



10/7/2010  
User: MONIQUE

GOLDENBERG MANAGEMENT, INC.

1:01:52PM  
Page 1 of 2

**Aging Report  
(Detailed)**

Property : WESGOLD LLC  
171 Philadelphia, PA 19131

as of 09/21/2010

Unit Type	Unit Reference Number	Occupant Name	Deposits Held	Balance Due	AGED 1 - 30 DAYS	AGED 31 - 60 DAYS	AGED 61-90 DAYS	AGED OVER 90 DAYS
CURR	07	ASHLEY STEWART-U.Brands	0.00	13,136.69	13,151.69		(15.00)	
	Phone :	(201) 319-9093						

CHARGE CODE	CHARGE DESCRIPTION	CHARGE DATE	
OTH	Unapplied Pmt Ck# 343298	07/12/2010	(15.00)
CAM	Common Area Maintenance	09/01/2010	963.00
RET	Real Estate Tax Escrow	09/01/2010	750.00
RNT	Minimum Rent	09/01/2010	10,424.79
UO	Use & Occupancy Tax	09/01/2010	238.20
WS	Water & Sewer Escrow	09/01/2010	149.43
LAT	Late Charge for Sept 2010	09/17/2010	626.27

10/7/2010  
User: MONIQUE

GOLDENBERG MANAGEMENT, INC.

1:01:52PM  
Page 2 of 2

**Aging Report  
(Detailed)**

Property : WESGOLD LLC  
171 Philadelphia, PA 19131

as of 09/21/2010

Unit Type	Unit Reference Number	Occupant Name	Deposits Held	Balance Due	AGED 1 - 30 DAYS	AGED 31 - 60 DAYS	AGED 61-90 DAYS	AGED OVER 90 DAYS
PROPERTY TOTALS			0.00	13,136.69	13,151.69	0.00	(15.00)	0.00

CHARGE CODE	CHARGE DESCRIPTION	CHARGE TOTAL		
OTH	Other Income	(15.00)		(15.00)
LAT	Late Charge	626.27	626.27	
WS	Jan-July 2010 Water & Sewer	149.43	149.43	
UO	Retro U&O Tax Jan-Dec 08	238.20	238.20	
RNT	Minimum Rent	10,424.79	10,424.79	
RET	Real Estate Tax Escrow	750.00	750.00	
CAM	Common Area Maintenance	963.00	963.00	

**LEASE**  
**BETWEEN**  
**WESGOLD, L.P.**  
**AND**  
**LARGE APPAREL OF PENNSYLVANIA, INC.**

**PARKWEST TOWN CENTER**  
**PHILADELPHIA, PENNSYLVANIA**

## Table of Contents

Page

### TABLE OF CONTENTS

1. DEMISING OF PREMISES.....	1
1.1 Premises.....	1
1.2 Measurement of Premises.....	1
2. TERM.....	1
2.1 Term of Lease.....	1
2.2 Right to Extend.....	2
3. RENT AND OTHER CHARGES.....	2
3.1 Minimum Annual Rent.....	2
3.2 Financial Reporting.....	3
3.3 Taxes.....	3
3.4 Common Area Maintenance.....	5
3.5 Net Rent.....	6
3.6 Late Charges and Default Rate.....	6
4. PREPARATION OF PREMISES.....	6
4.1 Landlord's Construction.....	6
4.2 Tenant's Construction.....	7
4.3 Tenant Allowance.....	8
4.4 Mechanic's Liens.....	9
5. REPAIRS, MAINTENANCE AND ALTERATIONS.....	9
5.1 Landlord's Repairs.....	9
5.2 Tenant's Repairs.....	9
5.3 Requirements of Law.....	9
5.4 Tenant's Alterations.....	10
5.5 Surrender of Premises.....	10
6. COMMON AREAS.....	10
6.1 Tenant's Right to Use The Common Areas.....	10
6.2 Control of Common Area.....	10
7. TENANT'S COVENANTS.....	11
7.1 Manner of Use of Premises.....	11
7.2 Storefront Alterations; Signs.....	11
7.3 Use of Sidewalks/Common Areas.....	11
7.4 Hazardous Materials.....	12
7.5 Utilities.....	13
7.6 Compliance with Laws.....	13
8. INDEMNITY AND WAIVER OF CLAIMS.....	13
8.1 Indemnity.....	13
8.2 Waiver of Claims.....	13
9. USE OF PREMISES.....	14
9.1 Use.....	14
9.2 Exclusives and Prohibited Uses.....	14
9.3 Opening and Operating Requirement.....	14
9.4 Recapture.....	14
10. ASSIGNMENT AND SUBLETTING.....	15
10.1 Assignment and Subletting by Tenant.....	15
10.2 Subdivision.....	16
10.3 Assignment by Landlord.....	16

Table of Contents  
(continued)

	<u>Page</u>
11. TENANT'S PROPERTY.....	16
12. INSURANCE.....	16
12.1 Landlord's Insurance.....	16
12.2 Tenant's Insurance.....	16
12.3 General Requirements.....	17
13. CASUALTY.....	18
13.1 Restoration.....	18
13.2 Rental Abatement.....	18
13.3 Landlord's Right to Terminate.....	18
13.4 Destruction at End of Lease Term.....	19
14. CONDEMNATION.....	19
14.1 Substantial Taking.....	19
14.2 Insubstantial Taking.....	19
14.3 Award.....	19
15. DEFAULT AND REMEDIES.....	19
15.1 Events of Default by Tenant.....	19
15.2 Remedies for Tenant's Default.....	20
15.3 Miscellaneous.....	22
16. TITLE MATTERS.....	23
16.1 Subordination.....	23
16.2 Quiet Enjoyment.....	23
17. MISCELLANEOUS.....	23
17.1 Holding Over.....	23
17.2 Waivers.....	23
17.3 Notices.....	23
17.4 Attorney's Fees.....	24
17.5 Force Majeure.....	24
17.6 Estoppel Certificates.....	24
17.7 Recordation.....	24
17.8 Invalidity of Particular Provision.....	24
17.9 Interpretation.....	25
17.10 Captions and Definitions.....	25
17.11 Brokerage.....	25
17.12 Entire Agreement.....	25
17.13 Authority.....	25
17.14 Independent Covenants.....	25
17.15 Landlord's Consents.....	26
17.16 Access.....	26
17.17 Tenant's Property.....	26
17.18 Singular and Plural; Exhibits.....	26
17.19 No Representation.....	26
17.20 Landlord's Liability.....	27
17.21 Time of Essence.....	27
17.22 Mortgagee Protection Clause.....	27
17.23 Acquisition.....	27
17.24 Submission of Lease to Tenant.....	27

Table of Contents  
(continued)

Page

Exhibits

EXHIBIT A	SITE PLAN
EXHIBIT B	LEGAL DESCRIPTION
EXHIBIT C	OE A
EXHIBIT D	LANDLORD'S SPECIFICATIONS
EXHIBIT E	EOP
EXHIBIT F	SHOPPING CENTER EXCLUSIVES
EXHIBIT G	TENANT'S STANDARD SIGNAGE

(iii) Renewal Periods:

Rental Period	MINIMUM ANNUAL RENT		MINIMUM MONTHLY RENT
	/Sq. Ft.	Total	Total
Lease Years 11-15	\$32.50	\$146,250.00	\$12,187.50
Lease Years 16-20	\$35.00	\$157,500.00	\$13,125.00

H. Estimated Additional Charges (per square foot per year for 2008):

Taxes \$2.00  
CAM and Insurance \$2.00

I. Real Estate Broker:

Legend Properties, Inc.

J. Landlord's Address for Payments and Notices and Telephone and Taxpayer ID Numbers:

WesGold, L.P.  
C/o The Goldenberg Group, Inc.  
350 Sentry Parkway, Building 630, Suite 300  
Blue Bell, PA 19422  
Tele. No.: (610) 260-9600  
Taxpayer ID No.: 20-4652467

With copies of default notices to:

Klehr, Harrison, Harvey,  
Branzburg & Ellers LLP  
260 South Broad Street  
Philadelphia, PA 19102  
Tele. No.: (215) 569-2592  
Attn: Lee R. Sussman, Esq.

K. Tenant's Address for Notices:

Large Apparel of PA, Inc.  
c/o Urban Brands, Inc.  
100 Metro Way  
Secaucus, New Jersey 07094  
Tele. No.: (201) 319-9093  
Attn: The Real Estate Department

## LEASE

THIS LEASE (the "Lease") made as of the 15<sup>th</sup> day of ~~November~~ 2006, between WESGOLD, L.P., a Pennsylvania limited partnership, having an address c/o The Goldenberg Group, Inc. 350 Sentry Parkway, Building 630, Suite 300, Blue Bell, Pennsylvania 19422 (hereinafter called "Landlord"), and LARGE APPAREL OF PENNSYLVANIA, INC., a Pennsylvania corporation, having an address at Large Apparel of PA, Inc., c/o Urban Brands, Inc., 100 Metro Way, Secaucus, New Jersey 07094 ("Tenant").

### WITNESSETH:

#### FUNDAMENTAL LEASE PROVISIONS

Certain fundamental terms of the Lease are set forth below for convenience of reference and are hereafter referred to as the "Fundamental Lease Provisions." Other provisions of the Lease shall prevail over the Fundamental Lease Provisions in the event of any inconsistency. Terms initially capitalized in the Fundamental Lease provisions and not otherwise defined shall have the meanings accorded such terms in the body of this Lease.

- A. Landlord: WesGold, L.P., a Pennsylvania limited partnership
- B. Tenant: Large Apparel of Pennsylvania, Inc., a Pennsylvania corporation
- C. Center Name and Location:
- Parkwest Town Center  
52<sup>nd</sup> and Jefferson Streets  
Philadelphia, Pennsylvania
- D. Premises Identification: Within the "Proposed Premises Area" (Building S-4)
- E. Approximate Dimensions of Premises:
- Width: 45 feet  
Depth: 100 feet  
Gross Floor Area: 4,500 square feet
- F. Term:
- (i) Initial Term: Ten (10) Lease Years  
(ii) Renewal Periods: Two (2) option periods of five (5) Lease Years each  
(iii) Estimated Date for Delivery of Possession: March, 2008
- G. Minimum Annual Rent:
- (i) The Minimum Annual Rent and the duration of each rental period during the Initial Term and any Renewal Periods shall be as provided in the charts set forth in subparagraphs (ii) and (iii), respectively, below.
- (ii) Initial Term:

Rental Period	MINIMUM ANNUAL RENT		MINIMUM MONTHLY RENT
	/Sq. Ft.	Total	Total
Lease Years 1-5	\$27.50	\$123,750.00	\$10,312.50
Lease Years 6-10	\$30.00	\$135,000.00	\$11,250.00

## 1. DEMISING OF PREMISES

### 1.1 Premises.

Landlord, in consideration of the rents to be paid and the covenants and agreements to be performed and observed by Tenant and subject to the terms and conditions hereof, hereby leases to Tenant, and Tenant does lease and take from Landlord, a store located in the Shopping Center (as hereinafter defined in this Section 1.1) that when completed in accordance herewith shall contain approximately four thousand five hundred (4,500) square feet of gross floor area and that shall be located within the portion of the Shopping Center designated on the site plan attached hereto as Exhibit A and made a part hereof (the "Site Plan") as the "Proposed Premises Area" (the "Premises"), the exact location of which shall be determined by Landlord before the Lease Commencement Date (as hereinafter defined in Section 2.1) in Landlord's sole discretion. The Site Plan depicts a retail shopping center to be known as "Parkwest Town Center" (the "Shopping Center") that is intended to be developed on property which is more particularly described in Exhibit B attached hereto and made a part hereof (the "Shopping Center Parcel"), portions of which are intended to be initially ground leased by Landlord pursuant to a long-term ground lease to be executed between the intended fee simple owner of such portion of the Shopping Center Parcel, West Philadelphia Financial Services Corporation, as lessor, and Landlord, as lessee (the "Ground Lease") and the remainder of which is intended to be owned in fee simple by Lowe's Home Centers, Inc. ("Lowe's"). The portions of the Shopping Center Parcel that are intended to be initially ground leased by Landlord pursuant to the Ground Lease shall hereinafter be referred to as the "Landlord Parcel." The portions of the Shopping Center Parcel that are intended to be initially owned by Lowe's shall hereinafter be collectively referred to as the "Lowe's Parcel". Tenant acknowledges that in connection with the development of the Shopping Center, Landlord and Lowe's are or will be parties to a certain Operation and Easement Agreement to be recorded in the Department of Records of the City of Philadelphia, substantially in the form attached hereto as Exhibit C (the "OEA"). This Lease shall be subject and subordinate to the OEA and Tenant, for itself and any permitted assignee or subtenant, hereby covenants and agrees to comply with and not violate any provision of the OEA. Landlord and Lowe's shall have the right to modify or amend the OEA in any manner (before or after the execution and recordation thereof) so long as such modification or amendment does not materially adversely affect Tenant's ability to conduct its intended business on the Premises.

### 1.2 Measurement of Premises.

Promptly following the Lease Commencement Date (as hereinafter defined in Section 2.1), the Premises shall be measured by Landlord's architect or engineer and a certificate shall be issued by such architect or engineer certifying the precise gross leasable floor area of the Premises (the "Gross Floor Area"). The Gross Floor Area shall be measured from the middle of common wall of the Premises and from the exterior of the outside walls of the Premises. Tenant, at its cost and expense, may have a licensed architect verify Landlord's architect's or engineer's certificate of square footage, and if the two architects, after good faith negotiations, are unable to come to a definitive determination of the Gross Floor Area, they shall promptly select a third architect licensed in the Commonwealth of Pennsylvania, whose determination of the Gross Floor Area (which shall be between the two square footage numbers calculated by each of the first two architects) shall be final and binding on the parties. The reasonable costs, fees and expenses of the third architect shall be borne equally by the two parties. If the final determined Gross Floor Area shall vary from the estimated square footage set forth in Section 1.1 above, all charges and payments calculated with reference to Gross Floor Area shall be recalculated in order to reflect the actual Gross Floor Area determined in accordance herewith.

## 2. TERM

### 2.1 Term of Lease.

Although this Lease shall become effective upon execution hereof, the initial term of this Lease (the "Initial Term") shall begin on the date upon which the Delivery of Possession (as hereinafter defined in Section 4.1.4) occurs (the "Lease Commencement Date") and shall terminate on the last day of the tenth (10th) Lease Year (as hereinafter defined in this Section 2.1), unless sooner terminated. The term "Lease Year" shall mean each successive period of twelve (12) consecutive full calendar months of the Term, commencing on the Rent Commencement Date (as hereinafter defined in Section 3.1); provided, however, that the first (1<sup>st</sup>) Lease Year shall commence on the Rent

Commencement Date and shall expire on January 31 of the calendar year after the calendar year in which the Rent Commencement Date occurs, and thereafter, each subsequent Lease Year shall commence on February 1 and shall expire on the following January 31<sup>st</sup>. The Initial Term and any extension thereof for a Renewal Period (as hereinafter defined in Section 2.2) exercised in accordance with the provisions of Section 2.2 below is sometimes hereinafter referred to collectively as the "Term". When the Rent Commencement Date shall have been determined, Landlord and Tenant shall, upon the request of either of them, execute and deliver a statement prepared by Landlord setting forth the Rent Commencement Date and the termination date of the Initial Term and each Renewal Period, if exercised. Any failure of Landlord or Tenant to execute such statement shall not affect the determination of the Rent Commencement Date. Landlord and Tenant further agree that at the request of either, they will execute and deliver a confirmatory agreement acknowledging that the Delivery of Possession has occurred, that Landlord has performed Landlord's Work (as hereinafter defined in Section 4.1.1) and that this Lease is in full force and effect and operative.

## 2.2 Right to Extend.

Tenant shall have the right to extend the term of this Lease for two (2) successive periods of five (5) Lease Years (each, a "Renewal Period"), exercisable upon the following terms and conditions:

2.2.1. Tenant shall give Landlord written notice of such election to extend the then current term for a Renewal Period at least nine (9) months prior to the expiration of such then current term;

2.2.2. At the time of such election and at the commencement of any Renewal Period, no Event of Default (as hereinafter defined in Section 15.1) has occurred and is continuing;

2.2.3. Each such Renewal Period shall be upon the same terms and conditions as during the Initial Term, except that the Premises shall be leased in their then "as-is" condition and Tenant shall have no further election to extend the Term beyond the second (2nd) Renewal Period;

2.2.4. No Renewal Period may be elected unless the prior Renewal Period was properly elected;  
and

2.2.5. Tenant shall pay to Landlord Minimum Annual Rent (as hereinafter defined in Section 3.1.1) during such Renewal Period at the per square foot rates provided in Section G (ii) of the Fundamental Lease Provisions herein.

If Tenant properly elects to exercise any such Renewal Period, the Term shall be automatically extended for the Renewal Period without necessity for the execution of any instrument to affect the same. In such event the phrases "the Term", "the term of this Lease" and "the term hereof" as used in this Lease shall include such Renewal Period.

## 3. RENT AND OTHER CHARGES.

### 3.1 Minimum Annual Rent.

3.1.1. Commencing on the earlier of (i) the date on which Tenant shall commence to conduct business in any part of the Premises or (ii) the sixtieth (60<sup>th</sup>) day after the Lease Commencement Date (the "Rent Commencement Date") and thereafter throughout the Term, Tenant covenants and agrees to pay Landlord, and Landlord agrees to accept, at such place as Landlord shall from time to time direct by notice to Tenant, a minimum guaranteed annual rental ("Minimum Annual Rent") for the Term at the rates provided in Section G of the Fundamental Lease Provisions herein, payable in advance, without notice, set-off, deduction or reduction, and in legal tender of the United States of America, drawn on a national banking institution located in the continental United States, in equal monthly installments on the first day of each and every calendar month during the Term; provided, the first installment of Minimum Annual Rent (the "First Installment") shall be due and payable on the Rent Commencement Date whether or not the Rent Commencement Date is the first day of a calendar month and in the event the Rent Commencement Date shall be a day other than the first day of a calendar month, the First

Installment shall be pro-rated for the fractional portion of such month based on the actual number of days in such month.

3.1.2. As used herein, the term "Additional Rent" shall consist of all other sums of money other than Minimum Annual Rent including, but not limited to Tenant's Proportionate Share of Taxes (as hereinafter defined in Section 3.3.2) and Tenant's Proportionate Share of Common Area Maintenance Costs (as hereinafter defined in Section 3.4.1), as shall become due from and be payable by Tenant hereunder (for default in the payment of which Landlord shall have the same remedies as for a default in the payment of Minimum Annual Rent).

### 3.2 Financial Reporting.

3.2.1. Tenant shall sign and submit to Landlord on or before the sixtieth (60<sup>th</sup>) day following the end of each calendar year during the Term, a statement certified by it to be true and correct showing in reasonable detail the amount of Gross Sales (as hereinafter defined in Section 3.2.2) during the preceding calendar year.

3.2.2. "Gross Sales" shall mean all revenue generated from all merchandise and services sold or rendered in or from the Premises by Tenant, any subtenant and any concessionaire and licensee, whether at retail or wholesale, whether for cash, check or on a charge, credit or time basis. In computing Gross Sales, the following shall be excluded:

3.2.2.1 The selling price of any goods returned by any customer (to the extent that the selling price of any such returned goods has been included in Gross Sales);

3.2.2.2 All sums representing sales taxes collected directly from customers, based upon present and future laws of the state or local government and collected by Tenant or any subtenant in the operation of its business on the Premises and paid over to the applicable taxing authority;

3.2.2.3 The transfer of merchandise by Tenant from the Premises to another store or a place of business owned or operated by Tenant;

3.2.2.4 Returns to shippers or manufacturers;

3.2.2.5 Cash or credit refunds to customers on transactions otherwise included in Gross Sales;

3.2.2.6 Sales of fixtures, machinery and equipment not in the ordinary course of business which are not stock for sale or trade after the use thereof in Tenant's business; and

3.2.2.7 Credit card and check cashing fees.

3.2.3. During the Term Tenant shall maintain and keep at the Premises a record and account of all Gross Sales for each day of the Term; provided, however, Tenant shall not be required to maintain and keep, or cause to be maintained and kept any such records and accounts for more than two (2) years after the date Tenant furnishes Landlord with the written statement of Gross Sales for the calendar year to which such records and accounts relate. Such records and accounts and all supporting records shall be open to inspection and audit at the Premises by Landlord, and its duly authorized agents or representatives, for the purpose of verifying Gross Sales.

### 3.3 Taxes.

3.3.1. In accordance with this Section 3.3, Tenant shall pay Landlord, as Additional Rent, Tenant's Proportionate Share of Taxes imposed, levied and/or assessed against the Landlord Parcel or, if the Landlord Parcel consists of more than one tax parcel, the tax parcel of which the Premises is a part (the "Tax Parcel"). For the purpose of this Lease, the term "Taxes" shall mean all real estate or equivalent taxes and assessments, regardless of how designated, including, but not limited to, any general or special assessments, water and sewer rents and other governmental impositions imposed, levied and/or assessed upon the Shopping Center

Parcel or, if applicable, the Tax Parcel, of every kind and nature whatsoever, extraordinary as well as ordinary, foreseen and unforeseen, and each and every installment thereof, which shall or may during the Term be levied, assessed or imposed on or against the Shopping Center Parcel or, if applicable, the Tax Parcel, or any portion thereof. Taxes shall include the reasonable costs and expenses (including attorney's fees) incurred by Landlord in contesting the amount of Taxes. Except as otherwise set forth in this Section 3.3, nothing contained in this Lease shall require the Tenant to pay any estate, inheritance, succession, capital levy, corporate franchise, gross receipts, transfer or income tax of Landlord, nor shall any of the same be deemed Taxes unless the same be imposed in lieu of or in addition to or in substitution of real estate taxes. "Tenant's Proportionate Share" of Taxes shall be the percentage computed by dividing the Gross Floor Area by the gross leaseable area of all buildings in the Landlord Parcel or, if applicable, the Tax Parcel (excluding any mezzanines or any basements unless used for selling purposes) during the calendar year in question as of the end of that calendar year.

3.3.2. Commencing on the Rent Commencement Date and thereafter throughout the Term, Tenant shall pay, as Additional Rent, Tenant's Proportionate Share of Taxes in monthly installments without notice, set-off, deduction or reduction and at the same times and in the same manner as Tenant's payment of Minimum Annual Rent. Until Tenant's Proportionate Share of Taxes is determined, Tenant shall pay an estimate determined by Landlord. As soon as practicable after each calendar year, Landlord shall furnish to Tenant a reconciliation of Tenant's Proportionate Share of Taxes and the amount actually paid by Tenant for the applicable period. So long as no Event of Default is continuing, any overpayments shall be credited against Tenant's next payment of Taxes, and any underpayments shall, within thirty (30) days of receipt of the reconciliation, be paid by Tenant to Landlord. Once Taxes for any calendar year have been determined, Landlord may furnish to Tenant a new estimate of monthly payments.

3.3.3. Subject to Section 3.3.5 below, Landlord may contest any and all Taxes. If the result of any such contest shall be a reduction in the amount of such Taxes so contested, that portion of each refund or recovery from the taxing authorities which is in the same proportion of the total refund or recovery as Tenant's Proportionate Share of Taxes, shall belong to Tenant, and the balance shall belong to Landlord; provided, however, if Landlord shall contest the amount of any such Taxes without participation by Tenant in the costs and expenses of such proceedings, each refund or recovery from the taxing authorities with respect to such Taxes shall belong to Landlord unless Tenant shall promptly, after receiving notice from Landlord of such refund or recovery, reimburse Landlord for Tenant's Proportionate Share of all costs and expenses incurred by Landlord in such proceedings.

3.3.4. In addition, Tenant shall pay before delinquency any and all taxes, assessments, impositions, excises, fees and other charges levied, assessed or imposed by governmental or quasi-governmental authority upon Tenant or its business operation, or based upon the use or occupancy of the Premises (including, but not limited to the Use and Occupancy Tax levied by the City of Philadelphia), or upon Tenant's leasehold interest, trade fixtures, furnishings, equipment, leasehold improvements (including, but not limited to, those required to be made pursuant to Tenant's Work (as hereinafter defined in Section 4.2)) alterations, changes and additions made by Tenant, merchandise and personal property of any kind owned, installed or used by Tenant in, from or upon the Leased Premises. If the property of Landlord is included in any of the foregoing items, the aforesaid taxes, assessments, impositions, excises, fees and other charges shall nonetheless be paid by Tenant as herein provided. Tenant shall pay, when due and payable, any sales tax, or other tax, assessment, imposition, excise or other charge now or hereafter levied, assessed or imposed upon or against this Lease or any rent or other sums paid or to be paid hereunder, or Tenant's or Landlord's interest in this Lease or any Rent or other sums paid or to be paid hereunder. Should the appropriate taxing authority require that any tax, assessment, imposition, excise or other charge referred to in this Section 3.3.4 be collected by Landlord for or on behalf of such taxing authority, then such tax, assessment, imposition, excise or other charge shall be paid by Tenant to Landlord monthly as Additional Rent in accordance with the terms of any notice from Landlord to Tenant to such effect. The taxes, assessments, impositions, excises, fees and other charges described in this Section 3.3.4 shall be the obligation of Tenant and not Landlord.

3.3.5. Tenant acknowledges that the Shopping Center Parcel is part of the "Park West Tax Increment Financing District" created by ordinance of the Council of the City of Philadelphia in accordance with the Tax Increment Financing Act, being the Act of July 11, 1990, P.L. 465, No. 113, as amended (the "TIF District") and that the development of the Shopping Center shall be financed, in part, with real estate and sales tax revenues generated from the use, occupancy and operation of the Shopping Center through tax increment financing (the "TIF Financing"). Tenant acknowledges and agrees that the benefits of the TIF Financing are required for the

development of the Shopping Center and shall inure solely to the benefit of Landlord and that Tenant shall not have any right or claim to reduction in real estate tax contributions by virtue of the existence of the TIF Financing. In connection with the TIF Financing, Tenant agrees as follows:

3.3.5.1 During the term of the TIF District, Tenant shall have no right to protest, contest or appeal (and shall not seek to cause Landlord to protest, contest or appeal) any Taxes or the value of the Premises.

3.3.5.2 Tenant shall provide to Landlord, or at Landlord's direction, the Philadelphia Authority for Industrial Development ("PAID"), within fifteen (15) days after the date of filing, copies of all of Tenant's use and occupancy and sales tax returns and reports, each of which shall be certified by Tenant's chief financial officer as being true and correct copies. So as to permit the verification of collection of sales taxes, Tenant hereby waives its rights and privileges of confidentiality under the laws of the Commonwealth of Pennsylvania with respect to its payment of sales taxes to the Commonwealth of Pennsylvania and grants to Landlord for the benefit of PAID and the Finance Director of the City of Philadelphia full access to all sales tax information. Upon request of Landlord, Tenant will execute such instruments of waiver as may be reasonably requested by PAID or the City of Philadelphia. Upon request, Tenant shall permit Landlord access to Tenant's submissions to the Commonwealth of Pennsylvania and any other taxing authorities as may be reasonably required to determine the payment and amounts of sales, use and occupancy and other taxes payable by Tenant.

#### 3.4 Common Area Maintenance

3.4.1. In accordance with this Section 3.4, Tenant shall pay Landlord, as Additional Rent, Tenant's Proportionate Share of Common Area Maintenance Costs. As used herein, the term "Common Area Maintenance Costs" shall mean all expenses incurred by Landlord with respect to the repair, replacement, maintenance, security, insurance and operation of the Common Areas (as hereinafter defined in Section 6.1), including without limitation the following: resealing, repairing, patching, repaving, replacement of and restriping the parking areas, driveways and access roads; maintenance, repair and painting of all improvements in the Common Areas; maintenance, repair and operation of any detention and/or retention ponds or basins serving the Shopping Center; cleaning, sweeping and other janitorial services; snow and ice removal; sanitation and maintenance of refuse receptacles relating to Common Areas only (not individual tenant receptacles) and disposal of refuse placed therein; maintenance of existing landscaping; maintenance of directional signs and other markers; upkeep of lighting and other utilities; electricity and other utilities consumed in connection with the operation of the Common Areas; the cost of personnel to implement all of the services indicated in Common Area Maintenance Costs (including all fringe benefits payable to employees); the cost of any security services provided by Landlord; the cost of utilities, repair and maintenance of the pylon, monument signs and other freestanding identification signs of the Shopping Center; the cost of complying with any legal requirements applicable to the Common Areas; repairs to plumbing and electrical systems located in the Common Areas; premiums for liability insurance for personal injury, death and property damage covering the Common Areas services provided or made available to all tenants of the Shopping Center (e.g., common trash collection); all other charges due with respect to "Common Area Maintenance Costs" pursuant to the OEA; and an administrative charge equal to ten percent (10%) of Common Area Maintenance Costs (excluding insurance and utility costs) to cover all administrative, management and overhead costs pertaining to Common Area Maintenance Costs. In addition to the foregoing, Common Area Maintenance Costs shall also include Landlord's cost for all premiums for Landlord's Property Insurance (as hereinafter defined in Section 12.1.2) and rent insurance respecting all buildings and improvements upon the Landlord Parcel. "Tenant's Proportionate Share" of Common Area Maintenance Costs shall be the percentage computed by dividing the Gross Floor Area by the gross leaseable area (expressed in square feet) of all buildings in the Shopping Center (excluding any mezzanines or basements unless used for selling purposes). In the event that any other tenant or occupant of the Shopping Center provides services as to its premises related to Common Area Maintenance Costs and/or insurance as to its premises, then for purposes of determining Tenant's Proportionate Share of Common Area Maintenance Costs as to the service in question and/or insurance premiums, the denominator of the fraction used to calculate Tenant's Proportionate Share of Common Area Maintenance Costs shall be the gross leaseable area of the buildings located in the Shopping Center less the gross leaseable area of buildings as to which such tenant or occupant is directly providing the service or insurance in question (in each case excluding any basements and mezzanines unless used for selling purposes), and the applicable cost (or invoice amount) of such service and/or insurance provided by such tenant or occupant shall not be included in the expenses to which Tenant contributes.

3.4.2. Notwithstanding anything to the contrary contained in this Lease, Common Area Maintenance Costs shall not include the following: real estate brokerage commissions; legal fees incurred in the negotiation of leases for the Shopping Center or in leasing disputes with tenants; interest or principal payments on any mortgage or deed of trust or any ground lease payments; Landlord's home office general overhead; any deduction for depreciation, amortization or similar non-cash accounting charges taken on Landlord's income tax returns; replacement or repairs covered by contractor's warranties, or by insurance proceeds (including without limitation, any repairs or replacements of defects in the initial construction of the common area improvements); charges or fees for, or taxes on, the furnishing of gas, fuel, electricity or other utility services to those portions of the Shopping Center which are leased to tenants; the cost of acquiring property to be added to the Shopping Center and the cost of any construction appertaining to any property so added; Landlord's federal, state or local income taxes; or capital expenditures, except amortized over the useful life in accordance with generally accepted accounting principles.

