90) days after such notice), then Declarant and the agents, employees and contractors of Declarant shall have the right and easement to enter upon the subject Property in order to correct such failure, whereupon all costs and expenses incurred by Declarant in connection with the correction of such failure, with interest thereon (at the rate provided in Section 9.4(f) below shall be paid by such Property Owner or Occupant to Declarant upon demand for the same. In the case of an emergency the thirty (30) day period shall be reduced to that period of time which may be reasonable under all of the attendant circumstances. Declarant hereby declares and reserves for itself and its agents, employees and contractors, an easement to enter upon each Property for the purpose of exercising the rights reserved to it pursuant to this Section 6.1(b). The failure by any Property Owner or Occupant to perform its duties and obligations under Section 6.1(a) shall constitute a default by such Property Owner or Occupant under this Declaration, and the remedies afforded to Declarant pursuant to this Section 6.1(b) are in addition to, and not in lieu of, any other remedies available to Declarant at law or in equity, specifically, including, without limitation, the right to seek damages or injunctive or other

equitable relief. Notwithstanding anything in this Section 6.1(b), Declarant may only access the interior of the Property to perform or cause to be performed corrections reasonably related to the exterior of the Property, Common Areas, Common Facilities, Common Utility Facilities, or Declarant's normal operation of the Total Parcel.

(c) If a Metropolitan District owns or is leasing any portion of the Total Parcel, whether pursuant to a Shopping Center Area Transfer or otherwise, and fails to perform its functions in connection with the operations and maintenance of such portion of the Property, and such failure is not corrected within 30 days after Declarant sends written notice of such failure to such Metropolitan District (or, if such failure is such that it cannot be corrected with due diligence within such 30 day period, the Metropolitan District commences correction of such failure within such 30 day period and thereafter continuously and diligently prosecutes the same to completion as soon as practicable, but in no event more than 90 days after such notice) then Declarant and the agents, employees and contractors of Declarant shall have the right, but not the obligation, upon delivery of at least thirty (30) days' prior written notice to such Metropolitan District, to take-over and assume operations and maintenance of such portion of the Property in the manner prescribed for Common Areas herein. In such case, as of the effective date of such take-over and assumption by Declarant, all costs and expenses incurred by Declarant in connection with such operations and maintenance shall be deemed to be Common Facility Maintenance Expenses, and each Property Owner and Occupant shall be responsible for its Proportionate Share of such additional costs and expenses in accordance with this Article 6.

6.2 Maintenance of Common Areas and Common Facilities.

(a) Declarant shall, until the earlier of the expiration or sooner termination of this Declaration, keep and maintain the Common Areas (subject to each Property Owner's right to take over such maintenance as set forth in Section 6.1) and Common Facilities in a good and safe state of repair and in a clean and orderly condition, to the extent not kept and maintained by other Persons pursuant to Matters of Record or Shopping Center Agreements, or by the Metropolitan District with respect to any portion of the Property owned by the Metropolitan District. Declarant's obligations hereunder may include, without limitation, maintaining, cleaning, insuring, paying taxes upon (with respect to the Common Facilities only), snow and ice removal, repairing, replacing, repaving, sweeping, operating, painting, irrigating, removing obstructions, debris and refuse from, heating, cooling, ventilating, and lighting, as applicable, the Common Areas and Common Facilities, including, without limitation, the Shopping Center Roads, Monument Signs and directional signage, Common Utility Facilities, lights, signals and markers, landscaped areas, and other items and areas a part of or servicing the Common Areas and Common Facilities of the Total Parcel. Notwithstanding the foregoing, Declarant shall have the right to enter into agreements, including, without limitation, ground leases, pursuant to which the other party or parties thereto (including, without limitation, a Metropolitan District), in lieu of Declarant, are obligated to maintain the Common Areas and Common Facilities upon any Property(ies) or portions thereof, in which event, the costs and expenses of the Person(s) responsible therefor shall not be considered Common Facility Maintenance Expenses.

(b) Notwithstanding anything to the contrary contained herein, Declarant shall not be obligated to maintain, operate, insure, install, repair or replace any facilities (including, without limitation, paved areas, signs, utility facilities, lighting, signs, markers or landscaping)

which are installed by or for the benefit of any particular Property or Occupant, unless Declarant expressly assumes the obligation to maintain same.

(c) Declarant grants, declares, creates and reserves for itself, an easement to enter upon each Property for the purpose of maintaining and operating the Common Areas and Common Facilities as provided in Sections 6.1(b) and 6.2(a) above. The easements created under this Section 6.2(c) shall include reasonable rights of access and ingress to and egress from the Common Areas located on each Property in the Total Parcel.

(d) Declarant may contract with a third Person or Persons (including, without limitation, a Metropolitan District or management company) to provide for the performance of all or any part of the duties and obligations of Declarant under this Article 6, which Person or Persons shall be entitled to utilize the easement rights created in Section 6.2(c) for reasonable rights of access and ingress to and egress from the Common Areas. Declarant shall remain responsible for the maintenance of the Common Areas and Common Facilities, in the manner provided in Section 6.2(a), and for the performance of such third Person or Persons under this Declaration.

6.3 Common Facility Maintenance Expenses. Declarant shall be responsible for paying (or causing to be paid), from the assessments collected pursuant to Section 6.4 below, directly to the Persons entitled to such payment, all direct and indirect costs and expenses incurred in connection with the operation, maintenance, insuring, repair and replacement of the Common Areas and Common Facilities as required under Section 6.2 and/or other properties (whether located on or off the Total Parcel) required to be maintained or repaired by Declarant (or any designee of Declarant, including, without limitation, a Metropolitan District or management company) pursuant to any instrument, declaration or agreement (including, without limitation, any Matters of Record or Shopping Center Agreements) related to Declarant's operation and development of the Total Parcel (all of which are collectively referred to as "Common Facility Maintenance Expenses"). Such Common Facility Maintenance Expenses may include, without limitation, (a) electricity, water, sewer and other utility charges (including surcharges) and tap-in and hook-up fees of whatever nature; (b) the premiums for liability, casualty and other insurance coverage with respect to the Common Areas and Common Facilities; (c) management fees and/or personnel costs, including, but not limited to, salaries, wages, employment taxes, fringe benefits and other direct and indirect costs of engineers, superintendents, watchmen, porters and any other personnel; (d) all maintenance, landscaping, irrigation, sweeping, resurfacing, painting, lighting, cleaning, security, snow removal, trash removal and other costs and expenses with respect to the Common Areas and Common Facilities (including, without limitation, the Shopping Center Roads and the Landscape Buffers, if and to the extent expressly designated as "Common Facilities" by Declarant, in the manner provided in Section 1.11 above, and the Common Utility Facilities); (e) all other costs and expenses of any kind and nature relative to operating, insuring, equipping, policing and protecting, replacing, repairing, maintaining or otherwise providing utilities and/or services for the Common Areas and Common Facilities, including, without limitation, the cost of (i) obtaining and procuring any traffic and engineering studies, signals, signs, or other materials and/or equipment which are designed and intended to improve the effectiveness or efficiency of traffic flow, parking facilities, lighting, landscaping or utilities within any portion(s) of the Total Parcel, (ii) any improvements, repairs and replacements which are made by Declarant or designees of Declarant

(including, without limitation, a Metropolitan District or management company) after completion of initial construction and installation of the Common Areas and Common Facilities, (iii) fire alarm monitoring service, (iv) license and permit fees, and (iv) operating any shuttle service(s) which may be instituted by Declarant within the Total Parcel including, without limitation, any rents and the costs of any employees and independent contractors hired to operate same; (f) all costs with respect to equipment and other personal property used in connection with the performance of the foregoing and the depreciation of such equipment including, without limitation, (i) all personal property taxes levied on or attributable thereto, (ii) straight-line depreciation thereon and (iii) rental or lease payments therefor; (g) any parking charges, utilities surcharges, or other costs levied, assessed or imposed on the Shopping Center by or at the direction of any governmental authority in connection with the use or occupancy of the Shopping Center, Common Areas or Common Facilities, and all charges pursuant to Matters of Record and Shopping Center Agreements (except for the expense of any mortgage, deed of trust or other lien presently existing or hereafter placed upon any portion of the Shopping Center by Declarant), including but not limited to any charges assessed by any Metropolitan District and all real estate taxes, assessments, charges and fees levied or assessed against the Common Areas and Common Facilities and/or the land upon which the same are located (other than those located on Common Areas situated on Property owned by Property Owners others than Declarant, which taxes and assessments shall be paid by the Property Owner(s) on whose Property the Common Areas are located); (h) all costs and expenses of Declarant and/or one or more Property Owners in connection with easements or other agreements in which Declarant and/or one or more Property Owners has obligations to be performed and which relate to or benefit the Shopping Center and have been approved by Declarant to be included as Common Facility Maintenance Expenses; (i) capital improvement costs, provided the same are amortized on a straight line basis over the useful life of the capital item being replaced and/or repaired; (j) appropriate reserves for the items set forth above; and (k) an administrative fee payable to Declarant in an amount not to exceed twelve percent (12%) of the Common Facility Maintenance Expenses identified in clauses (a)-(j) above.

