

**DECLARATION REGARDING CONSTRUCTION,
OPERATION, AND RECIPROCAL EASEMENTS**

This Declaration Regarding Construction, Operation, and Reciprocal Easements (the "**Declaration**") is made this 5 day of February, 2016, by Johnstown Plaza LLC, a Kansas limited liability company ("**Developer**"), and Scheels All Sports, Inc., a North Dakota corporation ("**Scheels**").

RECITALS

A. Developer is the owner in fee of that certain real property located in the Town of Johnstown, County of Larimer, State of Colorado, more particularly described in (i) **Exhibit A-1** attached hereto ("**Developer's Parcels**"), and (ii) **Exhibit A-2** attached hereto ("**Developer's District's Parcel**").

B. Scheels is the owner in fee of that certain real property located in the Town of Johnstown, County of Larimer, State of Colorado, more particularly described in **Exhibit A-3** attached hereto ("**Scheel's Parcel**"), and (ii) **Exhibit A-4** attached hereto ("**Scheel's District's Parcel**", Developer's District's Parcel and Scheel's District's Parcel hereinafter together, "**District's Parcel**"). Developer's Parcels, Scheel's Parcel and District's Parcel are hereinafter collectively referred to as the "**Shopping Center Property**".

C. District's Parcel is anticipated to be sold and conveyed in fee simple to Johnstown Plaza Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado ("**District**").

D. Developer and Scheels desire and intend that Owners (as defined in Article I below) from time to time of Parcels (as defined in Article I below) in the Shopping Center Property be committed to operate their respective Parcels as an integrated shopping center for the mutual benefit of such Parcels and, therefore, wish to declare and establish certain reciprocal easements, covenants, and conditions with respect to the Parcels comprising the Shopping Center Property.

E. Developer and Scheels also desire (i) to make provision for regulation of construction of Stores (as defined in Article I below) on the various Parcels within the Shopping Center Property, as well as regulation of certain other improvements on and within the Shopping Center Property as are substantially consistent with the Site Plan attached hereto as **Exhibit B** and the terms of this Declaration, and (ii) to construct certain improvements necessary for the integrated use of the Shopping Center (as defined in Article I below) in the Common Area (as defined in Article I below).

F. In furtherance of the foregoing, Developer and Scheels, recognizing that, for the optimum development and operation of the Shopping Center as a unified and coordinated project, it is necessary that the Owners of the various Parcels within the Shopping Center Property be bound by certain restrictions, covenants and agreements respecting certain matters relating to construction, maintenance and operation of the Shopping Center (including, but not limited to, matters relating to the construction and maintenance of facilities on, and the operation, use and restrictions on the use of, the respective Parcels), and recognizing further that establishment of such restrictions, covenants and agreements will afford successor Owners of Parcels within the Shopping Center Property further assurances as an inducement to undertake development and/or operation on the various Parcels of the Shopping Center

Property, do hereby declare that the Shopping Center Property is and shall be henceforth subject to the terms, provisions, easements, restrictions, covenants and agreements of this Declaration hereinafter set forth, which easements, restrictions, covenants and other agreements are hereby established on the terms and conditions hereof such that the Shopping Center Property and each Owner of any Parcel or Parcels therein henceforth shall be subject to and bound by, the easements, covenants and restrictions hereinafter set forth, all so as to assure that all development on and within the Shopping Center Property will be in conformity herewith during the Term (as defined in Article X below).

G. Notwithstanding anything to the contrary set forth in this Declaration, inasmuch as District was primarily created for the purpose of providing on District's Parcel non-exclusive public parking and ingress, egress, and access to such public parking, and to coordinate with public utility companies to provide underground public utilities through District's Parcel to Developer's Parcels and Scheel's Parcel, this Declaration shall not be recorded against District's Parcel in the Official Records until such time, if at all, as District's Parcel or any portion thereof is reconveyed to Developer, Scheels, or any successor or assign of either or both, including any subsequent Owner of a Parcel, or is otherwise no longer under the ownership and control of a quasi-municipal corporation and political subdivision of the State of Colorado or any other governmental entity intended to succeed to the rights and privileges of such corporation and subdivision (and, notwithstanding that such recording may not take place, this Declaration shall automatically encumber District's Parcel as of such date of reconveyance, transfer, or release). However, as between any Owners from time to time of any Parcel, District's Parcel shall during the entirety of the Term constitute a Parcel of the Shopping Center Property, deemed Common Area, and shall be subject to the terms, provisions, easements, restrictions, covenants and agreements of this Declaration. Without limitation of the foregoing, Developer, on its own behalf and on behalf of its successors and assigns, covenants and agrees to comply with the terms and provisions of this Declaration as if District's Parcel were a Parcel of the Shopping Center Property and shall cause District's Parcel to at all times be and remain in compliance with the terms of this Declaration, and represents and warrants that Scheels and the Scheels Owner shall have all rights with respect to District's Parcel and remedies against Developer and its successors and assigns as if this Declaration were recorded against District's Parcel and Developer was the Owner thereof, and for any failure of District's Parcel to be in compliance with the terms of this Declaration. Notwithstanding anything to the contrary set forth in this Declaration, in no event shall Scheels or the Scheels Owner have any liability to Developer or any Owner for a failure of any District's Parcel to be in compliance with the terms of this Declaration. In the event, and at the time, of any reconveyance, transfer, or release as contemplated above, Developer shall provide written notice to the Scheels Owner of such event and the Scheels Owner, without consent by any party including, without limitation, Developer or any other Owner, shall have the right to record this Declaration against District's Parcel to confirm the effectiveness of this Declaration against the same.

ARTICLE I DEFINITIONS

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

"Access Road(s)" shall mean those certain access ways and entrances shown and designated as such on **Exhibit B-1**.

"Abutting Access Road" is the northerly ½ of the roadway depicted on the plan attached hereto as **Exhibit D** and incorporated herein by this reference, which northerly ½ lies contiguous to but outside of the Shopping Center, the southerly ½ of such roadway being a portion of the Access Roads.

"Building Areas" shall mean the areas of the Shopping Center within which Stores (which for the purpose of this Declaration shall include any appurtenant canopies, supports, loading docks, truck docks, turn-around loading delivery areas or the portions of truck ramps serving any Store, and other outward extensions, as well as attached trash compactors and utility transformers) and any Outdoor Sales area may be constructed, placed, or located; such areas being Developer's Parcels and Scheel's Parcel.

"Common Area(s)" shall be the portion of the Shopping Center Property intended for the nonexclusive use by the Owners and their Permittees, in common with other users as permitted by this Declaration. Common Areas shall include, but not be limited to, common utility lines and systems, parking areas, Access Roads, driveways, lanes, entrances, public restrooms, public halls and hallways, walkways, sidewalks, public elevators, escalators and stairs located within or about the parking areas and sidewalks (not to include any such facilities interior to a Store), landscaping, a Shopping Center management office, any detention or retention ponds, areas, and drainage facilities. The Common Area shall include all areas surrounding Developer's Stores outside the actual footprint of Developer's Stores and still within Developer's Parcels, all areas surrounding Scheel's Store outside the actual footprint of Scheel's Store and still within Scheel's Parcel, and all areas within District's Parcel.

"Constant Dollars" shall mean the value of the U.S. dollar to which such phrase refers, as adjusted from time to time. An adjustment shall occur on first of April of the sixth calendar year following the date of this Declaration, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number; provided that the amount so calculated, and as previously increased in accordance with the provisions hereof, may never decrease by virtue of such calculation. **"Base Index Number"** shall be the level of the Index for the year this Declaration commences; the **"Current Index Number"** shall be the level of the Index for the year preceding the adjustment year; the **"Index"** shall be the consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (1982-84=100) or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then a substitute index selected by Developer of comparable statistics computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

"Control Parcel" means the parcels of land more particularly described in **Exhibit A-5** attached hereto and depicted on **Exhibit B-4** Site Plan.

"Defaulting Owner" is defined in Section 15.1 below.

"**Developer**" as used in this Declaration shall refer to Johnstown Plaza LLC, a Kansas limited liability company, and each successor to such party as Owner of the Control Parcel.

"**Developer's Parcels**" is defined in Paragraph A of the Recitals above.

"**Developer's Stores**" shall mean the structures and improvements constructed and contained within Developer's Parcels, as designated on the Site Plan.

"**District's Parcel**" is defined in Paragraph A of the Recitals above.