3.4.3. Commencing on the Rent Commencement Date and thereafter throughout the Term, Tenant shall pay, as Additional Rent, Tenant's Proportionate Share of Common Area Maintenance Costs in monthly installments without notice, set-off, deduction or reduction and at the same times and in the same manner as Tenant's payments of Minimum Annual Rent. Until Tenant's Proportionate Share of Common Area Maintenance Costs is determined, Tenant shall pay an estimate determined by Landlord. As soon as practicable after each calendar year, Landlord shall furnish to Tenant a statement of the Common Area Maintenance Costs for the year in question and a reconciliation of Tenant's Proportionate Share of Common Area Maintenance Costs and the amounts actually paid by Tenant for the applicable period. So long as no Event of Default has occurred and is continuing, any overpayments shall be credited against Tenant's next payment of rent due hereunder, and any underpayment shall, within thirty (30) days of receipt of the reconciliation, be paid by Tenant to Landlord. Landlord shall have the right from time to time, but not more than one (1) time each year during the Term, to revise the amount of its estimate as to Tenant's Proportionate Share of Common Area Maintenance Costs.

### 3.5 Net Rent.

Tenant hereby acknowledges and agrees that this Lease is intended to be a complete net lease to Landlord, except as expressly herein set out, that Landlord is not responsible for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Premises, or the use and occupancy thereof, or the contents thereof or the business carried on therein, and that Tenant shall pay all charges, impositions, costs and expenses of every nature and kind relating to the Premises, except as expressly otherwise agreed herein.

### 3.6 Late Charges.

If any portion of any payment of Minimum Annual Rent or Additional Rent is not made within five (5) days after its due date, Tenant shall pay to Landlord a "late charge" of five (5%) percent of the amount required to have been paid for the purpose of defraying the expense incident to handling and administering such delinquent payment. Nothing contained in the preceding sentence shall be deemed to suspend or delay the due date for payment of any Minimum Annual Rent or Additional Rent, or to limit any other remedy of Landlord.

## 4. PREPARATION OF PREMISES

### 4.1 Landlord's Construction.

4.1.1. Landlord, at Landlord's sole cost and expense, shall construct and provide to Tenant the Premises ("Landlord's Work") in accordance with Landlord's "vanilla box" building shell specifications described in Exhibit D attached hereto ("Landlord's Specifications") and Landlord's Final Plans (as hereinafter defined in Section 4.1.2).

4.1.2. Within ninety (90) days following date upon which Landlord ground leases the Landlord Parcel pursuant to the Ground Lease and Lowe's acquires the Lowe's Parcel (the "Shopping Center Parcel Acquisition Date"), Landlord shall submit to Tenant complete plans and specifications based on Landlord's Specifications for Landlord's Work for Tenant's approval. Within fifteen (15) days after such submission by

Landlord, Tenant shall approve such plans and specifications or provide Landlord's architect with comments regarding such plans and specifications. If comments are provided by Tenant and are acceptable to Landlord, such plans and specifications shall be revised by Landlord's architect and returned to Tenant within fifteen (15) days from the receipt of Tenant's comments. The submission of revised plans and specifications and providing of comments thereon shall continue (subject to the same fifteen (15) day deadlines as to responses by Landlord and Tenant) until such time as the plans and specifications are approved by Tenant. Tenant agrees that Tenant shall not unreasonably withhold and shall not delay Tenant's approval of the plans and specifications, nor condition said approval on unreasonable notes to the plans and specifications. Notwithstanding the foregoing, Tenant's right to approve or provide comments to such plans and specifications as set forth above shall be limited only to any comments regarding inconsistencies with Landlord's Specifications and if such plans and specifications submitted by Landlord are consistent with Landlord's Specifications, such plans and specifications shall be deemed approved by Tenant. Failure by Tenant to respond to any plans and specifications within the time frames aforesaid shall constitute approval by Tenant. The plans and specifications ultimately approved by Landlord and Tenant are hereinafter referred to as "Landlord's Final Plans".

4.1.3. Following the commencement thereof, Landlord shall diligently prosecute Landlord's Work to completion in a good and workmanlike manner, using good materials, substantially in accordance with Landlord's Final Plans, and in compliance with all applicable laws and regulations of the federal, state and municipal governments, or any department or division thereof. Landlord shall procure all building and other permits and approvals necessary for performing Landlord's Work. In the event that Tenant requests any changes to Landlord's Work, Landlord may consent to any such changes in its reasonable discretion, and Tenant shall, promptly upon receipt of applicable invoices, reimburse Landlord, as Additional Rent, for any increased construction costs (including increased or additional architectural and/or engineering design costs) incurred by Landlord as a result of such requested changes by Tenant (provided, however, once Landlord has commenced Landlord's Work, Tenant shall no longer have such right to request any such change).

4.1.4. Landlord shall be deemed to have delivered to Tenant and Tenant shall be deemed to have accepted possession of the Premises (hereinafter called "Delivery of Possession"), on the first date on which Landlord's Work has been substantially completed (except for minor items that do not materially and adversely affect the commencement of Tenant's Work). Landlord will endeavor to give Tenant at least forty-five (45) days prior written notice of Delivery of Possession. Under no circumstances shall Landlord be liable to Tenant for damages or otherwise for a delay in the Delivery of Possession occasioned by Landlord's delay in receiving governmental approvals or for any other reason, or for Landlord's failure to commence or complete construction of the Premises, and Landlord may, at its option, declare this Lease null and void should construction not be commenced or completed, and thereafter all parties shall be released from all liability hereunder whatsoever.

#### 4.2 Tenant's Construction.

Prior to the commencement of Tenant's Work, Tenant, at its sole cost and expense, shall cause to be prepared complete plans and specifications ("Tenant's Plans") depicting and describing the column layout and Tenant's planned initial improvements to the interior of the Premises ("Tenant's Work"). Tenant's Plans shall be subject to Landlord's approval. Once approved by Landlord, Tenant shall make no changes in Tenant's Plans without Landlord's consent. Tenant shall, at its sole cost and expense, be responsible for obtaining all final unappealable permits, licenses, certificates and approvals (including without limitation, all building permits and permits for signage) required for Tenant's Work and for the operation of the Premises as provided in Section 9 hereof (collectively, "Tenant Permits"). Tenant shall apply for and diligently pursue obtaining all Tenant Permits within ten (10) days after Landlord has approved Tenant's Plans. On and as of the Lease Commencement Date, Tenant shall, at its sole cost and expense, have the right to enter the Premises and fixture the Premises and otherwise complete Tenant's Work in accordance with Tenant's Plans, Tenant's Permits and the following provisions:

4.2.1. Tenant's Work shall be performed by Tenant's standard contractor, who shall be duly licensed in the Commonwealth of Pennsylvania ("Tenant's Contractor"). Tenant's Contractor shall obtain a payment and performance bond issued by a surety company satisfactory to Landlord and naming Landlord and its mortgagee as additional obligees. Tenant's Contractor shall be required to carry builder's risk insurance, commercial general liability and such other insurance coverages in amounts and issued by companies reasonably satisfactory to Landlord. All insurance policies shall name Landlord and its mortgagee as additional insured parties.

4.2.2. Intentionally deleted.

4.2.3. Tenant shall cause Tenant's Contractor and all subcontractors, materialmen, suppliers to perform Tenant's Work at the Premises in a good and workmanlike manner and using only new materials and in compliance with all applicable laws, codes, ordinances and regulations.

4.2.4. Tenant agrees to indemnify and hold Landlord and Landlord's agents and contractors harmless from and against any and all loss, liability, cost and expense (including without limitation, attorney's fees and court costs) incurred by Landlord or its agents or contractors relating in any way to the performance of Tenant's Work.

4.2.5. All of Tenant's Work shall be performed in such a manner as not to interfere with the work being performed in the Shopping Center or the operations of any other tenant or occupant of the Shopping Center. All construction work by Tenant's contractors and/or subcontractors must be coordinated with Landlord in a manner reasonably approved by Landlord such that it will not cause any labor unrest. Tenant shall take all steps necessary to avoid a union work stoppage, picketing or other such demonstration by any unions at the Premises (a "Strike"). If a Strike occurs, Tenant shall take other appropriate action as may be necessary to promptly stop the Strike. Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all claims, losses, liabilities, expenses, costs (including reasonable attorney's fees) and damages arising from or as a result of any Strike due to or caused by Tenant.

4.2.6. Tenant's Work shall be performed in accordance with and not in violation of the "Economic Opportunity Plan" for the Shopping Center, a copy of which is attached hereto as Exhibit E (the "EOP").

#### 4.3 Tenant Allowance.

Landlord agrees to contribute to Tenant an allowance equal to an amount up to but not to exceed \$67,500.00 (the "Tenant Allowance") to be used by Tenant for the actual costs of the performance of Tenant's Work. So long as no monetary Event of Default is continuing beyond applicable cure periods, the Tenant Allowance shall be payable by Landlord to Tenant when Tenant has opened for business in the Premises as required herein, paid the first full installment of Minimum Annual Rent, and furnished to Landlord the following:

4.3.1. Copies of paid invoices documenting the actual cost incurred by Tenant to complete Tenant's Work;

4.3.2. An original notarized affidavit of Tenant's contractor stating that (1) Tenant's Work has been fully completed, substantially in accordance with the plans and specifications approved by Landlord, subject, however, to Landlord's verification thereof, and (2) all subcontractors, laborers and material suppliers have been paid in full;

4.3.3. An original notarized waiver of lien with respect to the Premises, executed by every subcontractor, laborer and material supplier engaged in or supplying labor or materials; and

4.3.4. A certificate of use and occupancy for the Premises issued by the appropriate governmental authority.

Landlord reserves the right to perform inspections of Tenant's Work (by itself or its consultants). If Landlord fails to pay Tenant's Allowance within thirty (30) days after the satisfaction of the requirements contained in this section 4.3, Tenant shall have the right to offset Tenant's allowance against Minimum Annual Rent and Additional Rent in an amount equal to Tenant's Allowance until such time as Tenant's Allowance has been fully offset together with interest thereon at the per annum rate equal to five percent (5%) per annum greater than the prime rate of interest announced from time to time by Wachovia National Bank (or its successors), as the same may change from time to time (the "Default Rate"), provided, however, that such interest shall never exceed the maximum legal rate from time to time permitted by applicable law.

#### 4.4 Mechanic's Liens.

In no event shall Landlord's interest in the Premises or the Shopping Center be subject to any lien filed by any contractor or other lien claimant relating to any construction, improvements, repair or alterations made by Tenant in connection with Tenant's initial construction on the Premises or any repairs or alterations performed by or on behalf of Tenant pursuant to Section 5 below. Tenant will indemnify and save harmless the Landlord from and against all mechanics' liens or claims by reason of such alterations or additions which may be made by Tenant on the Premises. In the event any such lien is filed against the Premises or the Shopping Center, Tenant shall remove the same within thirty (30) days (or such shorter period as Landlord may require if such demand is made by Landlord in connection with a refinancing or sale of the Shopping Center or any portion thereof) of request of Landlord. If Tenant fails to remove or bond such lien, in addition to all other remedies available to Landlord, Landlord may remove or bond same and the cost thereof shall be payable by Tenant as Additional Rent, payable within thirty (30) days of receipt by Tenant of Landlord's demand for reimbursement.

### 5. REPAIRS, MAINTENANCE AND ALTERATIONS

#### 5.1 Landlord's Repairs.

Except for repairs necessitated by any acts, omissions or negligence of Tenant, or its employees, agents, invitees, sublessees, licensees or contractors, Landlord shall keep the foundations, roof and structural portions of the outer walls of the Premises in good repair. In no event shall Landlord be obligated to repair or maintain the doors, door systems, windows and frames, interior plumbing and other utility lines directly serving the Premises.

#### 5.2 Tenant's Repairs.

Subject to repairs required of Landlord pursuant to Section 5.1 above, Tenant shall repair, keep and maintain the Premises and all elements thereof and systems therein or attached thereto (including without limitation the heating, ventilating and air-conditioning ("HVAC") system, plumbing and electrical systems, signs and all door and window glass) in good order and condition making, when required, replacements thereto. Landlord agrees to assign to Tenant any and all assignable warranties, extended warranties and guarantees given to Landlord by Landlord's contractors or materialmen with respect to mechanical parts of the HVAC system. Tenant shall throughout the Term carry, at its cost, a commercially reasonable maintenance and service contract with a qualified vendor approved by Landlord which covers the HVAC facilities serving only the Premises and provides for periodic cleaning, oiling, changing of belts and filters, adding or changing refrigerants and seasonal inspections, all of which shall be done in accordance with the manufacturer's recommendations. Tenant shall deliver a copy of the service contract to Landlord upon written request. Tenant shall replace, at its expense, any and all plate glass damaged or broken from any cause in and about the Premises. All such repairs performed by Tenant shall be completed by Tenant in accordance with the provisions of Section 4.2 above. If Tenant fails to fulfill Tenant's obligations hereunder or under any other provision of this Lease, Landlord may, (but is not obligated to), at Landlord's sole option, after five (5) days written notice to Tenant, (except in an emergency, in which case Landlord may act without notice) perform Tenant's obligations on Tenant's behalf necessary to return the Premises to good order, condition and repair, and in such event, Tenant shall, within ten (10) days after demand by Landlord, pay all costs incurred by Landlord in fulfilling Tenant's obligations hereunder, plus ten percent (10%) for Landlord's supervision and administration, said amount to be payable upon demand as Additional Rent.

#### 5.3 Requirements of Law.

Any modifications, alterations or improvements mandated by any applicable federal, state or local law which relates to the components of the Premises which Landlord is required to repair pursuant to Section 5.1 above shall be made by Landlord, at its own cost and expense; provided, however, if any such law applies solely by virtue of Tenant's specific use of the Premises, Tenant shall make such modification, alteration or improvement. Any modifications, alterations or improvements mandated by any applicable federal, state or local law which relates to the components of the Premises which Tenant is required to repair pursuant to Section 5.2 above shall be made by Tenant, at its own cost and expense in accordance with the provisions of Section 5.4 below.

#### 5.4 Tenant's Alterations.

Tenant shall have the right, at its sole expense, from time to time, to redecorate the Premises and to make such other interior, non-structural alterations and improvements as Tenant shall deem expedient or necessary for its purposes so long as same do not affect any systems serving other premises at the Shopping Center; provided, however, if the cost of any such alterations exceeds the sum of \$10,000.00 in any one year, Landlord's consent thereto shall be required. Any alterations affecting the structural integrity or exterior of the Premises shall be subject to Landlord's prior approval, which approval shall be given by Landlord in its sole discretion. If Tenant's net worth is less than \$100,000,000.00, Tenant shall provide to Landlord, prior to the commencement of any such structural or exterior alterations or improvements costing in excess of \$50,000.00, a payment and performance bond issued by a bonding company acceptable to Landlord and naming Landlord as an additional obligee. Within thirty (30) days of the completion of any alteration or improvement by Tenant, Tenant shall deliver to Landlord as-built drawings depicting any such alteration or improvement. All such alterations performed by Tenant shall be completed by Tenant in accordance with the provisions of Section 4.2 above.

#### 5.5 Surrender of Premises.

At the expiration of or sooner termination of the Term, Tenant shall peaceably surrender the Premises in the same condition of cleanliness, repair and sightliness as the Premises was in upon the Rent Commencement Date, reasonable wear and tear and damage by fire or casualty excepted. At such time, Tenant shall surrender all keys for the Premises to Landlord at the place then fixed for the payment of rent and shall inform Landlord of all combinations on locks, safes and vaults, if any, in the Premises. Tenant shall in accordance with Section 11 remove all its trade fixtures (excluding dressing rooms but including any cash register desk and slat wall) before surrendering the Premises and shall repair any damage to the Premises caused thereby. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the Term.

### 6. COMMON AREAS

#### 6.1 Tenant's Right to Use The Common Areas.

Landlord grants to Tenant, its employees and invitees, in common with other tenants and occupants of the Shopping Center and their business invitees the right to use all of the sidewalks, access roads, driveways, parking areas, alleys, service areas including loading and unloading facilities (other than any loading area which is designed for use with a particular tenant's premises), and other natural areas, landscaping, if any, and other facilities of the Shopping Center designed for use by all occupants of the Shopping Center (hereinafter referred to as the "Common Areas"). Landlord reserves the right to dedicate any of the Common Areas to use by the public and to increase, eliminate, reduce or change the number, type, size, location, elevation, nature and use of the Common Areas or of the buildings comprising the Shopping Center; make changes, additions, subtractions, alterations or improvements in and to such Common Areas; withdraw portions of the Shopping Center from the Common Areas or add Common Areas to the Shopping Center, including non-contiguous parcels for parking and other shopping center purposes; and to construct buildings, kiosks and other improvements in the Common Areas; provided, however, Landlord agrees, except as may be required by applicable law, (i) not otherwise to change any other portion of the Common Areas in such a manner so as to materially and adversely affect the visibility of or access to the Premises without the consent of Tenant, and (ii) if such changes render the Premises unusable for the conduct of the Tenant's business for more than forty-eight (48) consecutive hours following Tenant's notice thereof to Landlord, then all Minimum Annual Rent shall be abated until Tenant's use of the Premises is restored.

#### 6.2 Control of Common Area.

All Common Areas shall at all times be subject to the exclusive control and management of Landlord, and Landlord shall have the right from time to time to establish, modify and enforce rules and regulations with respect to all Common Areas, which rules and regulations will be uniformly applied. Tenant agrees to abide by and conform with such rules and regulations and to cause its concessionaires and suppliers, officers, agents, employees and independent contractors so to abide and conform.

## 7. TENANT'S COVENANTS

Tenant covenants and agrees as follows:

### 7.1 Manner of Use of Premises.

Tenant shall occupy the Premises, conduct its business and control its agents, employees, invitees and visitors in such a manner as is lawful and reputable and does not create a nuisance or disrupt other tenants or customers of the Shopping Center. Tenant agrees to obtain any licenses and permits required for any use made of the Premises by Tenant. Tenant shall not permit any operation which emits any odor or matter which intrudes into other portions of the Shopping Center, place or permit any radio, television, loudspeaker or amplifier on the roof or outside the Premises or where the same can be seen or heard from outside the Premises, place any antenna, awning or other projection on the exterior of the Premises, use any apparatus or machine which makes undue noise or causes vibration in any portion of the Shopping Center or otherwise interferes with, annoys or disturbs any other tenant in its normal business operations or Landlord in its management of the Shopping Center. Tenant shall neither permit any waste on the Premises nor allow the Premises to be used in any way which would, in the reasonable opinion of Landlord, be extra hazardous on account of fire or which would in any way increase or render void the fire insurance on the Shopping Center. Tenant shall comply with all laws and ordinances and all rules and regulations of governmental authorities and all recommendations of the Association of Fire Underwriters with respect to the use or occupancy of the Premises by the Tenant; will cause all electrical, plumbing and other mechanical facilities to be inspected and approved by the appropriate inspection services or government agencies; and Tenant further agrees to supply, maintain, repair and replace for the Premises at Tenant's own cost and expense, any fire extinguishers or other fire prevention equipment and safety equipment required by the aforementioned rules, regulations and the Association of Fire Underwriters throughout the Term. Tenant shall keep the Premises clean, orderly, sanitary and free from objectionable odors (and shall ventilate the Premises accordingly) and from termites, insects, vermin and other pests. Any program of extermination and the company or person performing the same shall be subject to Landlord's approval.

### 7.2 Storefront Alterations; Signs.

Tenant shall not, without Landlord's prior written consent, make any changes to the storefront, install any exterior lighting, decorations or paintings, or erect or install any signs, window or door lettering, placards, decorations or advertising media of any type which can be viewed from the exterior of the Premises; provided, however, that Tenant may, subject to the following provisions of this Section 7.2, place professionally prepared, interior window signs without Landlord's prior written consent. All signs, lettering, placards, window displays, decorations and advertising media shall conform in all respects to the OEA and all valid applicable laws and regulations, and shall be subject to the prior approval of Landlord as to construction, method of attachment, size, shape, height, lighting, color and general appearance; provided, however, Landlord approves Tenant's signage attached hereto as Exhibit G ("Tenant's Standard Signage"), subject to Tenant's receipt of all required governmental permits and approvals and compliance with the OEA. All signs, both interior and exterior, shall be designed, constructed and installed at Tenant's sole cost and expense, shall be tastefully and professionally done, and shall be kept in good condition and in proper operating order at all times. The use of hand-scribed signs is expressly prohibited. Tenant shall, at Tenant's sole cost and expense, remove all signs at the termination of this Lease and promptly repair any damage (including holes) caused by such signs, and the removal shall be in such manner as to avoid injury, defacement or overloading of the Premises. Tenant shall be responsible for the repair, painting, and, if necessary, replacement of the building fascia surface where signs are attached.

### 7.3 Use of Sidewalks/Common Areas.

Except as hereinafter provided in this Section 7.3, Tenant shall not conduct business operations on the sidewalks in front of the Premises or in the Common Areas. Tenant agrees to keep the Premises and the sidewalks and the walkways adjacent to the Premises and any loading platform and service area used by Tenant clear and free from any rubbish and dirt and to store all trash and garbage within the Premises in adequate containers so as not to be visible to the public nor to create any health or fire hazard and arrange for the regular pickup of such trash or garbage at Tenant's expense.

Provided Tenant is not in default of any terms or conditions of this Lease, Tenant shall have the right, at Tenant's sole cost and expense, subject to and in accordance with the OEA and all laws, to use the sidewalks adjacent to the Premises for the display and/or sale of merchandise at retail, provided that no such display and/or sale of merchandise shall (i) occur more than four (4) times in any one (1) calendar year, (ii) exceed seven (7) days in duration per each such occurrence, (iii) unreasonably interfere with pedestrian traffic upon the sidewalk area, or (iv) leave less than five (5) feet of unobstructed sidewalk area for pedestrians to utilize. Landlord and Tenant acknowledge that the sidewalk upon which such display and/or sale of merchandise will be located is part of the Common Areas which all tenants in the Shopping Center are permitted to utilize. Therefore, in the event that any other tenant objects to such display and/or sale of merchandise, Tenant shall, within two (2) days after receipt of written notice from Landlord, terminate its use of such display and/or sale of merchandise and remove any items placed outside the Premises for use in such display and/or sale of merchandise, all at Tenant's sole cost and expense. In the event that Tenant fails to remove its any items within the two (2) day time period, or fails to comply with any other condition or requirement provided herein, Landlord shall have the right to remove all items from such display and/or sale of merchandise and store said items, all at Tenant's cost and expense. In such event, Tenant shall reimburse Landlord upon demand for any costs incurred in the removal or storage of such items, and said reimbursement shall be deemed additional rent under this Lease. In any event, Tenant shall keep the related areas free and clear of all trash, refuse and debris at all times.

#### 7.4 Hazardous Materials.

Without first obtaining Landlord's written consent, neither Tenant, nor any of its agents, employees, licensees, contractors or invitees shall cause or permit any Hazardous Materials to be stored, handled, treated, released or brought upon or disposed of on the Premises; provided, however, Tenant shall be entitled to use such Hazardous Materials as typically used by responsible retailers operating retail businesses in first class retail shopping centers provided Tenant shall comply with any and all applicable laws, ordinances, rules, regulations and requirements respecting the storage, handling, treatment, release, disposal, presence or use of such permitted Hazardous Materials. Tenant hereby agrees to indemnify, defend and hold Landlord harmless from and against any and all claims, actions, administrative proceedings, judgments, damages, penalties, costs, expenses, losses and liabilities of any kind or nature that arise (indirectly or directly) from or in connection with the presence (or suspected presence) or release (or suspected release), spill (or suspected spill) or discharge (or suspected discharge) of any Hazardous Materials (i) on the Premises at any time after the Delivery of Possession and until the expiration or sooner termination of this Lease, unless deposited by Landlord, or (ii) in the balance of the Shopping Center or elsewhere if caused by Tenant or any employee, agent, contractor or subtenant of Tenant. Without limiting the generality of the foregoing, the indemnity set forth above shall specifically cover any investigation, monitoring and remediation costs. Any sums expended by Landlord shall be reimbursed by Tenant as Additional Rent within thirty (30) days of demand therefor by Landlord. As used herein, the term "Hazardous Materials" shall mean in any hazardous or toxic substances, materials, wastes, pollutants and the like which are defined as such in, and/or regulated by (or become defined in and/or regulated by), any applicable local, state or federal law including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1801), the Clean Water Act (33 U.S.C. § 1251 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances (control Act (15 U.S.C. § 2601 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et seq.), the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), any other federal, state, local or foreign law or ordinance which is presently in effect or hereafter enacted relating to environmental matters, any rules and regulations promulgated under any of the foregoing, and any and all amendments to the foregoing (collectively, "Environmental Laws"). The provisions of this Section shall survive the expiration or sooner termination of this Lease.

Notwithstanding anything to the contrary contained herein, Tenant shall in no event be held liable or responsible (including, without limitation, for the removal or encapsulation thereof) for any Hazardous Materials existing in or upon the Premises prior to Delivery of Possession unless such Hazardous Materials were placed in or brought in or upon the Premises by Tenant. In the event any legal requirement or governmental entity requires the Premises to be inspected, tested or surveyed for the presence of any Hazardous Materials prior to or during Tenant's occupancy of the Premises, Landlord, at its sole cost and expense, shall perform such required activities. To Landlord's actual knowledge and except as is specifically set forth in that certain Phase I Environmental Audit of Selected Properties at the West Philadelphia Empowerment Zone performed by Environmental Research Associates,

Inc., dated December 19, 1998, and Phase I Environmental Site Assessment performed by Penmoni Associates Inc. for The Goldenberg Group, Inc., dated April 19, 2000, Landlord represents and warrants and agrees that, as of the date hereof and the date of Delivery of Possession, the Premises is and will be free from Hazardous Materials which violate, are required to be removed or remediated by or give rise to any liability under Environmental Laws.

#### 7.5 Utilities.

Landlord shall provide all utility lines, with separate metering or sub-metering, to the Premises. Tenant shall be responsible for obtaining water, gas, electric, telephone and all other utility services directly from the utility supplier and paying all applicable charges with respect thereto. Landlord shall have no liability for stoppages or damage from or to the utility lines servicing the Premises unless caused by the acts or omissions of Landlord, or its agents, contractors or employees; provided, however, if any essential utility services to be supplied by Landlord under this Lease are interrupted as a result of Landlord's negligence, and as a result of such cessation of service, the Premises is rendered untenable (meaning that Tenant is unable to use or gain reasonable access to the Premises for purposes of conducting Tenant's business therein), and Tenant provides written notice of such interruption to Landlord, Tenant shall be entitled to an equitable abatement of Minimum Annual Rent, allocable to the affected portion of the Premises commencing on the third (3<sup>rd</sup>) consecutive day following the date on which Tenant provided Landlord notice that the Premises have been rendered untenable and ending on the date such essential services are restored. If any such utilities are not separately metered or assessed or only partially separately metered or assessed and are used in common with other tenants or occupants of the Shopping Center, Tenant shall pay to Landlord an apportionment of such charges for utilities used in common based on square footage of floor space leased to or occupied by each tenant or occupant using such common facilities, in addition to Tenant's payments of separately metered charges hereunder. In the event any utilities are not separately metered or assessed Tenant shall reimburse Landlord, as Additional Rent, for such costs within thirty (30) days following Tenant's receipt of any such bill therefor. Tenant's obligation to pay for all utilities consumed on the Premises shall commence on the Lease Commencement Date.

#### 7.6 Compliance with Laws.

Tenant shall use and occupy the Premises in compliance and cause the Premises to comply with all applicable laws, rules, ordinances, regulations and related covenants applicable to the Premises, including without limitation, the Americans With Disabilities Act of 1990.

### 8. INDEMNITY AND WAIVER OF CLAIMS

#### 8.1 Indemnity.

Except as provided in Section 12.3.2, Tenant shall defend, indemnify and save harmless Landlord and its agents and employees against all costs, damages or claims, whether for personal injury or property damage, (i) occurring on the Premises after the Lease Commencement Date (except if caused by any act or omissions of Landlord, its agents, contractors, invitees or employees), (ii) arising out of any default by Tenant hereunder; (iii) arising out of any act or omission of Tenant, its agents, contractors, invitees or employees in the Shopping Center, but outside the Premises; or (iv) occurring on the Premises prior to the Lease Commencement Date, but only if caused by any act or omission of Tenant, its agents, contractors, invitees or employees. Tenant shall, at its own expense, defend all actions brought against Landlord, its agents or employees for which Tenant is responsible for indemnification hereunder, and if Tenant fails to do so, Landlord (at its option, but without being obligated to do so) may, at the cost and expense of Tenant and upon notice to Tenant, defend such actions, and Tenant shall pay and discharge any and all judgments that arise therefrom.

#### 8.2 Waiver of Claims.

Tenant waives all claims against Landlord, its agents and servants and agrees to indemnify and hold it and them harmless for loss of life, damage to person or property sustained by Tenant or any other occupant of Premises or of any other part of Shopping Center or by its or their agents servants and employees resulting directly or indirectly out of the condition of Premises or Shopping Center or resulting from any accident or occurrence in or

about Premises or Shopping Center (without regard to the cause or claimed cause thereof whether such loss of life, damage to person or property is due or is claimed to be due to any negligence including gross negligence or other act or failure of Landlord, or its officers, agents or employees occurring prior to or following the execution of this Lease) or resulting directly or indirectly from any act or neglect of any Tenant or occupant of Shopping Center or of any other person. All property belonging to Tenant or any occupant of the Premises or Shopping Center shall be thereon at the risk of Tenant or such other person only and Landlord shall not be liable for damage thereto or loss, theft or misappropriation thereof. Tenant shall be responsible for all goods or property of any third party left upon Premises.

## 9. USE OF PREMISES

### 9.1 Use.

Subject to the OEA, the EOP, the primary use exclusives applicable to the Shopping Center as set forth on Exhibit F attached hereto (the "Shopping Center Exclusives") and any future exclusive uses or prohibitions granted to any tenant or occupant of the Shopping Center (each a "Future Exclusive"), and provided that each such Future Exclusive does not limit Tenant from engaging in Tenant's Permitted Use (as hereinafter defined in this Section 9.1), the Premises shall be used by Tenant or any permitted Transferee (as hereinafter defined in Section 10) for the retail sale of plus sized women's clothing fashions, including shoes and related accessories ("Tenant's Permitted Use"), and for no other purpose during the entire Term.

### 9.2 Exclusives and Prohibited Uses.

In no event shall Tenant use any portion of the Premises in violation of the EOP, any of the Shopping Center Exclusives or any Future Exclusive.

### 9.3 Opening and Operating Requirement.

Promptly following the Lease Commencement Date, Tenant covenants and agrees to complete Tenant's Work and thereafter open for business in the entire Premises on and as of the Rent Commencement Date as a typical "Ashley Stewart" retail store for Tenant's Permitted Use, fully fixtured, stocked and staffed. Thereafter, Tenant shall continuously operate the entire Premises as a typical "Ashley Stewart" retail store for Tenant's Permitted Use during commercially reasonable hours, for at least fifty (50) hours each calendar week for a period of no less than ten (10) years (the "Required Operating Period"). Tenant recognizes it is a material consideration to Landlord that Tenant produce the maximum Gross Sales possible from the Premises during the Required Operating Period and thereafter throughout the remainder of the Term. In addition to Landlord's remedies as provided herein and at law as a result of Tenant's breach of its covenants of this Section 9.3, Tenant agrees that Landlord shall be entitled to enforce this covenant using any and all equitable remedies, including the remedy of specific performance.