6.4 Maintenance Assessment.

(a) It is the intent of Declarant that each Property Owner and Occupant contribute towards the Common Facility Maintenance Expenses incurred by Declarant in connection with the performance of Declarant's obligations under Section 6.2. Each Property Owner shall pay or cause the Occupant(s) of its Property to pay to Declarant (and its successors and assigns that assume Declarant's obligations under Section 6.2) an annual maintenance assessment (the "Maintenance Assessment") in payment of its share of the Common Facility Maintenance Expenses. The Maintenance Assessment shall be fixed, established and collected in accordance with the provisions of this Section 6.4; provided, however, that Declarant may make whatever arrangements it deems necessary or desirable in order to obtain reimbursement of Common Facility Maintenance Expenses from any particular Property Owners or Occupants.

(b) If Declarant has contracted with a Metropolitan District for the direct performance of all or any part of the duties and obligations of Declarant under this Article 6, Declarant shall have the right, but not the obligation, without limitation, in lieu of the Maintenance Assessment provided for in Section 6.4, to contract with the Metropolitan District for the levy of fees and charges (the "District Fee") to pay the Common Facility Maintenance

Expenses set forth herein with respect to such duties and obligations. Such District Fee levied by a Metropolitan District shall be calculated in substantially the same manner as provided for in Section 6.4(d) for the calculation of the Maintenance Assessment each Property Owner and Occupant is obligated to contribute in payment of its share of the Common Facility Maintenance Expenses. The District Fee shall, until paid, constitute a perpetual lien on and against the Property pursuant to Section 32-1-1001(1)(j), Colorado Revised Statutes, and be in a senior position as against all other liens of record affecting the Property served or benefited by the Metropolitan District, and shall run with the Property and remain in effect as to any portion of such Property as to which the District Fee has not been paid, except as specifically provided for by state or federal law, notwithstanding of any provisions to the contrary contained in Section 6.4(e); provided, that for so long as Sam's or Wal-Mart is an Occupant of a Property or portion thereof within the Shopping Center, such lien shall be subordinate to the lease, deed or other written instrument pursuant to which Sam's or Wal-Mart, as applicable, occupies such Property, or portion thereof. A Metropolitan District levying the District Fee shall be entitled to undertake all collection efforts permitted to special districts under state and federal law, notwithstanding any provisions to the contrary contained in Section 6.4(e) of Section 6.4(f), and any such lien may be foreclosed in the manner as provided by the laws of the State of Colorado for the foreclosure of mechanic's liens.

(c) Unless otherwise agreed to by Declarant and any Property Owner or Occupant, the Maintenance Assessment, or District Fee, if applicable, on each subject Property shall be due and payable in monthly installments, upon the first day of each month, commencing upon the first day of the first month following the date upon which such Property was first transferred or otherwise conveyed by Declarant to a Person unaffiliated with Declarant; however, in the event of a lease by Declarant to an Occupant, monthly installments shall commence on the first day of the first month following the date of rent commencement under said lease. The Maintenance Assessment, or District Fee, if applicable, shall be collected on the basis of a calendar year; accordingly, unless a Property Owner's or Occupant's obligation to pay commences on January 1 of any given year, the amount to be paid by any Property Owner or Occupant in the year in which the obligation to pay commences shall be prorated on the basis of the number of days remaining in the then-current calendar year.

(d) The annual Maintenance Assessment to be charged against each Property Owner or Occupant for each year shall be equal to the "Proportionate Share" of all of the Common Facility Maintenance Expenses incurred by Declarant in such year allocated to such Property Owner's or Occupant's Property.

(i) The "Proportionate Share" of such Common Facility Maintenance Expenses in any year allocated to a Property shall be calculated by multiplying: (A) all such Common Facility Maintenance Expenses incurred in such year by (B) a fraction, the numerator of which shall be the rentable area of such Property as determined by Declarant, and the denominator of which shall be the total of the rentable area within the Shopping Center, as determined by Declarant. Prior to completion of construction on a Property Owner's Property, such rentable area shall be the size depicted on the Site Plan, until plans for the Building on such Property Owner's Property have been approved by Declarant, at which time the rentable area shall be that set forth on such plans as reasonably approved by Declarant, and following any construction or reconstruction the rentable area of such Property Owner's Property shall be

adjusted by Declarant following receipt of a copy of the certificate of occupancy or as-built plans reflecting a revised rentable area. Following construction, each Property Owner shall, within 10 business days following request from Declarant, provide Declarant with as-built plans for all Buildings on its Property to aid Declarant in its calculations of rentable area. Notwithstanding anything else in this Declaration to the contrary: (1) Declarant at any time and from time to time shall have the right to combine or separate the calculation and allocation of some or all Common Facility Maintenance Expenses among any subset of Properties (or portions thereof), or Occupant grouping, within the Shopping Center, and, in such event, the applicable Proportionate Shares with respect to said Common Facility Maintenance Expense(s) and all other components of this Declaration which are affected thereby shall be equitably adjusted to reflect such allocation; and (2) for any Common Facility Maintenance Expense for which the percentages (as determined above), would have an inequitable result if applied uniformly, Declarant shall have the right (but not the obligation) to determine the percentages that Declarant reasonably deems to be equitable for such Common Facility Maintenance Expense(s). Notwithstanding the foregoing, during the term of the Lease between Declarant and Sam's, as it may be extended (the "Term"), the Maintenance Assessment due with respect to the Property which is leased thereunder shall not exceed \$30,000 per year, which amount shall be increased by 3% every two years during said Term, less any amounts due with respect to said Property under the Development Master Declaration, and the balance of any monies otherwise due from said Property, to the extent it exceeds said amount, shall be paid by the other contributing Owners proportionately in relation to the monies otherwise due hereunder.

(ii) During the period of time that a Metropolitan District owns or is leasing any Shopping Center Area Transfer Property, then to the extent such Shopping Center Area Transfer Property is not an Exempt Shopping Center Area Transfer Property, such Shopping Center Area Transfer Property shall continue to be subject to the terms and conditions of this Declaration, including but not limited to the rights, easements and obligations created or imposed hereby and the Metropolitan District shall be considered a "Property Owner" for purposes of this Declaration, provided that unless the Metropolitan District has agreed otherwise, such portion of the Property shall not be included for purposes of the calculation of Proportionate Shares, and a Metropolitan District shall not be responsible for payment of any assessments in connection with its ownership thereof. At such time any Shopping Center Area Transfer Property owned by a Metropolitan District is reacquired by or vests in Declarant or any Property Owner, as applicable, such property or portion shall again be included, to the extent applicable, for purposes of the calculation of Proportionate Shares and the owner thereof shall be responsible for payment of any assessments determined under this Declaration in connection with its ownership thereof.

(iii) For each year, Declarant shall advise each Property Owner or Occupant, during or after the subject year, of the total amount of the Common Facility Maintenance Expenses incurred in such year, together with the Proportionate Share thereof (and the Maintenance Assessment for such year) attributable to each such Property Owner or Occupant. Any monthly installments of a Property Owner's or Occupant's Maintenance Assessment that become due and payable prior to the date on which such Property Owner or Occupant is advised by Declarant as to the amount of such Maintenance Assessment for such year shall be based upon Declarant's reasonable estimate of the Maintenance Assessment for such year or, in the absence of such estimate, upon the Maintenance Assessment payable by such

Property Owner or Occupant for the immediately prior year (or which would have been payable for the immediately preceding year, had the Property Owner or Occupant been obligated to pay such Maintenance Assessment); provided, however, that there shall be an adjustment if the amount paid by any Property Owner or Occupant during any year differs from the actual amount of such Property Owner's or Occupant's Maintenance Assessment for such year, calculated as provided above. Any amount due Declarant or any amount due a Property Owner or Occupant pursuant to such adjustment shall be paid to Declarant or credited to such Property Owner's or Occupant's account, as the case may be, at the time that the next monthly installment of such Property Owner's or Occupants Maintenance Assessment is due and payable to Declarant.

(c) The Maintenance Assessment, together with interest thereon (at the rate specified in Section 6.4(f) below) and costs of collection thereof (including reasonable attorneys' fees), shall be charges and continuing liens upon each Property to which the Maintenance Assessment applies, binding upon the Property Owner or Occupant thereof and all successors in title thereto. In the event that the Maintenance Assessment against any Property is not paid when due, Declarant may record with the Recorder of Deeds of the County (or in any other appropriate office or records), a notice thereof and the aforesaid lien shall thereupon arise and be perfected. The lien of the Maintenance Assessments may be enforced by a proceeding to foreclose such lien in like manner as a mortgage of real property or by any other remedy available at law or in equity. Such lien shall continue in full force until such sum of money, and any accrued interest thereon and costs, fees and expenses of collection including, without limitation, reasonable attorney fees) shall have been paid in full. Notwithstanding anything contained herein to the contrary, the lien of the Maintenance Assessment provided for herein shall be subordinate to (i) the lien of any first mortgage or deed of trust upon each such Property (except to the extent provided below) upon recording of such first mortgage or deed of trust in the real property records and (ii) for so long as Sam's or Wal-Mart is an Occupant of a Property or portion thereof within the Shopping Center, the lease, deed or other written instrument pursuant to which Sam's or Wal-Mart, as applicable, occupies such Property, or portion thereof. Sale or transfer of any such Property shall not affect the Maintenance Assessment lien; provided, however, that after the period of redemption, if any, following the sale or transfer of any such Property pursuant to a foreclosure of any first deed of trust or mortgage in favor of any bank, savings and loan association, insurance company or other institutional lender, has expired, the lien of the Maintenance Assessment shall be extinguished (but not the obligation to pay the same) as to payments which became due prior to such foreclosure sale. No sale or transfer shall relieve the Property Owner (including, without limitation, any mortgagee in possession) or Occupant from liability for any payments of the Maintenance Assessment thereafter becoming due or from the lien thereof. The obligation to pay Maintenance Assessments becoming due prior to the expiration or termination of this Declaration shall survive the expiration or earlier termination of this Declaration. The Maintenance Assessments for any Property, together with interest thereon (at the rate specified in Section 6.4(f)) and costs and expenses of collection thereof, including reasonable attorneys' fees, shall also be the personal obligations of the record owner of such Property or any Occupant thereof at the time when the Maintenance Assessment becomes due.