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

"**Floor Area**" shall mean the gross number of square feet of floor space within a specified area (e.g., the Shopping Center, a building, specific leased premises), from time to time, of all floors in such structure, whether roofed or not, whether or not actually occupied, including basement space and subterranean areas, measured from the exterior faces or the exterior lines of the exterior walls (including basement wall) and all permanent Outdoor Sales areas. The term "**Floor Area**" shall not include any of the following: (a) The upper levels of any multi-deck stock areas created for convenience to increase the usability of space for stock purposes; (b) Areas, whether physically separated or whether otherwise required by building codes, which are used exclusively to house mechanical, electrical, telephone, telecommunications, and HVAC equipment, and other such building operating equipment; (c) All interior or exterior truck loading areas, truck tunnels, and truck parking, turn around and dock areas and ramps; (d) All Common Area; and (e) Mezzanines and any interior second story not open to customers and incidental to ground floor retail operations.

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

addressed under any Environmental Law or otherwise deemed to be hazardous, harmful, dangerous, toxic, or a pollutant.

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

"Non-Defaulting Owner" is defined in Section 15.1 below.

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

"Official Records" shall mean the land records of Larimer County, Colorado.

"Operator" is defined in Section 8.1 below.

"Outdoor Sales" shall mean any use by a Permittee for temporary or permanent sales, displays, and/or customer seating or other activities, which areas are located outside of the structure of such Permittee's Store. Outdoor Sales are subject to Developer's approval, except for Outdoor Sales on Scheel's Parcel or within the Scheel's Outdoor Area. Outdoor Sales are subject to the approval of the Scheels Owner in its sole discretion, except for Outdoor Sales on Developer's Parcels.

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

"Owner" and **"Owners"** as used in this Declaration shall initially mean Developer with respect to the Shopping Center Property (except that it shall mean Scheels with respect to the Scheel's Parcel) until Developer and/or Scheels, as applicable, and subject to Article XII, has transferred fee title in and to a Parcel(s) to another Person; and thereafter as to the Parcel so transferred, shall mean the successor or successors to Developer or Scheels, as applicable, as so determined in accordance with the provisions of Article XII.

"Parcel" or **"Parcels"** shall mean any one or more of Developer's Parcels, Scheel's Parcel, or District's Parcel, as context requires.

"Parking Area" shall mean those portions of the Common Area used for the parking of motor vehicles, including incidental and interior roadways, pedestrian stairways, walkways, curbs, and landscaping within or adjacent to areas used for parking of motor vehicles, together with all improvements to the Common Area which at any time are erected thereon.

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

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

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

"**Real Property Taxes**" is defined in Section 13.1 below.

"**Related Corporation**" shall mean a corporation, partnership, or other business entity, which directly or indirectly, controls, is controlled by, or is under common control with, another corporation, partnership, or business entity. If more than fifty percent (50%) of the voting stock of a corporation shall be owned by another corporation, partnership, or other business entity, the corporation whose stock is so owned shall be deemed to be controlled by the corporation, partnership, or other business entity owning such stock.

"**Rules and Regulations**" are defined in Article XVII below.

"**Scheel's Control Area**" shall mean that portion of Developer's Parcels and District's Parcel which is identified on the **Exhibit B-2** Site Plan as Scheel's Control Area.

"**Scheel's Maintenance Area**" is defined in Article VII below.

"**Scheel's Operating Covenant**" the operating covenant relating to Scheel's Parcel set forth in that certain agreement by and between Developer and Scheels and recorded against Scheel's Parcel.

"**Scheel's Outdoor Area**" shall mean that portion of District's Parcel which is identified on the **Exhibit B-3** Site Plan as Scheel's Outdoor Area.

"**Scheels Owner**" shall mean the Owner from time to time of Scheel's Parcel.

"**Scheel's Parcel**" is defined in Paragraph A of the Recitals above.

"**Scheel's Store**" shall mean the structures and improvements constructed and contained within Scheel's Parcel, as designated on the Site Plan.

"**Scheel's Separate Agreement**" shall mean that certain agreement entered into or to be entered into by and between Scheels and Developer, as more particularly described in Section 17.18 below.

"**Separate Agreement**" shall mean any separate agreement entered into by and between any Owner of any Parcel and Developer or its successors or assigns; provided, however, that the same shall not include Scheel's Separate Agreement.

"**Shopping Center**" shall initially mean the property consisting of Developer's Parcels, Scheel's Parcel, and District's Parcel; provided, however, that Developer shall have the right to expand the Shopping Center from time to time by the addition of one or more of the parcels depicted on the plan attached hereto as **Exhibit E** and incorporated herein by this reference, but only so long as such expansion is evidenced by a recorded instrument amending this Declaration, and provided that the written consent of the Scheels Owner is first obtained.

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

"**Sign Criteria**" is defined in Section 4.5 below.

"**Site Plan**" shall mean the Site Plan attached hereto as **Exhibit B** and incorporated herein by this reference.

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

"**Store**" or "**Stores**" shall mean Scheel's Store and/or Developer's Stores, as the context may appropriately require.

"**Term**" is defined in Article X below.

"**Transfer**" means a conveyance by way of sale, assignment, lease, grant or transfer, including, without limitation, the same portion of a "Sale and Leaseback" (as defined in Section 12.2) and/or "Assignment and Sub leaseback" (as defined in Section 12.2), but excluding the making of a Mortgage.

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

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

ARTICLE II EASEMENTS

Developer and Scheels hereby declare, establish, create, grant and convey, for the benefit of each of the Parcels and the owners thereof from time to time, the following easements in, to, over, and across the Common Area of the Shopping Center Property; provided, however, that the easements described in this Article II shall be subject and subordinate to the separate easement rights granted to or for the benefit of the Scheel's Parcel or the Scheels Owner on or prior to the date of this Declaration.

2.1 Access Easements.

(a) Each of the Parcels and the Owners thereof shall have nonexclusive easements in, to, over and across the Common Area, including driveways (provided, however, that such Common Areas, including driveways, are on Shopping Center Property), and the Abutting Access Road, for vehicular (including service vehicles) and pedestrian ingress and egress, and access and the right of access over established circulation roads, and ways between the public streets adjacent to the Shopping Center and any Parcel situated in the Shopping Center Property.

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

(c) Developer shall have a non-exclusive easement in, to, over and across the Common Area of each Parcel (provided, however, that such Parcels and Common Areas are on Shopping Center Property) for the purpose of accessing, repairing, replacing or maintaining the Common Area.

(d) Notwithstanding that the land underlying the Abutting Access Road is not within the Shopping Center, Developer, on its own behalf and on behalf of its successors and assigns,

covenants and agrees that each Owner from time to time of any Parcel shall during the entirety of the Term have the right to utilize the Abutting Access Road for the purpose of ingress and egress to and from any Parcel and the Access Road(s) to publicly dedicate rights of way, and that the Abutting Access Road shall be treated as Common Area, including, without limitation, for purposes of Developer's maintenance obligations under Article VIII of this Declaration, notwithstanding that the owner(s) from time to time of the Abutting Access Road, or their designee including any association of such owners, may be designated from time to time to perform such maintenance. Without limitation of the foregoing, Developer, on its own behalf and on behalf of its successors and assigns, covenants and agrees to comply with the terms and provisions of this Declaration as if the Abutting Access Road were a Parcel of the Shopping Center Property and shall cause the Abutting Access Road to at all times be and remain in compliance with the terms of this Declaration, and represents and warrants that the Scheels Owner shall have all rights with respect to the Abutting Access Road and remedies against Developer and its successors and assigns as if this Declaration were recorded against the Abutting Access Road and the owner(s) thereof were a party hereto, and for any failure of the Abutting Access Road to be in compliance with the terms of this Declaration.