### 9.4 Recapture.

Following the Required Operating Period, Landlord shall have the right to terminate this Lease by giving Tenant notice (the "Recapture Termination Notice") at anytime after either of the following events have occurred: (a) Tenant ceases to operate its business in the Premises for a period of sixty (60) consecutive days; or (b) Tenant notifies Landlord that Tenant has ceased operating its business in the Premises and that Tenant does not intend to re-open for business in the Premises. The Recapture Termination Notice shall contain the date upon which this Lease shall terminate, which date shall occur no later than one hundred twenty (120) days following the date of the Recapture Termination Notice. Upon such termination of this Lease, Tenant shall vacate the Premises and surrender and deliver exclusive possession thereof to Landlord in the manner and condition provided for in Section 5.5 above. Notwithstanding the foregoing, the failure of Landlord to exercise its termination right after the occurrence of either event in clauses (a) or (b) above or a re-opening of Tenant's business after the date of the Recapture Termination Notice but before the termination of this Lease, shall not constitute a waiver of Landlord's rights to exercise its termination right in accordance with the provisions of this Section 9.4 in the event of a subsequent occurrence of either event in clauses (a) or (b) above.

## 10. ASSIGNMENT AND SUBLETTING

### 10.1 Assignment and Subletting by Tenant.

10.1.1. Tenant shall not assign or in any manner transfer this Lease or any interest therein, or sublet the Premises or any part thereof, or grant any license, concession or other right to occupy any portion of the Premises (each a "Transfer") without the prior written consent of Landlord, which consent shall not be unreasonably withheld by Landlord. In determining whether to grant or withhold its consent, Landlord shall be entitled to take into account all relevant facts and circumstances, including without limitation, the creditworthiness and operating experience of the proposed assignee, subtenant, licensee or concessionaire (each a "Transferee") and the compatibility of the operation by such Transferee with the other tenants or occupants in the remainder of the Shopping Center. Consent by Landlord to one or more Transfers shall not operate as a waiver of Landlord's rights as to any subsequent Transfers. Notwithstanding any Transfer, Tenant shall at all times remain fully liable for the payment of the rental herein specified and for compliance with all of its other obligations under this Lease, including without limitation, all obligations occurring during any Renewal Periods. Tenant shall remain primarily liable notwithstanding any modifications that may be made to the Lease in the future.

10.1.2. If Tenant is a corporation, partnership, limited liability company or other entity, the transfer of more than fifty percent (50%) of the ownership interests of Tenant, or of such lesser percentage which results in a transfer of control of Tenant, whether in one transaction or a series of related transactions, shall be deemed a Transfer for purposes of this Lease.

10.1.3. Notwithstanding anything to the contrary contained in this Lease, Tenant shall have the right, without Landlord's consent or approval, but subject to all other terms of this Lease to enter into an assignment or transfer of this Lease, or a sublease of the Premises (A) to any corporation or other business entity controlled by, in control of or under common control with Tenant or (B) to any corporation or entity which shall acquire all or substantially all of the stock or all or substantially all of the assets of Tenant as a result of a consolidation, merger or sale, provided the net worth of such corporation or entity is not less than Tenant's net worth immediately prior to such transaction. Tenant shall provide Landlord with reasonable advance notice of any transaction which is permitted pursuant to the terms of this Section 10.1.3 and within thirty (30) days of the consummation of such transaction, Tenant shall provide Landlord with a true and correct copy of the relevant assignment, sublease or license agreement.

10.1.4. If Tenant desires to effect a Transfer of all or any part of the Premises for which Transfer Landlord's consent is required hereunder, Tenant shall so notify Landlord at least thirty (30) days in advance of the date on which Tenant desires to effect such Transfer. Tenant shall provide Landlord with (a) a copy of the proposed assignment, sublease or other document, (b) the proposed assignee or sublessee's name, address, contact names, number of stores and proposed use of the Premises, (c) financial statements for the three (3) most recent fiscal years for the proposed sublessee or assignee, (d) such other information as Landlord may request concerning the proposed sublessee or assignee to allow Landlord to make informed judgments as to the financial condition, reputation, operations and general desirability of the proposed Transfer and (e) a check in the amount of \$1,000.00 for Landlord's processing fees. Within thirty (30) days after Landlord's receipt of Tenant's notice of a proposed Transfer and all required information concerning the proposed Transferee, Landlord shall have the following options: (1) to cancel this Lease as to the Premises or portion thereof that is the subject of the proposed Transfer (whether the entire Premises or only a portion thereof, being the "Subject Portion"); (2) to consent to the proposed Transfer, and, if the rent due and payable by any Transferee under any such permitted Transfer (or a combination of the rent payable under such Transfer, plus any bonus or any other consideration or any payment incident thereto) exceeds the rent payable under this Lease for such space, Tenant shall pay to Landlord all such excess rent and other excess consideration within ten (10) days following receipt thereof by Tenant; or (3) to refuse to consent to the proposed Transfer, which refusal shall be deemed to have been exercised unless Landlord gives Tenant written notice providing otherwise. In the event that Landlord shall within said thirty (30) day period notify the Tenant of the Landlord's desire to exercise its option to terminate the Lease, then this Lease shall cease and terminate with respect to the Subject Portion on the sixtieth (60th) day following the date Landlord shall have exercised said option to terminate the Lease with respect to the Subject Portion or on such earlier date specified by Tenant in writing (and Tenant shall thereafter be relieved of all liability hereunder with respect to the Subject Portion, other than liabilities that have theretofore accrued hereunder), and Tenant shall on or before such date fully quit and vacate the subject

portion of the Subject Portion in accordance with the provisions of this Lease. In the event that Landlord consents to any Transfer, Tenant shall provide Landlord with duplicate original fully executed counterparts of all related assignment or sublease documents. Upon the occurrence of an Event of Default, if all or any part of the Premises has theretofore been the subject of a Transfer, Landlord, in addition to any other remedies provided by this Lease or provided by law, may, at its option, collect directly from the Transferee all rents becoming due to Tenant by reason of the Transfer, and Landlord shall have a security interest in all properties on the Premises to secure payment of such sums. Any collection of rent by Landlord directly from the Transferee shall not be construed to constitute a novation or a release of Tenant or any guarantor from the further performance of its obligations under this Lease or any guaranty.

#### 10.2 Subdivision.

In no event shall Tenant subdivide the Premises into separate and distinct units.

#### 10.3 Assignment by Landlord.

Landlord shall have the right to assign this Lease in connection with the transfer of the Landlord Parcel or any portion thereof, in which event Landlord shall be released as to all obligations accruing under this Lease as of and after the date of such transfer.

### 11. TENANT'S PROPERTY

All tables, counters, shelving and other equipment and all other trade and light fixtures installed by or at the expense of Tenant and all erections, additions and/or improvements not affixed to the Premises which were made to, in or on the Premises by and at the expense of Tenant and are susceptible of being removed from the Premises without damaging in any manner the structure of the Premises shall remain the property of Tenant and Tenant may, but shall not be obligated to unless Landlord so demands, remove the same or any part thereof at the end of the Term. In all events Tenant, at its sole cost and expense, shall make any repairs occasioned by such removal so as to return the Premises to good working order and condition. Any such tables, counters, shelving and other equipment and trade fixtures remaining in the Premises upon the expiration of the Term shall, at the option of Landlord, become the sole property of Landlord without any further action by Landlord; provided Landlord may, at its option, remove the same and restore the Premises at Tenant's cost and expense.

### 12. INSURANCE

#### 12.1 Landlord's Insurance.

12.1.1. Landlord shall, prior to the commencement of Landlord's Work and at all times during the Term, maintain insurance covering (i) Landlord's liability with respect to any construction that Landlord may perform in connection with the Premises or the Shopping Center and (ii) Landlord's liability for ownership, maintenance and use of the Common Areas including, without limitation, liability arising from any act or omission of Landlord or its agents relating to the Common Areas or by other tenants in the Shopping Center. Such insurance shall provide limits on a "per location" basis of not less than (a) \$2,000,000 with respect to injury to any one person, \$2,000,000 with respect to any one occurrence, and \$2,000,000 with respect to property damage arising out of any one occurrence, or (b) \$2,000,000 combined single limit coverage.

12.1.2. Landlord shall maintain "all risk" or "special form" property insurance covering the Premises and the remainder of the Landlord Parcel (excluding any portions that are covered by property insurance held by tenants or occupants) against loss or damage resulting from fire and other causes typically covered under a "Causes of Loss - Special Form" policy ("Landlord's Property Insurance"). Landlord Property Insurance shall be in amounts equal to the full replacement cost of all such included insurable items (subject to customary deductibles and exclusions from coverage).

#### 12.2 Tenant's Insurance.

12.2.1. Tenant shall maintain insurance covering (i) Tenant's liability with respect to any construction that Tenant may perform or cause to be performed in connection with the Premises; (ii) Tenant's liability for occupation and use of the Premises; and (iii) Tenant's contractual liability under Section 8.1 of this Lease. Such insurance shall provide limited coverage on a "per location" basis of not less than (a) \$2,000,000 with respect to injury to any one person, \$2,000,000 with respect to any one occurrence, and \$2,000,000 with respect to property damage arising out of any one occurrence, or (b) \$2,000,000 combined single limit coverage. Tenant shall also maintain umbrella coverage in the amount of at least \$5,000,000.

12.2.2. Tenant shall maintain "all risk" or "special form" property insurance covering any improvements or alterations to the Premises paid for or constructed by Tenant and all Tenant's personal property against loss or damage resulting from fire and other causes typically covered under a "Causes of Loss - Special Form" policy. Such insurance shall be in amounts equal to the full replacement cost of all such included insurable items (subject to customary deductibles and exclusions from coverage) and shall contain an agreed amount endorsement.

### 12.3 General Requirements.

12.3.1. The policies maintained by Tenant pursuant to Section 12.2 above shall (a) be on an occurrence basis, (b) provide primary coverage and not call upon any other insurance procured by other parties for defense, payment or contribution, (c) contain endorsements requiring thirty (30) days' (ten (10) days' in the event of non-payment of premiums) advance written notice to named insured of any cancellation or reduction in coverage, and (d) be issued by an insurance company or companies with a general policyholder's rating of not less than "A-" in the most current available Best's Key Rating Guide Property-Casualty, and licensed to do business in the Commonwealth of Pennsylvania. Any such policy may be a so-called blanket policy covering additional locations, provided that such coverage is not diminished or limited by virtue of such coverage being provided by a blanket policy as opposed to an individual policy. Prior to the Delivery of Possession, and at least fifteen (15) days prior to the expiration of any existing policy, Tenant will provide Landlord with certificates of required insurance. All policies which affect the Premises and the Common Areas carried by Tenant shall name Landlord (or any party designated by Landlord), in the case of property policies, as insured parties as their interest may appear, or in the case of liability policies, as additional insureds.

12.3.2. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant hereby waive and release each other, and their respective partners, officers, agents and employees, of and from any and all rights of recovery, claim, action or cause of action against each other, their partners, officers, agents and employees, for any injury or death or any loss or damage that may occur to the Premises, the Shopping Center, any improvements thereto or any of the contents thereof, to the extent that such loss or damage would be covered (without regard to any deductible) by the insurance required to be carried by Landlord and Tenant hereunder regardless of whether such insurance is actually carried, and regardless of cause or origin, including but not limited to negligence of Landlord or Tenant or their partners, officers, agents and employees. Because this Section 12.3.2 will preclude the assignment of any claim mentioned in it by way of subrogation or otherwise to an insurance company or any other person, each party to this Lease agrees immediately to give to each insurance company which has issued to it policies of insurance covering all physical loss written notice of the terms of the mutual waivers contained in this Section 12.3.2, and to have the insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of the mutual waiver contained in this Section. If either party's insurer refuses to provide the requested endorsements, the waiver and release of the party whose insurer fails to provide such endorsement shall be ineffective until such time as such endorsement is provided.

12.3.3. No more often than once every three (3) years during the Term, Landlord may require Tenant to raise its insurance limits to reasonable levels that are customarily carried by tenants operating comparable properties in the Commonwealth of Pennsylvania.

12.3.4. Tenant will not do, omit to do, or suffer to be done or keep or suffer to be kept anything in, upon or about the Premises which will violate the provisions of Landlord's policies insuring against loss or damage by fire or other hazards (including, but not limited to, public liability), which will adversely affect Landlord's all risk property or liability insurance premium rating or which will prevent Landlord from procuring such policies in companies acceptable to Landlord, provided Tenant is first given adequate notice of the

requirements of such policies. If anything done, omitted to be done or suffered to be done by Tenant, or kept or suffered by Tenant to be kept in, upon or about the Premises shall cause, by itself or in combination with other circumstances existing at the Shopping Center, the premium rate of all risk property or other insurance on the Premises or other property of the Shopping Center in companies acceptable to Landlord to be increased beyond the established rate from time to time fixed by the appropriate underwriters with regard to the use of the Premises for the purposes permitted under this Lease or to such other property in the Shopping Center for the use or uses made thereof, Tenant will pay the amount of such increase or, in the event that other circumstances existing at the Shopping Center shall have contributed to such increase, such equitable portion of such increase as reasonably determined by Landlord, as Additional Rent upon Landlord's demand and will thereafter pay the amount of such increase, as the same may vary from time to time, with respect to every premium relating to coverage of the Premises during a period falling within the Term until such increase is eliminated. In addition, if applicable, Landlord may at its option rectify the condition existing on the Premises which caused or was a contributing cause of the increased premium rate in the event that the Tenant should fail to do so after written notice and may charge the cost of such action to Tenant as Additional Rent, payable on demand. In determining whether increased premiums are the result of Tenant's use of the Premises, a schedule, issued by the organization making the insurance rate on the Premises, showing the various components of such rate, shall be conclusive evidence of the several items and charges which make up the all risk property insurance rate on the Premises.

### 13. CASUALTY

#### 13.1 Restoration.

Subject to the provisions of Section 13.3 below, in the event that the Premises shall be damaged or destroyed by fire or other casualty and Landlord nor Tenant elects to terminate this Lease as hereinafter provided, upon receipt of sufficient insurance proceeds Landlord shall proceed with reasonable diligence and at its sole cost and expense to rebuild and repair the Premises. Landlord's obligation to rebuild and repair under this Section shall be limited to the restoration of Landlord's Work substantially to the condition in which the same existed immediately prior to such casualty. Tenant agrees that promptly after completion of such work by Landlord, it will proceed with reasonable diligence and at its sole cost and expense to rebuild, repair, and restore Tenant's Work, including its signs, trade fixtures, equipment and other personal property.

#### 13.2 Rental Abatement.

Tenant agrees that during any period of reconstruction or repair of the Premises it will continue the operation of its business within the Premises to the extent reasonably practicable. During the period from the occurrence of the casualty until Tenant is able to open for business in the entire Premises, Tenant's obligation to pay Minimum Annual Rent and Tenant's Proportionate Share of Taxes and Tenant's Proportionate Share of Common Area Maintenance Costs shall be abated in the proportion that the square footage of the Premises which is not usable bears to the Gross Floor Area.

#### 13.3 Right to Terminate.

In the event of material damage to the Premises and/or Shopping Center to the extent that Landlord cannot rebuild the Premises and/or Shopping Center within one hundred eighty (180) days from the date of the occurrence of a fire or other casualty or in the event sufficient insurance proceeds are not available for restoration, Landlord shall have the right to terminate this Lease by written notice to Tenant within sixty (60) days of the occurrence of such casualty. Landlord agrees not to exercise this termination right in a fashion which is discriminatory against Tenant when compared to the treatment afforded similarly situated tenants.

In addition, in the event of material damage to the Premises and/or Shopping Center, to the extent that Landlord cannot, in its commercially reasonable opinion, rebuild the Premises and/or Shopping Center within one hundred eighty (180) days from the date of the occurrence of a fire or other casualty, Tenant shall have the right to terminate this Lease by written notice to Landlord within sixty (60) days of the occurrence of such casualty.

#### 13.4 Destruction at End of Lease Term.

Notwithstanding the provisions of Sections 13.1 through 13.3 of this Lease, if at the time the Premises is totally or partially destroyed the remainder of the Term is less than twenty-four (24) months and the cost to rebuild or restore the Premises would exceed fifty percent (50%) of the full replacement cost of the Premises, either Landlord or Tenant may terminate this Lease by providing written notice to the other party within thirty (30) days after the date of the casualty; provided, however, Tenant shall have the right to nullify Landlord's termination of this Lease pursuant to this Section 13.4 by giving Landlord written notice, within thirty (30) days after Tenant's receipt of Landlord's termination notice, that Tenant elects to exercise its right to extend the then current term of the Lease for a Renewal Period (if any such further election to extend the Term remains). If Tenant terminates this Lease, or if Landlord terminates this Lease and Tenant fails to extend the Term as provided above, this Lease shall terminate thirty (30) days after Tenant's receipt of Landlord's termination notice, or Landlord's receipt of Tenant's termination notice, whichever shall first occur.

#### 14. CONDEMNATION

##### 14.1 Substantial Taking.

In the event of a taking for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or sale in lieu thereof, Tenant shall have the right upon ninety (90) days notice to Landlord to terminate this Lease in the following circumstances: (i) if more than thirty percent (30%) of the Gross Floor Area is taken; (ii) if less than thirty percent (30%) of the Gross Floor Area is taken but the remainder of the Premises is not useable by Tenant in the operation of its business; or (iii) if a Substantial Portion of the Shopping Center is taken or sold in lieu thereof. As used herein, the term "Substantial Portion" of the Shopping Center is defined to be any of the following: (i) any taking or sale in lieu thereof which results in the loss of twenty percent (20%) or more of the parking spaces serving the Shopping Center (unless replacement parking is promptly provided by Landlord) or (ii) any taking which results in the loss of direct access over the Common Areas to and from the Premises and an adjacent public street or highway. If Tenant chooses not to terminate this Lease pursuant to this Section, Landlord shall forthwith, at its sole cost and expense, restore and reconstruct the Shopping Center, as nearly as possible to the same condition and usefulness as existed prior to such event, using such portion of the proceeds of such condemnation as may be required for such purpose. In the event of a taking, which does not result in a termination of this Lease, the Minimum Annual Rent, Additional Rent and any other charges provided herein shall be equitably adjusted.

##### 14.2 Insubstantial Taking.

In the event of a taking or sale in lieu thereof which does not result in a termination of this Lease, rent payable hereunder during the unexpired portion of this Lease shall be reduced in proportion to the area taken, effective on the date possession is taken by the condemning authority. Landlord shall make all necessary repairs or necessary alterations within the scope of Landlord's Work necessary to render the Premises an architectural whole.

##### 14.3 Award.

All compensation awarded for any taking (or the proceeds of private sale in lieu thereof) of the Premises or Common Areas shall be the property of Landlord and Tenant hereby assigns its interest in any such award to Landlord. Tenant shall have the right to claim any compensation as may be separately awarded or receivable by Tenant in Tenant's own right on account of any cost or loss Tenant may suffer for the removal of Tenant's merchandise, furniture, fixtures or equipment, the loss of the unamortized value of the improvements made pursuant to this Lease or any other element of special damage separately recoverable by Tenant, provided the filing of such claim does not adversely affect Landlord's claim.

#### 15. DEFAULT AND REMEDIES

##### 15.1 Events of Default by Tenant.

The occurrence of any one or more of the following events shall constitute an "Event of Default":

15.1.1. Tenant shall default in the payment of Minimum Annual Rent or any item of Additional Rent and such default shall continue for a period of five (5) days after the date upon which any such payment is due hereunder, provided, however, that with respect to the first such late payment each Lease Year (if any), Tenant shall not be in default hereunder unless such default shall continue for a period of five (5) days after the date upon which Tenant receives written notice that any such payment is due hereunder; or

15.1.2. Tenant shall default in the observance or performance of any of its covenants or obligations under this Lease (other than the payment of Minimum Annual Rent or Additional Rent), and shall not have cured such default within fifteen (15) days after written notice from Landlord of such default, or, if such default is susceptible to being cured but is of such a nature that it cannot be completely remedied within said fifteen (15) days, Tenant shall not (i) have promptly, upon the giving by Landlord of such notice, advised Landlord of Tenant's intention to institute all steps necessary to remedy such situation, (ii) have promptly instituted and thereafter diligently prosecuted to completion all steps necessary to remedy the same, and (iii) have completely corrected such default within a reasonable time after the date of the giving of said notice by Landlord and in any event prior to such time as would either subject Landlord or Landlord's agents to prosecution for a crime or cause a default under any lease or mortgage affecting the Shopping Center (which correction of such default shall in no event exceed sixty (60) days in the aggregate); or

15.1.3. Tenant shall fail to take occupancy of the Premises and open for business in the entire Premises on the Rent Commencement Date; or

15.1.4. Tenant vacates or abandons the Premises. As used herein, "abandonment" shall include, without limitation, Tenant's absence from the Premises for twenty (20) days or longer for reasons other than as permitted herein for casualty, condemnation or remodeling, whether or not Tenant may have left all or any part of its trade fixtures or other personal property in the Premises; or

15.1.5. Tenant or any guarantor or Tenant's obligations hereunder shall file a voluntary petition in bankruptcy or insolvency, or commence a case under the Federal Bankruptcy Code, or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law (foreign or domestic), or shall make an assignment for the benefit of creditors or shall seek or consent or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or any guaranty or of all or any part of Tenant's or guarantor's personal property; or

15.1.6. Within sixty (60) days after the commencement of any proceeding against Tenant or any guarantor or Tenant's obligations hereunder, whether by the filing of a petition or otherwise, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal bankruptcy act or any other present or future applicable federal, state or other statute or law (foreign or domestic), such proceeding shall not have been dismissed, or if, within sixty (60) days after the appointment of any trustee, receiver or liquidator of Tenant or any guarantor or of all or any part of Tenant's or any guarantor's personal property, without the consent or acquiescence of Tenant or any guarantor, such appointment shall not have been vacated or otherwise discharged, or if any execution or attachment shall be issued against Tenant or any guarantor or any of Tenant's or any guarantor's personal property pursuant to which the Premises, or any part thereof, shall be taken or occupied or attempted to be taken or occupied.

## 15.2 Remedies for Tenant's Default.

Upon the occurrence of any Event of Default Landlord may at its option pursue any one or more of the following remedies, without any additional notice or demand:

15.2.1. Commence dispossession, eviction or forcible detainer proceedings with or without the termination of this Lease.

15.2.2. Commence proceedings against Tenant for all amounts owed by Tenant to Landlord, whether as Minimum Annual Rent, Additional Rent, damages or otherwise.

15.2.3. Accelerate the balance of all Minimum Annual Rent, Additional Rent and other charges to become due throughout the Term, which monies shall be immediately due and payable, and Landlord may in its own name, but as agent for Tenant, assign, sublet or relet the Premises for any period equal to or greater or less than the remainder of the Term for any sum which Landlord may deem reasonable to any tenant Landlord may select, and for any use or purpose which Landlord may designate. If Landlord so sublets or assigns this Lease, Tenant hereby irrevocably constitutes and appoints Landlord as Tenant's agent to collect any rents due from such assignee or sublessee and apply the same to the Minimum Annual Rent, Additional Rent and other charges due hereunder without in any way affecting Tenant's obligation to pay any unpaid balance of Minimum Annual Rent, Additional Rent and other charges due hereunder. In the event of such assignment or subletting, Landlord shall apply the rents received therefrom to the obligation of Tenant hereunder until Landlord shall have recovered in full all amounts due and owing from Tenant to Landlord together with a service charge of ten percent (10%) to Landlord. Landlord shall be under no obligation whatsoever to assign, sublet or relet the Premises at any time or upon any specific terms or conditions.

15.2.4. Terminate the Term, in which event Tenant shall immediately surrender the Premises to Landlord. Tenant agrees to pay on demand the amount of all loss and damage which Landlord may suffer by reason of the termination of the Term under this Section or otherwise.

15.2.5. With or without termination of the Term, relet all or a portion of the Premises (either alone or together with additional space) on behalf of Tenant and receive directly the rent by reason of the reletting. Tenant agrees to pay Landlord on demand any deficiency that may arise by reason of any reletting of the Premises and Tenant agrees to reimburse Landlord upon demand for any expenditures made by it for remodeling or repairing in order to effect a reletting and for all other expenses incurred in connection with such reletting, including brokerage commissions and attorney's fees. Landlord shall not be liable for any failure to relet the Premises, in whole or in part, nor for any failure to collect any rent due from any such reletting.

15.2.6. Enter upon and take possession of the Premises, without being liable for prosecution of any claim for damages or for trespass or other tort. In the event that Landlord shall have taken possession of the Premises and pursuant to the authority herein granted, then Landlord shall have the right to keep in place and use any additions, alterations and improvements thereto. Landlord shall also have the right to remove from the Premises (without the necessity of obtaining a distress warrant, writ of sequestration, or other legal process) all or any portion of such furniture, trade fixtures, equipment, and other personal property located thereon and place same in storage at any premises within the County in which the Premises is located. In such event, Tenant shall be liable to Landlord for the reasonable costs incurred by Landlord in connection with such removal and storage and shall indemnify and hold Landlord harmless from all loss, damage, cost, reasonable expense, and liability in connection with such removal and storage.

15.2.7. Do or cause to be done whatever Tenant is obligated to do under the terms of this Lease, in which case Tenant agrees to reimburse Landlord on demand for any and all costs or expenses which Landlord may thereby incur. Tenant agrees that Landlord shall not be liable for any damages resulting to Tenant from effecting compliance with Tenant's obligations under this subparagraph, whether caused by the negligence of Landlord or otherwise.

15.2.8. Enforce the performance of Tenant's obligations hereunder by injunction or other equitable relief (which remedy may be exercised upon any breach or default or any threatened breach or default of Tenant's obligations hereunder).

15.2.9. SECTIONS 15.2.9.1 AND 15.2.9.2 BELOW SET FORTH WARRANTS OF AUTHORITY FOR AN ATTORNEY TO CONFESS JUDGMENT AGAINST TENANT. IN GRANTING THESE WARRANTS OF AUTHORITY TO CONFESS JUDGMENT AGAINST TENANT, TENANT HEREBY KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS TENANT MAY HAVE TO PRIOR NOTICE AND AN OPPORTUNITY FOR HEARING UNDER THE RESPECTIVE CONSTITUTIONS AND LAWS OF THE UNITED STATES AND THE

COMMONWEALTH OF PENNSYLVANIA BEFORE A JUDGMENT IS ENTERED OR EXECUTED THEREON.

15.2.9.1 Confession of Judgment for Rent. TENANT HEREBY EMPOWERS ANY PROTHONOTARY OR ATTORNEY OF ANY COURT OF RECORD IN THE COMMONWEALTH OF PENNSYLVANIA TO APPEAR FOR TENANT IN ANY AND ALL ACTIONS WHICH MAY BE BROUGHT FOR RENT AND/OR THE CHARGES, PAYMENTS, COSTS AND EXPENSES HEREIN RESERVED AS RENT, OR HEREIN AGREED TO BE PAID BY TENANT, AND IN SAID ACTIONS TO CONFESS JUDGMENT AGAINST TENANT FOR ALL OR ANY PART OF THE RENT SPECIFIED IN THIS LEASE AND DUE AND UNPAID, INCLUDING BUT NOT LIMITED TO ANY RENT DECLARED DUE AND PAYABLE PURSUANT TO THIS SECTION AND OTHER CHARGES, PAYMENTS, COSTS AND EXPENSES RESERVED AS RENT, TOGETHER WITH AN ATTORNEY'S COMMISSION OF FIVE PERCENT (5%) (BUT NOT LESS THAN \$5,000.00). SUCH AUTHORITY SHALL NOT BE EXHAUSTED BY ONE EXERCISE THEREOF, BUT JUDGMENT MAY BE CONFESSED AS AFORESAID FROM TIME TO TIME AS OFTEN AS ANY OF SAID RENT AND/OR OTHER CHARGES RESERVED AS RENT OR AGREED TO BE PAID BY TENANT SHALL FALL DUE OR BE IN ARREARS, AND SUCH AUTHORITY MAY BE EXERCISED AS WELL AFTER THE EXPIRATION OF THE TERM AND/OR DURING OR AFTER THE EXPIRATION OF ANY RENEWAL PERIOD.

15.2.9.2 Confession of Judgment for Possession. UPON THE EXPIRATION OF THE THEN CURRENT TERM OR THE EARLIER TERMINATION OR SURRENDER HEREOF AS PROVIDED IN THIS LEASE, IT SHALL BE LAWFUL FOR ANY ATTORNEY OF ANY COURT OF RECORD IN THE COMMONWEALTH OF PENNSYLVANIA TO APPEAR AS ATTORNEY FOR TENANT AS WELL AS FOR ALL PERSONS CLAIMING BY, THROUGH OR UNDER TENANT AND TO CONFESS JUDGMENT FOR THE RECOVERY BY LANDLORD OF POSSESSION OF THE PREMISES, FOR WHICH THIS LEASE SHALL BE ITS SUFFICIENT WARRANT, WHEREUPON, IF LANDLORD SO DESIRES, A WRIT OF POSSESSION OR OTHER APPROPRIATE WRIT UNDER THE RULES OF CIVIL PROCEDURE THEN IN EFFECT MAY ISSUE FORTHWITH, WITHOUT ANY PRIOR WRIT OR PROCEEDINGS; HOWEVER, IF SUCH PROCEEDING IS TERMINATED AND THE POSSESSION OF THE PREMISES REMAIN IN OR BE RESTORED TO TENANT, LANDLORD SHALL HAVE THE RIGHT FOR THE SAME DEFAULT AND UPON ANY SUBSEQUENT DEFAULT OR DEFAULTS, OR UPON THE TERMINATION OF THIS LEASE UNDER ANY OF THE TERMS OF THIS LEASE TO FURTHER CONFESS JUDGMENT FOR THE RECOVERY OF POSSESSION OF THE PREMISES AS HEREINABOVE PROVIDED.

15.2.9.3 Proceedings. Tenant hereby releases Landlord and any and all attorneys who may appear for Tenant from all errors in said proceedings and all liability thereof.

15.2.10. Avail itself of any other remedy available at law or in equity.

### 15.3 Miscellaneous.

No agreement to accept a surrender of the Premises and no act or omission by Landlord or Landlord's agents during the Term shall constitute an acceptance or surrender of the Premises or a termination of this Lease unless made in writing and signed by Landlord. No re-entry or taking possession of the Premises by Landlord shall constitute an election by Landlord to terminate this Lease unless notice of such intention is given to Tenant. No custom or practice which may develop between the parties in connection with the terms of this Lease shall be construed to waive or lessen either party's right to insist upon strict performance of the terms of this Lease, without written notice thereof to the other party. The receipt and acceptance by Landlord of Minimum Annual Rent and/or any items of Additional Rent, if any, with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No payment by Tenant or receipt by Landlord of a lesser amount than the Minimum Annual Rent or Additional Rent, if any, herein stipulated shall be deemed to be other than on account of the earliest Minimum Annual Rent or Additional Rent, if any, reserved hereby which is due and owing at the time such payment is received by Landlord. No endorsement or statement on any check or any letter accompanying any check or payment of any such rent shall be deemed in accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to remedy provided in this Lease. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy herein or by law

provided, but each such be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity or by statute.

16. TITLE MATTERS

16.1 Subordination.

Tenant hereby subordinates this Lease to any ground lease (including but not limited to the Ground Lease) or the lien of any mortgage or deed of trust now or hereafter placed upon Landlord's interest in the Shopping Center and to all renewals, modifications, amendments, consolidations, replacements and extensions thereof. The holder of any mortgage or deed of trust may also elect that this Lease shall have priority over such mortgage or deed of trust and upon notification by such holder to Tenant, this Lease shall be deemed to have priority over such mortgage or deed of trust whether this Lease is dated prior to or subsequent to the date of such mortgage. Tenant agrees to attorn to any ground lessor and to the holder of any such mortgage. Although the terms of this provision are intended to be self-operative and self-executing, Tenant agrees to execute such documentation as Landlord may reasonably require to confirm the terms of this Section.