(f) The Property Owner of any Property that is subject to the Maintenance Assessment, or District Fee, if applicable, and the Occupant of any such Property, and each of their successors in title, may not waive or otherwise escape liability for the Maintenance Assessment or District Fee by reason of nonuse of the Common Areas or Common Facilities or

by reason of abandonment of its Property. Any Maintenance Assessment which is not paid when due shall be delinquent and, if not paid within thirty (30) days after the due date, the amount due shall bear interest from the date due at the lesser of (i) that rate of interest that is five percent (5%) above the then-current published prime or corporate base rate charged by Citibank, N.A., or (ii) the highest rate permitted by applicable Law. Declarant, its successors or assigns, may bring an action at law or in equity against the delinquent Property Owner or Occupant, who by accepting a conveyance (or, with respect to an Occupant, possession) of the Property agrees that it shall be personally obligated to pay the same, and/or against any delinquent Occupant, who by accepting possession of such Property agrees that it shall be personally obligated to pay the same, and/or Declarant may foreclose the lien against the delinquent Property Owner's Property in like manner to the foreclosure of a mortgage of real property in the State of Colorado (subject, however, to limitations existing by virtue of any prior encumbrances). Notwithstanding the foregoing, a perpetual statutory lien of the Metropolitan District and any accompanying collection and foreclosure authorizations provided by the laws of the State of Colorado shall survive any such conveyance of Property. In each instance all interest, costs and expenses and the reasonable attorneys' fees of Declarant in connection with such action shall be added to the amount due and the amount of the lien. Thirty (30) days' written notice of such delinquency (which thirty (30) day period may run concurrently with the thirty (30) day period commencing on the due date) shall be provided to each mortgagee of the subject Property for whom any Property Owner or Occupant has provided written notice and a contact address therefore, prior to the institution of any action to foreclose the lien for any delinquent Maintenance Assessment; provided, however, that any failure by Declarant to provide such notice shall not invalidate any notice given to the delinquent Property Owner, nor shall such failure invalidate or impact in any way upon any action taken by Declarant pursuant to this Section 6.4.

(g) Declarant, its successors or assigns, shall have the right, at its sole option, to waive or reduce, temporarily or permanently, the Maintenance Assessment provided for herein for any Property Owner or Occupant. This shall not affect the right of Declarant, or its successors or assigns, to levy the full amount of the Maintenance Assessment against any subsequent Property Owner of the same Property, or against any Property Owner of any other Property that is subject to the Maintenance Assessment (as provided in this Section 6.4).

(h) Declarant, its successors or assigns, shall, within a reasonable time after receiving written request from any Property Owner or Occupant, furnish a certificate setting forth the status of the payments of the Maintenance Assessment on any Property. A reasonable fee may be charged for the issuance of any such certificates. The certificates shall be conclusive evidence of the payment of any Maintenance Assessment stated to have been paid therein.

6.5 Restoration and Reconstruction.

(a) In the event of any fire or other casualty which damages or destroys all or any part of any Buildings or improvements (including, without limitation, the Common Areas and Common Facilities) located on any Property, the Property Owner or Occupant of such Property shall (i) promptly remove any debris resulting from such fire or other casualty, and (ii) as soon as may reasonably be possible after such fire or other casualty, either commence reconstruction or restoration of its Buildings or improvements (including, without limitation, the Common Areas and Common Facilities), or raze the same; provided, however, that nothing

herein shall relieve any Property Owner or Occupant from or reduce any Property Owner's or Occupant's obligations to repair, reconstruct and/or rebuild the improvements (including, without limitation, the Common Areas and Common Facilities) on its Property as such obligations may be set forth in the deed, lease or other occupancy agreement pertaining to such Property. Once a Property Owner or Occupant commences such reconstruction, restoration, or razing Work, such Property Owner or Occupant shall proceed diligently and continuously with such Work until the same is completed. Any Property Owner or Occupant reconstructing or restoring its Buildings or improvements after a fire or casualty, as provided above, shall comply with all of the requirements set forth in this Declaration with respect to construction, alteration and reconstruction of Buildings and improvements within the Total Parcel.

(b) In the event that a Property Owner does not promptly restore all or any portion of its Buildings or improvements (including, without limitation, the Common Areas and Common Facilities) which are damaged or destroyed by fire or other casualty, such Property Owner or Occupant shall promptly raze the portions which are not restored or reconstructed, remove all debris and take all other action (including landscaping) required by good construction practice so that the areas which had been occupied by the damaged or destroyed Buildings or improvements will be in a safe and attractive condition. Nothing contained in this Declaration shall permit any Property Owner or Occupant of the Total Parcel which elects to raze its Building (as provided in this Section 6.5) to do so in a manner which interferes with or affects the structural integrity of any other Property Owner's or Occupant's Buildings or improvements, or in a manner which interferes with another Property Owner's or Occupant's use of the easement areas created under Article 3 of this Declaration.

(c) Any Property Owner or Occupant reconstructing or restoring its Buildings and improvements (including, without limitation, the Common Areas and Common Facilities) shall comply with all of the provisions of this Declaration which relate to the initial construction of improvements, including, without limitation, the provisions of Articles 3 and 4 hereof. Further, in such event, then each Property Owner and Occupant shall grant to Declarant, upon request, the easement and right to locate a reasonable construction staging area on such Property, provided that the exact location of the same shall be mutually acceptable to Declarant and to such Property Owner or Occupant.

ARTICLE 7

REAL ESTATE TAXES

7.1 **Payment of Taxes.** Each Property Owner shall pay or cause to be paid directly before delinquency all real estate taxes and other special or general taxes and assessments, including any charges pursuant to Matters of Record or Shopping Center Agreements, which may be levied or assessed against its Property and the improvements on the same (including, without limitation, any tax or assessment attributable to any interest or easement created by this Declaration), including any and all real estate taxes and other special or general taxes and assessments, or charges pursuant to Matters of Record or Shopping Center Agreements, levied or assessed against that portion of the Common Areas lying within such Property Owner's Property. If, by law, any tax and/or assessment may be paid in installments at the option of the taxpayer, the Person responsible for paying the tax or assessment may exercise the option to pay the same

in installments as they may become due from time to time. If any tax, assessment or charge affects more than one Property and does not specify how the tax, assessment or charge is to be subdivided or allocated, Declarant may reasonably determine the allocation among the applicable Properties.

7.2 Contest of Taxes. Any Property Owner may contest (or allow to be contested), at its own cost and expense and in good faith, by appropriate proceedings diligently prosecuted, any real estate tax or other special or general tax or assessment levied upon its Property; provided that, prior to the commencement of such proceedings, such Property Owner delivers to Declarant written notice of such contest. Any such contested tax or assessment shall be paid, however, prior to the time when the affected Property can be subjected to sale under any applicable Law pursuant to a proceeding which may result in impairment of the rights created under this Declaration or terminate any provision of this Declaration as applied to any Property.

7.3 Failure to Pay Taxes. If any Property Owner fails to comply with this Article, then Declarant may (at its option) pay the taxes, assessments and/or charges in question on behalf of such Property Owner, in which case the defaulting Property Owner shall reimburse Declarant upon demand for the sums so expended, with interest thereon as stated in Section 9.4(f) below. Upon payment of any such taxes, assessments and/or charges, Declarant shall have a lien on the Property of the defaulting Occupant as security for such reimbursement, which lien shall have the same priority and shall be enforceable in the same manner as the lien of the Maintenance Assessment provided for in Section 6.4(d). In the event that any portion of the Total Parcel is sold pursuant to a tax deed proceeding or any similar mechanism for the enforcement of unpaid taxes, assessments and/or charges, the easements and other provisions of this Declaration shall survive such sale to the extent permitted by applicable Laws.

ARTICLE 8

TERM; AMENDMENT

8.1 Term of Declaration. Subject to the provisions of Section 9.8 below, this Declaration and the obligations set forth under this Declaration shall remain binding from the date of execution hereof and continuing for a period of ninety-nine (99) years hereafter. After the expiration of such ninety-nine (99) year period, this Declaration shall automatically continue for periods of ten (10) years each, unless Declarant gives to each of the Property Owners and Occupants notice of cancellation of this Declaration at any time on or before the last day preceding the last two (2) years of the initial term or any automatic extension term. Notwithstanding the termination of this Declaration as provided above, neither the easements and rights relating to such easements granted pursuant to this Declaration in perpetuity or which otherwise survive the termination of this Declaration, nor the obligation of Property Owners and Occupants to pay charges pursuant hereto, shall terminate upon the termination of this Declaration.