2.2 **Utility Easements.** Each of the Parcels and the Owners thereof shall have nonexclusive easements in, to, over, across and under the Common Area for the benefit of and appurtenant to each for the purposes of installation, repair, replacement and maintenance of sewers, water and gas pipes and systems, electrical power conduits, telephone conduits, lines and wires, and other public utilities beneath the ground surface at a location or locations reasonably approved in writing by (i) Developer with respect to Developer's Parcels and (ii) the Scheels Owner with respect to Scheel's Parcel and with respect to the Scheel's Control Area; provided that in all cases, in the performance of such installation, repair, replacement and/or maintenance: (a) adequate provision shall be made for the safety and convenience of all persons using the surface of such areas; (b) the areas and facilities (including without limitation paving and landscaping) shall be replaced or restored to the condition in which they were prior to the performance of such work by the Owner performing such work; (c) the other Owners shall be held harmless and indemnified by the Owner performing or causing to be performed such work against claims, damages and losses, including court costs and reasonable attorneys' fees arising from the performance of such work or use of such easements; (d) except in the event of an emergency, Developer and any Owner that is affected by such work shall be notified in writing not less than thirty (30) days prior to commencement of such work; (e) such work shall not conflict with other utility lines, conduits and facilities, and shall have been previously reasonably approved by all owners of such lines, conduits and facilities which are situated within 20 feet of any point of such proposed line, conduit or facility; (f) such work shall not unreasonably interfere with the normal and usual operation of the servient Owner's respective Parcel, customer parking or the Shopping Center; and (g) such work shall be scheduled in a manner intended to minimize, to the extent reasonably practicable, performance of any such work between November 1 to January 4 or during the thirty (30) day period prior to Easter, it being understood that the foregoing limitations in no way restricts performance of such work in the event of an emergency, if required by applicable governmental authorities and/or with respect to any initial construction or restoration following a casualty upon a Parcel in accordance with the terms of this Declaration. Franchises granted to public utilities for such utilities shall constitute compliance with the foregoing provisions. In addition, each Owner shall be obligated to perform such other acts, and to execute, acknowledge and/or deliver such instruments, documents and other materials as Developer or an Owner may request in order

to document any such easement in a commercially reasonable manner. Any servient Owner shall have the right, upon not less than sixty (60) days of notice to the benefited Owner or Owners, at any time and from time to time, to move and relocate any such facility within such servient Owner's Parcel; provided, however, that (i) such relocation shall be made at the relocating-servient Owner's sole cost and expense, (ii) neither the relocation nor the relocated facility shall interfere with, nor increase the cost of, utility service to any benefited Owner, nor unreasonably interfere with the operation of any business being conducted on the Parcel of any benefited Owner, and (iii) such work shall otherwise comply with the terms of this Section. Nothing in this Section shall be deemed to limit the Scheels Owner from performing its initial construction and installation of utilities (including, without limitation, upon areas of the Shopping Center Property outside of Scheel's Parcel, in accordance with its initial construction plans approved by Developer.

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

- (a) The easement is non-exclusive;
- (b) All facilities installed pursuant to the easement shall be underground, except for ground mounted transformers, fire hydrants, manholes and manhole covers which shall be flush with adjacent grade, and except as otherwise shown on plans approved by grantor;
- (c) The grantor retains the right to use the surface areas as grantor sees fit, provided and so long as such uses are not inconsistent with the easement rights herein established;
- (d) The grantor reserves the right to require the grantee to relocate its facilities (and vacate the easement) to another location on the grantor's Parcel, subject to the conveyance of a similar easement, all at the grantor's cost and expense; provided that such relocation shall not be commenced (except in case of emergency) during the months of November, December or January without the prior consent of each Owner on whose Parcel such relocation will take place;
- (e) The grantee shall not, in its use or installation, interfere with other installations and easements in the area; and shall protect its facilities against uses of the surface made by the grantor and others;
- (f) The grantee shall make adequate provisions for the safety and convenience of all persons using the area and following installation or other work, shall replace and restore the areas and improvements (including without limitation paving and landscaping) to the condition in which they were immediately prior to performance of such installation and work;

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

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

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

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

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

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

2.7 **Construction Easements.** Developer hereby declares, establishes and creates, for the benefit of Scheel's Parcel, a non-exclusive easement over and across Developer's Parcels and Developer's District's Parcel, and Scheels hereby declares, establishes and creates, for the benefit of Scheel's Parcel, a non-exclusive easement over and across Scheel's District's Parcel, all for the purpose of storing materials and performing any work to the extent reasonably necessary to permit the construction, maintenance, repair, replacement, restoration or reconstruction of any and all improvements on Scheel's Parcel, provided that in the exercise of its easement rights granted by this Section, the Scheels Owner shall not unreasonably interfere with the performance by Developer of its obligations under this Declaration or the Scheel's Separate Agreement. Developer may impose reasonable limitations on the exercise of the Scheels Owner's rights under this Section 2.7, including establishing paths or areas of ingress and egress, staging

areas for construction equipment and activities and hours of the day or days of the week during which the Scheels Owner may use the easements established and created pursuant to this Section 2.7. Developer shall have the right to grant similar non-exclusive easements over Developer's Parcels, subject to similar limitations contained in this Section including, but not limited to, the imposition by Developer of reasonable limitations on the exercise by any such Owner of its rights under such easement, including establishing paths or areas and ingress and egress, staging areas for construction equipment and activities and hours of the day or days of the week during which such Owner may use the easement granted pursuant to this Section so that the Scheels Owners' business operations shall not be interfered with or interrupted. No owner other than the Scheels Owner may stage any construction or store any construction equipment anywhere within the Scheel's District's Parcel lying east of the Scheel's Parcel and, without limitation of the preceding. No later than one-hundred twenty (120) days prior to the date Scheels intends to initially open its Store for business to the public, no construction staging area or construction related closure shall be located anywhere on the Common Areas within Scheel's Control Area without Scheel's consent.

2.8 Unimpeded Access Between Parcels. Subject to Scheel's and Developer's rights and obligations with respect to the maintenance of Common Area, it is declared and established that the Owners at all times during the Term of this Declaration shall have free access over Common Area between each Parcel and the remainder of the Shopping Center Property, that such access will not be impeded and that such access will be maintained in a manner consistent with the Site Plan for the Shopping Center, as same may be modified in accordance with the provisions of this Declaration.

2.9 Use by Permittees. Subject to the Rules and Regulations, the use of all easements provided for in this Article, and the use of the entire Common Area in or on Shopping Center Property will, in each instance, be nonexclusive, and for the use and benefit of all Permittees, except as otherwise expressly stated herein, including, but not limited to, any exclusive easement reserved or dedicated by Scheels or granted by the District to Scheels.

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

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

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

2.13 **Parking Easements.** Except for any exclusive parking rights granted or reserved for the benefit of the Scheel's Parcel in a deed, easement, declaration, or other instrument recorded in the Official Records, each of the Parcels and the Owners thereof, shall have non-exclusive easements in, to, over, and across the Common Area for the purpose of parking vehicles of Permittees in the Parking Areas thereon. Without limitation of the other terms and conditions of this Declaration, Developer and Scheels acknowledge that although certain Parking Areas are located within District's Parcel, Developer represents, warrants and covenants that Scheels Owner shall have access in, to, over, and across District's Parcel for the purpose of parking vehicles of Permittees in the Parking Areas thereon.

2.14 **Assurances Regarding Separate Agreements.** Developer represents and warrants for the benefit of the Scheels Owner that nothing in any Separate Agreement shall diminish any of the rights granted in favor of Scheels in this Declaration or in the Scheel's Separate Agreement or contained in any other agreement between Developer and Scheels.

ARTICLE III CONSTRUCTION REQUIREMENTS

3.1 **Construction Compatibility.** No improvements shall be constructed, erected, expanded or altered on the Parcels until the plans and specifications for same (including, but not limited to, site layout, exterior building materials and colors, and landscaping) have been approved in writing by Developer. Each Owner shall, during the period prior to commencement of construction, consult with the Project Architect and Developer concerning the exterior design, color treatment and exterior materials to be used in the construction, of all buildings and structures, including sidewalks, on its respective Parcel(s). Each Owner shall cause its respective architect to work in good faith with the Project Architect and Developer so that the buildings to be erected and constructed will have an overall cohesive and related architectural continuity and will be in harmony with the balance of the Shopping Center improvements. Any improvements constructed, erected, expanded or altered on the Parcels shall be in accordance with the Site Plan. Notwithstanding anything in this Declaration to the contrary, Developer and all Owners expressly waives its right of objection, approval and enforcement with respect to the design, construction, reconstruction or restoration of any Building located on the Scheel's Parcel including, without limitation, any interior Building areas. In addition to the foregoing, the Scheels Owner shall have the approval rights set forth in Section 4.7, notwithstanding anything in this Declaration to the contrary.

3.2 **Performance of Construction.** Each Owner shall be bound to perform all construction on its respective Parcel or Parcels, (i) in accordance with the applicable plans and specifications as approved in

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

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

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

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

3.6 **Safety Measures; Initial Condition.** Each Owner shall at all times take any and all safety measures reasonably required to protect the other Owners from injury or damage caused by or resulting from the performance of its construction. Without limitation of the foregoing, until the commencement of development of any Parcel within the Shopping Center Property, Developer or any successor Owner of such Parcel shall maintain such Parcel in a first class condition, free of debris, piles of dirt, weeds, and other unnatural conditions and accumulations, and shall mow the same regularly.