16.2 Quiet Enjoyment.

Landlord covenants and agrees with Tenant that during the Term, upon Tenant paying the rent and observing and performing all of the terms, covenants and conditions on Tenant's part to be observed and performed hereunder, Tenant may peaceably and quietly have, hold, occupy and enjoy the Premises without hindrances or molestation from Landlord or any persons lawfully claiming through Landlord.

17. MISCELLANEOUS

17.1 Holding Over.

If the Premises are not surrendered upon the expiration or sooner termination of this Lease, such holding over shall not be deemed to extend the Term or renew this Lease or to have created or be construed as a tenancy and Landlord shall be entitled to evict or dispossess Tenant without the necessity of further notice. However, Tenant shall pay, until such time as Tenant complies with this Section, in monthly installments in advance, on the first day of each and every month of such holding over, (i) one hundred fifty percent (150%) of the monthly installment of Minimum Annual Rent payable during the last month of the Term; (ii) Tenant's Proportionate Share of Common Area Maintenance Costs and Tenant's Proportionate Share of Taxes; and (iii) all other Additional Rent due under this Lease. In addition to such monthly installments to be paid by Tenant during such holdover, Tenant hereby indemnifies Landlord against liability resulting from delay by Tenant in so surrendering the Premises, including any claims made by any succeeding tenant or prospective tenant founded upon such delay. Tenant's obligations under this Section shall survive the expiration or sooner termination of this Lease.

17.2 Waivers.

Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver, express or implied by either party at any time of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of such action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies which either party may have under this Lease or by operation of law, either at law or in equity, upon any breach shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other; and no one of them, whether exercised by such party or not, shall be deemed to be an exclusion of any other; and any two or more or all of such rights and remedies may be exercised at the same time.

17.3 Notices.

All notices and other communications authorized or required hereunder shall be in writing and shall be given by (i) mailing the same by certified mail or registered mail, return receipt requested, postage prepaid, (ii) hand delivery against a signed receipt or (iii) overnight courier providing for delivery against a signed receipt, and any such notice or other communication shall be deemed to have been given when received by the party to whom such notice or other communication shall be addressed, or on the date noted that the addressee has refused delivery or on the date that the notice is returned to sender due to the inability of the postal authorities to deliver, whichever shall first occur. If intended for Landlord, the same shall be mailed to the addresses hereinabove set forth in Paragraph J of the Fundamental Lease Provisions or such other address or addresses as Landlord may hereafter designate by notice to Tenant, and if intended for Tenant, the same shall be mailed to Tenant at the addresses hereinabove set forth in Paragraph J of the Fundamental Lease Provisions or to such other address or addresses as Tenant may hereafter designate by notice to Landlord. Landlord and Tenant acknowledge and agree that telephonic or verbal notice shall not be sufficient to satisfy the provisions of this Section 17.3 notwithstanding any provision of this Lease or presumption of law to the contrary.

#### 17.4 Attorney's Fees.

If either party hereto is made or becomes a party to any litigation commenced by or against the other party involving the enforcement of any of the rights and remedies of such party, or arising on account of the default of the other party in the performance of such party's obligations hereunder, then the prevailing party in any such litigation, or the party becoming involved in such litigation because of a claim against such other party, as the case may be, shall receive from the other party all costs and reasonable attorneys' fees incurred by such party at trial and on appeal in connection with such litigation.

#### 17.5 Force Majeure.

Notwithstanding any provision to the contrary contained herein, in the event that Landlord or Tenant shall be delayed or hindered in or prevented from the performance of any act (other than the payment of money) by reason of strikes, lockouts, unavailability of materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, the act, failure to act, or default of the other party, war or other reason beyond its control, then performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay. Lack of funds shall not be deemed to be a cause beyond control of either party.

#### 17.6 Estoppel Certificates.

Tenant agrees to execute and deliver to Landlord, within ten (10) days after any written request, an "estoppel certificate" stating the amount of rent due from Tenant hereunder, that this Lease remains in full force and effect without modification, the date to which rent has been paid, that Tenant has no set-offs against rent, and such other information concerning this Lease as Landlord may reasonably request; or, if this Lease has been modified, or if Tenant claims any set-offs against rent, the exact nature of the modifications and the precise amount of the set-offs. Such estoppel certificate may be relied upon by Landlord and by any prospective mortgagee or purchaser of the Premises.

#### 17.7 Recordation.

Neither party shall be entitled to record this Lease. Upon the expiration of the Term, Tenant agrees to execute a quitclaim deed and such other instruments as may be necessary to release any interest that Tenant may have in the Shopping Center.

#### 17.8 Invalidity of Particular Provision.

If any term or provision of this Lease or the application hereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected

thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

17.9 Interpretation.

No provision of this Lease shall be construed against or interpreted to the disadvantage of either Landlord or Tenant by any court or other governmental or judicial authority by reason of either Landlord or Tenant having or being deemed to have drafted, structured or dictated such provision.

17.10 Captions and Definitions.

The captions of the Sections of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease. The term "Landlord" and the pronouns referring thereto shall mean, where the context so admits or requires, the persons, firm or corporation named herein as Landlord or the mortgagee in possession for the time being of the land and building comprising the Premises. The word "rent" as used herein shall be deemed to include Minimum Annual Rent, Additional Rent and any other charges payable by Tenant under this Lease. Except as otherwise provided in this Lease, the terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither any provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

17.11 Brokerage.

Landlord and Tenant represent and warrant each to the other that each has not dealt with any real estate agent or broker in connection with this transaction and agree to indemnify and save each other harmless from and against all loss, cost and expense incurred by reason of any claim of any real estate agent or broker claiming by, through or under the indemnifying party, regardless of whether such claim is meritorious.

17.12 Entire Agreement.

This instrument contains the entire and only agreement between the parties, and no oral statement or representations or prior written matter not contained in this Lease shall have any force and effect. This Lease shall not be modified in any way except by a writing executed by both parties.

17.13 Authority.

Each party executing this Lease on behalf of Landlord or Tenant represents that he or she is duly authorized to execute this Lease on behalf of Landlord or Tenant, as the case may be, and that the execution and delivery of this Lease has been authorized by all necessary corporate or partnership action. Landlord and Tenant agree to provide the other upon request reasonable evidence confirming the existence of such authority.

17.14 Independent Covenants.

Tenant agrees that Tenant's covenants and obligations under this Lease shall be independent of Landlord's covenants and obligations under this Lease and that each such covenant and obligation is independent of any other covenant or obligation. Landlord's breach or non-performance of any of Landlord's covenants or obligations under this Lease shall not excuse Tenant of Tenant's covenants and obligations under this Lease and shall not be the basis for any defense, of any kind or nature whatsoever, to any suit by Landlord for Tenant's breach or non-performance of any of Tenant's covenants or obligations under this Lease (including, without limitation, Tenant's failure to pay Minimum Annual Rent, Additional Rent and other payments due under this Lease). All payments of Minimum Annual Rent, Additional Rent or other payments due under this Lease are absolutely and unconditionally due at the times set forth herein, without any right of set-off or deduction of any kind or nature whatsoever except as expressly provided to the contrary herein.

#### 17.15 Landlord's Consents.

Tenant hereby waives any claim against Landlord which it may have based upon any assertion that Landlord has unreasonably withheld or unreasonably delayed any consent or approval pursuant to this Lease. Tenant agrees that, notwithstanding anything contained in this Lease to the contrary, in the event Landlord refuses or fails to grant, or delays in the granting of, Landlord's consent or approval, Tenant's sole and exclusive remedy shall be an action or proceeding for specific performance, injunction or declaratory judgment. In the event Tenant is successful in any such action or proceeding, the requested consent or approval shall be deemed to have been granted; however, Landlord shall have no liability to Tenant for Landlord's refusal or failure to give, or delay in giving, any such consent or approval.

#### 17.16 Access.

17.16.1. Landlord, its representatives, and designees may enter the Premises at reasonable times under the circumstances, whether or not during business hours, to inspect the Premises, to enforce any provisions of this Lease, to make or cause to be made such repairs as Landlord may deem necessary to perform Landlord's obligations hereunder or to cure defaults of Tenant, to repair any utility lines or system or systems servicing other parts of the Shopping Center, to rectify any condition in the Premises adversely affecting other occupants of the Shopping Center or, upon prior reasonable notice to Tenant, to exhibit the Premises to others. If Tenant, its agents or employees shall not be present or shall not permit an entry into the Premises at any time when such entry shall be permissible, Landlord may use a master key (or master code, card or switch if Tenant's security system is other than conventional locks and keys), or, in the case of an emergency, forcibly enter the Premises. Nothing in this paragraph shall be deemed or construed to impose upon Landlord any obligation, responsibility or liability whatsoever for the care, maintenance or repair of the Premises or any part thereof.

17.16.2. During the six (6) months prior to the expiration of the Term, Landlord may place upon the Premises "For Rent" signs. Tenant shall permit such signs to remain.

#### 17.17 Tenant's Property.

Except as otherwise specifically permitted under this Lease, Landlord shall not be liable for any damage to property of Tenant or of others located in the Premises or in the Shopping Center, nor for the loss of or damage to any property of Tenant or of others by theft or otherwise. Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the Premises or Shopping Center or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause of whatsoever nature. Landlord shall not be liable for any such damage caused by other tenants or persons in the Premises, occupants of adjacent property or of the Shopping Center, or the public, or caused by operations in construction of any private, public or quasi-public work. Landlord shall not be liable for any latent or patent defect in the Premises or in the building of which they form a part unless due to substandard workmanship by Landlord, its contractors, agents or employees. All property of Tenant kept or stored on the Premises shall be so kept or stored at the risk of Tenant only and Tenant shall hold Landlord harmless from and hereby waives any claims arising out of damage to the same or damage to Tenant's business, including subrogation claims by Tenant's insurance carrier, unless such damage shall be caused by the willful act or gross negligence of Landlord, its employees, agents, or representatives.

#### 17.18 Singular and Plural; Exhibits.

Whenever herein the singular number is used, the same shall include the plural; and words of any gender shall include each other gender. The Exhibits hereto are hereby incorporated into this Lease and made a part hereof as if fully set forth herein. The terms, provisions and covenants contained in this Lease shall be covenants running with the land.

#### 17.19 No Representation.

Tenant expressly acknowledges that neither Landlord nor Landlord's agents have made or are making, and Tenant, in executing and delivering this Lease, is not relying upon, any warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Lease, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth in this Lease. The Site Plan is for the sole purpose of designating the size of the Premises and its approximate location. Landlord makes no representation as to the identity of other tenants leasing space in the Shopping Center. Landlord reserves the right to relocate other store units and to change the size and number thereof at its discretion.

17.20 Landlord's Liability.

If Landlord shall be in default under this Lease and, as a consequence of such default, Tenant shall recover a judgment against Landlord, such judgment shall be satisfied only out of the right, title and interest of Landlord in the Shopping Center, as the same may be encumbered, and neither Landlord nor any person or entity comprising Landlord shall be liable for any deficiency. In no event shall Tenant have the right to levy execution against any property of Landlord, nor of any person or entity comprising Landlord, other than Landlord's interest in the Shopping Center as herein expressly provided. This provision is not intended to be a measure or agreed amount of Landlord's liability with respect to any particular breach and shall not be utilized by any court or otherwise for the purpose of determining any liability of Landlord hereunder, except only as a maximum amount not to be exceeded in any event.

17.21 Time of Essence.

Time is of the essence of every obligation of Landlord and Tenant hereunder.

17.22 Mortgagee Protection Clause.

Tenant agrees to give any mortgagees and/or trust deed holders, by certified or registered mail, a copy of any notice of default served upon Landlord, provided that prior to such notice, Tenant has been notified in writing (by way of notice of assignment of rents and leases, or otherwise) of the addresses of such mortgagees and/or trust deed holders or it is a party with whom Tenant has signed a subordination and nondisturbance agreement. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease, then the mortgagees and/or trust deed holders have an additional thirty (30) days within which to cure such default, provided that if more time is required to complete such performance, the mortgagees and/or trust deed holders shall not be in default if they commence such performance within the thirty (30) day period and thereafter diligently pursue its completion, in which event, Tenant shall not exercise its remedies hereunder so long as the mortgagees and/or trust deed holders are diligently pursuing their remedies necessary to cure such default.

17.23 Acquisition.

Notwithstanding any other provision of this Lease to the contrary, in the event that the Shopping Center Parcel Acquisition Date does not occur on or before March 31, 2007, thereafter, until the Shopping Center Land Acquisition Date occurs, Landlord or Tenant may terminate this Lease upon written notice to the other and neither party hereunder shall have any further right or remedy against the other.

17.24 Submission of Lease to Tenant.

The submission by Landlord to Tenant of this Lease shall have no binding force or effect, shall not constitute an option for the Leasing of the Premises, nor confer any rights or impose any obligations upon either party until the execution thereof by Landlord and the delivery of an executed original copy thereof to Tenant or its representative.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written by their respective duly authorized officers.

LANDLORD:

WESGOLD, L.P. a Pennsylvania limited partnership

By: WesGold General, LLC, a Pennsylvania limited liability company

By:   
Kenneth N. Goldenberg, Manager

Witness: 

TENANT:

LARGE APPAREL OF PENNSYLVANIA, a Pennsylvania corporation

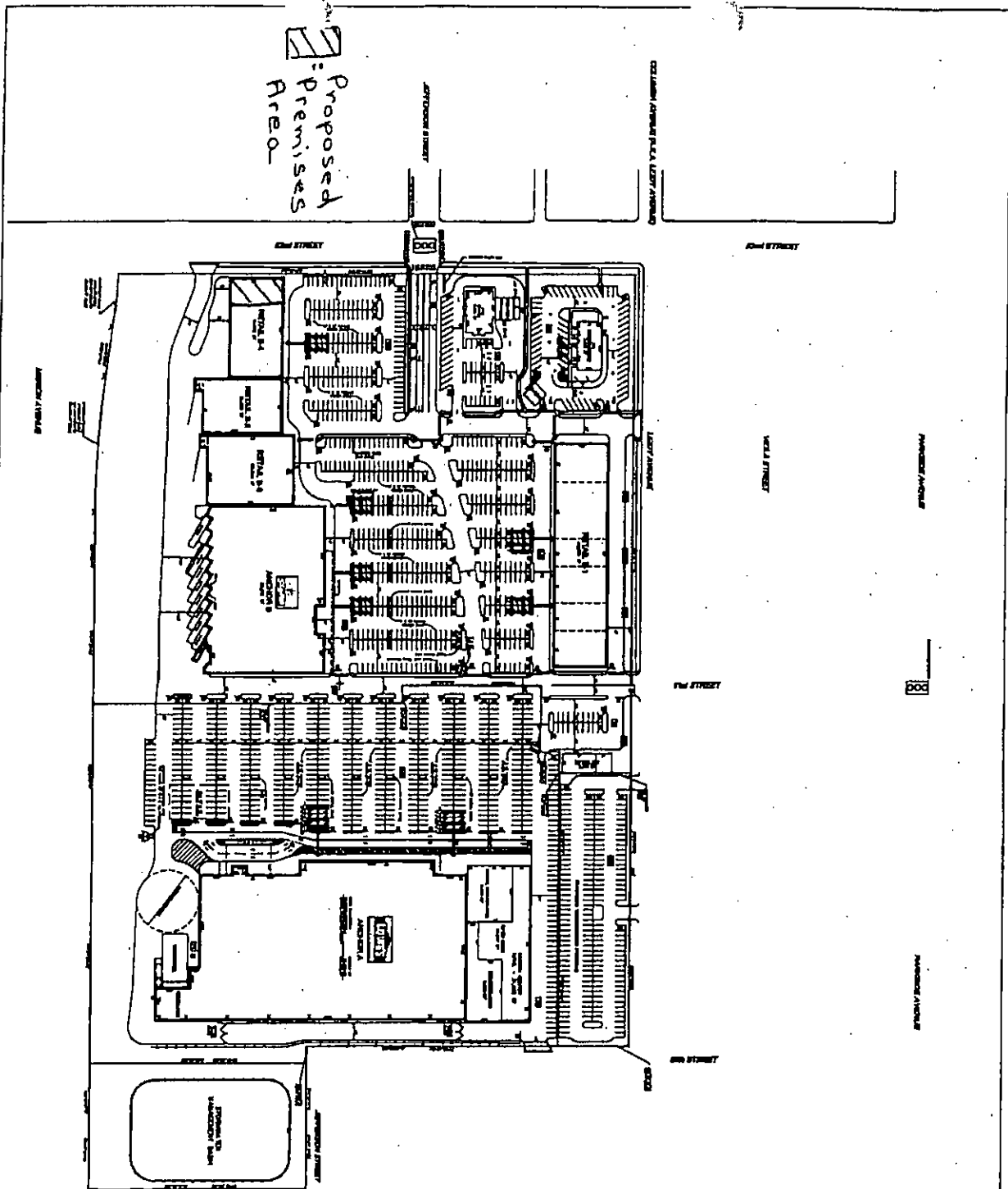
By: 

Name: Ethan Shapiro  
Title: President/CEO

Witness: 

**EXHIBIT A**

**SITE PLAN**

[illegible]

ADDITION 8	11,912.87
RETAIL 8-1	46,328.82
RETAIL 8-2	20,244.89
RETAIL 8-3	18,000.87
RETAIL 8-4	14,029.87
RETAIL 8-5	4,100.87
RE-INSTALLMENT	3,888.87
8-5: BONUS	4,029.87
TOTAL	264,157.82
TOTAL WITH AREA 2,351,486.42	

TRACT	LOT AREA	INCHES
LOWE'S TRACT	412328 AC	600
DEVELOPER'S TRACT "A"	411602 AC	600
DEVELOPER'S TRACT "B"	411603 AC	60
DEVELOPER'S TRACT "C"	412442 AC	60
DEVELOPER'S TRACT 2	409718 AC	42
TOTAL	1,711,093 AC	1281

[illegible]

**ZEN GROUP'S PARKWAY  
BUILDING AND  
FLUOR CORP.  
SILICON VALLEY, CA 94065**

**United States**  
**Department of Justice**

[illegible]

**PARKWEST  
TOWN CENTRE**

**TOWN CENTER**

LEASING SITE P

**EXHIBIT B**  
**LEGAL DESCRIPTION**

EXHIBIT B



12 July 2006  
25416

OVERALL SHOPPING CENTER  
PARKWEST TOWN CENTER  
PHILADELPHIA, PA

ALL THAT CERTAIN lot or piece of ground with the buildings and improvements thereon erected, SITUATE in the City of Philadelphia, Commonwealth of Pennsylvania, as shown on a plan titled "Subdivision Plan", prepared by Langan Engineering and Environmental Services, Inc., dated 06-28-06 and last revised 07-06-06 and being more particularly bounded and described as follows, to wit:

BEGINNING at the point of intersection of the easterly right-of-way line of 52<sup>nd</sup> Street (100 feet wide) and the southerly right-of-way line of Columbia Avenue (70 feet wide) and extending thence,

1. Along the aforementioned line of Columbia Avenue, South 62°24'47" East, a distance of 885.314 feet to a point; thence,
2. Leaving said line of Columbia Avenue South 27°35'13" West, a distance of 129.217 feet; thence,
3. South 62°24'47" East, a distance of 484.686 feet to a point in the westerly right-of-way line of 50<sup>th</sup> Street (60 feet wide)
4. Along said line of 50<sup>th</sup> Street, South 27°35'13" West, a distance of 463.282 feet to a point in the southerly right-of-way line of Jefferson Street (60 feet wide); thence,
5. Extending along said line of Jefferson Street, South 62°24'47" East, a distance of 254.164 feet; thence,
6. Leaving said line and extending South 27°35'13" West, a distance of 387.326 feet to a point in the southerly right-of-way line of a Conrail Easement (45 feet wide); thence,
7. Along said right-of-way line of a Conrail Easement, North 62°24'47" West, a distance of 1202.082 feet; thence,
8. Still along the same on the arc of a circle curving to the right having a radius of 1784.269 feet, an arc distance of 239.615 feet, and a central angle of 7°41'40" and being subtended by a chord bearing North 58°38'47" West, a chord distance of 239.435 feet; thence,
9. North 54°47'57" West, a distance of 88.781 feet to a point of curvature; thence,
10. On the arc of a circle curving to the left having a radius of 1074.779 feet, an arc distance of 95.571 feet, and a central angle of 5°05'41" and being subtended by a chord bearing North 57°20'48" West, a chord distance of 95.540 feet to a point on the aforementioned easterly right-of-way line of 52<sup>nd</sup> Street; thence,
11. Extending along said line of 52<sup>nd</sup> Street, North 27°35'13" East, a distance of 943.896 feet to the first mentioned point and place of Beginning.

Containing 31.496 acres of land more or less.

Shaun F. Higgins  
Professional Land Surveyor  
PA License No. SU-051088-E

\\sls\sls025\016071\Survey Data - 25416\016071\Descr\p\desc\Overall Prepared Shopping Center.doc

**EXHIBIT C**

**OEA**

West Town Center  
52<sup>nd</sup> Street and Jefferson Street  
Philadelphia, PA

**EXHIBIT C**

**OPERATION AND EASEMENT AGREEMENT**

**BETWEEN**

**LOWE'S HOME CENTERS, INC.**

**AND**

**WESGOLD, L.P.**

## TABLE OF CONTENTS

	<u>PAGE</u>
1. DEFINITIONS .....	2
1.1. Approving Party .....	2
1.2. Building .....	2
1.3. Building Area .....	2
1.4. Common Area .....	2
1.5. Constant Dollars .....	2
1.6. Floor Area .....	3
1.7. Governmental Authorities .....	3
1.8. Governmental Requirements .....	3
1.9. Occupant .....	4
1.10. Operator .....	4
1.11. Original Tract .....	4
1.12. Intentionally Deleted .....	4
1.13. Party .....	4
1.14. Permittee .....	5
1.15. Person .....	5
1.16. Intentionally Deleted .....	5
1.17. Restaurant .....	5
1.18. Tract .....	5
1.19. Utility Lines .....	6
2. EASEMENTS .....	6
2.1. Ingress, Egress and Parking .....	6

2.2. Utilities.....	8
2.3. Intentionally Deleted.....	10
2.4. Sign Rights and Easements.....	10
2.5. Restriction.....	11
3. CONSTRUCTION.....	11
3.1. General Requirements.....	11
3.2. Common Area.....	14
3.3. Building Improvements.....	17
3.4. Liens.....	19
4. MAINTENANCE AND REPAIR.....	19
4.1. Utility Lines.....	19
4.2. Common Area.....	20
4.3. Building Improvements.....	30
5. OPERATION OF THE SHOPPING CENTER.....	30
5.1. Uses.....	30
5.2. Lighting.....	37
5.3. Occupant Signs.....	38
5.4. Insurance.....	40
5.5. Taxes and Assessments.....	47
6. MISCELLANEOUS.....	47
6.1. Default.....	47
6.2. Interest.....	48
6.3. Estoppel Certificate.....	49

6.4. Notices .....	50
6.5. Approval Rights and Deemed Approval .....	51
6.6. Condemnation .....	51
6.7. Binding Effect .....	52
6.8. Construction and Interpretation. ....	52
6.9. Negation of Partnership .....	53
6.10. Not a Public Dedication .....	53
6.11. Excusable Delays .....	53
6.12. Mitigation of Damages .....	53
6.13. OEA Shall Continue Notwithstanding Breach.....	54
6.14. Time .....	54
6.15. No Waiver .....	54
6.16. Mortgage Subordination .....	54
6.17. Limited Guaranty .....	54
7. TERM .....	55
8. EXCULPATION.....	55
8.1. Casualty Insurance and Condemnation Proceeds.....	55
8.2. Hazardous Substances.....	55
8.3. Liability Insurance.....	56
8.4. Taxes, Assessments and Liens .....	56
8.5. Fraud or Misrepresentation .....	56
8.6. Equitable Relief; Costs .....	56

## EXHIBITS

Exhibit A-1	Legal Description of Developer Tract
Exhibit A-2	Legal Description of Outlot Tracts
Exhibit A-3	Legal Description of Lowe's Tract
Exhibit B	Legal Description of Shopping Center Tract
Exhibit C	Site Plan
Exhibit D	Pylon Sign
Exhibit E	Height Criteria

PARKWEST TOWN CENTER

OPERATION AND EASEMENT AGREEMENT

THIS OPERATION AND EASEMENT AGREEMENT ("OEA") is made and entered into to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2006, between LOWE'S HOME CENTERS, INC., a North Carolina corporation ("Lowe's") and WESGOLD, L.P., a Pennsylvania limited partnership ("Developer").

WITNESSETH

BACKGROUND

Developer has, pursuant to a Ground Lease dated the same date as this OEA by and between Developer and West Philadelphia Financial Services Institution, a Pennsylvania corporation (the "Ground Lease"), become the tenant of a certain tract of land described in Exhibits A-1 attached hereto, which tract is referred to herein as the "Developer Tract".

Developer has also, pursuant to the Ground Lease, become the tenant of two (2) separate tracts of land described in Exhibit A-2 attached hereto, which tracts are each individually referred to herein as an "Outlot Tract" and are collectively referred to herein as the "Outlot Tracts".

Lowe's has, on or before the effective date hereof, become the owner of a certain tract of land described in Exhibit A-3 attached hereto, which tract is referred to herein as the "Lowe's Tract".

Attached hereto as Exhibit B is an outbound description of the total of the Developer Tract, the Outlot Tracts and the Lowe's Tract, which combined parcels constitute and are hereinafter collectively referred to as the "Shopping Center Tract".

Attached hereto as Exhibit C is a site plan (the "Site Plan") for the Shopping Center (as defined below) on which are designated, among other things, the Developer Tract, each of the Outlot Tracts and the Lowe's Tract.

The signatories hereto intend to develop and operate their respective Tracts (as defined below in Section 1.18) in conjunction with each other as integral parts of a retail shopping complex on the Shopping Center Tract (the "Shopping Center"), but not a planned or common interest development/community, and in order to effectuate the common use and operation thereof they desire to enter into certain covenants and agreements, and to grant to each other certain reciprocal easements, in, to, over, and across their respective Tracts.

Notwithstanding anything contained herein to the contrary, all references in this OEA to "ownership" of any Tract or a portion thereof shall be deemed to refer to Developer's (or

any successor or assign of Developer) leasehold interest over the Developer Tract and the Outlot Tract pursuant to the Ground Lease and Lowe's fee ownership of the Lowe's Tract.

NOW, THEREFORE, in consideration of the premises, the covenants and agreements hereinafter set forth and in furtherance of the understanding of each Party (as defined below in Section 1.13), it is agreed as follows:

1. DEFINITIONS

1.1. Approving Party. "Approving Party" shall mean the Party designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this OEA. There shall be one Approving Party representing the Developer Tract and the Outlot Tracts and one Approving Party representing the Lowe's Tract. Each Approving Party shall have absolute discretion to make the decisions and/or give the approvals expressly designated to be made and/or given on behalf of the Original Tract (as defined below in Section 1.11) represented by such position regardless of whether the Approving Party then owns all or less than all of an Original Tract. The holder of the Approving Party position shall have the right to assign such position to any other Party owning a Tract within the same Original Tract as the transferring Approving Party, but if an assignment is not made, then such Approving Party position shall automatically be deemed assigned to the Party acquiring the last Tract owned by the transferring Approving Party. Any such assignment (other than a deemed assignment) of the Approving Party position shall be in writing with copies provided to all other Approving Parties, and to Operator (as defined below in Section 1.10). Such assignment, if any, shall be effective only when recorded in the county and state where the Shopping Center Tract is located. Developer and Lowe's shall each be the initial Approving Party for their respective Original Tracts.

1.2. Building. "Building" shall mean any permanently enclosed structure placed, constructed or located on a Tract (including (a) any garden center or similarly enclosed or semi-enclosed selling area and (b) any concrete pad area serving as the drive-thru area for a banking facility or restaurant, including any canopy and all support beams related to any such concrete pad area (each a "Concrete Pad Area")).

1.3. Building Area. "Building Area" shall mean the limited areas of the Shopping Center within which Buildings may be constructed, placed or located. Building Areas are designated on the Site Plan. One or more Buildings may be located within a Building Area. Building appurtenances such as stairs leading to or from a door, transformers, trash containers or compactors, canopies, supports, loading docks, truck ramps and other outward extensions of such structure (collectively, "Building Appurtenances") shall be located within a Building Area.

1.4. Common Area. "Common Area" shall mean all areas within the exterior boundaries of the Shopping Center, exclusive of (i) any Building and (ii) any Building Appurtenances.

1.5. Constant Dollars. "Constant Dollars" shall mean the present value of the U.S. dollars to which such phrase refers, as adjusted from time to time. An adjustment shall

occur on the first day of June of the sixth (6<sup>th</sup>) full calendar year following the date of this OEA, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The "Base Index Number" shall be the level of the Index for the year this OEA commences; the "Current Index Number" shall be the level of the Index for the year preceding the adjustment year; the "Index" shall be the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All items (1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Approving Parties shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

1.6. Floor Area. "Floor Area" shall mean the aggregate of the actual number of square feet of space contained on each floor within a Building, including any mezzanine or basement space or any garden centers, as measured from the exterior faces of the exterior walls or store front and/or the center line of any common walls; provided, however, that notwithstanding the foregoing, the following areas shall not be included in such calculation: (a) walk-in refrigerators outside of any Building; (b) space attributable to any multi-deck, platform, rack or other multi-level system used solely for the storage of merchandise which is located above ground floor (provided, however, the ground floor area below any such multi-deck, platform, pack or other multi-level system shall be included in the calculation of Floor Area); (c) any space used solely for Building utilities or mechanical equipment outside of any Building; (d) up to an aggregate of ten thousand (10,000) square feet of any mezzanine or basement space on each Original Tract used for office or storage purposes; or (e) any Concrete Pad Area. Within thirty (30) days after receipt of a request therefor, a Party shall certify to the requesting Party the amount of Floor Area applicable to each Building on its Tract. If any Party causes an as-built survey to be prepared with respect to any portion of the Shopping Center, such Party shall furnish a copy of such survey to the other Parties for informational purposes only.

During any period of rebuilding, repairing, replacement or reconstruction of a Building, the Floor Area of that Building shall be deemed to be the same as existed immediately prior to that period. Within sixty (60) days after completion of such rebuilding, repairing, replacement or reconstruction, the Party upon whose Tract such Building is located, shall cause a new determination of Floor Area for such Building to be made in the manner described above, and such determination shall be sent to any Party requesting the same.

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

1.8. Governmental Requirements. "Governmental Requirements" shall mean all applicable laws, statutes, ordinances, codes, rules, regulations, orders, and applicable judicial

decisions or decrees, as presently existing and hereafter amended, of any Governmental Authorities.

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

1.10. Operator. "Operator" shall mean the Person, if any, designated from time to time by the Approving Parties to maintain and operate the Common Area. The Person designated as Operator shall serve in such capacity until he resigns upon sixty (60) days prior written notice, or is removed by the Approving Parties. The Approving Parties hereby designate Developer or such Person affiliated with Developer as Developer may designate as the initial Operator, and Developer or such designated Person accepts such appointment. Subject to the provisions of Section 4.2(G) below, Developer may subsequently designate any Person affiliated with Developer as Operator provided that in no event shall such further designation release Developer from its obligations hereunder.