8.2 Amendment of Declaration. Except as otherwise provided in this Declaration, this Declaration may be amended and/or supplemented by a writing signed by Declarant without the consent of any other Persons (including the Property Owners, Occupants or any other Property User of the Total Parcel). Declarant shall have the unilateral right to (i) locate with

specificity any of the easements created pursuant to Article 2 (and to relocate the same, if permitted under Article 2), (ii) subject any other land presently outside of the Total Parcel to the provisions of this Declaration, by recording among the appropriate public records of the County, an amendment to this Declaration executed only by Declarant, without the consent of any other Property Owner or Occupant, and/or (iii) revise the Site Plan, the Signage Plan or the Sign Criteria and/or (iv) modify the requirements of this Declaration with respect to any particular Property without the consent of any Person other than the affected Property Owner of that particular Property.

ARTICLE 9

MISCELLANEOUS

9.1 Consent, Approval, Discretion and Judgment of Declarant. Except as otherwise specifically provided in this Declaration, whenever the consent or approval of Declarant is required under any section of this Declaration, such consent or approval may be granted or withheld by Declarant, in its sole and absolute discretion, and for any reason or for no reason whatsoever. Further, except as otherwise specifically provided in this Declaration, the terms "discretion" or "judgment" with respect to Declarant shall mean the sole and absolute discretion or judgment of Declarant. Notwithstanding the foregoing, following designation of the Board Declarant, all Property Owners agree to act reasonably and in good faith with respect to all actions, consents, votes and actions of the Board Declarant.

(a) Once the Property Owners are jointly designated the "Declarant" in accordance with Article 1 (referred to herein as the "Board Declarant"), all rights and obligations of Declarant hereunder shall be held and discharged by the Property Owners in accordance with the will of the Majority of the Property Owners in accordance with each Property Owner's Proportionate Share, expressed as a percentage. "Majority" means the Property Owners owning an aggregate of greater than fifty percent (50%) of the Proportionate Shares. The approval, consent, vote or action of a Majority is required to approve or consent to any matter, to vote at any meeting or to take any action of the Board Declarant. All actions, consents, votes and actions of the Property Owners shall be given, cast and taken by the Property Owners in proportion to their Proportionate Shares at the time of such approval, consent, vote or action. Notwithstanding anything to the contrary herein, in the event that, pursuant to the last sentence of Section 6.2(a), a Property Owner or Occupant of a Property has the obligation to maintain the Common Areas and Common Facilities on such Property (in lieu of Declarant), the Property Owner thereof shall not have the right to approve, consent to or vote on any matter concerning the maintenance, repair or replacement of the Common Areas or Common Facilities located on the other Properties, nor any amendment to this Section 9.1(a), and with respect to any such matters, such Property shall not be included for purposes of the calculation of Proportionate Shares.

(b) Meetings of the Property Owners for any purpose may be called at any time by one or more Property Owners. Notice of such meeting shall be sent to each Property Owner in accordance with Section 9.5 not less than ten (10) nor more than fifty (50) days before the meeting, and such notice shall specify the place, date and time of the meeting (including the telephone conference line or other reasonable method for remote participation), as well as the

purpose or purposes for which the meeting is called. All meetings must allow for participation by means of a telephone conference or similar, reasonable method of communication by which all individuals participating in the meeting can hear each other, and participation in a meeting in this manner constitutes presence in person at the meeting. Any Property Owner's meeting, whether or not a Majority is present, may be adjourned from time to time by the vote of a majority of those Property Owners present, but in the absence of a Majority present, no other business may be transacted at any such meeting. A written waiver of notice required to be given to such Property Owner signed by the Property Owner entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice. By attending a meeting, a Property Owner waives objection to the lack of notice or defective notice unless the Property Owner, at the beginning of the meeting, objects to the holding of the meeting or the transacting of business at the meeting. A Property Owner who attends a meeting also waives objection to consideration at such meeting of a particular matter not within the purpose described in the notice unless the Property Owner objects to considering the manner when it is presented. A Majority of Property Owners present in person, by telephone conference or similar means as described above, or by proxy as set forth above, shall constitute a quorum of the Property Owners for purposes of conducting business at a meeting. At all times when the Property Owners are conducting business at a meeting, a quorum must be present or the meeting must be adjourned until a quorum is present. Any decisions to be made by the Property Owners at such meeting must be approved by a Majority of the Property Owners.

(c) The transactions carried out at any meeting of the Property Owners, however called and noticed or wherever held, shall be as valid as though carried out at a meeting properly called and noticed if: (1) all of the Property Owners are present at the meeting; or (2) a Majority is present and if, either before or after the meeting, each of the Property Owners not present signs a written waiver of notice or a consent to holding such meeting or an approval of the minutes thereof; provided, that no Property Owner attending such a meeting without notice protests prior to the meeting or at its commencement that notice was not given to such Property Owner. At all meetings of Property Owners, a Property Owner may vote in person or by proxy executed in writing by the Property Owner or by a duly authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. A facsimile, electronic or photocopy of such proxy or attorney-in-fact designation shall have the same force and effect as the original. Any action which may be taken at a meeting of the Property Owners may be taken by the Property Owners without a meeting if authorized by the written consent of a Majority. Whenever action is taken by written consent, a meeting of the Property Owners need not be called nor notice of a meeting given, but a copy of the proposed written consent shall be provided to all Property Owners. Any written consent may be executed in one or more counterparts and by email or facsimile, and each consent so executed shall be deemed an original.

(d) The Property Owners may authorize, in a management agreement, resolution or other writing, one or more Persons (including a Property Owner) who may act as the agent of the Property Owners with respect to the exercise of all or a portion of the rights and discharge of the obligations of the Board Declarant pursuant to this Declaration. Moreover, prior to the designation of the Board Declarant, the then-current Declarant may enter into one or more management agreement(s) with any Person (including without limitation a Metropolitan District or third-party manager or management company) for the exercise of the rights and/or

performance of the duties of Declarant hereunder, and such agreement shall stay in place until the Board Declarant determines to terminate the applicable management agreement in accordance with the terms hereof.

(e) It is expressly agreed that the Property Owners, or any of them, may engage in any capacity in other activities and business ventures of every nature and description, whether or not in competition with or benefitted by the Project or each other, independently or with others, and no other Property Owners shall have any rights, by virtue of this Declaration or the relationships created hereby, in and to any independent venture or activity or the income or profits therefrom, and notwithstanding any other duty existing at law or in equity.

9.2 Compliance with Laws. Each Property Owner and Occupant shall comply with any and all applicable Laws, Matters of Record and Shopping Center Agreements governing or otherwise related to any improvement, addition, alteration, modification, maintenance or other action or work subject to the terms, conditions and provisions of this Declaration to be performed by or on behalf or at the direction of such Property Owner or Occupant and related to any Property or any Building (or any portion thereof) located on any Property owned or occupied by such Property Owner or Occupant, including, without limitation, any Work to be performed by or on behalf or at the direction of such Property Owner or Occupant, the construction or alteration of any Building, the installation of or connection or tap-in to any Common Utility Facilities or other utilities servicing any portion of the Total Parcel, the relocation of any roadway or other facilities servicing any portion of the Total Parcel, the installation of any signage (permanent or temporary), and the maintenance of any Property or Building located on any Property owned or occupied by such Property Owner or Occupant.

9.3 Excuses For Non-Performance. Notwithstanding anything to the contrary contained in this Declaration, Declarant shall be excused from performing any non-monetary obligation under this Declaration, and any delay in the performance of any obligation under this Declaration shall be excused, if and so long as the performance of the obligation is prevented, delayed or otherwise hindered by fire, earthquake, floods, explosion, actions of the elements which cannot reasonably be anticipated, war, riots, mob violence, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, court orders, laws, regulations or orders of governmental or military authorities, actions (or lack of actions) by governmental authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of Declarant.

9.4 Default.

(a) Any Person serving a notice of default or any other notice of an event or act which, if taken or not taken, may become a default (any of the foregoing hereinafter referred to as a "Notice of Default") under this Declaration shall send, by registered United States mail, postage prepaid, a copy of such notice to the holder of each mortgage of record on the Property of the Person so served, provided such mortgage holder shall have sent the Person serving the Notice of Default a notice informing it of the existence of such mortgage and the name of the person or officer and the address to which copies of such notices of default are to be sent. Such holder shall be permitted to cure any such default within the time limits permitted the defaulting

Person under this Declaration; provided, however, if such holder does not, within such time periods, cure such defaults, the notifying Person shall have the right to proceed to enforce the terms and the conditions of this Declaration. In the case of an emergency, the notice to such mortgage holders shall not be required but shall be given as soon as may be reasonably practicable under the circumstances.

(b) Except as provided in Section 3.2 above and otherwise in this Declaration, Declarant (and any other Property Owners having an interest to be protected hereunder) shall have the right to prosecute any proceedings at law or in equity against any Person, violating or attempting to violate or defaulting upon any of the provisions contained in this Declaration, in order to prevent the violating or defaulting Person from violating or attempting to violate or defaulting upon the provisions of this Declaration, and/or to recover damages for any such violation or default. The remedies available under this Section 9.4(b) shall include, without limitation, ex parte applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default, and actions for specific performance of this Declaration.

(c) A waiver of any default hereunder must be in writing, and no such waiver shall be implied from any omission by any Person to take any action in respect of such default. No waiver of any default hereunder shall affect any other default or cover any period of time other than the default and period of time specified in such waiver. One or more written waivers of a default in the performance of any provision of this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Declaration. The consent or approval by any Person to or of any action or request by any other Person requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar acts or requests. Unless expressly provided to the contrary in this Declaration, the rights and remedies given pursuant to this Declaration shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity which any Person might otherwise have by virtue of a default under this Declaration, and the exercise of one such right or remedy by any Person shall not impair such non-defaulting Person's standing to exercise any other right or remedy.