3.7 **Architects Certificates.** During the Term of this Declaration, all architects employed in connection with any construction on the Owners' respective Parcels shall be certified architects licensed to practice in the State of Colorado or will affiliate with an architect so licensed. Upon request of an Owner, the Owner to whom such request is made shall cause the architect who prepared plans and specifications for any construction on an owner's Parcel to deliver a certificate to the Owner making the request, stating the actual Floor Area constructed. Each Owner shall cause its architect, upon request, to give notice to the other Owners by a certificate stating the actual Floor Area and any net change of Floor Area on such Owner's Parcel; provided, however, the Scheels Owner shall only be required to deliver such certificate to Developer.

3.8 **Site Development Agreement.** Developer and Scheels acknowledge that Developer and Scheels have agreed to enter into a site development agreement governing certain aspects of developing the Shopping Center (the "**Site Development Agreement**"). In the event that this Article III and the Site Development Agreement conflict, then the terms of the Site Development Agreement shall prevail.

ARTICLE IV SHOPPING CENTER DEVELOPMENT RESTRICTIONS

4.1 **Common Area.** Except as shown on the Site Plan and as provided below, no improvements may be built or maintained or allowed in the Common Area in or on Shopping Center Property other than parking lots, curbs, driveways, lights, sidewalks, signs, landscaping, trash receptacles or enclosures and other improvements normally found in a parking lot or common area without Developer's and Scheels Owner's written consent, which consent may be arbitrarily withheld by Developer and the Scheels Owner in their sole discretion.

4.2 **Certain Closures, Alterations, Etc.** Except as otherwise prohibited herein, Developer reserves the right from time to time without notice to any Owner (except as further provided below), to close temporarily any of the Common Area in connection with the performance by Developer of its repair and maintenance obligations, provided that any such work shall, to the extent reasonably practicable, be scheduled in a manner intended to minimize interference with the ordinary conduct of business within the Shopping Center. Before taking such action, Developer shall notify the Scheels Owner as well as the owner of the Parcel on which such temporary closure will occur as to the location, duration and extent of such repair and maintenance. In particular, but without limitation, any such closure shall be scheduled in a manner intended to minimize, to the extent reasonably practicable, performance of any such work between November 1 to January 4 or during the thirty day period prior to Easter, it being understood that the foregoing limitation in no way restricts closure in the event of an emergency, if required by applicable governmental authorities and/or with respect to any initial construction or restoration following a casualty

upon a Parcel in accordance with the terms of this Declaration. Subject to the terms of this Article, Developer further reserves the right from time to time without notice to any Owner (i) to make changes to the Common Area, including, without limitation, driveways, ramps, entrances, exits, passages, stairways and other ingress and egress, landscaped areas, loading and unloading areas, and walkways; (ii) to add additional Stores, to expand existing stores, or to enlarge and change, redevelop, redesign any improvements or enlarge and/or change any Building Area; (iii) to use the Common Area while engaged in making additional improvements, repairs or alterations to the Shopping Center or to any adjacent land, or any portion thereof; and (iv) to do and perform such other acts and make such other changes in, to or with respect to the Shopping Center and Common Area or the expansion thereof as Developer may, in the exercise of sound business judgment, reasonably deem to be appropriate.

4.3 Roof Top Equipment; Trash Enclosures. Roof top mechanical and telecommunications equipment (including, without limitation, any antennae or satellite dishes) shall be screened from public view from adjacent public streets and highways and in a manner satisfactory to Developer. Any trash facility shall be screened from public view from adjacent public streets and highways on all four sides or in a manner otherwise satisfactory to Developer. The trash facility on Scheel's Parcel shall comply with all applicable laws, ordinances and rules and regulations of all governmental agencies having jurisdiction over such matters.

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

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

Shopping Center Property. Further, the Scheels Owner shall have all signage rights afforded to it under the Scheel's Separate Agreement, Site Development Agreement, and other instruments and agreements between Developer and/or any governmental authority and the Scheels Owner.

4.6 **Lighting.** Subject to the other terms of this Section, the Owner of each Parcel shall implement a lighting plan relative to the Common Area located on such Parcel, and install lighting pursuant to said plan. The accent lighting, exterior building lighting and interior building lighting on each Parcel is not subject to this Declaration. The lighting plans for each Parcel, including the installation thereof, shall, as applicable, comply with the Scheel's Separate Agreement, the Site Development Agreement, any and all applicable government rules, laws, ordinances, regulations and statutes, and any requirements of this Declaration. After completion of the lighting system on an applicable Parcel and during the remaining Term of this Declaration, each Parcel shall, at Developer's cost and expense, be fully illuminated each day from dusk until at least the end of Normal Business Hours (including, without limitation, repair and replacement of bulbs and ballasts), and with respect to lighting in the Common Area within the Scheel's Control Area, during such additional hours as reasonably requested by the Scheels Owner, and the level of lighting within the Scheel's Control Area must be reasonably acceptable to the Scheels Owner. During the Term of this Declaration (and thereafter so long as the Store utilizing the following described license exists, subject to a reasonable period to permit reconstruction or replacement of such Store if the same shall be destroyed, damaged, or demolished), the Owner of each Parcel and is hereby granted an irrevocable license for the purpose of permitting the lighting from one Parcel to incidentally shine on the adjoining Parcel.

4.7 **Changes to Scheel's Control Area.** In addition to the other restrictions set forth in this Declaration, and without limitation of any of the terms of the Scheels Separate Agreement, neither Developer nor any other Person or Owner shall, without the Scheels Owner's express written consent, which may be withheld in its sole and absolute discretion, do, make, or allow (i) any improvements or changes to the Common Areas within Scheel's Control Area depicted on **Exhibit B-2**, including without limitation, each Parking Area, traffic patterns, exterior lighting, exterior signage, driveways, ramps, entrances, exits, passageways, stairways, and other ingress and egress, landscaped areas, loading and unloading areas, and walkways, or (ii) any improvement or structure within the Scheel's Control Area to exceed fifty feet (50') in height, inclusive of parapets, and other architectural embellishments as measured from the finished floor elevation of such structure. To the fullest extent allowed under applicable law, the terms of this Section 4.7 shall survive the termination of the Declaration and shall continue in perpetuity.

4.8 **Parking Ratio and Standards.** During the entire Term of this Declaration, the Parking Area (including, without limitation, within District's Parcel) shall be maintained or caused to be maintained by Developer in accordance with the Site Plan and the requirements of the governmental authorities applicable to the Shopping Center so that the overall Parking Area of the Shopping Center contains the number of parking spaces to satisfy a ratio of no less than four and one-half (4.5) parking spaces for each one thousand (1,000) square feet of Floor Area located within the Shopping Center Property, or such greater ratio as is required by law.

4.9 **Parking Charges.** No metered or other direct parking charge shall be made by any Owner or District on any of its land included in the Shopping Center or District's Parcel or by their successors or

assigns and Developer shall not allow any Owner or any other party to impose such charges anywhere in the Shopping Center Property, it being the intention of Developer that the right to park in the Common Area shall be free of any charge whatsoever except that Developer may charge a fee if it provides valet parking services provided that no such valet parking service shall be provided in the Scheel's Control Area without the prior approval of the Scheels Owner, in its sole discretion. In the event that, notwithstanding the foregoing provisions, parking upon any portion of District's Parcel requires payment of parking charges by the District or the town of Johnstown, then Developer shall provide for free ticket validation, without cost or reimbursement by the Scheels Owner or its Permittee, to the Scheels Owner and its Permittees.

4.10 **Employee Parking.** Neither Developer nor any Owner or Person, except for the Scheels Owner, shall establish or allow employee parking areas within Scheel's Control Area. Prior to the opening of Scheel's Store, the Scheels Owner and Developer shall mutually designate a permitted area within Scheel's Control Area to be used by Scheel's employees for parking their cars. The Scheels Owner shall use commercially reasonable efforts to cause its employees to park in such permitted employee parking areas, but the Scheels Owner shall not be responsible for violation of this parking restriction by other Permittees.