1.11. Original Tract. "Original Tract" shall mean each of the Developer Tract, the Outlot Tracts and the Lowe's Tract.

1.12. Intentionally Deleted.

1.13. Party. "Party" shall mean each signatory hereto and their respective successors and assigns during the period of the Person's ownership of any portion of the Shopping Center Tract. Each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the portion of the Shopping Center Tract owned by it which accrue during the period of such ownership, and such liability shall continue with respect to any portion transferred until the notice of transfer set forth below is given, at which time the transferring Party shall be released from the obligations of this OEA arising subsequent to the effective date on the transfer notice. A Party transferring all or any portion of its ownership interest in the Shopping Center Tract shall give notice to all other Parties and Operator of such transfer and shall include therein at least the following information:

- (i) the name and address of the new Party;
- (ii) a copy of the legal description of the portion of the Shopping Center Tract transferred; and
- (iii) if the transferee is the designated Approving Party (in such case where the transferee is designated an Approving Party, the procedures outlined in Section 1.1 above shall also apply).

If a Tract is owned by more than one Person, the Person or Persons holding at least fifty-one percent (51%) of the ownership interest in the Tract shall designate one of their

number to represent all owners of the Tract and such designated Person shall be deemed the Party for such Tract. Until the notice of transfer is given, the transferring Party shall (for the purpose of this OEA only) be the transferee's agent. For the purpose of this Section only, if the notice of transfer is given pursuant to the provisions of Section 6.4, the effective date of such notice shall be the date such notice is sent.

Nothing contained herein to the contrary shall affect the existence, priority, validity or enforceability of any lien permitted hereunder which is recorded against the transferred portion of the Shopping Center Tract prior to receipt of the notice and/or recordation of a deed.

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

- (i) Exhibiting any placard, sign, or notice;
- (ii) Distributing any circular, handbill, placard, or booklet;
- (iii) Soliciting memberships or contributions for private, civic, public, charitable or political purposes;
- (iv) Parading, picketing, or demonstrating; and

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

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

1.16. Intentionally Deleted.

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

1.18. Tract. "Tract" shall mean that portion of the Shopping Center Tract owned by a Party; provided that references to the "Developer Tract" or a "Tract", if applicable to the Developer Tract, shall be deemed to refer as well to each separately subdivided parcel comprising the Developer Tract so that each such lot or parcel shall be required independently to

comply with all requirements of this OEA, except to the extent specifically provided otherwise in this OEA.

1.19. Utility Lines. "Utility Lines" shall mean those facilities and systems for the transmission of utility services, including but not limited to, sanitary sewers, storm drains, water (fire and domestic), gas, electrical, telephone, communication lines and the drainage and storage of surface water. "Common Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to the Lowe's Tract and the Developer Tract. "Bilateral Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to two (2) of the Original Tracts. "Separate Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to only one Party or Tract. For the purpose of this OEA, the portion of a Utility Line extending between a Common Utility Line and a Building shall be considered a Separate Utility Line. Utility Lines installed pursuant to this OEA shall only provide service necessary for the development and/or operation of the Shopping Center.

## 2. EASEMENTS

### 2.1. Ingress, Egress and Parking.

Each Party hereby grants and conveys to each other Party for its use and for the use of its Permittees, in common with others entitled to use the same, during the term of this OEA, a non-exclusive easement for the passage and parking of vehicles over and across the parking and driveway areas of the grantor's Tract, as the same may from time to time be constructed and maintained for such use (the "Parking and Access Easement"), and a perpetual easement for the passage and accommodation of pedestrians over and across the parking, driveways, service drives and sidewalk areas of the grantor's Tract, as the same may from time to time be constructed and maintained for such use. In addition to and not in limitation of the provisions of the foregoing sentence and notwithstanding that this Agreement may otherwise terminate or expire, as long as any Party (i) complies with the provisions of Section 5.1 below, and either or (ii) does not place, allow or construct any Building except within the Building Areas on such Party's Tract, such Party shall perpetually be entitled to the benefits of the Parking and Access Easement. The easements herein established shall be appurtenant to and for the benefit of each grantee's Tract, and shall be binding on, enforceable against and burden each grantor's Tract. The easement rights contained in this Section 2.1(A) shall be subject to the following reservations as well as other provisions contained in this OEA:

- (i) Each Party reserves the right to close off such portion of the Common Area lying within its Tract for such reasonable period of time as may be legally necessary, in the reasonable opinion of such Party's counsel, to prevent the acquisition of prescriptive rights by anyone; provided however that any such closure shall be coordinated such that it does not occur during traditional high-volume retail

sales periods, such as Thanksgiving to Christmas and Easter, and further provided that prior to closing off any portion of the Common Area, as herein provided, such Party shall give written notice to each other Party of its intention to do so and shall attempt to coordinate such closing with each other Party so that no unreasonable interference in the passage of pedestrians or vehicles shall occur.

- (ii) Each Party reserves the right at any time and from time to time to exclude and restrain any Person who is not a Permittee from using its Tract.
- (iii) Subject to the joint maintenance provisions of Section 4.2(B) below, each Party reserves the right to erect temporary fences or barriers on the Common Area located on its Tract during any period of repair, maintenance and/or replacement to the Common Areas or any Building on its Tract; provided however, except in the event of an emergency, any such closure shall be coordinated such that it does not occur during traditional high-volume retail sales periods, such as Thanksgiving to Christmas and Easter and further provided that prior to closing off any portion of the Common Area, as herein provided, such Party shall give written notice to each other Party of its intention to do so and shall attempt to coordinate such closing with each other Party so that no unreasonable interference in the passage of pedestrians or vehicles shall occur.
- (iv) Notwithstanding anything to the contrary contained in this OEA, the Occupants of each of the Outlot Tracts and their Permittees shall have the sole and exclusive right to park vehicles within the individual Outlot Tract occupied by any such Occupant and each such Occupant and their Permittees shall have no further rights to park vehicles within the Shopping Center, it being understood that the easements granted in this Section 2.1 for the parking of vehicles within the Developer Tract and the Lowe's Tract shall not extend to the Occupants of the Outlot Tracts and their Permittees and the easements granted in this OEA for the parking of vehicles within each Outlot Tract shall not extend to the Occupants of the Developer Tract, the Lowe's Tract, the remaining Outlot Tract and each of their respective Permittees.

## 2.2. Utilities.

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

- (i) ground mounted electrical transformers;
- (ii) as may be necessary during periods of construction, reconstruction, repair, or temporary service;
- (iii) as may be required by Governmental Authorities or otherwise shown on the final land development plans for the Shopping Center approved by Developer, Lowe's and the applicable Governmental Authorities;
- (iv) as may be required by the provider of such service (provided that the imposition of extra cost for below ground placement shall not constitute a requirement);
- (v) fire hydrants;
- (vi) gas or utility meters on the sides of buildings;
- (vii) service lines serving gas or utility meters;
- (viii) emergency generators designed and screened in a commercially reasonable manner; and
- (ix) power poles located along the outside boundaries of the Shopping Center.

Except in connection with the initial construction of the Shopping Center, at least thirty (30) days prior to exercising the right granted herein, the grantee shall first provide the grantor with a written statement describing the need for such easement, shall identify the proposed location of the Utility Line, the nature of the service to be provided, the anticipated

commencement and completion dates for the work and shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by 5.4(C) hereof. Except as otherwise agreed to by the grantor and the grantee, any Party installing Separate Utility Lines or Parties installing Bilateral Utility Lines pursuant to the provisions of this subparagraph shall pay all costs and expenses with respect thereto and shall cause all work in connection therewith (including general clean-up and proper surface and/or subsurface restoration) to be completed as quickly as possible and in a manner so as to minimize interference with the use of the Common Area. Once installed, Separate Utility Lines and Bilateral Utility Lines shall be maintained in accordance with the provisions of Section 4.1(A) below. In addition, the grantee of any Separate Utility Line or grantees of any Bilateral Utility Line agree to defend, protect, indemnify and hold harmless the grantor or grantors, as the case may be from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the exercise of the right to install, maintain and operate any Separate Utility Line or Bilateral Utility Line.

(B) Except as may otherwise be agreed, the Parties (the "Cooperating Parties") electing to install a Common Utility Line shall obtain all permits and approvals and shall pay all costs and expenses with respect to the initial construction thereof. Once constructed, Common Utility Lines shall be maintained in accordance with the provisions of Section 4.1(B) below.

(C) The grantor shall have the right to relocate a Utility Line upon thirty (30) days' prior written notice, provided that such relocation:

- (i) shall not be commenced during each period from November 1<sup>st</sup> to January 15<sup>th</sup>;
- (ii) shall not interfere with or diminish the utility service to the grantee during the grantee's business hours; and if an electrical line/computer line is being relocated, then the grantor and grantee shall coordinate such interruption to eliminate any detrimental effects;
- (iii) shall not reduce or unreasonably impair the usefulness or function of such Utility Line;
- (iv) shall be performed without cost or expense to the grantee;
- (v) shall be completed using materials and design standards which equal or exceed those originally used; and
- (vi) shall have been approved by the provider of such utility service and the appropriate Governmental Authorities.

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

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

- (i) The Common Area grades and the surface water drainage/retention system for the Shopping Center shall be initially constructed in strict conformance with the details approved by the Approving Parties which approval shall occur simultaneously with the complete execution of this OEA; and
- (ii) No Party shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Tract if such alteration would materially increase the flow of surface water onto an adjacent Tract either in the aggregate or by directing the flow of surface water to a limited area or interfere with the drainage from the Adjacent Tract.

The surface water collection, retention and distribution facilities shall be deemed a Common Utility Line that serves all Parties and shall be maintained in accordance with the provisions of Section 4.1(B) below.

2.3. Intentionally Deleted.

2.4. Sign Rights and Easements. Developer hereby grants and conveys to Lowe's, its successors and assigns, for its use and for the use of designated Occupants of its Tract, a non-exclusive perpetual easement for the construction, reconstruction, replacement, operation, maintenance and repair of the pylon sign serving the Shopping Center (the "Pylon Sign") depicted on Exhibit D (the "Sign Exhibit"), including the right and privilege to place thereon or affix thereto sign panels (both sides), in each case consistent with the Sign Exhibit, over, under, upon and across the portions of the Developer Tract on which the Pylon Sign is to be situate, as identified on the Site Plan; together with reasonable access over, under, upon, through and across the Developer Tract to install, replace, maintain, repair and operate a Separate Utility Line pursuant to the terms and conditions set forth in Section 2.2 above in order to provide such sign structure and its panels with power to illuminate the same. The Parties acknowledge and agree that the rights in the immediately preceding sentence are to be exercised only if and to the extent (a) Developer and/or its successor fails for any reason to construct the Pylon Sign, (b) Operator fails for any reason to reconstruct, replace, operate, maintain or repair the Pylon Sign

(excluding sign panels) and/or (c) the Developer fails for any reason to reconstruct, replace, operate, maintain or repair the Pylon Sign (excluding sign panels) during any period during which there is no Operator and/or after the termination of this OEA; provided Developer or Operator, as the case may be, fails to cure the foregoing circumstances within thirty (30) days notice or such advance notice as is reasonably practicable in the event of an emergency of such failure. Upon ten (10) days notice to Operator, if any, Lowe's shall have the right to release the easement, and upon such release Lowe's shall remove its panel(s) and thereafter have no further rights, duties or responsibilities with respect to the Pylon Sign.

If the Pylon Sign location is no longer available for use because of a condemnation or governmental restriction (a) prior to the expiration of this OEA, a substitute Pylon Sign location may be approved by the Approving Parties, subject to the consent, which shall not be unreasonably withheld, of the Party owning the Tract to be burdened by the substitute Pylon Sign location, or (b) after the expiration of this OEA, the owner of the land upon which the sign structure is located shall designate a replacement area with comparable visibility as close to the original location as is reasonably possible. The Person then maintaining the sign structure shall be entitled to receive the portion of the condemnation award relating to the sign structure taken, including any relocation benefits, and such Person shall cause a new sign structure to be constructed in the replacement location in accordance with any design criteria approved by the grantees entitled to place panels on the sign structure pursuant to the easement grants. If the award received is for the sign structure is less than the cost to replace the sign structure, the grantees entitled to place panels on the sign structure shall pay the deficiency based on the panel area allocated to each pursuant to the easement grants, even if such panel area is not used. The award (whether paid separately or as part of a lump sum) attributable to each panel taken shall belong to the owner thereof.

During the term of this OEA, the construction, use and maintenance of the Pylon Sign structure shall be governed by the provisions of Section 5.3 below. The foregoing easement, together with the rights included therewith and otherwise set forth in this Section 2.4 and in Section 5.3 hereof, shall be for the benefit of each owner of a Tract and its successors and assigns and appurtenant to such Tracts and shall be binding on and burden the Developer Tract.

2.5. Restriction. No Party shall grant any easement for the benefit of any property not within the Shopping Center Tract, provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by a Party on its Tract to Governmental Authorities, quasi-governmental authorities, or public utilities in order to provide service to the Shopping Center.

### 3. CONSTRUCTION

#### 3.1. General Requirements.

(A) Each Party agrees that all construction activities performed or authorized by it within the Shopping Center shall be performed in compliance with all

Governmental Requirements. All construction shall utilize new materials, and shall be performed in a good, safe, workmanlike manner.

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

- (i) cause any unreasonable increase in the cost of constructing improvements upon another Party's Tract;
- (ii) unreasonably interfere with construction work being performed on any other part of the Shopping Center;
- (iii) unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Shopping Center by any other Party or its Permittees; or
- (iv) cause any Building located on another Tract to be in violation of any Governmental Requirements.

(C) Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys fees and cost of suit, arising out of or resulting from any construction activities performed or authorized by such indemnifying Party and also including any material increases in the costs of constructing improvements attributable to such indemnifying Party's construction activities; provided however, that the foregoing shall not be applicable to either events or circumstances caused by the negligence or willful act or omission of such indemnified Party, its licensees, concessionaires, agents, servants, employees, or anyone claiming by, through, or under any of them, or claims covered by the release set forth in Section 5.4(D).

(D) In connection with any construction, reconstruction, repair or maintenance on its Tract, each Party reserves the right, at its expense, to create a temporary staging and/or storage area in the Common Area or in the Building Area on its Tract at such location as will not unreasonably interfere with access between such Tract and the other areas of the Shopping Center (the "Temporary Storage/Staging Area"). Prior to the commencement of any work which requires the establishment of a Temporary Storage/Staging Area, unless such Temporary Storage/Staging Area is to be located by a Party on its respective Tract in the area designated as such on the Site Plan, a Party shall give at least thirty (30) days prior notice to the Approving Parties, for their approval, of the proposed location, provided, however, that if a business is operating on a Tract, then no other Party's Temporary Storage/Staging Area shall be located within one hundred (100) feet of such Tract, unless located within a Building Area, and if substantial work is to be performed, the constructing Party shall, at the request of any Approving Party, fence off the Temporary Storage/Staging Area. If the Approving Parties do not approve the proposed location of the Temporary Storage/Staging Area, the Party shall modify the

proposed location to satisfy the reasonable requirements of the Approving Parties. In connection with any Party's construction, reconstruction, repair or maintenance on its Tract, all storage of materials shall occur only in the Temporary Storage/Staging Area, the parking of construction vehicles, including vehicles of workers, shall occur only on the constructing Party's Tract, and all laborers, suppliers, contractors and others connected with such construction activities shall use only the access points located upon the constructing Party's Tract. In any event, the constructing Party shall, at such Party's sole cost and expense, apply for and secure any and all permits, licenses and approvals required by any governmental authority having jurisdiction over the Shopping Center in connection with such construction. Upon completion of such work, the constructing Party shall restore the affected Common Area to a condition equal to or better than that existing prior to commencement of such work.

(E) Each Party hereby grants and conveys to each other Party and to its respective contractors, materialmen and laborers a temporary license for access and passage over and across the Common Area of the grantor's Tract as shall be reasonably necessary for the grantee to construct and/or maintain improvements upon the grantee's Tract; provided, however, that such license shall be in effect only during periods when actual construction and/or maintenance is being performed and provided further that (i) the use of such license shall not unreasonably interfere with the use and operation of the remainder of the Shopping Center by any Party or its Permittees and (ii) such right for passage shall not be deemed as a storage area for construction materials or equipment. The Approving Parties reserve the right to designate reasonable locations of construction access ways to be used by any Party which are reasonably acceptable to such Party and if this occurs, such Party shall only use those so designated. Prior to exercising the rights granted herein, the grantee shall first provide the grantor with a written statement describing the need for such license, identify the area of use, and furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by Section 5.4(C) hereof. Any Party availing itself of the temporary license shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean the area, and restore and/or repair the affected portion of the Common Area to a condition which is equal to or better than the condition which existed prior to the commencement of such work. Notwithstanding the foregoing, in the event a dispute or threatened dispute arises between any of the contractors, subcontractors, laborers, suppliers and/or others connected with the construction, activities on any Tract or portion of a Tract (any such Tract or portion of such Tract, a "Labor Dispute Tract"), the owner of any other Tract that is not a Labor Dispute Tract shall have the right, at the sole cost of the owner of such Labor Dispute Tract to promptly construct, make available and enforce the use of a separate entrance to such Labor Dispute Tract for non-union employees, contractors, subcontractors, laborers and suppliers (and, if necessary, in Developer's or Lowe's (as the case may be) sole discretion, to construct fencing which separates any such entrance and such Labor Dispute Tract from the remainder of the Shopping Center), in order to promote labor harmony. Decisions concerning the time for implementing and the location of such a "reserve gate" shall be in the sole discretion of the Developer or Lowe's (as the case may be). In the event such a reserve gate is constructed as to the Labor Dispute Tract, the owner of the Labor Dispute Tract shall require its non-union employees, contractors, subcontractors, laborers and suppliers to only enter the Labor Dispute

Tract through such reserve gate, and the owner of the Labor Dispute Tract shall be liable for the failure to do so by any of its employees, contractors, subcontractors, laborers and suppliers. The cost, including but not limited to reasonable legal fees, of implementing and enforcing accessibility to the reserve gate shall be the responsibility of the owner of such Labor Dispute Tract (provided, however, the owner of the Labor Dispute Tract shall not be responsible for legal fees incurred by the owner of any other Tract in connection with such reserve gate if not due to any breach of the foregoing by the owner of such Labor Dispute Tract).

3.2. Common Area. The Parties have agreed that the Common Area shall be constructed as shown on the Site Plan, provided, however, no fence or other barrier which would prevent or unreasonably obstruct the passage of pedestrian or vehicular travel shall be erected or permitted within or across the Common Area except (i) in accordance with the provisions of Section 2.1 above, (ii) with respect to the limited curbing and other forms of traffic control depicted on the Site Plan, (iii) any permitted Temporary Storage/Staging Area or (iv) as may be required pursuant to Governmental Requirements. Contemporaneously with the construction of a Building upon its Tract, the constructing Party shall cause the Common Area on its Tract to be substantially completed no later than the day the first Occupant of such Tract opens for business with the public. Such work shall be done in accordance with Governmental Requirements, in a good and workmanlike manner and in accordance with good engineering standards; provided, however, the following minimum general design standards shall be complied with throughout the term of this OEA:

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

- (i) 2.5 footcandles at curb in front of the entrance of any Building;
- (ii) 2.5 footcandles at entry drives to the Shopping Center;
- (iii) 2.5 footcandles in the general parking area; and
- (iv) 1.0 footcandles at the perimeter of the parking areas.

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

(B) The slope in the parking area shall not exceed a maximum of three percent (3%), nor be less than a minimum of two percent (2%), the slope at all entrances to the Shopping Center shall not exceed a maximum of five percent (5%).

(C) All sidewalks and pedestrian aisles shall be concrete or other materials subject to the reasonable approval of the Approving Parties, the automobile parking

areas, drives, and access roads shall be designed at a minimum in conformity with the specifications of the Approving Parties and with the recommendations of a registered soils engineer of record, which engineer shall require the installation of a suitable base and surfacing with an asphaltic concrete or concrete wearing material with a twenty (20) year design life. The exterior surface area of any lighting standards in the Common Areas shall be uniform as approved by the Approving Parties.

(D) Utility Lines that are placed underground shall be at depths designated by consultants approved by the Approving Parties and any governmental or quasi-governmental authorities having jurisdiction thereover. If surface water retention and/or detention areas are located outside of the general parking lots, such areas shall be fenced or otherwise secured to impede public access thereto.

(E) The parking area on the Lowe's Tract, the Developer Tract and each of the Outlot Tracts shall each contain sufficient ground level parking spaces, without reliance on parking spaces that may be available on another Tract, in order to comply with the greater of Governmental Requirements or the following minimum requirements:

- (i) Four (4) parking spaces for each one thousand (1,000) square feet of Floor Area on the Lowe's Tract, exclusive of the parking requirements set forth in clauses (iii) and (iv) below; provided, however, Floor Space on the Lowe's Tract that is used exclusively as a garden center, shall be excluded from the calculation of Floor Area with respect to this Section 3.2(E)(ii).
- (ii) Four (4) parking spaces for each one thousand (1,000) square feet of Floor Area on the Developer Tract and each Outlot Tract, exclusive of the parking requirements set forth in clauses (iii) and (iv) below.
- (iii) If a business use contains a drive-up unit (such as a remote banking teller or food ordering/dispensing facility), then there shall also be created space for stacking not less than four (4) automobiles for each drive-up unit.
- (iv) For each single Restaurant containing more than two thousand (2,000) square feet of Floor Area, seven (7) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use.
- (v) The size of all parking spaces shall be not less than nine (9) feet wide and eighteen (18) feet long.

If an Occupant operates a Restaurant incidentally to its primary business purpose, then so long as such incidental operation continues, the portion of the Floor Area occupied by such Restaurant shall be excluded from the application of (iv) above. For the purposes of this OEA, a Restaurant shall be an "incidental operation" if (a) with respect to the any Occupant of the Lowe's Tract it occupies less than seven percent (7%) of the Occupant's Floor Area and does not have a separate customer entry/exit door to the outside of the Building, (b) any Occupant of the Developer Tract or the Outlot Tracts occupying not less than fifty thousand (50,000) square feet of Floor Area, if it occupies less than seven percent (7%) of the Occupant's Floor Area and does not have a separate customer entry/exit door to the outside of the Building or (c) any Occupant of any Tract, if it occupies less than two thousand five hundred (2,500) square feet of the Occupant's Floor Area and does not have a separate customer entry/exit door to the outside of the Building. In the event an Occupant utilizes Floor Area for a Restaurant which is not an incidental operation and also utilizes Floor Area for purposes other than a Restaurant, only the portion of Floor Area allocated for Restaurant purposes shall be subject to the increased parking requirements set forth in (iv) above as applicable.

In the event of a condemnation of part of a Tract or sale or transfer in lieu thereof that reduces the number of usable parking spaces on such Tract below that which is required herein, the Party whose Tract is so affected shall use its best efforts (including using proceeds from the condemnation award or settlement) to restore and/or substitute ground level parking spaces in order to comply with the parking requirements set forth in this OEA. If such compliance is not reasonably possible, such Party shall not be deemed in default hereunder, but such Party shall not be permitted to expand the amount of Floor Area located upon its Tract. If such Floor Area is thereafter reduced other than by casualty, then the Floor Area on such Tract may not subsequently be increased unless the parking requirements set forth above are satisfied.

The Parties acknowledge and agree that for the purposes of determining whether the parking requirements set forth in this OEA have been satisfied, parking spaces used for cart corrals or any permitted sales, display or storage within the Common Area shall be included in any calculation of parking spaces required hereunder.

(F) No Party shall make changes to the improved Common Area (as shown on the Site Plan and in accordance with Section 3.1 above and this Section 3.2) on its Tract without the approval of the Approving Parties, except that each Party hereby reserves the right, from time to time without obtaining the consent or approval of any other Party, to make at its own expense any immaterial change, modification or alteration in its portion of the Common Area on its Tract, including the installation of convenience facilities such as mailboxes, public telephones, cart corrals, benches, bike racks, directional and/or parking information signs, provided that:

- (i) the accessibility of such Common Area for pedestrian and vehicular traffic (as it relates to the remainder of the Shopping Center) is not unreasonably restricted or hindered, and all parking stalls and rows and vehicular

traffic lanes shall remain generally as shown on the Site Plan;

- (ii) there shall be maintained at all times within such Common Area, a sufficient number of lawful vehicular parking spaces to meet the parking requirements set forth in Section 3.2(E);
- (iii) no Governmental Requirements shall be violated as a result of such action; any and all Governmental Requirements applicable to such modifications shall be satisfied by the Party performing the same; and such action shall not result in any other Party being in violation of any Governmental Requirements;
- (iv) no change shall be made in the access points between the Common Area and the public streets; provided, however, that additional access points may be created with the reasonable approval of the Approving Parties; and
- (v) at least thirty (30) days prior to making any such change, modification or alteration, the Party desiring to do such work shall deliver to each other Approving Party copies of the plans therefor, and provided further that, except in the event of an emergency such work, and any maintenance or repair work in the Common Area, shall not occur during each period from November 20<sup>th</sup> to January 10<sup>th</sup>. The provisions of this paragraph (F) do not apply to any changes, modifications or alterations of Common Area located within Building Areas which result from or arise out of the construction, expansion or maintenance of Buildings.

### 3.3. Building Improvements.

(A) Building(s) shall only be located within the Building Areas designated on the Site Plan. While it is acknowledged and agreed that, except as otherwise specifically provided in a separate agreement between Developer and the owner of a Tract, no Party shall have an obligation to commence construction of any Building on its Tract, each Party agrees that once it has commenced construction of a Building, such Building shall be completed in a timely fashion.

(B) Intentionally Deleted.

(C) Intentionally Deleted.

(D) The Parties agree that all Buildings constructed within any Building Area shall comply with the following requirements:

- (i) no Building shall be constructed within fifty feet (50') of the Building Area on an adjoining Tract unless such Building, hereinafter referred to as the "Adjacent Building," shall be located immediately adjacent to the common boundary line and is attached to the Building, if any, on the adjacent Tract in accordance with 3.3(C);
- (ii) if an Adjacent Building exists, then no Building shall be located within fifty feet (50') of the Adjacent Building unless such Building is attached to the Adjacent Building in accordance with 3.3(C); the Adjacent Building and all other Buildings on the Tract that are attached to the Adjacent Building and to each other are hereinafter referred to as the "Building Group";
- (iii) any Building that is not part of the Building Group, shall be located at least fifty feet (50') distant from the Building Group;
- (iv) the Adjacent Building or the Building Group, as the case may be, shall comply with the Building code requirements applicable to an "unlimited area" building, including without limitation the installation of an approved sprinkler system for fire protection.

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

If required by any Governmental Authorities, each Party agrees to join in a recordable declaration which confirms the existence of a fifty foot (50') clear area around the Primary Building Areas.

(E) No Building shall exceed the applicable heights for each Building set forth in the Building elevations attached hereto as Exhibit E (the "Height Criteria"). The height of any Building shall be measured perpendicular from the finished floor elevation to the top of the roof structure, including any screening, parapet, penthouse, mechanical equipment or similar appurtenance located on the roof of such Building. Each Party shall have the right to

install, maintain, repair, replace and remove Communications Equipment (as defined in this Section 3.3(E) below) on the top of the Building on its Tract which may extend above the applicable heights for each Building set forth in the Height Criteria; provided, however, such Communication Equipment shall be set back from the front of the Building to reduce sight lines from parking areas and visibility thereof by customers. As used herein, the phrase "Communications Equipment" means such things as satellite and microwave dishes, antennas and laser heads, together with associated equipment and cable which exclusively serve the Building to which they are appurtenant and which do not unreasonably interfere with the Communications Equipment previously installed by any other Party.

3.4. Liens. In the event any mechanic's lien is filed against the Tract of one Party as a result of services performed or materials furnished for the use of another Party, the Party permitting or causing such lien to be so filed agrees to cause such lien to be discharged within thirty (30) days after the entry of a final judgment (after all appeals) for the foreclosure of such lien. Upon request of the Party whose Tract is subject to such lien, the Party permitting or causing such lien to be filed agrees to promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge. Nothing herein shall prevent the Party permitting or causing such lien from contesting the validity thereof in any manner such Party chooses so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such Party shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien. The Party permitting or causing the lien agrees to defend, protect, indemnify and hold harmless the other Party and its Tract from and against any and all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from such lien.

#### 4. MAINTENANCE AND REPAIR

##### 4.1. Utility Lines.

(A) Each Party (or applicable Parties in the case of any Bilateral Utility Line) shall, at such Party's (or applicable Parties' in the case of any Bilateral Utility Line) sole cost and expense, maintain, replace and repair, or cause to be maintained, replaced and repaired, in a good state of repair, safe condition and in compliance with all Governmental Requirements, all Separate Utility Lines and Bilateral Utility Lines, as the case may be, utilized by such Party or Parties regardless of where located. Any maintenance, replacement and/or repair of nondedicated Utility Lines located on another Party's Tract shall be performed: after two (2) weeks' notice to other Party (except in an emergency the work may be initiated with reasonable notice); after normal business hours whenever possible; and in such a manner as to cause as little disturbance in the use of the other Party's Tract as is practicable under the circumstances. Any Party performing or causing to be performed maintenance or repair work agrees: to promptly pay all costs and expenses associated therewith; to diligently complete such work as quickly as

possible; and to promptly clean the area and restore the affected portion of the Common Area to a condition equal to or better than the condition which existed prior to the commencement of such work.

(B) Subject to the joint maintenance provisions set forth in 4.2(B) below, Common Utility Lines shall be maintained, repaired and/or replaced by Operator in a safe, clean and good state of repair and condition, and any relocation or abandonment of such Common Utility Line shall be performed by Operator in compliance with all Governmental Requirements, as quickly as possible and after normal business hours whenever possible. All costs incurred by Operator with respect to the maintenance, relocation or abandonment of the Common Utility Line shall be included in Common Area Maintenance Costs; provided however, if there is no Operator, then any Cooperating Party shall have the right to maintain, repair or replace the Common Utility Line without submission of a Budget or estimate of expenditures, except as hereinafter provided. If a Cooperating Party, in performing maintenance, repair or replacement of a Common Utility Line, is likely to incur costs of more than Ten Thousand Dollars (\$10,000.00) in Constant Dollars for such work in any one instance (or series of related or repeated circumstances), such Cooperating Party shall first notify the other Cooperating Parties required to pay a portion of such costs, in which case the Cooperating Parties shall prepare a list of qualified bidders, shall seek competitive bids from the list of qualified bidders before performing the work and shall select the lowest, responsive qualified bidder to perform the work. If a list of bidders is not jointly prepared within fifteen (15) days of the request for bidders, the Cooperating Party desiring to perform the work may prepare the list (containing not less than three bidders) for such other Cooperating Parties' approval, which approval shall not be unreasonably withheld, from which bids will be solicited. After a Cooperating Party has incurred any costs for maintaining, repairing or replacing a Common Utility Line, it may send a statement of such costs, increased by an amount equal to the Administrative Fee (defined in Section 4.3(A)), together with a copy of any invoice reflecting any charge exceeding Five Hundred Dollars (\$500.00) to each Cooperating Party benefiting from such Common Utility Line. Each Cooperating Party shall pay within thirty (30) days after receipt of the statement of costs either its allocable share of such costs as agreed upon when the Common Utility Line was installed, or if no separate cost sharing agreement was made, then in accordance with the sharing of Common Area Maintenance Costs. Except in the case of a maintenance emergency where such work may be initiated after reasonable notice, the grantor shall be provided with at least fifteen (15) days prior notice before commencement of any work.