(d) If Declarant shall fail to perform any covenant, term or condition of this Declaration upon its part to be performed, and if as a consequence of such default a money judgment is recovered against Declarant, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levied thereon against the right, title and interest of Declarant in its Property and out of rents or other income from such Property receivable by Declarant, or out of the consideration received by Declarant from the sale or other disposition of all or any part of Declarant's right, title and interest in its Property, subject, nevertheless, to the rights of any mortgagee of Declarant's Property, and neither the Declarant, its members nor any of their respective agents, representatives, shareholders, officers, directors, employees or mortgagees shall be liable for any deficiency. The foregoing limitation of liability shall be noted in any judgment secured against Declarant and in any notice or memorandum of such judgment filed against Declarant or against the Property owned by Declarant.

(e) Notwithstanding anything contained in this Declaration to the contrary, neither Declarant nor Sam's shall be deemed to be in default of its obligations under this Declaration unless it fails to perform any covenant, term or condition upon its part to be performed, and such failure continues for more than thirty (30) days after Declarant's or Sam's (as applicable) receipt of written notice of such failure from any Property Owner entitled to enforce the terms of this Declaration, or, if such failure is such that it cannot be corrected within such thirty (30) day period, Declarant or Sam's (as applicable) fails to commence correction of such failure within such thirty (30) day period and diligently prosecute the same to completion as soon as reasonably practicable, but in no event later than ninety (90) days after the date on which it receives notice of such failure from Declarant, any Property Owner or any Occupant. In the case of an emergency, the thirty (30) day period shall be reduced to that period of time which may be reasonable under all of the attendant circumstances.

(f) In the event that any Property Owner or Occupant fails to make any payments due pursuant to this Declaration on a timely basis, then the amount due shall bear interest from the date due until the date paid at the lesser of (i) that rate of interest that is five percent (5%) above the then-current published prime or corporate base rate charged by Citibank, N.A. (or any equivalent base rate selected by Declarant), or (ii) the highest rate permitted by law.

(g) In the event that any Occupant or Property Owner (other than Declarant) shall default in its obligations hereunder (other than for the payment of money) and such default is not cured (i) immediately, in the case of an emergency, as determined by Declarant, or (ii) within five (5) days after such Occupant or Property Owner is given written notice of such default by Declarant, in cases other than emergencies, then Declarant and Declarant's agents, contractors and employees shall be entitled (but not obligated) to enter into the subject Property and perform the obligations of the defaulting Occupant or Property Owner or take whatever steps that Declarant reasonably deems to be necessary or appropriate to cure the default and/or to mitigate the damage or harm caused by such default, and all costs and expenses (including reasonable attorneys' fees) incurred in connection with such activities of Declarant shall be due and payable to Declarant immediately upon demand therefor and, if not paid upon demand, shall bear interest as provided in Section 9.4(f) above, and Declarant shall have a lien on the Property of such defaulting Property Owner or Occupant as security for such reimbursement, which lien shall have the same priority and shall be enforceable in the same manner as the lien on the Maintenance Assessment provided for on Section 6.4(d). Each Occupant and Property Owner shall defend, indemnify and hold harmless Declarant and Declarant's agents, employees, partners, officers and mortgagees from and against any and all Claims incurred by or asserted against Declarant or Declarant's agents, employees, partners, officers, or mortgagees by reason of or in connection with the exercise of Declarant's rights under this Section 9.4(g), (subject to the limitations on the obligations of any Metropolitan District set forth in Section 4.3).

(h) No default under this Declaration shall entitle either Declarant or any Property Owner or Occupant to terminate, cancel or otherwise rescind this Declaration; provided, however, this limitation shall not affect any other rights or remedies that may be available by reason of any default under this Declaration.

9.5 Notices. All notices, consents or other instruments or communications provided for under this Declaration shall be in writing, signed by or on behalf of the Person giving the

same, and shall be deemed properly given and received (i) when actually delivered and received, if personally delivered, (ii) three (3) business days after mailed, if sent by registered or certified mail, postage prepaid, return receipt requested, or (iii) one (1) business day after being sent by overnight delivery service. The addresses of Declarant for the purposes of this Section 9.5 shall be as follows:

For Declarant: Promenade Castle Rock, LLC
c/o Alberta Development Partners
5750 DTC Parkway, Suite 210
Greenwood Village, Colorado 80111
Attention: Peter Cudlip

with a copy to:

Brownstein Hyatt Farber Schreck, LLP
c/o Robert Kaufmann
410 17th Street, Suite 2200
Denver, Colorado 80202

provided, however, that the Declarant shall have the right to designate other or additional addresses and/or addressees for the delivery of notices, by giving notice thereof similarly given.

9.6 Declaration for Exclusive Benefit of Property Owners and Occupants. The provisions of this Declaration are for the exclusive benefit of Declarant, the Property Owners and the Occupants and, except as otherwise provided in this Declaration, not for the benefit of any other Person. Except as otherwise provided in this Declaration, this Declaration shall not be deemed to have conferred any rights, express or implied, upon any third person.

9.7 Table of Contents and Captions; Exhibits. The table of contents and captions of this Declaration are inserted only as a matter of convenience and for reference purposes. They do not define, limit or describe the scope or intent of this Declaration, and they shall not affect the interpretation of this Declaration. All Exhibits which are mentioned in this Declaration are incorporated herein by reference and made a part hereof as if set forth at length.

9.8 Covenants Run With the Land.

(a) The covenants, easements, agreements, promises and duties as set forth in this Declaration shall be construed as covenants and not as conditions and, to the fullest extent legally possible, all such covenants shall run with and be enforceable against both the covenantor and the land and shall constitute equitable servitudes as between the Property of the respective covenantor, as the servient tenement, and the Property of the respective covenantee, as the dominant tenement. Except as otherwise provided in this Declaration, each covenant to do or refrain from doing some act on each Property under this Declaration (i) is a burden upon such Property (or the portion thereof which is affected) and is for the benefit of the other Property, (ii) shall be a covenant running with the land with respect to each Property and (iii) shall be binding upon and inure to the benefit of Declarant and each Property Owner and each successor to any interest therein derived in any manner through any owner of any Property or any portion thereof.

If and to the extent that any of the covenants or other provisions herein would otherwise be unlawful or void for violation of (A) the rule against perpetuities, (B) the rule restricting restraints on alienation, or (C) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provisions concerned shall continue and endure only until the expiration of a period of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants living on the date of this Declaration of: (1) Queen Elizabeth II, the queen of the United Kingdom of Great Britain and Northern Ireland; (2) John D. Rockefeller III, David Rockefeller, and Laurance S. Rockefeller, sons of John D. Rockefeller, Jr., and Abby Rockefeller, daughter of John D. Rockefeller, Jr.; and (3) former U.S. Presidents George H. W. Bush and William J. Clinton, and U.S. President Barack H. Obama.

(b) Notwithstanding anything contained in this Section 9.8 or elsewhere in this Declaration to the contrary, all of the rights and benefits specifically granted to and reserved by Declarant under this Declaration, and all of the obligations and burdens imposed upon Declarant under this Declaration, are personal to Declarant, binding upon and inuring to the benefit of Declarant, except to the extent transferred pursuant to Section 1.1(o) above.

(c) Declarant may enter into agreements to be recorded against a part but not all of the Total Parcel whereby Declarant may waive or modify its rights under this Declaration, which agreements and documents shall be binding on Declarant and its successors and assigns.

9.9 **Successors.** Subject to the provisions of Section 9.6 above, this Declaration shall be binding upon and shall inure to the benefit of the Property Owners and their respective successors and assigns.

9.10 **Governing Laws and Venue.** This Declaration shall be governed by, and enforced in accordance with the laws of the State of Colorado solely and exclusively in state court in the District of Douglas County, Colorado. Declarant and each Property Owner agrees that jurisdiction is exclusive and appropriate in such venue.

9.11 **No Partnership Joint Venture or Principal-Agent Relationship.** Neither anything contained in this Declaration nor any acts of Declarant performed pursuant to this Declaration shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association among Declarant and/or among the Property Owners and Occupants.

9.12 **Performance of Obligations.** The performance of all or and part of Declarant's obligations under this Declaration by any other Person or Persons performing such obligations pursuant to an agreement with Declarant, shall satisfy Declarant's obligations under this Declaration to the extent of such performance.

9.13 **Not A Public Dedication.** Except as expressly provided herein, nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Total Parcel, to the general public, for the general public or for any public use or purpose whatsoever, it being the intention and understanding of Declarant that this Declaration be strictly limited to and for the purposes expressed in this Declaration for the development, maintenance

and operation of a private shopping center development on private property solely for the benefit of Declarant and those Persons referred to in this Declaration. Pursuant to the provisions of this Section 9.13, Declarant shall have the right to prevent or prohibit the use of its Property, or any portion thereof, including the Common Areas, Common Facilities and Buildings and improvements located thereon, by any Person, for any purpose detrimental to the operation of an integrated high quality private shopping center and related development for retail and commercial purposes as contemplated by Section 5.1 of this Declaration.