ARTICLE V USE RESTRICTIONS AND COVENANTS

5.1 **Use In General.** Subject to the limitations and terms set forth below, the Shopping Center shall only be used during the Term hereof for retail and other businesses common to first class shopping centers and mixed use developments located in the State of Colorado. None of the restrictions within this Article 5 shall be deemed to prevent Scheel's Parcel from being used as a typical sporting goods store or as a Scheels large format store, or any of the components thereof, as same evolves from time to time. None of the following uses or operations will be made, conducted or permitted on or with respect to all or any part of the Shopping Center at any time:

- (a) any gas or service station or automobile service facility;
- (b) any residential use, elderly care facility, or nursing home;
- (c) any noise or sound that is reasonably objectionable due to intermittence, beat, frequency, shrillness or loudness;
- (d) any obnoxious odor;
- (e) any excessive quantity of dust, dirt, or fly ash; provided however, this prohibition shall not preclude the sale of soils, fertilizers, or other garden materials or building materials in containers if incident to the operation of a home improvement or other similar store;
- (f) any fire, explosion or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks;

- (g) any assembly, manufacture, distillation, refining, smelting, agriculture or mining operations;
- (h) any mobile home or trailer court, labor camp, junkyard, mortuary, stock yard or animal raising. Notwithstanding the foregoing, (1) pet shops shall be permitted within the Shopping Center; and (2) the foregoing shall not prohibit the temporary installation of construction trailers during periods of construction, reconstruction or maintenance;
- (i) any drilling for and/or removal of subsurface substances;
- (j) any dumping of garbage or refuse, other than in enclosed receptacles intended for such purpose;
- (k) any automobile, truck, trailer or recreational vehicle sales, rental, leasing or body and fender repair operation;
- (l) any flea market and/or swap meet;
- (m) any massage parlor, adult book shop, movie house or other establishment selling or exhibiting pornographic materials or other pornographic use; provided, however, that such restrictions shall not preclude the (i) showing of films in any first rate motion picture theater operated in the Shopping Center, so long as such motion picture theater does not show any picture that has received an "NC-17" rating (or the equivalent or a more restrictive rating) from the Motion Picture Association of America or any successor to the Motion Picture Association of America which rates motion pictures or any other pictures that are considered pornographic by the Town of Johnstown, (ii) sale or rental of adult books, magazines or videos (including, without limitation, video cassettes, DVDs, laserdiscs and other like media) as an incidental part of the business of a general purpose bookstore or retailer carrying a general selection of books, magazines and video products (such as, by way of example and without limitation, Target, Best Buy and Blockbuster Video) normally found in a first class shopping center or (iii) massages in connection with a beauty salon, spa operation or massage therapy operation which are normally found in a first class shopping center;
- (n) any abortion clinic or drug rehabilitation clinic;
- (o) any warehouse or industrial use;
- (p) any self-storage facility;
- (q) any tattoo or body piercing parlor;
- (r) any public or private nuisance;

- (s) any cemetery, mortuary or similar service establishment;
- (t) any fire sale or bankruptcy sale, unless pursuant to a court order, or auction house operation;
- (u) any pawn shop;
- (v) any establishment selling drug related paraphernalia;
- (w) any convenience store;
- (x) any roller-skating rink, bowling alley, teenage discotheque, discotheque, dance hall, video game parlor, pool room, card club, bingo parlor, facility containing gaming equipment (other than for the retail sale thereof), or carnival activities; provided, the foregoing shall not preclude (i) any restaurant otherwise properly operating within the Shopping Center from having a dance floor for the enjoyment of its patrons therein, so long as incidental to the operation of the restaurant; (ii) use and operation of video games within restaurants otherwise permitted in the Shopping Center, so long as incidental to the operation thereof; and (iii) use and operation of an entertainment/restaurant complex, which serves food and beverages and provides an array of interactive entertainment attractions such as billiards, shuffleboard, simulators, virtual reality and traditional carnival-style amusements and games of skills (such as, by way of example and without limitation, Dave & Buster's, ESPN Zone or 810 Zone);
- (y) any school, training, or educational facility, including but not limited to: beauty schools, barber colleges, nursery schools, diet centers, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, the foregoing restriction shall not (1) prohibit the operation of a Sylvan Learning Center or similar business, (2) be deemed to limit employee training by a permitted operator, or (3) limit animal training within the interior of any pet store operation otherwise permitted within the Shopping Center;
- (z) any dry cleaning facilities utilizing hazardous substances or Hazardous Materials with an on-premises plant; provided, however, that nothing contained herein shall preclude a drop-off/pick-up dry cleaning business as long as no cleaning services are conducted at such location;
 - (aa) any fire sale or bankruptcy sale, unless pursuant to a court order, or auction house operation;
 - (bb) any unemployment agency, service or commission;
 - (cc) any hotel, motel, or other forms or short-term or temporary living quarters, sleeping apartments or lodging rooms;
 - (dd) any gambling facility, casino or similar operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall or parlor;
 - (ee) any bar, tavern or nightclub; provided, however, that the foregoing shall not prohibit (i) the operation of a bar, tavern, or nightclub as a part of any restaurant being operated in the Shopping Center, so long as the sale of alcohol from such bar, tavern or nightclub does not exceed forty-five percent (45%) of such restaurant's gross sales, (ii) sale of beer, wine and liquor incidental to the operation of any first-rate theater operated in the Shopping Center in accordance

with the terms of this Declaration, (iii) a so-called "wine bar" or "martini bar" or (iv) any use otherwise permitted pursuant to the terms of subsection (hh) below;

(ff) any office use, other than: (1) retail offices, providing services commonly found in a similar first-class shopping center in the Denver, Colorado, metropolitan area (for example, financial services, real estate brokerage, insurance agency, banking, travel agency);

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

The use restrictions set forth in Sections 5.1(c) through (k), (m), (n), (r), (v), (dd) and (gg) are hereinafter collectively referred to as the "**Surviving Use Restrictions.**"

Without limitation of the other terms of this Declaration if, in addition to the Developer's Parcels any additional parcels of land within the Shopping Center or within a one-quarter (1/4) mile radius of the Shopping Center shall become within the ownership of Developer or any person or entity affiliated with or controlled by Developer, then, from and after such point, any such parcels of land shall thereafter be deemed to be encumbered by the use restrictions in this Article 5. Developer shall notify the Scheels Owner in writing no less than thirty (30) days in advance of any such change in ownership and shall cause such restrictions to be recorded against any such parcel simultaneously with the acquisition thereof, in form and substance reasonably satisfactory to the Scheels Owner. For purposes of this paragraph, "control" shall mean the possession of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.

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

(a) No Owner shall cause, maintain or permit any nuisance in, on or about the Shopping Center. Developer shall be permitted to grant the right to allow any Permittee to conduct Outdoor Sales within any of Developer's Parcels, including the right to allow Permittees of the Shopping Center to conduct, from time to time (and not on a permanent basis), sales in the sidewalk areas immediately adjacent to such Permittee's Store; provided, however, (i) in no event shall any such sales be located in Scheel's Control Area without the prior written approval of the Scheels Owner, provided that restaurant patios, outdoor dining areas, or outdoor seating areas located on any of Developer's Parcels shall not be prohibited by this restriction; (ii) such sales shall comply with any required governmental approval; and (iii) any such sales may not result in the material interfere with pedestrian access and movement.

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

Owner's Parcel over the rates which would otherwise apply unless such Permittee shall pay the increased insurance cost on demand.

ARTICLE VI COMPLIANCE WITH LAWS

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

ARTICLE VII MAINTENANCE OF IMPROVEMENTS

7.1 **Maintenance of Improvements.** Except as otherwise provided herein (including without limitation Developer's maintenance of the Common Area as set forth in Article VIII), each Owner shall, for the benefit of the Owners at all times during the Term of this Declaration, maintain, or cause to be maintained, the exterior of Stores and other improvements, including (without limitation) Common Area, from time to time located on such Owner's Parcel in a first class condition and in good order, maintenance, and repair consistent with similar first class shopping centers located in Larimer County, Colorado, and in accordance with this Declaration. Such obligations shall include maintenance of all improvements and Common Areas located on such Owner's Parcel including, but not limited to, any sidewalks, curbs, landscaping, and other improvements which are located between the exterior face of such Owner's Store and the exterior curb face of the perimeter sidewalk located around such Owner's Store, whether located on such Owner's Parcel or not, except that with respect to the Scheel's Parcel such obligation shall instead include all improvements and Common Areas within the area identified on the **Exhibit B-5** Site Plan as Scheel's Maintenance Area (such area, "**Scheel's Maintenance Area**"). For purposes of this Article VII, Article VIII below, and wheresoever else the term Scheel's Maintenance Area is used, Developer and Scheels acknowledge and agree that a portion of the Scheel's Maintenance Area lies within the District's Parcel, but such fact shall not limit the rights and obligations of the Scheels Owner hereunder. Without limitation of the foregoing, Developer, on its own behalf and on behalf of its

successors and assigns, represents, and warrants and covenants that during the Term the Scheels Owner shall have the right to enter upon the District's Parcel for the purpose of performing its maintenance and other obligations, or performing Developer's or any other Owner's obligations in the event that the Scheels Owner, in its sole discretion, elects to exercise any self-help remedy, under this Declaration and under any other agreement including, without limitation, the Scheel's Separate Agreement, with respect to the Scheel's Maintenance Area or any other portion of the Common Areas.