#### 4.2. Common Area

(A) Subject to the joint maintenance provision set forth in (B) below, each Party shall, at its sole cost and expense, maintain, or cause to be maintained, the Common Area on its Tract in a slightly, safe condition and good state of repair. The unimproved Common Area shall be mowed and kept litter-free. The minimum standard of maintenance for the improved Common Area shall be comparable to the standard of maintenance followed in other first class retail developments of comparable size in the Philadelphia, Pennsylvania area; notwithstanding the foregoing, however, the Common Area shall be operated and maintained in

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

- (i) Drive and Parking Areas. Repairing and maintaining all paved surfaces and curbs in a smooth and evenly covered condition, including, without limitation, replacement of base, skin patch, resurfacing and, when necessary to reseal and/or restripe the parking area. (For the purpose of this section, an overlay of the drives and parking areas shall be considered a maintenance item.)
- (ii) Debris and Refuse. Periodic removal of all papers, debris, filth, refuse, ice and snow (2" on surface), including daily vacuuming and broom sweeping to the extent necessary to keep the Common Area in a first-class, clean and orderly condition; provided, however, that Occupant trash and/or garbage removal shall not be a Common Area Maintenance Cost since such removal obligation is covered by Section 4.3(A). All sweeping shall be at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Area by Permittees.
- (iii) Non-Occupant Signs and Markers. Maintaining, cleaning and replacing any appropriate directional, stop or handicapped parking signs or markers; restriping parking lots and drive lanes as necessary to maintain parking space designation and traffic direction; and keeping clearly marked fire lanes, loading zones, no parking areas and pedestrian cross-walks:
- (iv) Lighting. Maintaining, cleaning and replacing Common Area lighting facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers, illuminating the Common Area pursuant to Section 5.2(A); provided however, exterior Building lighting fixtures, including any light fixtures associated with a canopy or other architectural feature forming a part of such Building, shall not be considered a Common Area improvement, but instead the maintenance and replacement of such fixtures, and the cost of illumination, shall be the

obligation of the Party upon whose Tract such fixtures are located.

- (v) Landscaping. Maintaining and replacing all landscape plantings, trees and shrubs in an attractive and thriving condition, trimmed and weed free, maintaining and replacing landscape planters, including those adjacent to exterior walls of Buildings; providing water for landscape irrigation through a properly maintained system, including performing any modifications to such systems to satisfy governmental water allocation or emergency requirements. If any Occupant requires "special" landscaping (i.e. flowers, shrubs, trees, etc.) beyond the standard landscaping requirements for the remainder of the Shopping Center, or if landscaping additions/modifications are required as a result of a Building addition, expansion or remodel, the cost of installation, replacement and maintenance of such special or required landscaping shall be borne solely by such Party or Occupant, as the case may be, and shall not be included in Common Area Maintenance Costs (as defined in Section 4.2(B) below).
- (vi) Common Utility Lines. Subject to the provisions of Section 4.1(B), maintaining, cleaning, replacing and repairing all Common Utility Lines, including without limitation, all surface water collection, retention and distribution facilities.
- (vii) Obstructions. Keeping the Common Area free from any obstructions including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this OEA.
- (viii) Sidewalks. Maintaining, cleaning and replacing of all sidewalks, including those adjacent and contiguous to Buildings located within the Shopping Center. Sidewalks shall be steam cleaned at least monthly (during appropriate months) and shall be swept at appropriate intervals during such time as shall not interfere with the conduct of business or use of the Common Area and shall be cleared of ice or snow (after each snow fall of 2" or more).

- (ix) Supervisory Personnel. Providing of professional supervisory personnel for the Common Area, if reasonably required.
- (x) Liability Insurance. Providing the liability insurance required pursuant to Section 5.4(A) below.
- (xi) Traffic. Supervision of traffic at entrances and exits to the Shopping Center and within the Shopping Center as conditions reasonably require in order to maintain an orderly and proper traffic flow.
- (xii) Pylon Sign. Reconstructing, replacing, repairing, operating (including the cost of utilities) and maintaining the Pylon Sign and directional signs; provided that for purposes of allocating a Party's share of Common Area Maintenance Costs for the Pylon Sign, such allocation shall be based on the proportionate size of such Party's Pylon Sign panel(s) to the overall size of the aggregate of all panels on the Pylon Sign.
- (xiii) Bus Shelter Area. Maintaining, repairing and replacing bus shelter areas located on the Shopping Center.

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

(B) Except as provided in any separate agreement by and between any of the Parties hereto, Operator shall operate and maintain the Common Area in accordance with the requirements of 4.2(A) above, commencing on the earlier of (i) the date an Occupant of the Lowe's Tract opens for business with the general public, or (ii) the date on which any of the Approving Parties designates in writing to Operator that Operator should commence such operation and maintenance on such notifying Approving Party's Tract. Within thirty (30) days following the commencement of such maintenance and operation, Operator shall provide the Approving Parties an estimated budget for the balance of the current calendar year containing the information required by 4.2(C) below, and each Party agrees to pay its share thereof in accordance with 4.2(D) below. Operator may hire companies affiliated with it to perform the maintenance and operation of the Common Area, but only if the rates charged by such companies are competitive with those of other companies furnishing similar services in the metropolitan area in or about the Shopping Center. Each Party hereby grants to Operator, its agents, contractors and employees a license to enter upon its Tract to discharge the duties to operate,

maintain and repair the Common Area. Operator shall expend only such funds as are reasonably necessary for the operation, maintenance, repair, replacement security and insurance of the Common Area and shall promptly pay such costs ("Common Area Maintenance Costs") when incurred. For the purpose of this OEA, Common Area Maintenance Costs shall not include:

- (i) any late charges or fees, any cost, fee, fine, penalty, or similar charge arising out of or resulting from any violation by Operator or anyone else relating to the Shopping Center;
- (ii) any charge for electricity for Building accent lighting or Building security lighting. Also, with respect to a Party that separately pays the cost of power to illuminate the Common Area on its Tract, any charge for the cost of power to illuminate any portion of the Common Area on the balance of the Shopping Center;
- (iii) with respect to any Party that separately pays the cost of water for irrigating the landscaping upon its Tract, any charge for the cost of water for irrigating any portion of landscaping on the balance of the Shopping Center;
- (iv) any costs for promotional, marketing, seasonal or holiday events of any type (including, without limitation, costs of promotional equipment, banners, decorations and/or lighting except as approved by the Approving Parties);
- (v) any costs to clean up or repair the Common Area resulting from any promotional, marketing, seasonal or holiday activities, from construction, maintenance or replacement of a Party's Buildings;
- (vi) any costs resulting from or arising out of the repair or replacement of items covered by warranties or guaranties including, but not limited to, such as site improvements, signs, trees, plants or other landscaping;
- (vii) real property taxes and assessments on the Common Area;
- (viii) Operator's profit, administrative and overhead costs (including but not limited to: office space, equipment and utilities; legal, accounting and administrative services; Operator's personnel who are not permanently located at the Shopping Center) and premiums relating to bonding over mechanic's liens;

- (ix) any fee or charge paid to a third party, commercial management company or similar provider for services and/or supervision of the management or operation of the Common Area, or any part thereof; and
- (x) entertainment, transportation, meals and lodging of anyone.

In lieu of Operator's profit, administrative and overhead costs, Operator shall be permitted to charge an amount ("Administration Fee") computed by multiplying the Common Area Maintenance Costs (exclusive of insurance premiums, the portion of single purpose non-reoccurring expenditures that exceed Twenty-Five Thousand Dollars (\$25,000.00) in Constant Dollars and utility charges) by ten percent (10%). Subject to Section 4.2(B)(viii), if any of Operator's personnel at the Shopping Center perform services, functions or tasks in addition to Common Area duties, then the cost of such personnel shall be equitably allocated according to time spent performing such duties.

(C) Operator shall, at least ninety (90) days prior to the beginning of each calendar year, submit to the Approving Parties an estimated budget ("Budget") for the Common Area Maintenance Costs and the Administration Fee for operating and maintaining the Common Area for the ensuing calendar year. The Budget shall be in a form and content reasonably acceptable to the Approving Parties and shall identify separate cost estimates for at least the categories specified under Section 4.2 (A), plus:

- (i) premiums for Commercial General Liability Insurance covering the Common Area as required by 5.4(A) below; provided however, such premiums shall not exceed the current filed Insurance Services Offices (ISO) rate for premises operations, adjusted by the increased limits factor, and if a blanket policy is utilized by Operator, then there shall be reasonable allocation of premium between such covered locations, taking into account the amount of Common Area and ISO rates applicable to each location;
- (ii) rental or purchase of equipment and supplies used in maintaining or repairing the Common Area;
- (iii) depreciation or trade-in allowance applicable to items purchased (or leased in a manner in which Operator is deemed the owner for tax purposes) for Common Area purposes; and
- (iv) Administration Fee.

If an item of maintenance, repair or replacement is to be accomplished in phases over a period of calendar years, such as resurfacing of the drive and/or parking areas, then the

Budget shall separately identify the cost attributable to such year (including the portion of the Common Area affected), and shall note the anticipated cost and timing (indicating the portion of the Common Area affected) of such phased work during succeeding calendar years. The cost of approved "phased" work shall be paid by the Parties approving the same, or their successors or assigns, as the case may be, notwithstanding that when such work is performed a Party may not then be participating in the joint maintenance of the Common Area.

If an Approving Party disapproves the proposed Budget, it shall consult with the other Approving Party and Operator to establish a final approved Budget. If a Budget is not approved by December 1<sup>st</sup> of any calendar year, Operator shall have the right to terminate its maintenance obligation with respect to the Common Area located on the Tract of the disapproving Approving Party by written notice prior to December 10<sup>th</sup>. If such notice is given, commencing on the following April 1<sup>st</sup>, then such Approving Party shall, commencing on April 1<sup>st</sup>, maintain and operate the Common Area on its Tract at its expense in accordance with Section 4.2(A) above (except for those obligations enumerated in Sections 4.2(A)(vi), (ix), (xi), and, to the extent such party is a Benefited Party (as defined in Section 5.3 below), (xii)), all of which shall continue to be performed by Operator and for which the disapproving Approving Party shall continue to be responsible to pay in accordance with Section 4.2(D) below) and Operator shall maintain and operate the balance of the Common Area; during the period from January 1<sup>st</sup> to March 31<sup>st</sup>, during which period such Approving Party shall pay its share of maintenance. If the notice is not given, then the Operator shall continue to maintain and operate the entire Common Area for the next calendar year. Approval of the Budget, or any of the line items comprising a part thereof, shall not be considered a waiver of a Party's right to audit and/or contest, challenge or dispute the Reconciliation (defined in Section 4.2(D)).

Operator shall use its diligent, good faith efforts to operate and maintain the Common Area in accordance with the Budget. Operator agrees that it shall not enter into any contracts or agreements that have a term exceeding one year and that cannot be terminated upon thirty (30) days notice, without the prior written consent of each Party. Notwithstanding the foregoing, Operator shall have the right to make emergency repairs to the Common Area to prevent injury or damage to Persons or property, it being understood that Operator shall nevertheless advise each Approving Party of such emergency condition as soon as reasonably possible, including the corrective measures taken and the cost thereof. If the cost of the emergency action exceeds Ten Thousand Dollars (\$10,000.00) in Constant Dollars then Operator may submit a supplemental billing to each Party, together with evidence supporting such payment, and each Party shall pay its share thereof within thirty (30) days; if the cost limitation set forth above is not exceeded then such costs shall be included as part of the Common Area Maintenance Costs at the year end.

(D) Subject to a condemnation of part of a Tract or sale or transfer in lieu thereof and subject further to the provisions of this Section 4.2(D) below regarding the increase of Floor Area on any Tract (in which event the Common Area Maintenance Costs and the Administration Fee shall be re-allocated), the Common Area Maintenance Costs and the Administration Fee shall be initially allocated as follows:

- (i) To the Developer Tract and the Outlot Tracts      49.59%
- (ii) To the Lowe's Tract      50.41%

Notwithstanding anything contained herein to the contrary, in the event the Floor Area within any Tract is increased from the intended Floor Area shown on the Site Plan for such Tract, as permitted in accordance with terms and conditions of this OEA, the percentages set forth above for the allocation of Common Area Maintenance Costs and the Administration Fee (which were all computed by dividing the intended Floor Area shown on the Site Plan for each Tract by the total intended Floor Area for all portions of the Shopping Center) shall be adjusted by dividing the Floor Area of each Tract (taking into account such increased Floor Area) by the total Floor Area of the Shopping Center (including such increased Floor Area). In no event shall such percentages be adjusted due to a decrease of the Floor Area within any Tract from the intended Floor Area shown on the Site Plan for such Tract.

In the event an existing Tract is subdivided, the Party causing such subdivision shall prorate the allocation attributable to the existing Tract between the newly created Tracts, file a recorded declaration confirming such allocation and deliver a copy of such declaration to Operator and each other Party. Each Party shall pay to Operator in equal monthly payments, in advance, on the first (1<sup>st</sup>) day of each month, without notice or demand, its share of the Common Area Maintenance Costs and the Administration Fee based either upon the amount set forth in the approved Budget, or if a Budget is not approved, then the lesser of the amount set forth in the unapproved Budget or the monthly payment established for the prior year. Operator shall reasonably estimate such costs for the partial year during which its maintenance obligations commence and each Party shall make its first payment on the first (1<sup>st</sup>) day of the month following Operator's undertaking of such maintenance and repair of the Common Area. Such initial payment shall include (i) the applicable Party's share of Common Area Maintenance Costs and Administrative Fees for the first month, or portion thereof, in which Operator undertakes the maintenance and repair of the Common Area and (ii) advance payment for the second month of Operator's undertakings.

Within ninety (90) days after the end of each calendar year, Operator shall provide each Party with a detailed line item statement certified by an authorized Person, together with supporting invoices (collectively, the "Reconciliation"), setting forth the actual Common Area Maintenance Costs paid by it for the operation and maintenance of such Common Area, the Administration Fee, and such Party's share of the aggregate thereof. The Reconciliation shall separately identify cost categories specified in Sections 4.2(A) and 4.2(C), and shall be in a form reasonably acceptable to the Approving Parties. If the amount paid by a Party for such calendar year shall have exceeded its share, Operator shall refund the excess to such Party at the time the Reconciliation is delivered. If the amount paid by a Party for such calendar year shall be less than its share, such Party shall pay the balance of its share to Operator within 30 days after

receipt of such certified statement. If Operator does not refund amounts shown by the Reconciliation to be owed a Party, then such Party may offset the refund owed, plus interest, at the rate set forth in Section 6.2 below, against payments for Common Area Maintenance Costs and Administration Fee due for any future period. Notwithstanding anything contained herein to the contrary, if during a calendar year Operator resigns or is replaced, the replacement Operator shall be responsible for the Reconciliation adjustments, including any reimbursement due to a Party for such calendar year

Within three (3) years after the date of receipt of a Reconciliation, each Party shall have the right to audit Operator's books and records pertaining to the operation and maintenance of the Common Area for the calendar year covered by such Reconciliation. The Party shall notify Operator of its intent to audit at least thirty (30) days prior to the designated audit date and if such date conflicts with Operator's availability, then such requesting Party may designate a new date for such audit which shall be not less than fifteen (15) days nor more than thirty (30) days later than the initially proposed date; the three (3) year period shall be extended by length of time equal to that occurring between the initial delivery of the notice requesting such audit and the date of occurrence of such audit. In the event that such audit shall disclose any error in the determination of the Common Area Maintenance Costs, the Administration Fee or in the allocation thereof to a Tract, an appropriate adjustment shall be made forthwith for all affected Parties and notice thereof shall be given by Operator to each affected Party (the "Audit Notice"). In the event such Audit Notice provides that a Party has paid an excess of its share of the Common Maintenance Costs or Administrative Fee, Operator shall refund the excess to such Party simultaneously with the delivery of the Audit Notice. In the event such Audit Notice provides that a Party has paid an amount less than its share of Common Maintenance Costs and Administrative Fees, the applicable Party shall pay the balance of its share to Operator within thirty (30) days of such Party's receipt of the Audit Notice. The cost of any audit shall be assumed by the auditing Party unless such Party shall be entitled to a refund in excess of five percent (5%) of the amount calculated by Operator as its share for the calendar year, in which case Operator shall pay the cost of such audit. If Operator does not respond to the results of such audit within ninety (90) days after receipt of the audit, then the auditing Party shall have the right to offset the refund claimed, the costs of the audit, plus interest, from Operator.

(E) Operator agrees to defend, indemnify and hold each Party harmless from and against any mechanic's, materialmen's and/or laborer's liens, and all costs, expenses and liabilities in connection therewith; including reasonable attorney's fees and court costs, arising out of the maintenance and operation by Operator of the Common Area, and in the event that any Tract shall become subject to any such lien, Operator shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting such bond or other security as shall be required by law to obtain such release and discharge.

(F) In the event any of the Common Area is damaged or destroyed by any cause whatsoever, whether insured or uninsured, during the term of this OEA, other than damage caused by ordinary use or wear and tear, the Party upon whose Tract such Common Area

is located shall repair or restore such Common Area at its sole cost and expense with all due diligence. Except to the extent limited by Section 5.4(D) hereof, in the event such damage or destruction of Common Area on its Tract is caused in whole or in part by another Party or a third Person, the Party obligated to make such repair or restoration reserves and retains the right to proceed against such other Party or third Person for indemnity, contribution and/or damages.

(G) Any Party (a "Takeover Party") shall have the right, upon giving not less than sixty (60) days' written notice to Operator, to take over and assume the maintenance of the Common Area upon the Takeover Party's Tract. Following the effective date of such assumption, the Takeover Party shall maintain the Common Area on the Takeover Party's Tract in accordance with Section 4.2(A) above (except as hereinafter noted) and shall pay all costs and expenses incurred in connection therewith; provided, however, Operator shall continue to (i) maintain the Common Utility Lines (including any detention/retention ponds) regardless of location in the Shopping Center, (ii) maintain the Common Area supervisory program, if any, (iii) maintain the Pylon Sign (excluding sign panels) and directional signs, (iv) maintain the bus shelter, (v) maintain the traffic control for the Shopping Center and (vi) insure the Common Area on each Party's Tract under Operator's Common Area commercial general liability insurance program if the owner of such Tract elects to participate therein by written notice to Operator. Upon such assumption, the Takeover Party shall be released from the obligation to contribute towards Operator's maintenance and operation of the balance of the Common Area, except with respect to those functions identified above for which continued participation is mandatory or elected and Takeover Party's share of such costs shall be paid in accordance with the allocation set forth in Section 4.2 (D) above. Operator shall continue to maintain the balance of the Common Area in accordance with the standards set forth herein.

If Takeover Party elects to take over and assumes the maintenance of the Common Area on the Takeover Party's Tract, the Takeover Party shall have the right to cause Operator to resume the operation and maintenance of its Common Area upon the satisfaction of the following conditions:

- (i) The Takeover Party shall give Operator at least 60 days' prior notice of its intention to have Operator reassume the operation and maintenance of its Common Area; provided however, such date for reassumption shall always be the first day of a calendar quarter; and
- (ii) Prior to the date established for Operator to reassume the maintenance and operation thereof, the Takeover Party shall, at its sole cost and expense, cause the Common Area on the Takeover Party's Tract to be at least equal to the same condition of maintenance then existing on the other portions of the Common Area then being maintained by Operator.

Provided the above conditions are satisfied, concurrently with the designated date, Operator shall resume full operation and maintenance of the Common Area located on the Takeover Party's Tract and Takeover Party shall be responsible for its share of the costs and expenses of Operator's performance as set forth in Section 4.2(D) above.

4.3. Building Improvements.

(A) After completion of its construction, each Party covenants and agrees to maintain and keep the exterior portion of the Buildings and Building Appurtenances located on its Tract in first-class condition and state of repair, in compliance with all Governmental Requirements and in compliance with the provisions of this OEA. Each Party further agrees to store all trash and garbage on its Tract in adequate containers, to locate such containers so that they are not readily visible from the parking area, and to arrange for regular removal of such trash or garbage at such Party's sole cost and expense.

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

5. OPERATION OF THE SHOPPING CENTER

5.1. Uses.

(A) The Shopping Center shall be used only for retail sales, Retail Offices, Business Offices, Restaurants or other commercial purposes. "Business Office" shall mean an office which does not provide services directly to consumers, and "Retail Office" shall mean an office which provides services directly to consumers, including but not limited to financial institutions, real estate agencies, stock brokerages, title company and escrow offices, travel and insurance agencies, and medical, dental and legal clinics or offices; provided, however, that (i) commercial bank branches, savings bank branches, savings and loan association branches or any other institutions that accept deposits of money shall be deemed "retail sales" for purposes of this OEA and shall not be deemed Retail Offices hereunder and (ii) office space

used by an Occupant for administrative purposes incidental to retail sales or Restaurants and which is not open to the general public shall not be considered Retail Offices or Business Offices. Not more than twenty percent (20%) of the total Floor Area on any Tract may be used (in the aggregate) for Retail Office and/or Business Office purposes.

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

- (i) Any use which emits an obnoxious odor, obnoxious noise, or obnoxious sound which can be smelled or heard outside of any Building in the Shopping Center;
- (ii) Any operation primarily used as a storage warehouse operation (except that this provision shall not prohibit storage of lumber or similar building supplies associated with the operation of a Lowe's store or home improvement center) and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation (except that this provision shall not prohibit the assemblage by any Occupant of any of the goods and products sold by such Occupant, in preparation for such sale);
- (iii) Any "second hand" store, "surplus" store or pawn shop;
- (iv) Any mobile-home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);
- (v) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any Building);
- (vi) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;
- (vii) Intentionally deleted;
- (viii) Any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation; provided that the foregoing shall not prohibit (a) the retail sale of auto parts and services such as a Pep Boys or Auto Zone store and (b) the daily rental of vans or pick-up trucks (or similar two axle trucks such as a cab chassis truck with a

rear attached aluminum flat bed) by any Occupant to its customers solely for the purpose of transporting and/or delivery of merchandise purchased from such Occupant by its customers so long as (i) the parking of such vehicles is limited to the Tract upon which the business operated by such Occupant is situate, and (ii) such activity does not involve the use of more than six (6) such vehicles and (iii) the parking spaces used for such vehicles shall be applicable towards the parking requirements as set forth in Section 3.2(E);

- (ix) Any bowling alley or skating rink (except in connection with and ancillary to a sporting goods retailer);
- (x) Any movie theater or live performance theater;
- (xi) Any hotel, motel, short or long term residential use, including but not limited to: single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments, or lodging rooms;
- (xii) Any veterinary hospital or animal raising or boarding facility; provided, however, that the foregoing restrictions shall not apply to any Occupant whose primary business is the retail sale of pets (including, but not limited to, fish, birds, reptiles, dogs, cats and other small mammals), pet grooming, veterinary or other pet services, pet food, pet accessories and other pet products provided such operations are otherwise in compliance with all other provisions of this OEA and provided, further, that (a) overnight boarding (indoor only) of pets is limited to that which is incidental to the operations of such Occupant and not offered to customers as a separate service and (b) the combined veterinary and overnight boarding facilities occupy no more than fifteen percent (15%) of the Gross Floor Area of such Occupant. In no event shall outdoor boarding or exercising of pets be permitted under any circumstances. Such Occupant shall use reasonable efforts not to permit its customers to allow their pets to urinate or defecate in the Common Areas and will promptly act, at its sole cost and expense, to prevent the accumulation of any pet stains, pet odors or pet droppings within that portion of the Common

Area located within one hundred fifty (150) feet from any entrance to such Occupant's premises;

- (xiii) Any mortuary or funeral home;
- (xiv) Any establishment selling or exhibiting paraphernalia intended for or relating to illegal drug use;
- (xv) Any establishment exhibiting either live or by other means to any degree, nude or partially clothed dancers or wait staff and/or any massage parlors or similar establishments;
- (xvi) Any establishment selling or exhibiting pornographic or obscene materials, except that this provision shall not prohibit (A) first class national videotape retailers which rent primarily non- "x-rated" videotapes (that is, "G" to "R"-rated videotapes) but which also rent "X-rated or non-rated videotapes" for off-premises viewing only, provided such "X-rated" or "non-rated" videotapes, and the place and procedure for selection thereof (which shall not exceed in the aggregate fifty (50) square feet of Floor Area), precludes viewing or selection by minors and without any promotional, advertising or other depiction or description in respect of any "X-rated" or "non-rated" videotapes displayed or utilized within or outside the store or (B) first-class national book stores which are not perceived to be, nor hold themselves out as "adult book" stores, and general merchandise stores such as drug stores which sell primarily general audience books, but which incidentally sell books magazines and other periodicals which may contain pornographic materials so long as such sale is not from any special or segregated section in the store;
- (xvii) Any bar, tavern, Restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds sixty percent (60%) of the gross revenues of such business, provided this shall not prohibit or restrict any family oriented sit down restaurant such as TGI Fridays, Red Lobster, Champps, Bennigans, Ruby Tuesday, Longhorn Steakhouse and Old Country Buffet;

- (xviii) Any amusement or video arcade (except a first class entertainment retail operation or incidental to a Restaurant), flea market, pool or billiard hall, car wash, or dance hall;
- (xix) Any church, school, meeting hall, dance hall, auditorium or day care facility;
- (xx) Any fictitious going-out-of-business sale, "lost our lease" sale or similarly advertised event;
- (xxi) Any health spa, fitness center or workout facility within the Tracts which exceeds Eight Thousand (8,000) square feet of Floor Area;
- (xxii) Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms (except incidental to the operations of a book retailer), places of instruction or other operations catering primarily to students or trainees rather than to customers; provided however, this prohibition shall not be applicable to on-site employee training or customer computer training by an Occupant incidental to the conduct of its business at the Shopping Center;
- (xxiii) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities, or charitable gambling activities; so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the Occupant;
- (xxiv) Any establishment whose principal business is check cashing or currency exchange (provided that in no event shall the foregoing restriction prohibit (A) an Occupant (such as a supermarket) from providing check cashing or currency exchange services to its customers as an incidental part of such Occupant's business and (B) the operation of state and national banks, savings banks, credit unions, savings and loan institutions, mortgage and brokerage companies, insurance companies, and any other entities in the financial services industry);

(xxv) Any so-called "rent-to-own" establishment whose principal business is the rental of furniture or appliances to customers with the requirement to purchase such items following the term of the rental; and

(xxvi) A dry cleaning plant, which restriction shall not preclude (1) a "drop off" and "pick up" dry cleaning service where all dry cleaning processes shall be located outside of the Shopping Center, and (2) subject to Lowe's prior written consent, which consent shall not be unreasonably withheld, an on-premises retail dry cleaning store located at least three hundred (300) feet from the outer boundaries of the area denoted on the Site Plan as the Building Area on the Lowe's Tract, which shall use "state of the art" environmentally safe and explosion resistant equipment in its operations reasonably acceptable to Lowe's.

(C) No Party shall use, release, spill, discharge, dump or abandon, nor permit the use, release, spill, discharge, dump or abandon of Hazardous Materials on, about, under or in its Tract, or the Shopping Center, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws. Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including but not limited to costs of investigation, remedial or removal response, and reasonable attorneys' fees and cost of suit, arising out of or resulting from any Hazardous Material used or permitted to be used by such Party, whether or not in the ordinary course of business.

For the purpose of this paragraph (C), the term (i) "Hazardous Materials" shall mean and refer to the following: petroleum products and fractions thereof, asbestos, asbestos containing materials, urea formaldehyde, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials, substances or wastes listed or identified in, or the use, manufacture, storage, release, transportation or disposal of which is regulated by, any Environmental Law, and (ii) "Environmental Laws" shall mean and shall refer to: all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

(D) No merchandise, equipment or services, including but not limited to vending machines, promotional devices and similar items, shall be displayed, offered for sale or lease, or stored within the Common Area; provided however, that the foregoing prohibition shall not be applicable to (i) the storage of shopping carts, provided the Occupant installs and maintains "cart corrals", (ii) the installation on any Tract of pay telephones which do not allow incoming calls, the revenues from which shall belong to the owner of such Tract, (iii) the sale of

merchandise on the sidewalk in front of any Building in accordance with applicable law, (iv) any recycling center required by law, the location of which shall be subject to the approval of the Approving Parties, or (v) the sale of merchandise from any portion of the Common Area excluding sidewalks in front of any Building, provided, however, with respect to the sale of merchandise from any portion of the Common Area excluding sidewalks in front of any Building, such space shall be used in accordance with applicable law.

(E) Intentionally Omitted.

(F) The name "Lowe's" shall not be used to identify the Shopping Center or any business or trade conducted on the Developer Tract. Until the Approving Parties agree upon a name change, the Shopping Center shall be called "Parkwest Town Center".

(G) Except to the extent required by law, no Permittee shall be charged for the right to use the Common Area; for the purpose of this provision, a tax assessment or other form of governmentally imposed charge applicable to parking spaces or parking lots may be deemed by the Approving Parties an imposition required by law.

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

(I) Except as provided pursuant to any separate agreement executed by and between Developer, the owner of any Tract or any Occupant, this OEA is not intended to, and does not, create or impose any obligation on a Party to operate, continuously operate, or cause to be operated a business or any particular business at the Shopping Center or on any Tract.

(J) So long as the Occupant of the portion of the Shopping Center identified on the Site Plan as "Anchor B" occupies such portion of the Shopping Center or any part thereof as a supermarket, grocery store or similar operation, no portion of the Lowe's Tract shall be used as a supermarket, grocery store or similar operation, or for a so-called "superstore" (such as, without limitation, Wal-Mart Supercenter or SuperTarget) which sells groceries as a primary use (provided, in no event shall such restriction prohibit the operation of a warehouse store on the Lowe's Tract such as, without limitation, Costco, BJ's Wholesale Club or Sam's Club or of a discount department store such as, without limitation, Target, Kmart or Wal-Mart).

(K) No portion of the Developer Tract or the Outlot Tracts shall be used for:

- (i) A hardware store or center;
- (ii) A nursery and/or lawn and garden store or center;
- (iii) A paint, wall paper, tile, flooring, and/or carpeting store or center; or

- (iv) A retail and/or warehouse home improvement center, lumber yard, building materials supply center, home improvement service center and/or for other stores or centers similar to those operated by or as Lowe's, Home Depot, Home Depot Expo, Villagers Hardware, 84 Lumber, Wickes, Hughes Lumber, McCoys, Menard's, Sears Hardware, Great Indoors, Sutherlands, Scotty's, Orchard Supply and/or Grossman's Bargain Outlet (collectively, the "Home Improvement Center Uses").

Notwithstanding the foregoing, (a) in no event shall the foregoing restrictions set forth in this Section 5.1(K) prohibit the operation of a store selling domestics and home furnishings merchandise such as Bed Bath & Beyond, Homegoods and Linens-n-Things or the operation of a craft store such as Michaels, Jo-Ann Stores and ACMoore and (b) if Lowe's fails to open for business on the Lowe's Tract for the Home Improvement Center Uses as required pursuant to a separate document entered into between Developer and Lowe's, or, if following such opening date, the Lowe's Tract ceases to be used for any of the Home Improvement Center Uses and such cessation continues for in excess of eighteen (18) months (except for closures occasioned by (1) the making of repairs, alterations or renovations to Lowe's store on the Lowe's Tract due to a casualty or (2) the remodeling of Lowe's store on the Lowe's Tract), thereafter, the restrictions set forth in this Section 5.1(K) shall automatically become null and void and of no further force or effect.