9.14 Litigation Expenses.

(a) If Declarant or any Property Owner or Occupant shall bring an action or proceeding (including, without limitation, any cross-complaint, counterclaim or third party claim) against Declarant or any other Property Owner or Occupant by reason of the breach or alleged violation of any covenant, term or obligation of this Declaration, or for the enforcement of any provision of this Declaration, or otherwise arising out of this Declaration, the Prevailing Person (as hereinafter defined) in such action or proceeding shall be paid its costs and expenses of suit including, without limitation, reasonable attorneys' fees and disbursements, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing Person" within the meaning of this Section 9.14 shall include, without limitation, a Person who, in an adversarial proceeding is awarded damages or other relief substantially equal to the relief sought by such Person, or who successfully defends such proceeding, or who dismisses an action for recovery under this Declaration in exchange for payment of the sums allegedly due, performance of covenants allegedly breached or consideration substantially equal to the relief sought in the action.

(b) If Declarant or any Property Owner or Occupant is required to initiate or defend any action or proceeding with a third party (including, without limitation, any cross-complaint, counterclaim or third party claim) because of the Declarant's or another Property Owner's or Occupant's breach of or failure to enforce this Declaration, or otherwise arising out of this Declaration, and such Person is the Prevailing Person in such action or proceeding, then such Prevailing Person shall be paid its reasonable attorneys' fees and disbursements from Declarant, Property Owner or Occupant.

(c) Attorneys' fees under this Declaration shall include, without limitation, attorneys' fees on any appeal and, in addition, a Person to be paid attorneys' fees shall be paid all other reasonable costs and expenses incurred in connection with such action.

9.15 Severability. Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any Person, by judgment or court order, shall in no way affect any of the other provisions of this Declaration or the application thereof to any other Person or circumstance and the remainder of this Declaration shall remain in effect; provided, however, that in the event such invalidation would render the remaining portions of this Declaration ineffective to carry out the material intentions of Declarant as expressed or implied by this Declaration, then the objectionable provision(s) hereof shall be construed, and this Declaration shall be deemed amended, as if such provision were replaced with an enforceable provision which effectuates, as nearly as possible, the material intentions of Declarant.

9.16 **Entire Agreement.** This Declaration and the Exhibits to this Declaration contain all the representations and the entire agreement with respect to the subject matter of this Declaration as of the date hereof. Any prior correspondence, memoranda or agreements are superseded in total by and integrated into this Declaration and the Exhibits to this Declaration. The provisions of this Declaration and the Exhibits to this Declaration shall be construed liberally as a whole according to their common meaning and not strictly for or against any Person.

9.17 **Special Provisions Regarding Shopping Center Area Transfer Property.** From time to time, portions of the Land (each, a "Shopping Center Area Transfer Property") may be leased or transferred to a Metropolitan District, the City or other governmental or quasi-governmental entity (each, a "Shopping Center Area Transfer"). Upon retirement of certain debt of a Metropolitan District, all of a Metropolitan District's rights, duties and obligations under the Shopping Center Area Transfer may be assigned to and assumed by the City, or the Shopping Center Area Transfer Property may be transferred back to the Declarant. During the period of time that the Shopping Center Area Transfer is in effect: (a) if the improvements upon the Shopping Center Area Transfer Property have been financed, in whole or in part, by the issuance of bonds by the Metropolitan District such that, in the opinion of the Metropolitan District's counsel, the Shopping Center Area Transfer Property is not permitted to be encumbered by the provisions of this Declaration (an "Exempt Shopping Center Area Transfer Property"), or if it is otherwise required in connection with such dedication or conveyance that the Shopping center Area Transfer Property must be an Exempt Shopping Center Area Transfer Property, the Exempt Shopping Center Area Transfer Property shall not be subject to any of the terms and conditions of this Declaration, including but not limited to the rights, easements and obligations created or imposed hereby; (b) neither a Metropolitan District, the City or other governmental or quasi-governmental transferee shall be considered to be "Occupants" for purposes hereof; and (c) except as may be relevant for calculation purposes hereunder (including, without limitation, calculations of Proportionate Shares of Common Facility Maintenance Expenses, but only to the extent a Shopping Center Area Transfer provides for the payment of Maintenance Assessments by the Metropolitan District, the City, or the other governmental or quasi-governmental transferee), the applicable Exempt Shopping Center Area Transfer Property shall not be considered as part of the "Total Parcel" and shall not constitute "Common Areas," "Common Facilities," "Parking Area," "Property," "Shopping Center Roads," or the "Shopping Center." Notwithstanding the fact that any Shopping Center Area Transfer Property is to be included for calculation purposes under the foregoing subsection (c), neither a Metropolitan District, the City nor the other governmental or quasi-governmental transferee shall be responsible for payment of any assessments determined under this Declaration in connection with such calculations, including, without limitation, the Maintenance Assessment to be calculated hereunder, except to the extent a Shopping Center Area Transfer provides otherwise. At such time as a Shopping Center Area Transfer expires or is terminated, or in the event that any portion of a Shopping Center Area Transfer Property is conveyed by the City, a Metropolitan District or other governmental or quasi-governmental transferee to Declarant, as applicable, such property or portion shall again be subject to all provisions of this Declaration without further action of any party hereto.

9.18 **Property Owner Estoppel Certificate.** From time to time, each Property Owner shall, within thirty (30) days of receipt of written notice from Declarant or another Property

Owner, execute and deliver to the requesting Person a certificate in recordable form stating the following, and such other items as may reasonably be requested: (a) this Declaration is in full force and effect and is unmodified or, if modified, stating the modification; (b) whether or not such Property Owner has sent any notice of any default to any other Property Owner under this Declaration; (c) whether or not such Property Owner has received any notice of any default from any other Property Owner under this Declaration; and (d) the name and remaining term of any lease or occupancy agreement (including renewal options) of any Occupant of such Property Owner's Property, if and to the extent the requesting Person is required to comply with a use or development restriction related to such lease or occupancy agreement, or such other information as may be relevant to compliance with such restrictions.

9.19 Declarant Estoppel Certificate. From time to time, the Declarant shall, within thirty (30) days of receipt of written notice from a Property Owner, execute and deliver to the requesting Person a certificate in recordable form stating the following, and such other items as may reasonably be requested: (a) this Declaration is in full force and effect and is unmodified or, if modified, stating the modification; (b) whether or not the Declarant has sent any notice of any default to the requesting Property Owner under this Declaration that remains uncured as of the date of the estoppel certificate; (c) whether or not the Declarant has received any notice from any non-requesting Property Owner of any default by the requesting Property Owner under this Declaration that remains uncured as of the date of the estoppel certificate; and (d) whether or not the requesting Property Owner is delinquent in the payment of any amounts owed under this Declaration.

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, Declarant has duly executed this Declaration as of the day and year first above written.

Declarant:

PROMENADE CASTLE ROCK, LLC,
a Delaware limited liability company

By: Alberta Castle Rock Management, LLC,
a Colorado limited liability company, its Manager

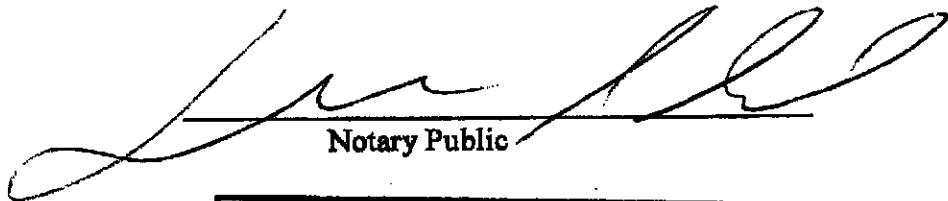
By: 
Donald G. Provost, Manager

STATE OF COLORADO)
) ss:
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 8th day of April, 2015, by Donald G. Provost, as Manager of Alberta Castle Rock Management, LLC, a Colorado limited liability company, as Manager of Promenade Castle Rock, LLC, a Delaware limited liability company.

Witness my hand and official seal.

My commission expires: 12-14-18


Notary Public

THERESE RACHAK
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 2010405528
MY COMMISSION EXPIRES DECEMBER 14, 2018

MORTGAGEE:

**THE PRIVATEBANK AND TRUST COMPANY, an
Illinois banking corporation**

By: _____

Name: _____

Its: _____

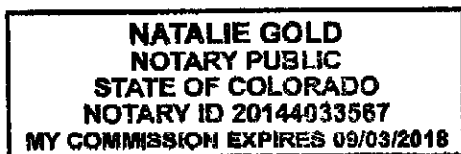
[Signature]
Jane Rachadurian
Managing Director

CORPORATE ACKNOWLEDGMENT

STATE OF Colorado
COUNTY OF Arapahoe) SS

Be it remembered that on this 9th day of April, 2015, before me a notary public in and for the county and state aforesaid, came Jane Rachadurian, Managing Director of THE PRIVATEBANK AND TRUST COMPANY, an Illinois banking corporation, a corporation, who is personally known to me to be the person who executed as such officer the within instrument of writing on behalf of such corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my notary seal the day and year last above written.