ARTICLE VIII OPERATION AND MAINTENANCE OF COMMON AREA

8.1 **Maintenance of Common Area.** During the Term hereof, Developer will do or cause to be done, with respect to the Common Area, and Scheels Owner with respect to Common Area within the Scheel's Maintenance Area, will do or cause to be done, the following: (i) maintain, repair and/or replace, or cause to be maintained, repaired and/or replaced, the Common Area so as to keep it in first class condition consistent with other first class shopping centers in Larimer County, Colorado, (ii) clean the Common Area and keep same free of rubbish and other hazards to persons using such area, (iii) subject to the terms of Section 4.6 herein provide lighting facilities (including bulbs and ballasts) and properly light the Common Area and (iv) maintain the landscaping within the Common Area. Such obligations shall include, without limitation, providing adequate security protection services (if similarly situated shopping centers located in the Larimer County, Colorado trade market area are provided security protection services or if Developer otherwise determines same to be reasonably necessary or appropriate), except that Developer shall provide all such security protection services within the Scheel's Maintenance Area, maintaining, repairing and replacing all above and underground utilities, common utilities and other utility conduits and lines and sewers located within the Shopping Center (except within those utility easements granted to any governmental authority or utility company, which has maintenance and repair obligations thereover, and except for service drops exclusively serving improvements on a particular Parcel, rather than the Shopping Center as a whole, which service drops shall be the maintenance responsibility of the Owner utilizing same, and except that Developer shall maintain all such utility conduits and lines and sewers within the Scheel's Maintenance Area), maintaining, repairing, repainting and replacing all directional/way-finding signs, maintaining, repairing and replacing all irrigation systems, maintaining and replacing as necessary the plants located within the landscaped and planted areas, resurfacing and restriping all Parking Areas in the Common Areas, and repairing all holes or breaks in the paving in the Common Area within a reasonable time after the same appear, causing all garbage receptacles of all occupants of buildings as well as those located in the Common Area to be emptied as needed, collection and disposal of all paper and trash in all Common Area each day as needed and sweep all sidewalks, all drives adjacent to all Stores and other buildings located in the Shopping Center as needed, and remove, and treat, ice and remove snow from the exposed areas as soon as practicable. Developer shall, to the extent reasonably practicable, endeavor in good faith to schedule any extraordinary work to be performed in accordance with the foregoing provisions in a manner intended to minimize interference with the ordinary conduct of business within the Shopping Center. In particular, but without limitation, any such extraordinary work reasonably expected to cause a temporary closing of any of the Common Area shall be scheduled in a manner intended to minimize, to the extent reasonably practicable, performance of any such work between November 1 to January 4 or during the thirty day period prior to Easter, it being understood that the foregoing limitation in no way restricts closure in the

event of an emergency or if required by applicable governmental authorities. With respect to the portions of the Common Areas which are the Developer's obligation to operate and maintain, Developer will have the right to select from time to time a person or persons other than Developer to operate and maintain the Common Area or portions thereof ("**Operator**"), provided that such selection will not diminish Developer's obligations to maintain and operate the Common Area and otherwise comply with the terms of this Declaration. The Owners of all Parcels within the Shopping Center (except for the Scheels Owner) will be required to pay Developer's expenses in connection with maintenance of such Common Area in accordance with this Declaration. Any contributions from the Scheels Owner to contribute to Developer's expenses in connection with maintenance of such Common Area shall be set forth in the Scheel's Separate Agreement.

8.2 Default of Developer/Self-Help by the Scheels Owner. In the event of a default by Developer in performing the services or maintenance of the Common Area and other obligations as required by Section 8.1 hereof or of any of the other terms of this Declaration or of the Scheel's Separate Agreement, the Scheels Owner may provide notice of such default to Developer specifying the nature of such default and Developer shall be allowed thirty (30) days to cure such default, or if such default cannot be cured within thirty (30) days, Developer shall commence curing such default within such time and shall diligently pursue such cure to completion within a reasonable time thereafter. In the event of an emergency (including, but not limited to, Developer's failure to remove accumulated snow or ice within a reasonable time) such notice of default shall be sent by fax to Developer and Developer shall immediately cure such default or immediately commence to cure such default and diligently pursue completion of such cure within a reasonable time thereafter. In the event that Developer fails to cure such default within the requirements of this Section then, without limitation of any other remedies provided for in this Declaration or in the Scheel's Separate Agreement, the Scheels Owner may elect to perform the Common Area maintenance specified in any such notice to Developer provided under this Section and, if not reimbursed within twenty (20) days of demand of the same, to deduct the cost and expense incurred by the Scheels Owner in performing such common area maintenance, including interest on such expenses at the Default Rate, from any payments due from the Scheels Owner under the Scheel's Separate Agreement.

8.3 Succession to Maintenance Obligations. It is understood and agreed that the obligations of Developer hereunder to maintain the Common Area and administer the provisions of this Declaration respecting Common Area obligations and the Overall Common Area Obligations shall attach to and run with title to the Control Parcel such that the Owner or Owners from time to time of the Control Parcel shall jointly and severally (if more than one) be responsible for the performance of the obligations of Developer arising under this Declaration and pertaining to the Shopping Center and the obligations of Developer under the Scheels Separate Agreement, and not just the obligations of Developer hereunder pertaining specifically to Developer's Parcels. From and after conveyance of the Control Parcel by Developer to another Person, any other Person succeeding to Developer's interest as Owner of any of Developer's Parcels other than the Control Parcel shall have no liability or obligation for performance of the obligations of Developer arising under the Declaration and pertaining to the Shopping Center; provided that the foregoing shall in no way absolve any such Owner of the obligation to perform the obligations of an Owner pertaining specifically to the Parcel of Parcels of such Owner.

ARTICLE IX
RESTORATION

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

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

9.3 **Common Area.** In the event of damage or destruction of any Common Area improvement erected or placed on any Parcel (including District's Parcel), whether by fire or other casualty, the Owner of such Parcel agrees to take all such action as may be required under applicable municipal ordinances and other laws, rules and regulations with respect to any such damage or destruction and to promptly remove all debris resulting from such damage or destruction and commence, in accordance with Section 9.4 below, to repair, replace and rebuild such damaged Common Area. In the event of damage or destruction of any Common Area improvement on District's Parcel, and notwithstanding anything to the contrary in this Declaration, Developer warrants and covenants that all requirements of this Section 9.3 and Section 9.4 shall be met or shall be caused to be met by Developer, at no cost to the Scheels Owner, with respect to District's Parcel, regardless of the cause of the damage, including without limitation, if caused by a party under an oil or gas lease or the holder of a mineral or water right in the process of extracting the same, or otherwise exercising its rights.

9.4 **Duty to Commence and Complete Rebuilding.** Subject to Sections 9.1 through 9.3, each Owner agrees to commence any required repair, replacement and rebuilding within six (6) months after such damage or destruction, or sooner if possible, and thereafter use due diligence in order to cause any building or other improvement which such Owner is required to repair, replace and rebuild pursuant to this Article to be completed and ready for occupancy within twelve (12) months after such damage or destruction occurs or as soon thereafter as is practicable under the circumstances, so long as such repair, replacement and rebuilding is diligently and continuously carried to full completion. Each Owner agrees that prior to commencing any such repair, replacement and rebuilding, such Owner shall comply with the

requirements set forth in Article III of this Declaration and other applicable provisions of this Declaration with respect to construction, except as to any such requirement that may be modified under this Article. All such repaired, replaced and rebuilt Stores, Common Area and other improvements shall be repaired, replaced and rebuilt to as good a condition, to the same general appearance, and on the same level or story as the Store, Common Area and other improvements were immediately prior to such damage or destruction.