## 5.2. Lighting.

(A) After completion of the Common Area lighting system on its Tract, each Party hereby covenants and agrees to keep its Tract fully illuminated each day, from dusk to at least 12:00 p.m. prevailing local time unless the Approving Parties agree upon a different time. Each Party further agrees to keep any exterior Building security lights on from dusk until dawn. Each Party grants a perpetual irrevocable license to each other Party for the purpose of permitting the lighting from one Tract to incidentally shine on the adjoining Tract.

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

- (i) If the period is less than thirty (30) days, then the prepayment shall be one hundred ten percent (110%) of the

reasonable cost for such additional operation (including electrical power, bulbs and manpower) (one hundred ten percent (110%) of such estimated cost shall hereinafter be referred to as the "Additional Power Cost"), as estimated by the Requested Party; or

- (ii) If the period is greater than or equal to thirty (30) days, then the prepayment shall be the Additional Power Cost for the initial thirty (30) days, as estimated by the Requested Party and for each additional thirty (30) day period the Requesting Party shall renew such prepayment at the end of the initial or previous thirty (30) day period.

The Requesting Party agrees to pay the Additional Power Cost and the prepayment shall be applied to such obligation as incurred. If the Requesting Party is of the opinion that the estimated prepayment made by the Requested Party is greater than one hundred ten percent (110%) of such costs, the Parties shall attempt to agree to the Additional Power Cost and if they cannot do so, then the amount the Requesting Party is obligated to pay shall be determined from the Additional Power Cost as estimated by the electrical utility company furnishing such power, or if the utility fails to do so, by a reputable engineer. Upon the failure of a Requesting Party to pay the amount of the Additional Power Cost or renew a prepayment as required hereby, the Requested Party shall have the right to discontinue such additional lighting and to exercise other remedies herein provided. Any such request for additional lighting may be withdrawn or terminated at any time by written notice from the Requesting Party and a new request or requests for changed hours may be made from time to time.

### 5.3. Occupant Signs.

(A) No freestanding sign ("Sign") shall be permitted within the Shopping Center except for the Pylon Sign and/or other signs as depicted on the Site Plan or other signs approved by the Approving Parties, for which approval shall not be unreasonably withheld or delayed. The Pylon Sign and/or other Signs shall be constructed in the specific areas designated on the Site Plan, and only one such Sign may be located in each designated area. The Pylon Sign shall be constructed where shown on the Site Plan as shown on the Sign Exhibit, having sign panels of the size indicated thereon. In addition, (a) each Occupant of an Outlot Tract may construct and maintain (i) within each Outlot, signage stating that parking within such Outlot is exclusive to the customers of the Occupant of such Outlot and (ii) adjacent to each such Occupant's Building, one (1) freestanding sign identifying each such Occupant's business (provided that no such freestanding sign shall exceed twenty (20) feet in height and contain more than one hundred (100) square feet of signage per side) and (b) Lowe's shall have the right, at its sole cost and expense and subject to Lowe's obtaining all governmental approvals, to design, install and maintain a "Navigational Sign" on the Shopping Center Tract, in the location shown on the Site Plan.

Developer shall construct the Pylon Sign at the location identified on the Site Plan in accordance with the Sign Exhibit; provided however, that each Benefited Party shall be responsible for the design, construction and installation of their own sign panel(s) with the Developer responsible for the sign panel for the name of the Shopping Center. Thereafter, subject to the joint maintenance provisions of Section 4.2(B) below in which event all costs of maintenance (including the cost of providing power) shall be included in Common Area Maintenance Costs, each Party whose Occupants are permitted to be identified on the Pylon Sign and/or any other particular Signs (each, a "Benefited Party" and collectively the "Benefited Parties") shall be responsible for the Sign's operation, maintenance, repair and replacement on a first-class basis, with the costs thereof (including cost of providing power) allocated in accordance with Section 4.2(A)(xii) above. All of the sign panels on the Pylon Sign and/or other Signs (i) shall conform to all applicable governmental codes and ordinances, (ii) shall not display any offensive content, (iii) such panels shall be composed of commercially acceptable materials which are similar in form, substance and appearance to those used on a majority of the aggregate panel area on the Pylon Sign and/or other Signs and (iv) the lettering and any logo or drawing proposed for the sign panel shall not occupy, in the aggregate, more than 90% of the sign panel field so as to permit a border between the edge of the sign panel and its content. Regardless of whom maintains the Pylon Signs and/or other Signs, each Benefited Party shall cause the sign panels (including any backlit lighting) of each of its Occupants displayed thereon to be maintained in a safe condition, good state of repair and pursuant to Governmental Regulations without expense to the other Benefited Parties.

(B) Each Occupant shall have the right to attach identification signs to the exterior of its Building, so long as such signs do not violate any applicable Governmental Requirements, and, except with respect to any Building containing in excess of eighty thousand (80,000) square feet of Floor Area (which Buildings shall not be subject by the following restrictions), no Occupant identification sign attached to the exterior of a Building shall be:

- (i) placed on canopy roofs extending above the Building roof, placed on penthouse walls, or placed so as to project above the highest point of the canopy or entry feature, or top of the wall upon which it is mounted;
- (ii) placed at any angle so as to extrude from the Building; provided, however, the foregoing shall not apply to any sign located under a sidewalk canopy if such sign is at least eight (8) feet above the sidewalk. Notwithstanding the foregoing, channel sign letters protruding from the front of a canopy or building shall be permitted;
- (iii) painted on the surface of any Building;
- (iv) a flashing, moving or audible sign;

- (v) a sign employing exposed raceways, exposed neon tubes, exposed ballast boxes, or exposed transformers; or
- (vi) a paper or cardboard sign, a temporary sign (exclusive of contractor signs), sticker or decal; provided, however, the foregoing shall not prohibit (a) the placement at the entrance of each Occupant's space of a small sticker or decal, indicating hours of business, emergency telephone numbers, acceptance of credit cards, and other similar bits of information or (b) an Occupant from displaying upon its Building, not more than eight (8) times per year and with each period not exceeding three (3) weeks, tasteful and professionally prepared banner signs of not greater than one hundred fifty (150) square feet, describing Occupant's retail activities and/or promotions or (c) an Occupant from displaying upon its Building initial "coming soon", "now open" or other customary opening banners of a temporary nature not to exceed six (6) months.

(C) Notwithstanding anything above to the contrary, each Party shall be permitted to place within the Common Area located on its Tract directional signs or informational signs such as "Handicapped Parking," the temporary display of leasing information and the temporary erection of one sign identifying each contractor working on a construction job on its Tract. Each Party shall have the obligation to operate, maintain, and repair, in a clean, sightly and safe condition, all signs, including components thereof, located upon its Tract pursuant to (B) above or the provisions hereof. Subject to the provisions of applicable law, Developer will place the above described directional signs throughout the Common Areas of the Shopping Center with the location and design of such directional signs subject to the approval by the Approving Parties, which approval shall not be unreasonably withheld or delayed.

#### 5.4. Insurance.

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

- (i) Commercial General Liability Insurance covering the Common Area of the Shopping Center with a combined single limit of liability of Five Million Dollars (\$5,000,000.00) in Constant Dollars for bodily injury, personal injury and property damage, arising out of any one occurrence; each Party shall be a "named insured" under such policy. It is the agreement of the Parties that the insurance maintained by Operator shall be primary

insurance and not contributory with the insurance maintained by the Parties pursuant to (B) below or any other insurance maintained by the Parties. If any Party is operating and maintaining the Common Area on its Tract, and such Party elects not to participate in Operator's insurance program regarding the Common Area, then Operator shall be released from its obligation to carry such insurance on such Party's Tract.

- (ii) Workers' compensation and employer's liability insurance:
  - (a) Worker's compensation insurance as required by any applicable law or regulation.
  - (b) Employer's liability insurance in the amount of One Million Dollars (\$1,000,000.00) each accident for bodily injury, One Million Dollars (\$1,000,000.00) policy limit for bodily injury by disease and One Million Dollars (\$1,000,000.00) each employee for bodily injury by disease.
- (iii) Automobile Liability Insurance: To the extent automobiles are owned or operated in the Shopping Center at any time, automobile liability Insurance including coverage for owned, hired, and non-owned automobiles. The limits of liability shall not be less than One Million Dollars (\$1,000,000.00) combined single limit each accident for bodily injury and property damage combined.

Operator agrees to defend, protect, indemnify and hold harmless each Party from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind, including reasonable attorneys' fees and cost of suit, asserted or incurred in connection with or arising out of the performance, or failure to perform, by Operator of its duties or obligations under this OEA with respect to the maintenance and operation of the Common Area; provided however, the foregoing obligation shall not apply to claims caused by the sole negligence or by the willful act or omission of the Party to be indemnified or its licensees, concessionaires, agents, servants or employees, or the agents, servants, or employees of any licensee or concessionaire thereof. If any Party is operating and maintaining the Common Area on its Tract, such Party agrees to defend, protect, indemnify and hold harmless the other Parties and Operator in identical fashion to that required of Operator in the immediately preceding sentence.

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

- (i) Commercial General Liability Insurance with a combined single limit of liability of Five Million Dollars (\$5,000,000.00) in Constant Dollars for bodily injury, personal injury and property damage, arising out of any one occurrence; the other Parties shall be "additional insureds" under such policy as it applies to the insuring Party's Tract. Each Party agrees to look first to the insurance coverage obtained pursuant to (A) above, and to exhaust all limits thereof before making any claim, other than to preserve rights if coverage under (A) is inadequate, under the insurance carried by a Party hereunder.
- (ii) Workers' Compensation and Employer's Liability Insurance:
  - (a) Worker's compensation insurance as required by any applicable law or regulation.
  - (b) Employer's liability insurance in the amount of One Million Dollars (\$1,000,000.00) each accident for bodily injury, One Million Dollars (\$1,000,000.00) policy limit for bodily injury by disease and One Million Dollars (\$1,000,000.00) each employee for bodily injury by disease.
- (iii) Automobile Liability Insurance: To the extent automobile are owned or operated in the Shopping Center at any time, automobile liability insurance including coverage for owned, hired, and non-owned automobiles. The limits of liability shall not be less than One Million Dollars (\$1,000,000.00) combined single limit each accident for bodily injury and property damage combined.

Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceedings brought thereon, and all costs, losses, expenses and liability of any kind relating thereto, including reasonable attorney's fees and cost of suit, arising out of or resulting from the injury to or death of any Person, or damage to the property of any Person located on the Tract owned by each indemnifying Party; provided however, the foregoing obligation shall not apply to claims caused by the negligence or willful act or omission of such other Party, its licensees, concessionaires,

agents, servants, or employees, or the agents, servants, or employees of any licensee or concessionaire thereof. In the event it is determined that such other Party was not at fault, then the indemnifying Party shall reimburse such other Party for all reasonable costs and/or expenses incurred by it defending against such claim or demand.

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

- (i) Workers' compensation and employer's liability insurance:
  - (a) Worker's compensation insurance as required by any applicable law or regulation.
  - (b) Employer's liability insurance in the amount of One Million Dollars (\$1,000,000.00) each accident for bodily injury, One Million Dollars (\$1,000,000.00) policy limit for bodily injury by disease and One Million Dollars (\$1,000,000.00) each employee for bodily injury by disease.
- (ii) General liability insurance: Commercial General Liability insurance covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability and coverages:
  - (a) Required coverages:
    - (1) Premises and Operations;
    - (2) Products and Completed Operations;
    - (3) Contractual Liability, insuring the indemnity obligations assumed by contractor under the contract documents;
    - (4) Broad Form Property Damage (including Completed Operations);
    - (5) Hazard, Fire, Flood, Underground Explosion and similar risks; and
    - (6) Personal Injury Liability.

(b) Minimum limits of liability:

- (1) One Million Dollars (\$1,000,000.00) each occurrence (for bodily injury and property damage);
  - (2) One Million Dollars (\$1,000,000.00) for Personal Injury Liability;
  - (3) Two Million Dollars (\$2,000,000.00) aggregate for Products and Completed Operations; and
  - (4) Two Million Dollars (\$2,000,000.00) general aggregate applying separately to the applicable construction activity.
- (iii) Automobile Liability Insurance: If the contractor has any insurable automobiles within the Shopping Center, automobile liability insurance including coverage for owned, hired, and non-owned automobiles. The limits of liability shall not be less than One Million Dollars (\$1,000,000.00) combined single limit each accident for bodily injury and property damage combined. The Contractor shall require each of his Subcontractors to include in their liability insurance policies coverage for Automobile Contractual Liability.
- (iv) Umbrella/Excess Liability Insurance: The Contractor shall also carry umbrella/excess liability insurance in the amount of Five Million Dollars (\$5,000,000.00). If there is no per project aggregate under the Commercial General Liability policy, the limit shall be Ten Million Dollars (\$10,000,000.00).

If the construction activities involve the use of another Tract, then the constructing Party shall cause (x) the owner of such other Tract to be an additional insured on each policy (the Commercial General Liability pursuant to a CG 2010 11-85 version Form B endorsement), (y) with respect to the work on such other Tract, the coverage set forth in Section 5.4(C)(ii)(b)(3) above to be extended for a three (3) year period following final completion of work, and (z) each such policy to provide that the same shall not be cancelled, allowed to expire, nor reduced in amount or coverage below the requirements set forth above without at least thirty (30) days prior written notice to each insured. If any of the insurance policies are cancelled, expire or the amount or coverage thereof is reduced below the level required, then the constructing Party shall immediately stop all work on and use of the other Tract until either the required insurance is

reinstated, or replacement insurance is obtained, and evidence thereof is given to the owner of such other Tract.

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

Each Party (the "Releasing Party") hereby releases and waives, for itself and for each Person claiming by, through or under it, each other Party and, Operator (the "Released Party") from any liability for any loss or damage to all property of such Releasing Party located upon any portion of the Shopping Center, which loss or damage is of the type covered by the insurance required to be maintained under Section 5.4(D) above, irrespective either of any negligence on the part of the Released Party which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried, including any deductible or self insurance reserve. Each Releasing Party agrees to use its reasonable efforts to obtain, if needed, appropriate endorsements to its policies of insurance, and to the policies of insurance carried by its Occupants, with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release and waiver hereinabove given.

Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses, and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit asserted by or through any Permittees of the indemnifying Party's Tract for any loss or damage to the property of such Permittee located upon the indemnifying Party's Tract, which loss or damage would have been covered by the insurance required to be maintained under Section 5.4(D) above, irrespective of any negligence on the part of any other Party which may have contributed to or caused such loss.

All insurance required by this Section 5.4 shall be written on an occurrence basis and procured from companies rated by Best's Rating Guide not less than A-/X which are authorized to do business in the state where the Shopping Center is located. All insurance may be provided under (i) an individual policy covering this location, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Party; provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than Twenty Million Dollars (\$20,000,000.00) in Constant Dollars, then such insuring Party shall also maintain excess liability coverage necessary to establish a total liability insurance limit of Twenty Million Dollars (\$20,000,000.00) in Constant Dollars, (iii) a plan of self-insurance which may be maintained by such Party or on such Party's behalf by its "Affiliate" (as hereinafter defined), provided that any Party so self-insuring notifies the other Parties of its intent to self-insure and agrees that upon request it shall deliver to such other Parties each calendar year a copy of its annual report (unless such Party or its Affiliate which is providing self-insurance coverage is a public company listed on a national stock exchange) that is audited

by an independent certified public accountant which discloses that such Party has One Hundred Fifty Million Dollars (\$150,000,000.00) in Constant Dollars of both net worth and net current assets and any such Affiliate executes a guaranty in the form of Section 6.17 below, or (iv) a combination of any of the foregoing insurance programs. Until further subsequent notice to the contrary, Lowe's hereby confirms that it shall be self-insuring through its Affiliate, Lowe's Companies, Inc. which shall confirm and evidence the same in writing in form reasonably satisfactory to each of the other Approving Parties. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by a Party in compliance with this Section 5.4, such Party shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed \$50,000.00 in Constant Dollars unless such Party complies with the requirements regarding self-insurance pursuant to (iii) above. Each Party and Operator, if any, agree to furnish to any Party requesting the same a certificate(s) of insurance or statement of self-insurance, as the case may be, or the Web address where such insurance information is contained, evidencing that the insurance required to be carried by such Person is in full force and effect.

The insurance required pursuant to (A) and (B) above:

- (i) shall provide that the policy shall not be cancelled or reduced in amount or coverage below the requirements of this OEA, nor shall it be allowed to expire, without at least thirty (30) days prior written notice by the insurer to each insured and to each additional insured;
- (ii) shall provide for severability of interests;
- (iii) shall provide that an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to the other insureds; and
- (iv) shall provide for contractual liability coverage with respect to the indemnity obligation set forth in Section 5.4(A) for Operator and Section 5.4(B) for a Party.

For the purposes of this Section 5.4, "Affiliate" of a Party shall mean a Person that controls or is controlled by or is under common control with such Party.

With respect to any insurance amounts under this Section 5.4 that provide for an adjustment based on Constant Dollars, if a Party maintains the amount set forth in this Agreement (without adjustment for Constant Dollars) such Party shall not be in default under this Section 5.4 for failing to adjust to Constant Dollars unless the Operator has provided such Party with written notice of its failure to adjust (along with notification of the adjusted amount required based on the Constant Dollars adjustment) and such Party fails to cure within thirty (30) days after delivery of such written notice.

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

## 6. MISCELLANEOUS

### 6.1. Default

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

- (i) The failure to make any payment required to be made hereunder within ten (10) days of the due date, or
- (ii) The failure to observe or perform any of the covenants, conditions or obligations of this OEA, other than as described in (i) above, within thirty (30) days after the issuance of a notice by another Party or Operator, as the case may be (the "Non-Defaulting Party") specifying the nature of the default claimed or such longer time period as shall be reasonably necessary to effect such cure, if the nature of such failure will take longer than thirty (30) days to cure, provided (a) the Party receiving such notice commences such cure within such thirty (30) day period and diligently pursues the same thereafter to its completion and (b) that, in no event, shall such cure period exceed ninety (90) days. Any notice sent pursuant to this Section 6.1(A)(ii) to a Defaulting Party shall simultaneously be sent to any mortgagee of the Defaulting Party which has previously requested any other Party, in writing, to forward such notices to it.

(B) With respect to any default under Section 6.1(A)(ii) above, any Non-Defaulting Party shall have the right following the expiration of any applicable cure period, but not the obligation, to cure such default by the payment of money or the performance of some

other action for the account of and at the expense of the Defaulting Party; provided, however, that in the event the default shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Non-Defaulting Party shall have the right to enter upon the Tract of the Defaulting Party (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. Each Party shall be responsible for the default of its Occupants. In the event any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses incurred in connection with such curative action, plus interest as provided herein, within ten (10) days of receipt of demand, together with reasonable documentation supporting the expenditures made.

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

- (i) Impose any obligation on a Non-Defaulting Party to do so;
- (ii) Render the Non-Defaulting Party liable to the Defaulting Party or any third party for an election not to do so;
- (iii) Relieve the Defaulting Party from any performance obligation hereunder; or
- (iv) Relieve the Defaulting Party from any indemnity obligation as provided in this OEA.

(C) Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other Person, violating or attempting to violate or defaulting upon any of the provisions contained in this OEA, and to recover actual damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants, or conditions of this OEA, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to a Party under this OEA or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy. In addition, each Party hereby waives trial by jury in connection with any litigation between or among any other Party or Parties involving this OEA.

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

- (i) The highest rate permitted by law to be either paid on such type of obligation by the Person obligated to make such payment or charged the Person to whom such payment is due, whichever is less; or
- (ii) The prime rate, plus three percent (3%). As used herein, "prime rate" shall mean the rate of interest published from time to time as the "Prime Rate" in the Wall Street Journal under the heading "Money Rates"; provided, however, that (i) if more than one such rate is published therein the prime rate shall be the highest such rate and (ii) if such rate is no longer published in the Wall Street Journal or is otherwise unavailable, the prime rate shall be a substantially comparable index of short term loan interest rates charged by U.S. banks to corporate borrowers selected by the Approving Parties.

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

- (i) whether it knows of any default under this OEA by the requesting Person, and if there are known defaults, specifying the nature thereof in reasonable detail;
- (ii) whether this OEA has been assigned, modified or amended in any way by it and if so, then stating the nature thereof in reasonable detail;
- (iii) whether this OEA is in full force and effect; and
- (iv) whether the requesting Party has given any notice pursuant to this OEA of any off-sets, claims, demands or set-offs against the issuing Party.

Such estoppel certificate shall act to estop the issuer from asserting a claim or defense against a bona fide encumbrancer or purchaser for value to the extent that such claim or defense is based upon facts known to the issuer as of the date of the estoppel certificate which are contrary to the facts contained therein, and such bona fide purchaser or encumbrancer has acted in reasonable reliance upon the estoppel certificate without knowledge of facts to the contrary. The issuance of an estoppel certificate shall in no event subject the issuer to any liability for the negligent or inadvertent failure of the issuer to disclose correct and/or relevant information (but it shall estop such issuer from making assertions contrary to those set forth in the certificate for the period covered by the certificate), nor shall such issuance be construed to

waive any rights of the issuer to perform an audit or obtain an adjustment with respect to Common Area Maintenance Costs for any year it is entitled to do so, or to challenge acts committed by other Parties for which approval by the Approving Parties was required but not sought or obtained. Failure by any Party to furnish such statement after receipt by such Party of an additional ten (10) day notice from the requesting Party shall be deemed an acknowledgment by the Party requested to execute such statement that (i) such Party knows of no defaults under this OEA, (ii) this OEA has not been assigned, modified or amended in any way, (iii) this OEA is in full force and effect, and (iv) the requesting Party has not given any notice pursuant to this OEA to such Party of any off-sets, claims, demands or set-offs against any other Party, as of the date of such request.

6.4. Notices. All notices, demands and requests (collectively the "notice") required or permitted to be given under this OEA must be in writing and shall be sent by registered or certified mail or a nationally recognized overnight mail service, in each case to the following initial addresses of the Parties:

Lowe's: Lowe's Home Centers, Inc.  
P.O. Box 1111  
Highway 268 East  
North Wilkesboro, NC 28656-0001  
Attention: Property Management (REO)

With a copy to:

Lowe's Home Centers, Inc.  
P.O. Box 1111  
Highway 268 East  
North Wilkesboro, NC 28656-0001  
Attention: Legal Department (REO)

Developer: WesGold, L.P.  
c/o The Goldenberg Group, Inc.  
350 Sentry Parkway, Building 630  
Suite 300  
Blue Bell, PA 19422-2316  
Attn: Mr. Kenneth N. Goldenberg

Operator: As from time to time designated.

Such notices shall be deemed to have been received by the addressee upon the first to occur of (a) actual receipt thereof or (b) the date on which delivery thereof by a method described in this Section 6.4 is first attempted during customary business hours. Upon at least

ten (10) days prior written notice, each Person shall have the right to change its address to any other address within the United States of America by written notice to each Party and Operator.

6.5. Approval Rights and Deemed Approval.

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

(B) Unless provision is made for a specific time period, each response to a request for an approval or consent required to be considered pursuant to this OEA shall be given by the Person to whom directed within thirty (30) days after receipt. Each disapproval shall be in writing and, subject to (A) above, the reasons shall be clearly stated. If a response is not given within the required time period, the requested Party shall be deemed to have given its approval if the original notice stated in capitalized letters that failure to respond within the applicable time period will be deemed an approval. Notwithstanding anything contained herein to the contrary, the provisions of this paragraph (B) do not apply in any manner or fashion to any request which requires an amendment to this OEA, such requests being governed solely by the provisions of Section 6.8(E).

(C) If the Approving Parties' approval is requested, unanimous approval must be given.

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

6.7. Binding Effect. The terms of this OEA and all easements granted hereunder shall constitute covenants running with the land and shall bind the real estate described herein and inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns who become Parties hereunder. This OEA is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby.

6.8. Construction and Interpretation.

(A) This OEA and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior negotiations, correspondence, memoranda or agreements are superseded in total by this OEA and Exhibits hereto. This OEA has been fully negotiated at arms length between the signatories hereto, and after advice by counsel and other representatives chosen by such signatories, and such signatories are fully informed with respect thereto; no such signatory shall be deemed the scrivener of this OEA; and, based on the foregoing, the provisions of this OEA and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party.

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

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

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

(E) This OEA may be terminated or amended by, and only by, a written agreement signed by all of the then current Approving Parties and shall be effective only when recorded in the county and state where the Shopping Center is located; provided, however, that no such amendment shall impose any materially greater obligation on, or materially impair any right of, a Party or its Tract without the consent of such Party. Except as expressly provided

in this Section 6.8(E), no consent to the termination or amendment of this OEA shall ever be required of any Occupant or Person other than the Parties, nor shall any Occupant or Person other than the Parties have any right to enforce any of the provisions hereof. Since the submission of a proposed amendment to the Parties is not an item of "consent" or "approval", each Party may consider, approve or disapprove any proposed amendment to this OEA in its sole and absolute discretion without regard to reasonableness or timeliness. So long as any mortgage or deed of trust shall encumber any Tract, of which mortgage or deed of trust each Party has written notice of, the termination of this OEA shall not be effective as against any Person holding any such mortgage or deed of trust unless the instrument of termination is also executed by each such Person.

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

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

6.10. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center Tract or of any Tract or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Party hereto shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

6.11. Excusable Delays. Whenever performance is required of any Person hereunder, such Person shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, inability or delays in receiving approvals or permits (provided such Party has used all due diligence and good faith in seeking such approvals or permits in a timely manner) unforeseen site or soil conditions or any other cause beyond the reasonable control of such Person, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this section shall not operate to excuse any Person from the prompt payment of any monies required by this OEA.

6.12. Mitigation of Damages. In all situations arising out of this OEA, all Parties shall attempt to avoid and mitigate the damages resulting from the conduct of any other

Party. Each Party hereto shall take all reasonable measures to effectuate the provisions of this OEA.

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

6.14. Time. Time is of the essence of this OEA.

6.15. No Waiver. The failure of any Party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that Party may have hereunder, at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. No waiver by any Party of any default under this OEA shall be effective or binding on such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers or any default under any provision of this OEA shall not be deemed to be a waiver of any subsequent default in the performance or the same provision or any other term or provision contained in this OEA.

6.16. Mortgage Subordination. Any mortgage or deed of trust affecting any portion of Shopping Center Tract shall at all times be subject and subordinate to the terms of this OEA and any party foreclosing any such mortgage or deed of trust or acquiring title by deed in lieu of foreclosure or trustee sale shall acquire title subject to all of the terms and provisions of this OEA.

6.17. Limited Guaranty. Lowe's Companies, Inc. ("Parent Company") the sole shareholder of Lowe's, enters into this OEA for the sole and limited purpose of irrevocably and unconditionally guaranteeing the full and timely performance of each and every self-insurance coverage obligation of Lowe's in the event and to the extent that (a) Lowe's elects to self-insure its insurance coverages, or any portion thereof, in accordance with the terms of Section 5.4, and (b) Lowe's is unwilling or unable to deliver a copy of an annual report of Lowe's (independent of the Parent Company) that is audited by an independent certified public accountant which discloses that Lowe's has One Hundred Fifty Million Dollars. (\$150,000,000.00) in Constant Dollars of both net worth and net current assets. In such case, the foregoing guaranty shall be limited to all of Lowe's obligations under Section 5.4, including without limitation, the payment of valid claims in accordance with the self-insurance provisions of Section 5.4, but only to the extent such claims would have been payable pursuant to an insurance policy meeting the requirements of this OEA (the "Self-insurance Obligations"). Notwithstanding anything contained in this OEA to the contrary, this guaranty shall only be effective as to any self-

insurance obligations of Lowe's, or any affiliate of either Lowe's or the Parent Company, shall be null and void and of no force or effect with respect to the obligations of any other successors or assigns of Lowe's, and shall be null and void upon the transfer, conveyance or sale of the Lowe's Tract by Lowe's to any third (3<sup>rd</sup>) party except with respect to matters occurring prior to such transfer, conveyance or sale.

Subject to the provisions and limitations set forth in the immediately preceding paragraph, no act or thing need occur to establish the liability of the Parent Company hereunder, and no act or thing (including, but not limited to, a discharge in bankruptcy of the Self-insurance Obligations) relating to the Self-insurance Obligations which but for this provision could act as a release of the liabilities of the Parent Company hereunder (if any) shall in any way exonerate the Parent Company, or affect, impair, reduce or release this guaranty and the liability of the Parent Company hereunder (if any) and this shall be a continuing, absolute and unconditional guaranty and shall be in force and be binding upon the Parent Company until the Self-insurance Obligations (if any) are fully paid and performed or as otherwise provided in this Section 6.17 or Section 5.4.

Subject to all of the foregoing, no Party shall be required to first resort for performance of the Self-insurance Obligations, to Lowe's or other persons or corporations, their properties or estates, or to any property, liens or other rights or remedies whatsoever.

7. TERM

This OEA shall be effective as of the date first above written and shall continue in full force and effect in perpetuity.

8. EXCULPATION

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

8.1. Casualty Insurance and Condemnation Proceeds. To recover from another Party all damages and costs on account of, or in connection with, casualty insurance or condemnation proceeds which are not applied or used in accordance with the terms of this OEA.

8.2. Hazardous Substances. To recover from a Party all damages and costs arising out of or in connection with, or on account of, breach by a Party of its obligations under Section 5.1(C).

8.3. Liability Insurance. To recover from a Party all loss or damages, and costs arising out of or in connection with, or on account of, breach by a Party of its obligation to carry liability insurance as specified under 5.4 or failure to self-insure and indemnify.

8.4. Taxes, Assessments and Liens. To recover from a Party all damages and costs arising out of or in connection with, or on account of, the failure by such Party to pay when due any tax, assessment or lien as specified under Section 5.5.

8.5. Fraud or Misrepresentation. To recover from a Party all damages and costs as a result of any fraud or misrepresentation by such Party in connection with any term, covenant, or condition in this OEA.

8.6. Equitable Relief; Costs. To pursue equitable relief in connection with any term, covenant or condition of this OEA, including a proceeding for temporary restraining order, preliminary injunction, permanent injunction or specific performance and recover all costs, including Interest thereon, relating to such enforcement action.

SIGNATURE PAGE  
FOR  
OPERATION AND EASEMENT AGREEMENT  
BETWEEN  
LOWE'S HOME CENTERS, INC.  
AND  
WESGOLD, L.P.

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

WESGOLD, L.P.

LOWE'S HOME CENTERS, INC.

BY: WESGOLD GENERAL, LLC,  
its sole general partner

By: \_\_\_\_\_  
Kenneth N. Goldenberg  
Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CONSENT AND NON-DISTURBANCE

The undersigned, as fee owner of the Developer Tract and the Outlot Tracts, with the intention to be legally bound hereby, (a) consents to and approves this ECR and the recording hereof against the Developer Tract and the Outlot Tracts and (b) agrees for the benefit of the parties hereto and all Occupants, that notwithstanding any eviction proceedings or any proceedings for the enforcement of the Ground Lease or any termination of the Ground Lease prior to the expiration of the term thereof or the expiration of the term of the Ground Lease, and notwithstanding any exercise by the undersigned of any rights of landlord under the Ground Lease, (i) this ECR shall remain in full force and effect for the entire term hereof and shall not be disturbed or affected by the undersigned and (ii) upon the termination or expiration of the term of the Ground Lease, the undersigned shall be deemed to have assumed and agreed to perform the duties of Developer under this ECR.