[Signature]

Notary Public

(SEAL)

My commission expires: 09/03/2018

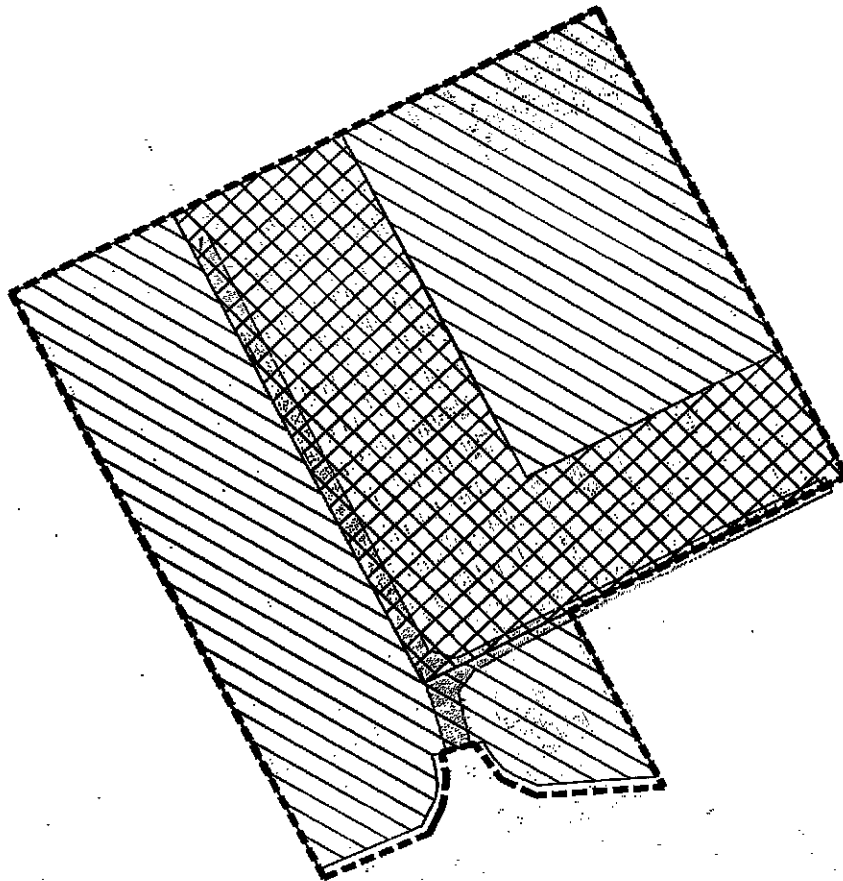
EXHIBIT A

SITE PLAN

[See Attached]

LEGEND

-  TOTAL PARCEL
-  BUILDING AREA
-  PARKING AREA
-  DEVELOPMENT ROADS



© 2014 GALLOWAY

Galloway
Planning, Architecture, Engineering

PAVEMENT AT CASTLE ROCK

EXHIBIT A - SITE PLAN - BLOCK 4B



2014, Galloway & Company, Inc. All rights reserved.

EXHIBIT B

LAND

A PARCEL OF LAND BEING A PART OF THE SOUTHEAST QUARTER OF SECTION 22 AND THE NORTH HALF OF SECTION 27, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, IN THE TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 22 AND CONSIDERING THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 22 TO BEAR SOUTH 89°09'35" EAST, A DISTANCE OF 2643.13 FEET, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE SOUTH 36°00'45" WEST, A DISTANCE OF 545.44 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 62°14'06" EAST, A DISTANCE OF 1,011.82 FEET;

THENCE SOUTH 27°45'54" EAST, A DISTANCE OF 266.51 FEET;

THENCE NORTH 62°14'06" EAST, A DISTANCE OF 156.66 FEET TO A POINT ON THE EASTERLY BOUNDARY OF PARCEL 5-2 AS DESCRIBED IN QUIT CLAIM DEED RECORDED UNDER RECEPTION NUMBER 2014061067 OF THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER'S OFFICE;

THENCE ALONG SAID EASTERLY BOUNDARY, SOUTH 27°45'18" EAST, A DISTANCE OF 699.84 FEET TO THE NORTH CORNER OF LOT 2, BLOCK 1, CASTLE PINES COMMERCIAL FILING 5 FINAL PLAT RECORDED UNDER RECEPTION NUMBER 9664761 IN SAID CLERK AND RECORDER'S OFFICE;

THENCE DEPARTING SAID EASTERLY BOUNDARY AND ALONG THE NORTHERLY BOUNDARY OF SAID LOT 2 BLOCK 1, SOUTH 62°13'17" WEST, A DISTANCE OF 1,205.69 FEET TO THE NORTHEAST CORNER OF ATRIUM DRIVE RIGHT-OF-WAY AS SHOWN ON SAID CASTLE PINES COMMERCIAL FILING 5 FINAL PLAT;

THENCE ALONG THE NORTHERLY RIGHT-OF-WAY SAID ATRIUM DRIVE, SOUTH 77°17'24" WEST, A DISTANCE OF 70.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 468.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 77°15'51" WEST;

THENCE ALONG THE WESTERLY RIGHT-OF-WAY OF SAID ATRIUM DRIVE AND SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 40°35'02", AN ARC LENGTH OF 331.49 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 40.00 FEET;

THENCE DEPARTING SAID WESTERLY RIGHT-OF-WAY AND ALONG SAID COMPOUND CURVE THROUGH A CENTRAL ANGLE OF $102^{\circ}47'40''$, AN ARC LENGTH OF 71.76 FEET;

THENCE TANGENT TO SAID CURVE, NORTH $49^{\circ}21'27''$ WEST, A DISTANCE OF 405.73 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 26.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $98^{\circ}01'39''$, AN ARC LENGTH OF 44.48 FEET;

THENCE TANGENT TO SAID CURVE, NORTH $48^{\circ}40'12''$ EAST, A DISTANCE OF 25.15 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 599.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $19^{\circ}22'50''$, AN ARC LENGTH OF 202.61 FEET;

THENCE TANGENT TO SAID CURVE, NORTH $29^{\circ}17'22''$ EAST, A DISTANCE OF 15.66 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 384.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $23^{\circ}01'20''$, AN ARC LENGTH OF 206.20 FEET;

THENCE TANGENT TO SAID CURVE, NORTH $06^{\circ}16'03''$ EAST, A DISTANCE OF 69.67 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 588.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $20^{\circ}05'34''$, AN ARC LENGTH OF 154.30 FEET;

THENCE NON-TANGENT TO SAID CURVE, NORTH $23^{\circ}33'45''$ EAST, A DISTANCE OF 39.87 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 91.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $32^{\circ}09'55''$, AN ARC LENGTH OF 51.09 FEET;

THENCE TANGENT TO SAID CURVE, NORTH $55^{\circ}43'40''$ EAST, A DISTANCE OF 24.48 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 119.50 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH $19^{\circ}38'24''$ EAST;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $5^{\circ}31'38''$, AN ARC LENGTH OF 11.53 FEET;

THENCE NON-TANGENT TO SAID CURVE, NORTH $16^{\circ}36'10''$ WEST, A DISTANCE OF 50.36 FEET;

THENCE SOUTH $73^{\circ}23'50''$ WEST, A DISTANCE OF 14.45 FEET;

THENCE SOUTH $80^{\circ}38'36''$ WEST, A DISTANCE OF 24.98 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 81.50 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $33^{\circ}40'21''$, AN ARC LENGTH OF 47.90 FEET;

THENCE TANGENT TO SAID CURVE, NORTH $65^{\circ}41'03''$ WEST, A DISTANCE OF 38.08 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 66.50 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $5^{\circ}22'45''$, AN ARC LENGTH OF 6.24 FEET;

THENCE NON-TANGENT TO SAID CURVE, NORTH $24^{\circ}36'00''$ WEST, A DISTANCE OF 169.28 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 29.756 ACRES, (1,296,152 SQUARE FEET), MORE OR LESS.

DEREK S. BROWN

COLORADO LICENSED PROFESSIONAL LAND SURVEYOR NO. 38064

FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.

300 E. MINERAL AVENUE, SUITE 1, LITTLETON, CO 80122

EXHIBIT C
SIGNAGE PLAN

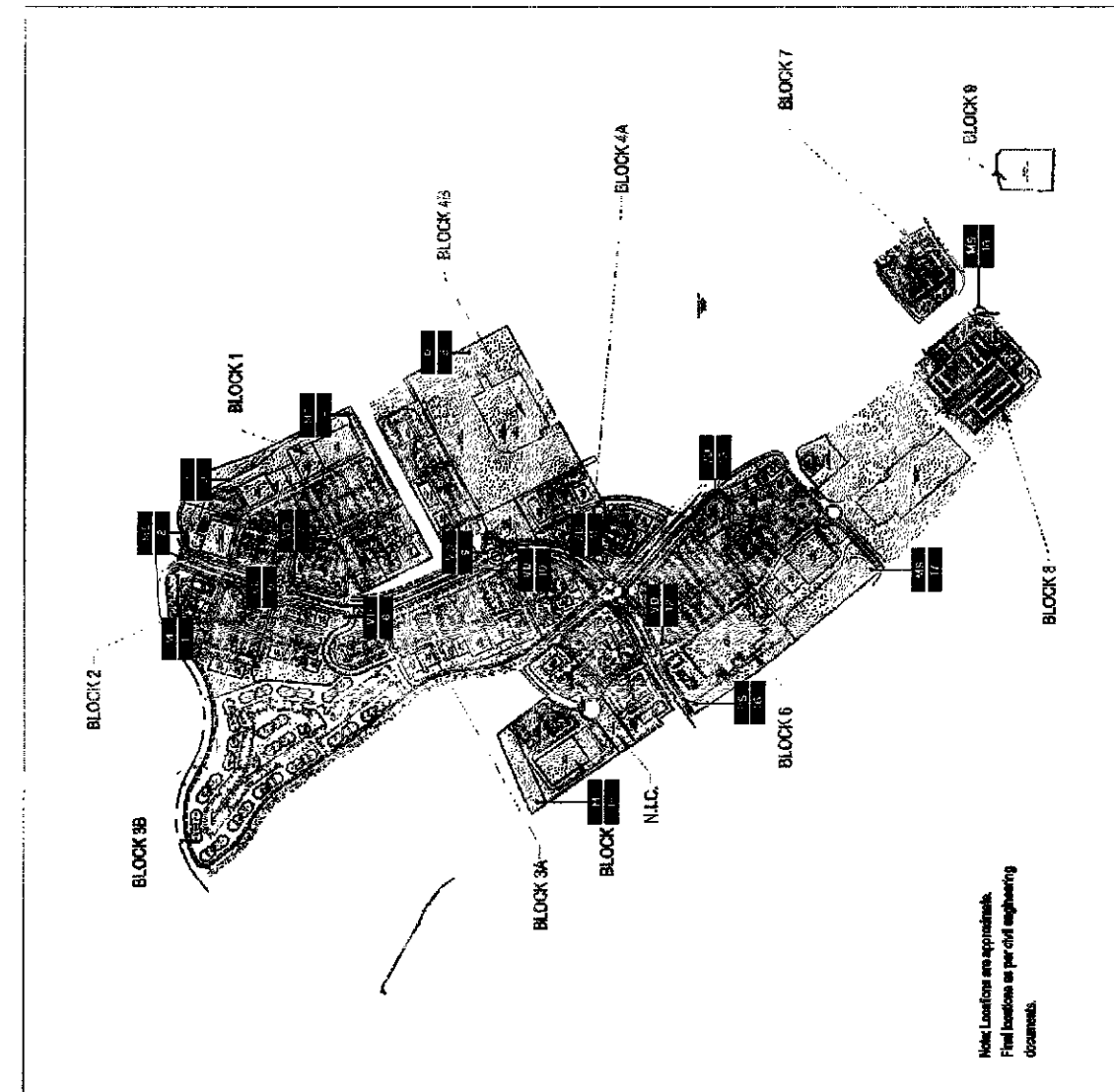
[See Attached]