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

ARTICLE X TERM

10.1 This Declaration and each term, easement, covenant, restriction and undertaking of this Declaration shall be effective for a term ("**Term**") commencing as of the date hereof and shall terminate on the earlier of (1) June 1, 2065, (2) such date as the Owners may elect by written notice of termination executed by all of the Owners and recorded in the Official Records, or (3) such earlier termination as provided pursuant to and in accordance with this Declaration (the "**Expiration Date**"); provided, however, that the Term may, as provided in the succeeding sentence, be extended beyond such Expiration Date for a maximum of three (3) independent ten (10) year terms (each, an "**Extended Term**") (for a total of thirty (30) years beyond the initial Term); provided, further that no such expiration or termination shall affect the provisions and easements hereof that by their Term survive expiration. The Owner of the Control Parcel or the Scheels Owner may, prior to the expiration of the Term or then Extended Term (as applicable), deliver notice to the other Owners indicating that such Electing Owner elects to extend the Term of this Declaration for the next succeeding Extended Term. In such event, such Electing Owner shall unilaterally record a statement or other notice with the Official Records indicating such election to extend the Term of this Declaration (with such statement or notice to include evidence that such Owner elected to extend the Term of this Declaration as provided herein) within thirty (30) days of the expiration of the Term or then Extended Term (as applicable). In the event a statement or other notice is not filed with the Official Records within such thirty (30) day time period, this Declaration shall be deemed terminated. The following terms shall survive the termination of this Declaration and shall continue in perpetuity: (i) Section 4.8 above; (ii) prohibition against obstructions in Section 4.4 above; (iii) compliance with laws requirement in Article VI above; (iv) the rights and easements set forth in Article II

above; (v) the hazardous and toxic materials provision of Article XVI below; (vi) the Surviving Use Restrictions; and (vii) the restrictions specified in Section 4.7 above.

10.2 As provided in Paragraph G of the Recitals of this Declaration, notwithstanding that this Declaration is not initially (and, subject to the provisions of said Paragraph G, may never be) recorded against District's Parcel in the Official Records, as between any Owners from time to time of any Parcel, District's Parcel shall during the entirety of the Term constitute a Parcel of the Shopping Center Property, deemed Common Area, and shall be subject to the terms, provisions, easements, restrictions, covenants and agreements of this Declaration. Without limitation of the foregoing, Developer, on its own behalf and on behalf of its successors and assigns, covenants and agrees to comply with the terms and provisions of this Declaration as if District's Parcel were a Parcel of the Shopping Center Property and shall cause District's Parcel to at all times be and remain in compliance with the terms of this Declaration, and represents and warrants that Scheels and the Scheels Owner shall have all rights with respect to District's Parcel and remedies against Developer and its successors and assigns as if this Declaration were recorded against District's Parcel and District were a party hereto, and for any failure of District's Parcel to be in compliance with the terms of this Declaration.

ARTICLE XI **EMINENT DOMAIN**

11.1 **Awards to each owner.** As between the Owners, any damage or other award resulting from or arising out of a condemnation or other taking for public or quasi-public purposes (a "**Condemnation**") of all or any portion of such Owner's Parcel(s) shall belong to such Owner without deduction therefrom for any present estate or interest of any other Owners and such other Owners hereby assign to the Owner whose Parcel was subject to the Condemnation all of such other Owner's right, title and interest in and to such damages or awards. Any damage or other award resulting from a Condemnation of any portion of the District's Parcel shall for all purposes herein be deemed to belong to and have been paid to Developer and shall be used for restoration as specified in Section 11.2 herein. This provision shall not act to prevent any other Owner from filing for or recovering its own separate award for any loss related to its Parcel and/or Store.

11.2 **Parking Areas.** If any portion of the Parking Area within the Shopping Center shall be taken by Condemnation with the result that the Shopping Center or any Parcel thereof is not thereafter in compliance with the parking requirements of this Declaration, Developer, after receipt of any Condemnation award or damages resulting therefrom or equitably attributable thereto, as determined in Section 11.1 (the "**Allocable Awards**"), shall promptly use all of said Allocable Award to create, to the extent reasonably possible, additional surface parking facilities in the Shopping Center in order that the Shopping Center will comply with the parking ratio required by this Declaration. First priority shall be to create additional surface parking facilities as close as possible to the Parcel or Parcels which are subject to the Condemnation. Notwithstanding the foregoing, Developer shall have no obligation to restore Parking Area unless the Owner of the Parcel on which such Parking Area is to be restored approves of the location and configuration of the Parking Area to be restored (such approval not to be unreasonably withheld, delayed, or conditioned) and no Owner shall be obligated to provide or permit additional Parking Area upon its Parcel in case of a Condemnation of Parking Area contemplated by this Section 11.2, unless such

Owner has given its consent to the location and layout thereof (such consent not to be unreasonably withheld, delayed, or conditioned), if the Parking Area so taken by Condemnation was not contained within such Parcel of the Owner at issue. In the event that there is not enough usable land available to restore surface parking facilities to comply with the required parking ratio, all Owners shall negotiate in good faith in an effort to agree upon an area within the Shopping Center where a parking deck could be constructed so as to replace the Parking Area lost by Condemnation, and if the Owners are able to reach such Agreement (as well as agreement on the precise location, design and cost of such parking deck), each Owner shall make available to Developer any Allocable Award paid to such Owner with respect to Condemnation of its Parking Area (to the extent not utilized for provision of replacement surface Parking Area as aforesaid) and Developer thereafter shall construct the parking deck so agreed upon, so long as same is allowed by applicable law under the circumstances, in order to comply with the required parking ratio; provided that Developer shall have no obligation to construct any such Parking Deck if the cost to Developer of constructing same (both "hard costs" and "soft costs") shall be in excess of the amount of the Allocable Awards paid to Developer, as reasonably determined by Developer, unless agreement likewise is reached among the Owners to provide for payment of the balance of the cost of such parking deck by the Owners over and above the Allocable Awards. In the event that the Allocable Awards shall be insufficient to completely restore the amount of parking required to comply with the parking ratio set out in Section 4.8 (and if the Owners have not hereafter agreed to fund the excess costs as contemplated herein), then the parking ratio set out in Section 4.8 shall be reduced to a ratio as near as possible to the requirements of Section 4.8 without the necessity for Developer's expenditure of any additional funds. If the Condemnation damages or award attributable to the Parking Area within a Parcel are not expended by Developer to create additional surface parking facilities, and Developer, within 120 days following Developer's receipt of such damages or award, shall not have committed to construct a parking deck as provided above, the Condemnation damages or award shall be returned to the Owner of such Parcel subject to Condemnation.

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

defense of any condemnation proceeding or the pursuit of any rights, remedies or awards available to Developer pursuant to such condemnation.

ARTICLE XII TRANSFER OR CONVEYANCE

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

12.2 **Sale Leaseback.** In the event the whole of the interest of such Owner in and to the Parcel in which it has an interest is Transferred, but a new interest is created in such Owner simultaneously with such transfer by way of leasehold or similar possessory arrangement (i.e., a Sale and Leaseback or Assignment and Sub-leaseback), or in the event such Owner shall Transfer its interest in said Parcel or any part thereof by deed of trust or other security instrument as security for indebtedness, then none of the rights or obligations conferred upon such Owner with regard to the interest Transferred shall be transferred by such Owner by virtue of the transaction at issue, but all of the rights and obligations of such Owner shall remain in such Transferor Owner so long as it retains any possessory interest in and to said Parcel other than as a beneficiary under the terms of a deed of trust or mortgage. In the event the interest of such Owner shall cease and terminate, then upon such termination the rights and obligations (to the extent thereafter to be performed) of such Owner shall vest in the Transferor Owner's successor Transferee in accordance with this Article (but such Transferee, in such event, shall not be personally liable for the performance of any term, covenant, obligation or condition as to any matter which arose prior to the Transfer).

12.3 **Multiple Ownership.** In the event there shall be more than one record owner comprising the Owner of a Parcel ("**Co-Owners**"), then not less than fifty-one percent (51%) in interest of such Co-Owners shall designate one of their number to act on behalf of all of such Co-Owners in the exercise of the rights granted to an Owner under this Declaration. So long as such designation remains in effect, such designee shall be the Owner hereunder and shall have the power to bind such Parcel and such Co-Owners, and the other Co-Owners shall not be deemed to be Owners. Any such designation must be in writing and served upon the other Owners by registered or certified mail, and must be recorded in the Official Records. In the absence of such written designation, the acts of the Owner whose interest is so divided with respect to the exercise of the rights vested by this instrument shall be binding upon all Co-Owners until such time as written notice of such designation is given and recorded in the Official Records. All Co-Owners shall be jointly and severally liable with respect to all the terms, obligations, covenants and conditions under this Declaration during their period of ownership (subject to Section 12.4 below).