WEST PHILADELPHIA FINANCIAL SERVICES  
INSTITUTION, a Pennsylvania corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

JOINDER

The undersigned joins in the execution of this OEA solely for the purpose of confirming its obligations pursuant to Section 6.17 thereof.

LOWE'S COMPANIES, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NORTH CAROLINA )

) SS

COUNTY OF WILKES )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2006 in the County and State aforesaid before me, the subscribed, a Notary Public authorized to take acknowledgments and proofs in said County and State, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of LOWE'S HOME CENTERS, INC., a North Carolina corporation, who, I am satisfied, is the person who, as such officer, signed the within instrument on behalf of such corporation, and said person did acknowledge that he is authorized to sign and deliver the within instrument on behalf of such corporation and that he signed and delivered as the act and deed of such corporation for the uses and purposes expressed therein.

\_\_\_\_\_  
Name:

Notary Public

My Commission Expires:

(NOTARIAL SEAL)

)

)

COUNTY OF

)

Name:

PHIL 628484-6

EXHIBIT A-1

LEGAL DESCRIPTION OF DEVELOPER TRACT

EXHIBIT A-2

LEGAL DESCRIPTION OF OUTLOT TRACTS  
[TO BE PROVIDED BEFORE EXECUTION OF THE OEA]

EXHIBIT A-3

LEGAL DESCRIPTION OF LOWE'S TRACT

EXHIBIT B

LEGAL DESCRIPTION OF SHOPPING CENTER TRACT

EXHIBIT C

SITE PLAN

EXHIBIT D

PYLON SIGN

EXHIBIT E

HEIGHT CRITERIA

**EXHIBIT D**  
**LANDLORD'S SPECIFICATIONS**

EXHIBIT D

PARKWEST TOWN CENTER  
ASHLEY STEWART  
LANDLORD'S "VANILLA-BOX" SPECIFICATIONS  
"RETAIL C, D, E, F & G" BUILDINGS  
NOVEMBER 23, 2005  
*REVISED NOVEMBER 7, 2006*

Landlord, at its sole cost, shall be obligated to construct and to deliver the Demised Premises to Tenant in accordance with the following parameters:

I. **BUILDING SHELL:** The foundations, structural steel framing, insulated exterior masonry walls, storefront, exterior doors and roof system, including stormwater drainage system, comprising the building shell will be constructed in accordance with Landlord's final "Building Shell" plans and the following standard materials and finishes:

(1) **FOUNDATIONS & CONCRETE FLOOR:**

- (a) **Foundation** - Conventional spread footings will be utilized and designed in accordance with the applicable geotechnical report and recommendations and will be placed at required frost elevation depth. Foundation walls will be designed utilizing concrete masonry units or poured concrete foundation in accordance with applicable code requirements.
- (b) **Concrete Floor** - 3,000 PSI concrete floor slab will be reinforced in accordance with the applicable geotechnical report and recommendations over a vapor barrier and stone base. Concrete slab will be provided with control joints throughout as indicated on Landlord's "Building Shell" plans. Concrete floor will receive a smooth trowel finish and will be un-sealed. Tenant, at Tenant's cost, shall be responsible for final floor finishes.

(2) **EXTERIOR WALLS:** Exterior walls will be insulated concrete masonry units ("CMU"), either smooth-faced or split-faced and either integrally colored or painted, at Landlord's option. Interior joints of CMU will be tooled flush throughout with exception to rear wall. All exterior walls will be load bearing as required by applicable code and/or as shown on Landlord's final "Building Shell" plans.

(3) **STOREFRONT:** One pair of entrance doors (each 3'-0" by 7'-0" centered) with anodized aluminum framing and with standard hardware including surface mounted closers, lockset and push/pull bars. Storefront will be 10 feet high from finished floor by full width of store and will have 1-inch clear insulated glass with anodized aluminum mullions or framing. No interior vestibule will be provided. Entrance doors will be provided with removable-core construction cylinder. Tenant, at its cost, will be responsible for providing and installing permanent lock core and keying of cylinder.

(5) **ROOF:** Roof will consist of a low-sloped roofing system with a minimum R-19 insulation and in accordance with the applicable energy code. All roof surfaces will be drained to the underground storm water collection system. An interior clear height of 14-feet minimum will be provided from finished floor to underside of steel framing.

(6) REAR EXIT/RECEIVING DOOR: One hollow metal insulated door (3'-8" by 7'-0") with standard exterior hardware and peep-hole will be provided. Rear door and frame will be painted on both sides.

## II. INTERIOR IMPROVEMENTS AND/OR FINISHES:

(1) GYPSUM WALL BOARD (GWB) CONSTRUCTION: The front wall (and side wall if an end cap store), including all interior structural steel columns, will be furred with 3-5/8 inch metal studs finished with one layer of 5/8 inch GWB to 12 foot height above finished floor (AFF). Demising walls will be 6-inch metal studs from finished floor to roof deck with batt insulation, fire rating in accordance with applicable code and with one-layer of 5/8 inch GWB on each side. All interior GWB walls will be taped, spackled, sanded and ready to receive Tenant's wall finishes. Tenant, at its cost, shall be responsible, for all final wall finishes. In addition, Tenant, at its sole cost, shall be responsible for all other desired interior partitions, excepting the toilet room walls as provided hereinafter in Section II (3).

(2) INTERIOR CEILINGS: suspended ceiling (12 11-foot height AFF) with 2' X 4' standard lay-in grid (white) system and with standard 2' by 4' acoustical ceiling tiles (white).

(3) TOILET ROOMS: two (2) unisex toilet rooms will be constructed at the rear location detailed by tenant layout/drawings ~~corner~~ of the Demised Premises (exact location to be mutually agreed upon in order to accommodate Tenant's floor plan). The toilet rooms will comply with all Local, State and Federal requirements. Partitions will be 3-5/8 inch metal studs with 5/8 inch water resistant GWB on the interior side and standard 5/8 inch GWB on the exterior side. Interior ceiling will be 8 foot height (AFF) with 2' x 4' standard lay-in grid (white) with standard 2' by 4' acoustical ceiling tiles (white). Door will be a 3' by 7' hollow metal door and frame with ADA lever-handle, privacy lock, and wall stop (door and frame will be painted). Floor will be VCT tile with 4-inch vinyl cove base. Each toilet room will have domestic water and sanitary sewer lines as required per code, one (1) water closet (floor mounted handicapped type with toilet paper holder and grab bars per code), one (1) sink (wall mounted handicapped type with bracket support), one (1) mirror (wall hung 18" x 30" mirror), one (1) exhaust fan (vented through wall or roof), one (1) 2' by 4' two tube recessed fluorescent light fixture with clear prismatic lens and one (1) wall switch to operate both the light and the fan. Both toilet rooms will be served by one (1) six (6) gallon electric hot water heater. In addition, one (1) mop sink will be installed and one (1) drinking fountain will be installed on the exterior of the toilet room door partition wall. All toilet room GWB partition walls will be taped, spackled, sanded and painted.

(4) SPRINKLER: Automatic sprinkler system will be installed in accordance with the applicable building codes. Sprinkler main and back flow preventer will be located in Landlord's utility room and branch mains will be distributed to each store with applicable code required monitoring devices. All mains and all laterals will be located above the bottom cord of joist/structure or as close as possible to underside of structure with sprinkler heads mounted in ceiling. Tenant shall be responsible for the cost of monitoring the fire protection system for its Demised Premises.

(5) HEATING, VENTILATION & AIR CONDITIONING ("HVAC"): a new HVAC system with fully ducted supply and return will be installed. The roof top HVAC units (Traine, Lennox, Carrier or equal, at Landlord's option) will have full perimeter curbs to match units and gas/electric heat (at Landlord's option). The HVAC system size will be based on 1 ton per 350 square feet of the total area of the Demised Premises, and each rooftop HVAC unit will have a five (5) year standard manufacturer's warranty. All supply air ductwork will be insulated and will have non-directional diffusers. All main and branch duct work to be sheet metal. Flex duct (12 foot maximum length) may be used only at end runs to diffusers. All ductwork will be installed tight against steel joists. One (1) standard heat/cool thermostat will be installed per rooftop HVAC unit (wall mounted 5 feet AFF). Duct smoke detectors will be installed as required by code. Tenant shall be responsible for the cost of monitoring the fire protection system for its Demised Premises.

(6) ELECTRIC: All electrical work will be done in accordance with the National Electric Code and all local codes. Each store will be provided with the following:

- (i) Wall mounted duplex electrical outlets based on one (1) outlet every 20 feet on-center (18 inches AFF) along demising and side walls.
- (ii) 2' x 4' recessed fluorescent light fixtures with electronic ballast, four (4) T-8 lamps (Phillips F32T8 TL 835 or equivalent, at Landlord's option) and clear prismatic lens based on one (1) fixture for each 75 60 square feet of floor area of the Demised Premises.
- (iii) Main telephone service will be located in Landlord's utility room and one 2-inch conduit with pull string will be distributed to each Demised Premises to a ¾ inch plywood backboard (2' x 2') to be located at the rear of the Demised Premises next to the electrical panel near the rear door. All interior conduit, junction boxes and wiring associated with Tenant's telephone system shall be provided and installed by Tenant, including installing main feed wire(s) to main service in Landlord's utility room.
- (iv) One (1) wall mounted duplex outlet to be located between the electrical panel and the telephone board.
- (v) One (1) J-box with wire and power from a 120/208v 20-amp circuit will be located on the front wall (centered) for tenant's exterior store sign. Tenant, at its cost, shall be responsible for final sign and connections to J-box.
- (vi) One (1) light switch in each toilet room to operate both light and fan.
- (vii) One (1) 3-way light with switch at each exit door for sales area lighting.
- (viii) One (1) exit light at both the front and rear doors and emergency and exit lighting per code.
- (ix) All required electrical circuiting and connections for all roof top HVAC units, the drinking fountain, the hot water heater, all sprinkler flow and tamper switches and all smoke detectors as required.

A 277/480 volt, 3 phase, 4 wire service and one panel board will be provided to each store. The electrical service will be sized at 20 watts per square foot of the Demised Premises and the electrical panel will be sized based on the store areas as follows:

1. 1,350 sf to 4,500 sf - 300 amp panel
2. 4,950 sf to 5,400 sf - 400 amp panel
3. 5,850 sf to 8,100 sf - 600 amp panel

(7) UTILITY METERS: all utilities (ie: electric, gas and water) will be brought to the Demised Premises and will be separately metered (electric/gas) or sub-metered (water) for the Demised Premises. Tenant, at its cost, shall be responsible for cost of utilities within its Demised Premises.

**EXHIBIT E**

**EOP**

## EXHIBIT E

### PARKWEST TOWN CENTER ECONOMIC OPPORTUNITY PLAN

#### **I. Project and Plan Introduction**

This Economic Opportunity Plan involves the Parkwest Town Center, which is an approximately 308,000 square foot retail center anchored by Lowe's Home Improvement and a Shop Rite Supermarket located in Philadelphia, PA, and bounded by Columbia Avenue to the north, 52<sup>nd</sup> Street to the west, 50<sup>th</sup> Street to the east and railroad tracks to the south (hereinafter referred to as the "Project"). WesGold, L.P., a joint venture between West Philadelphia Financial Services Institution ("WPFSI") and The Goldenberg Group ("TGG") (collectively referred to hereafter as the "Owner") are developing the Project. The purpose, standards and procedures of this Economic Opportunity Plan (the "Plan") are the expressed wishes of the Owner as set forth herein. The participants to the Plan shall include consultants, construction management, and prime contractors (collectively referred to as the "Participants").

The Plan shall be attached to and made apart of all contracts entered into by the Participants for this Project. All participants will be obligated to fully comply with the requirements of the Plan.

The Owner is committed to provide meaningful and representative opportunities for minority-owned, women-owned and disabled-owned business enterprises, and economically disadvantaged-owned business enterprises (collectively referred to hereafter as "M/W/DS-BE firms") and individuals that are locally based in all phases of the Project. It is expected that all Participants make the same commitment. Each Participant shall not, and furthermore, shall ensure that their associates, partners or representatives shall not, discriminate on the basis of race, color, religion, sex or natural origin in the award and performance of contracts pertaining to the Project or with respect to any and all related employment practices.

All participants in the Project shall observe and be subject to the enforcement of all relevant City of Philadelphia, Commonwealth of Pennsylvania and federal laws; ordinances, orders, rules and/or regulations regarding M/W/DS-BE firms and locally based business enterprises. Furthermore, affirmative action will be taken, consistent with sound procurement policies and applicable laws to ensure that M/W/DS-BE firms are afforded a meaningful and representative opportunity to participate in contracts relating to the Project.

For the purposes of this Plan, the term "minority" shall refer to the following: black (all persons having origins in any of the Black African racial groups); Hispanic/Latino (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin); Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands); and American Indians (all persons having origins in

any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

Agencies and representatives of the City of Philadelphia and/or Commonwealth of Pennsylvania may be consulted regarding the appropriate inclusion of M/W/DS-BE firms and socially/economically disadvantaged professionals in this Project as outlined in this Plan and with regard to its implementation.

## **II. Procedures for Determination**

**A. Scope/Duration.** This Plan shall apply to contracts awarded and procurements by the Owner and all Participants throughout the entire length of the Project.

**B. Statement of Objectives.** The Objectives set forth in the Plan shall be incorporated in all requests for proposals, bid packages and solicitations for the Projects and communicated to all Participant levels.

**C. Good Faith Efforts.** Participants shall reasonably exhaust the use of best and good faith efforts as defined hereunder to provide appropriate participation and utilization opportunities for M/W/DS-BE firms. All Project contractors and vendors will be required to do likewise, consistent with best and sound procurement practices, and with applicable law. *Best and good faith efforts* will be deemed adhered to when a Participant meets the criteria set forth in this section and demonstrates and documents its efforts throughout the length of the Project. If the established ranges for inclusion of M/W/DS-BE firms are not met, a Participant must submit a Subcontracting/Vendor Plan showing how *best and good faith efforts* were made to achieve said ranges. This plan must include, but not be limited to, the following:

- Written request for assistance to the Owner three (3) business days prior to the bid due date.
- Solicitation through newspapers, periodicals advertisements, job fairs, etc. that focus on construction and are minority-owned and/or focused.
- Telephone logs.
- Evidence of solicitation to qualified and MBEC certified M/W/DS-BE firms.
- Bid results and reasons as to why no awards were made to M/W/DS-BE firms.
- Use of City/MBEC-certified business firms via their directory.
- Correspondence between contracting firm and any M/W/DS-BE firms.
- Attendance logs and/or records of any scheduled pre-bid or pre-proposal meeting
- Specific, general and technical assistance offered and provided to M/W/DS-BE firms related to their portion of the Project.
- Proof there was notification of and access to bid documents at company or other office locations for open and timely review.

**D. Monitoring of *Best and Good Faith Efforts*.** Owner requirements relative to monitoring of *best and good faith efforts* of Participants engaged in the Project shall be established by the Owner in consultation with appropriate city, state and federal agencies and/or private professional entities to include (in addition to further measures as may be required) the following:

1) Participants shall submit to the Owner copies of signed contracts and purchase orders with M/W/DS-BE subcontractors.

2) Participants shall be ready to provide evidence of payments to their subcontractors, sub-consultants and supply vendors for participation verification. This documentation should be provided monthly or included with every request for payment to Contractors.

3) At the conclusion of work, the Subcontractor shall provide a statement or other evidence of the actual dollar amounts paid to M/W/DS-BE subcontractors.

4) All On-site Contractors shall be prepared to submit "certified" payrolls listing the following items for all on-site employees:

1. Full name
2. Social Security number
3. Full address
4. Trade classification (e.g., laborer, carpenter, apprentice, electrician, plumber, and foreman)
5. Gender
6. Race
7. Hours worked
8. All withholding (e.g., laborer, local, state, FICA, etc.)
9. Name of Contractor and Indication of Prime for Subcontractors
10. Name of Project

5) Certified payroll reports shall be signed by an authorized company officer.

6) The Participant shall comply with all applicable requirements of any federal, state or local law ordinance or regulation relating to contract and payroll compliance.

**E. Documentation of *Best and Good Faith Efforts* and Compliance.** The following two components have been established to facilitate the inclusion of M/W/DS-BE firms as contractors and vendors, and minority/female/local residents as Project site workforce participants:

1. M/W/DS-BE Contracting and Vending Participation Levels - the basis for each determination will be the total dollar amount of the bid/contract OR the total dollar amount of the bid/contract for the identified Project task.

2. Minority/Female/Local Resident Employment Participation Levels - the basis for each determination will be the projected total on-site field employee hours divided by the number of minority, female and local residents' employee hours anticipated to be performed on the Contractor's payroll, and each of the Contractor's on-site subcontractors payrolls.

F. **Oversight Committee** The Owner, in consultation with the appropriate agencies and entities, will establish and identify the members of a Project Oversight Committee, which will be composed of representatives from the following entities: Owner, Construction Manager, office of State Senator Vincent Hughes, office of Councilman Michael Nutter, Parkside Association, Cathedral Park Community Association, Men of Mill Creek, Carroll Park Community Council, Business Association of West Parkside, West Philadelphia Coalition of Neighbors & Businesses and the Minority Business Enterprise Council ("MBEC").

A meeting of the Oversight Committee shall be called by the Owner within one (1) month of the initiation of this Project and shall meet on a regular basis during all phases of the Project. Participants will engage in monitoring, reporting and problem solving activities which are to include regular meetings to address all matters relevant to further development of the EOP Plan, carrying out its implementation and the successful completion of the Project.

### **III. Certified M/W/DS-BE Firms**

A. Only businesses that are owned, managed and controlled, in both form and substance, as M/W/DS-BE firms and certified as such by the Minority Business Enterprise Council, the Unified Certification Program (the "UCP") or a authorized governmental agency, shall count towards the participation ranges, set forth herein on this Project.

B. M/W/DS-BE certification should not be the sole determination of a Bidders or Contractors financial or technical ability to perform specified work. The Owner reserves the right to evaluate the Contractor's or Subcontractor's ability to satisfy financial, technical, or other criteria separate and apart from said certifications before bid opening. Pre-qualification conditions and requirements shall be conveyed in a fair, open and non-discriminatory manner to all.

C. The Owner recognizes that M/W/DS-BE certifications may expire or the firm may experience de-certification by an authorized governmental entity.

Certifications that expire during a firm's participation on a particular phase of the Project may be counted toward overall goals for participation ranges.

#### IV. Non-Compliance

A. In cases where the Owner has cause to believe that a Participant, acting in good faith, has failed to comply with the provisions of the Plan, the Owner and/or the Oversight Committee, with the assistance and consultation of the appropriate agencies and professional entities, shall attempt to resolve the noncompliance through conciliation and persuasion.

B. In conciliation, the Participant must satisfy the Owner and the Oversight Committee that they have made their *best and good faith efforts* to achieve the agreed upon participation goals by certified M/W/DS-BE firms. *Best and good faith efforts* on the part of the Participant/Contractor include:

- 1) Entering into a contractual relationship with the designated M/W/DS-BE firm in a timely, responsive and responsible manner, and fulfilling all contractual requirements, including payments, in said manner.
- 2) Notifying all parties - including the Owner, the M/W/DS-BE firm, the Oversight Committee and all relevant Participants - of any problems in a timely manner.
- 3) Requesting assistance from the Owner and/or the Oversight Committee in resolving any problems with any M/W/DS-BE firm.
- 4) Making every reasonable effort to appropriately facilitate successful performance of contractual duties by a M/W/DS-BE firm through timely, clear and direct communications.

C. In cases where the Owner and/or the Oversight Committee has cause to believe that any Participant has failed to comply with the provisions of the plan, they shall conduct an investigation.

D. After affording the Participant notice and an opportunity to be heard, the Owner and/or the Oversight Committee are authorized to take corrective, remedial and/or punitive action. Such actions may include, but are not limited to:

- 1) Declaring the Participant as non-responsible and/or non-responsive, with a determination as ineligible to receive the award of a contract, continue a contract and/or ineligible for any other future contracts affiliated with this EOP;
- 2) Suspending the violating Participant from doing business with the Owner;

3) Withholding payments to the violating Participant; and/or

4) Pursuing and securing any relief which the Owner and/or the Oversight Committee may deem to be necessary, proper, and in the best interest of the Owner and the Project, consistent with applicable policy and law.

E. A Participant may appeal a determination of non-compliance with this Equal Opportunity Plan by filing a written grievance with the Owner and/or its Oversight Committee

F. Within five (5) working days the Owner and/or the Oversight Committee shall issue and serve a written notice/determination, together with a copy of the grievance as filed, to all persons named in the grievance.

## **V. Guidelines for Joint Venturing**

Joint Venture relationships with certified M/W/DS-BE firms must meet the following criteria in order to receive credit towards participation goals:

A. The M/W/DS-BE partner(s) must be certified by MBEC, UCP or a governmental agency authorized by law to certify such enterprises prior to proposal/bid submission.

B. The M/W/DS-BE partner(s) must be substantially involved in significant phases of the contract including, but not limited to, the performance (with its own work force) of a portion of the on-site work, and of administrative responsibilities, such as bidding, planning, staffing and daily management.

C. The business arrangements must be customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their respective ownership interests).

D. If a certified partner is a M/W/DS-BE, the participation will be credited only to the extent of the partner's ownership interest in the joint venture; there will remain a requirement to meet M/W/DS-BE goals.

## **VI. Participation Goals and Ranges**

The following employment goals have been set for the Project:

Employment	Empowerment Zone Resident	Minorities	Females	Disabled
Construction Workforce	20%	30%	5%	0%
Permanent Workforce				
- Hourly	40%	40%	30%	2%
- Management	20%	25%	35%	2%

The following contract ranges have been set for the Project:

	Minority	Female	Disabled
Contracts	Owned	Owned	Owned
Professional Services	25-30%	15-20%	2-5%
Construction Contractors	25-30%	15-20%	2-5%
Operational Service Providers	25-30%	15-20%	2-5%

In support of local initiatives that target economic benefits to low-income persons and underemployed crafts persons, the Owner will require its contracts to make a good faith effort to maximize employment opportunities for apprentices and pre-apprentice crafts persons, consistent with established journey person/apprentice craft persons ratios.

Owner believes it will have enough time to provide training to help construction tradesmen improve their skills and gain access to local union halls. This opportunity exists because the Owner has developed a relationship with the Philadelphia Housing Authority and American Community Partnerships, of which both have agreed to train Empowerment Zone residents and assist them in their attempt to join a union. Therefore, the Owner's contractors will be able to hire these individuals as apprentices, local hiring goals will be met and a local source of labor for future projects would have been created.

**EXHIBIT F**  
**SHOPPING CENTER EXCLUSIVES**

**EXHIBIT F**

**SHOPPING CENTER EXCLUSIVES**

**1. ShopRite Supermarket**

Landlord covenants and agrees that Landlord shall not permit any occupant or occupants of the Landlord Parcel to sell, and Tenant shall have the exclusive right in the Landlord Parcel to sell:

- i. prescription drugs ("Prescription Drug Items"); provided that the restriction contained in this paragraph shall not be applicable if, for any reason other than Permitted Temporary Closures, (a) Tenant has not commenced selling Prescription Drug Items from the Demised Premises within one (1) year after the Rent Commencement Date, or (b) at any time thereafter, Tenant ceases selling Prescription Drug Items from the Demised Premises for a period of one (1) year; or
- ii. fresh, frozen, packaged, canned or other human edibles for off-premises consumption, including fish, meat, produce, poultry, baked goods, dairy products, delicatessen and appetizing foods, and non-alcoholic beverages (collectively, "Supermarket Food and Beverage Items"); provided that Landlord may permit the operation of restaurants, sandwich shops, fast food restaurants, diners, luncheonettes, candy stores, cookie stores, pizza shops, bagel stores, donut stores, coffee stores and coffee bars ("Restaurants") within the Landlord Parcel (excluding the portions of the Landlord Parcel identified on the Lease Site Plan as "RETAIL S-2" and "RETAIL S-3", in which Restaurants are not permitted and provided that a maximum of three (3) Restaurants with an aggregate Gross Floor Area of no more than six thousand (6,000) square feet may be located within the portion of the Landlord Parcel identified on the Lease Site Plan as "RETAIL S-1"). The restrictions contained in this Article 22.2.3 shall not be applicable if, for any reason other than Permitted Temporary Closures: (a) Tenant has not commenced selling Supermarket Food and Beverage Items from the Demised Premises within one (1) year after the Rent Commencement Date; or (b) Tenant ceases selling Supermarket Food and Beverage Items from the Demised Premises for a period in excess of one (1) year.

The covenants of Landlord contained above shall not be applicable to and shall not prohibit: pet stores; one (1) so called "99¢" or "\$1.00" stores or unit price store; or "incidental sales" of any of the prohibited items within the Competing Primary Uses. For purposes of the foregoing, a tenant shall be deemed to be conducting only "incidental sales" of each such individual prohibited item only if (x) the aggregate floor area in such tenant's premises devoted to the display of each such individual category of items does not exceed the lesser of (1) ten percent (10%) of the rentable area of such tenant's premises or (2) two thousand five hundred (2,500) square feet.

## 2. McDonald's

For so long as Tenant is operating a McDonald's restaurant on the Leased Space, Landlord covenants and agrees that no portion of the Shopping Center Parcel (other than the Leased Space) shall, during the Term, be leased, used or occupied as a quick service restaurant with a drive-thru, selling or serving hamburgers or chicken served in sandwich form. In addition, and not by way of example, the following restaurants operating under the listed trade names, or operating under any successor trade names, are prohibited within the areas, and for the time period specified in this Article.

Apolo Burgers	Arby's	Astro Burgers
Atlanta Burgers	A & W	Backyard Burgers
Bojangles	Brown's Chicken	Burger Chef
Burger King	Burger Street	Carl's Jr.
Carrow's	Checkers	Cheeburger, Cheeburger
Chick-Fil-A	Crown Burgers	Crystal Burgers
Culvers	Dairy Queen	El Pollo Loco
Fuddrucker's	Hardee's	Hire's Big H
IceBerg Drive-In	In and Out Burgers	Jack-in-the-Box
Jakes Over the Top	Johnnie's	Johnny Rockets
Kentucky Fried Chicken (KFC)	Pollo Tropical	Popeye's Chicken
Rally's	Rax	Round Table
Roy Rogers	Shakeys Whataburger	Sonic
Steak 'N' Shake	Tim Horton's	Wendy's
Whataburger	White Castle	

Provided, however, it is specifically agreed that the foregoing covenant shall not apply to the Lowe's Parcel, the portion of the Shopping Center Parcel identified on the Site Plan as "Anchor B" and any other single tenant or occupant of the Shopping Center occupying 15,000 square feet or more of contiguous rentable area.

## 3. Wachovia Bank

During the Lease Term, but subject to the rights heretofore granted to other tenants in the Development under any leases existing as of the Lease Date, Landlord covenants and agrees that for so long as Tenant is operating on the Premises for Financial and/or Brokerage Services it shall not lease or consent to the use of any space in the Developer Tracts (other than the Premises) for Financial and/or Brokerage Services, provided, however, that the foregoing exclusive shall not be applicable to the Lowe's premises and the Lowe's Tract and further provided that the foregoing exclusive shall not prohibit the operation of an ATM within any portion of the Development that (i) is ancillary to the primary business being operated thereon and (ii) is located in the interior of any building. The term "Financial and/or Brokerage Services" shall include state and national banks, savings banks, credit unions, savings and loan institutions, mortgage and brokerage companies, insurance companies, and any other entities in the financial services industry, as well as the operation of ATMs, financial drive-thrus, and night depositories.

4. **Anna's Linens**

Subject to the terms and conditions set forth below, provided that Tenant is in possession of the Premises and is selling Restricted Items therein, Tenant shall have the exclusive right to the retail sale of blankets, bedspreads, sheets, towels, pillows, window coverings, table top and kitchen accessories (the "Restricted Items") within the Landlord Parcel throughout the Term. A "Use Restriction Violation" occurs upon either or both of the following events: (1) any tenant or occupant in the Landlord Parcel uses more than twenty percent (20%) of its sales area to sell Restricted Items; or (2) Landlord leases space to another tenant in the Landlord Parcel for the sale of Restricted Items in more than twenty percent (20%) of its sales area.

5. **AJ Wright**

Landlord agrees that, from the date hereof until expiration of the term of this lease, no other premises in the Landlord Parcel shall at any time contain more than (i) fifteen thousand (15,000) square feet of floor area therein used or occupied for, or devoted to, the sale or display of brand name men's and women's and/or children's apparel at off-price or brand name women's apparel at off price, and/or (ii) eleven thousand (11,000) square feet of floor area therein used or occupied for, or devoted to the sale or display of shoes, footwear and related accessories, and/or (iii) fifteen thousand (15,000) square feet of floor area therein used or occupied for, or devoted to, the sale or display of furnishings for the home including the following categories of items: linens and domestics, window treatments, floor coverings, bathroom items, bedding, furniture, wall décor, housewares, table top goods, glassware, flatware, cookware, kitchen utensils, giftware and/or closet, shelving and storage items and home accessories (all of the foregoing hereinafter referred to as a "Competing Use" and the merchandise referred to therein as the "Protected Merchandise"). The computation of such floor area shall include one half (1/2) of all floor area in any aisles, corridors or similar spaces adjacent to or abutting any racks, gondolas, shelves, cabinets, counters or other fixtures or equipment containing or used for the sale or display of the Protected Merchandise.

6. **Monster Pets**

During the Term, provided that Tenant is in possession of the Premises and operating continuously for Tenant's Primary Business therein, and no Event of Default has occurred and is continuing, Landlord agrees that it will not enter into a lease or consent to the use and occupancy of any other space within the Shopping Center by a tenant, subtenant, assignee, licensee or concessionaire for the primary operation of a business deriving twenty-five percent (25%) or more of its gross sales from the sale of pets, pet supplies and animals, including wild birds.

7. **Eternity**

Landlord agrees that, during the Term, Landlord will not enter into a lease for premises in the Landlord Parcel for the operation of retail clothing stores known as City Blue, Easy Pickings, Unica, and Barefeet Shoes.

**EXHIBIT G**

**TENANT'S STANDARD SIGNAGE**

[None attached. To be approved by Landlord following execution of this Lease.]

Jeffrey Kurtzman  
Direct Dial: (215) 569-4493  
Email: [jkurtzma@klehr.com](mailto:jkurtzma@klehr.com)

October 8, 2010

BMC Group, Inc.  
Attn: Urban Brands Claims Processing  
P.O. Box 3020  
Chanhassen, MN 55317-3020

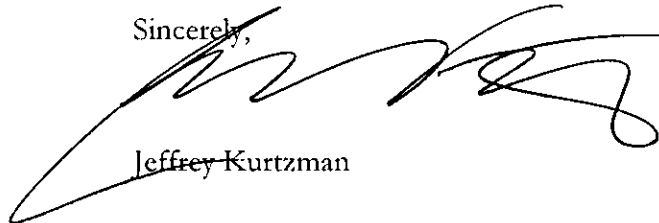
**Re: Urban Brands, Inc.**  
**Case No. 13005 (KJC) Chapter 11**

Dear Sir or Madam:

Enclosed herewith for filing is an original and one copy of the proof of claim of WesGold, LLC in the above-referenced Chapter 11 case. Please return a time-stamped copy of the proof of claim in the pre-addressed stamped envelope which has been enclosed for your convenience.

Thank you for your assistance.

Sincerely,



Jeffrey Kurtzman

JK/ap  
Enclosures