Promenade at Castle Rock Sign Location Plan: Sam's Club



N0003V11495396.10

C-2



STUDIO 346

The Promenade at Castle Rock
PROJECT

OWNER

Alberta Development Partners
DEVELOPMENT MANAGER

PLM JV
P.L.B. Studio No. 6

OWNER'S REPRESENTATIVE:
P.L. Associates
1125 Main Street
Lakewood, CO 80027
Paul Trace

PROJECT ARCHITECT:

PROJECT RESIDENT:
Sally Mc
11400 Point St
Lakewood, CO 80027
Paul Trace

CONTRACT NO.	
DATE	

February 4, 2015

Sam's Club
Location Plan

This document is for the sole purpose of
providing information and does not
constitute a contract. The user of this
document is responsible for its use and
any liability for its use shall be the
responsibility of the user.

Promenade at Castle Rock Sign Location Plan: Sam's Club

1. Sam's Club
2.
3.
4.
5.
6.
7.
8.

1. Sam's Club	P
2.	
3.	
4.	
5.	
6.	
7.	
8.	

Signtype P: Pylon
Slide 4

Sign type P: Pylon

Side b

1. Sam's Club
2.
3.
4.
5.
6.
7.

Signtype Ne Monument	M
Slide 4	1
1. Sam's Club	
2.	
3.	
4.	
5.	

Singapore MD: Vetsiscan Dr.

Slide #

1. Sam's Club
2.
3.
4.
5.
6.

1. Sam's Club
 2.
 3.
 4.
 5.
 6.
 7.


 December —
CASTLE ROCK
James
 JAMES, MAZZE
 ARCHITECTURE



The Promenade at Castle Rock
1995

CONCRETE
Advanced Development Programme
DEVELOPMENTAL MANAGER

PLATE 1

OWEN'S HELP SERVICE:
 P.O. Box 1000
 1000 10th Ave.
 (703) 553-9000
 owen@owen.com

PROJECT ABSTRACT

410 JEFFERSON BLVD
 SUITE 202
 JACKSONVILLE, FL 32202
 TEL: 904/455-1234
 FAX: 904/455-1235

[illegible]February 4, 2015

Swan's Club	Location: Planet
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21
22	22
23	23
24	24
25	25
26	26
27	27
28	28
29	29
30	30
31	31
32	32
33	33
34	34
35	35
36	36
37	37
38	38
39	39
40	40
41	41
42	42
43	43
44	44
45	45
46	46
47	47
48	48
49	49
50	50
51	51
52	52
53	53
54	54
55	55
56	56
57	57
58	58
59	59
60	60
61	61
62	62
63	63
64	64
65	65
66	66
67	67
68	68
69	69
70	70
71	71
72	72
73	73
74	74
75	75
76	76
77	77
78	78
79	79
80	80
81	81
82	82
83	83
84	84
85	85
86	86
87	87
88	88
89	89
90	90
91	91
92	92
93	93
94	94
95	95
96	96
97	97
98	98
99	99
100	100

12. Other than any one requirement listed in item 11, a company is required to be licensed under the Securities Exchange Act of 1934, if it is required to register securities under the Securities Act of 1933.

EXHIBIT D

CONSTRUCTION REQUIREMENTS

1. All Buildings, structures and other improvements to its Property (and all restorations thereof and additions, alterations and changes thereto) shall be constructed or made strictly in accordance with and in the locations shown on the plans and specifications approved by Declarant.
2. Upon commencement of any Work, such Work shall be diligently and expeditiously prosecuted to completion, and, in any event, such Work shall be completed within the time specified for such Work, if any, in the deed, lease or other occupancy agreement between Declarant and the Property Owner in question.
3. All Work shall be performed in a good and workmanlike manner and in accordance with all applicable Laws and the Development Standards.
4. Each Property Owner shall use its best efforts to cause its architects, engineers, contractors and subcontractors to cooperate and coordinate its Work with the architects, engineers, contractors, and subcontractors of Declarant and of all other Persons performing Work on other land adjacent to or in the vicinity of its Property, to the extent necessary to achieve the objectives set forth in this Declaration.
5. Each Property Owner shall perform its Work so as not to impair, disrupt or interfere unreasonably with the construction, use, occupancy or enjoyment of the Total Parcel or any part thereof.

EXHIBIT E
PROHIBITED USES

- (a) Any use creating public or private nuisance;
- (b) Any use creating any noxious, toxic, caustic or corrosive fuel or gas, except materials normally used in the operation of a regional shopping center similar in age and quality as the Shopping Center, consistent with all applicable laws and sound commercial practices;
- (c) Any fire sale, bankruptcy sale (except pursuant to a court order) or auction house operation;
- (d) Any pawn shop, flea market or swap meet;
- (e) Any mobile home or trailer court, labor camp, junk yard, or stock yard;
- (f) Any permanent circus, carnival or skateboard park;
- (g) Any drug rehabilitation clinic or drug counseling center;
- (h) Any gambling establishment, facility or operation, or betting parlor including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; provided, however, the use of slot machines, video poker/blackjack/keno machines or similar devices shall be permitted within a restaurant on an incidental basis. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities, including, without limitation, the Colorado Lottery, Powerball, scratch games or other games sponsored by Colorado Lottery, the Colorado Lottery Commission or Colorado Department of Revenue, or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the Occupant;
- (i) Any use which permits the use of hazardous materials beyond legal limits on, about, under or in its tract except in the ordinary course of its usual business operations conducted thereon; provided that any such use shall at all times be in compliance with all environmental laws;
- (j) Any assembly or manufacturing operation which would be permitted only in a manufacturing or industrial zone; or any distillation, refining, smelting, industrial, agricultural, drilling or mining operation provided however, that an Occupant shall be permitted to operate a microbrewery;
- (k) Any dump or any operation for the incineration of garbage or refuse, unless the same is operated by Declarant and is intended solely for the handling of waste produced within the Total Parcel by Occupants conducting permitted uses;
- (l) Any facility or operation primarily used as a storage warehouse;

- (m) Any central laundry, dry cleaning plant, or laundromat; provided, however, this restriction shall not apply to any facility providing only on-site pick-up and delivery of dry cleaning and laundry by the ultimate consumer, including nominal supporting facilities or "earthwise", eco-dry cleaning plants;
- (n) Any cemetery, crematorium, mausoleum, mortuary, funeral home or similar service establishment;
- (o) Any oil development operations, oil refining, quarrying or mining operations of any kind; any oil wells, tanks, tunnels, or mineral excavation or shafts upon the surface of any portion of the Development or within 500 feet below the surface of the Development; any derrick or other structure designed for the use in boring for water, oil, natural gas or other minerals;
- (p) Any massage parlor (except that such prohibition shall not prohibit a spa, beauty business, medical, chiropractic or similar facility from providing therapeutic massage services, including without limitation, an operation similar to a "Massage Envy");
- (q) For so long as Sam's or Wal-Mart is an Occupant of a Property within the Shopping Center, and without Sam's consent, which may be withheld in its sole discretion, (i) any billiard parlor, nightclub, bar, or other establishment, to the extent that any of the foregoing derives over 40% of its sales from alcohol, or (ii) any place of recreation or amusement in excess of 5,000 square feet; provided, that the foregoing shall not prohibit restaurants not exceeding 8,000 square feet on the portions of the Shopping Center not owned or occupied by Sam's or Wal-Mart; and
- (r) For so long as Sam's or Wal-Mart is an Occupant of a Property, and without Sam's consent, which may be withheld in its sole discretion, any facility dispensing gasoline or fuel from pumps, tire or automotive store.