12.4 **Release.** Whenever the rights and obligations conferred upon any of the Owners are vested in another Owner or Owners pursuant to the provisions of this Article, the Transferor shall be released or discharged from the obligations thereafter accruing under the terms of this Declaration, and the

Transferee(s) of such interest shall be bound by the covenants and restrictions herein contained, subject to the terms herein. Notwithstanding the foregoing, (i) no such Owner shall be so released until notice of such Transfer has been given in the manner set forth below, at which time the Transferring Owner's personal liability for unaccrued obligations shall terminate, and (ii) in no event shall Developer be released, if at all, until such time as Developer's obligations under the Site Development Agreement have been fully performed. An Owner transferring all or any portion of its interest in the Shopping Center shall give notice to the other Owners of such Transfer and shall include therein at least the following information: (i) the name and address of the new Owner; (ii) a copy of the legal description of the portion of the Shopping Center so Transferred; and (iii) a copy of the instrument evidencing such Transfer and the assumption by the Transferee as provided herein. Until notice of such Transfer is given, the Transferring Owner shall (for purposes of this Declaration only) be the Transferee's agent.

ARTICLE XIII TAXES

13.1 **Calculation and Payment of Real Property Taxes.** To the fullest extent possible, real estate taxes and general and special assessments (collectively, "**Real Property Taxes**") levied and assessed against any Owner's Parcel and any Store or other improvements thereon, shall be separately assessed by the taxing authority and all Owners shall cooperate reasonably with Developer and each other as needed to have separate tax parcel status given to each Parcel hereunder; provided, however, that nothing herein shall require Developer to obtain separate tax assessments for any Parcel, Store or other improvements, except that the Scheel's Parcel shall in all events be separately assessed and the Scheel's Owner shall have no obligation to pay any portion of Real Property Taxes on any portion of the Shopping Center other than the Scheel's Parcel. Each Owner shall pay or cause to be paid on or before the date such Real Property Taxes become delinquent, all such Real Property Taxes levied and assessed on its Parcel and any Store or other improvements thereon, except as otherwise provided herein. Such Real Property Taxes may be paid in installments where installments are permitted by the taxing authorities. In the event an Owner shall deem any Real Property Taxes (including the rate thereof or the assessed valuation of the property in question or any other aspect thereof) assessed against such Owner by the taxing authority to be excessive or illegal, such Owner shall have the right, at its own cost and expense, to contest the same by appropriate proceedings, and nothing contained in this Section 13.1 shall require such Owner to pay any such Real Property Taxes as long as the amount or validity thereof shall be contested in good faith, and in the reasonable opinion of counsel for such Owner, the Owner's Parcel and, without limitation, the easements and rights established hereby in favor of other Owners with respect thereto, shall not thereby be in danger of being forfeited. If, notwithstanding the above provisions, any Parcels shall not be separately assessed, but instead are assessed as part of a larger parcel which includes more than one Parcel hereunder, then until such time as the Parcels at issue are separately assessed, the Owners of the Parcels that are assessed together shall coordinate to make timely payment of all Real Property Taxes pertaining to such Parcels so that same will be fully paid without penalty or interest, or if a discount shall be available for early payment prior to the last day that such discount is available (unless such Owners agree to the contrary). Any Owner not so performing as required above shall pay all interest, penalties, late charges and lost discount amounts incurred as a result of such Owner's failure to perform and shall reimburse the performing Owner for any amounts with respect thereto paid by the performing Owner. In the case of such joint assessment, the Owner of each Parcel shall be responsible for a share of the Real Property

Taxes assessed and applicable solely to such Owner's Parcel, as determined by reference to the records of the applicable taxing authority, including, without limitation, any work sheets and other documents compiled by the assessor. In the event it is not possible in such fashion to determine the specific Real Property Taxes applicable to each such Parcel by reference to the foregoing records, each Owner shall pay its proportionate share of the bill for Real Property Taxes at issue, calculated as follows: (i) as to any Real Property Taxes assessed against land, each Owner shall pay such Owner's proportionate share of the Real Property Taxes assessed against the land comprising the larger parcel based on a fraction, the numerator of which shall be the number of acres (to the nearest 1/100th of an acre) in the Parcel at issue and the denominator of which shall be the total number of acres in the aggregate of all Parcels assessed in such tax bill (to the nearest 1/100th of an acre); and (ii) as to any Real Property Taxes assessed against buildings, each Owner shall pay such Owner's fair and equitable share of the Real Property Taxes assessed against all the buildings of the jointly assessed Parcels, as reasonably determined by Developer, which share shall be consistent with the assessed value of the building(s) on the Parcel at issue (if such value is available) or the assessed value of similarly situated buildings in Larimer County, Colorado to the extent the actual assessed value of the building(s) is not available. To the extent that District's Parcel is subject to Real Property Taxes, Developer agrees to pay such Real Property Taxes without cost or charge to the Scheels Owner.

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

ARTICLE XIV **INDEMNIFICATION AND INSURANCE**

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

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

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

14.3 Casualty Coverage. In order to assure performance of their respective obligations under this Declaration, it is agreed that commencing as of the date any Owner (or District) commences construction with respect to its respective Parcel(s) and thereafter for the Term of this Declaration, such Owner (or District) shall carry property insurance on an all risk basis on its respective Store(s) in an amount sufficient to avoid the effect of any coinsurance provisions of such policies and in any event in an amount not less than the full replacement value of such Store(s) excluding, in each case, foundation, footing and excavation costs, with reasonable deductibles, and otherwise in accordance with the requirements set forth in this Article. Operator shall maintain or cause to be maintained property insurance on an all risk basis covering the Common Area in an amount not less than the full replacement value of said Common Area, otherwise in accordance with the requirements set forth in this Article. All such insurance shall be carried with financially responsible companies authorized to do business in the State of Colorado and meeting the standards set forth in this Article. In the event District does not cause District's Parcel to meet the insurance standards set forth in this Article, then Developer shall cause District's Parcel to meet the insurance standards set forth in this Article at no cost to the Scheels Owner.

14.4 Liability Coverage. Each Owner shall carry (or cause to be carried) with insurance companies authorized to do business in the State of Colorado, commercial general liability insurance written on an occurrence basis covering its legal liability in connection with claims for personal injury or death and property damage incurred upon or about its Parcel(s) and within any Store(s) constructed on its Parcel(s) in accordance with the requirements of this Article; provided, however, that so long as Developer (or Operator as applicable) is obligated to maintain the Common Area pursuant to the terms of this Declaration, no Owner other than Developer shall be required to maintain such liability insurance on any portion of the Common Area located on such Owner's Parcel. Similarly, Developer shall carry (or cause to be carried) with insurance companies authorized to do business in the State of Colorado, commercial general liability insurance written on an occurrence basis covering legal liability for claims for personal injury or death or property damage incurred upon or about the Common Area in accordance with the requirements of this Article. Developer shall be shown as an additional insured on each Owner's commercial general liability insurance for personal injury or death and property damage incurred upon or about its Parcel. All such commercial general liability insurance shall have minimum limits in Constant Dollars, of \$1,000,000.00 per occurrence, with an annual aggregate limit of \$2,000,000.00 for personal or bodily injury and damage to property, and an umbrella policy with an annual aggregate limit of \$5,000,000.00. In the event District does not cause District's Parcel to meet the insurance standards set forth in this Article, then Developer shall cause District's Parcel to meet the insurance standards set forth in this Article, at no cost to the Scheels Owner.

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

14.6 **Waiver of Subrogation.** Each Owner (the "**Waiving Owner**"), by accepting a deed to its Parcel, shall be deemed to have waived any rights the Waiving Owner may have against the other Owners (including but not limited to a direct action for damages) on account of any loss or damage suffered by the Waiving Owner (whether or not such loss or damage is caused by the fault, negligence or other tortious conduct, acts or omissions of the other Owners or their respective officers, directors, employees, agents, contractors or invitees), to its property, Parcel and the improvements thereon, its contents or to any other portion of the same arising from any risk covered by or which could be covered by the forms and type of property insurance required to be carried by the Owners, respectively, under Section 14.3 of this Declaration. Each Waiving Owner further, on behalf of its insurance companies insuring the property of such Waiving Owner against any such loss, waives any right of subrogation that such Waiving Owner or its insurers may have against the other Owners or their respective officers, directors, employees, agents, contractors or invitees and all rights of their respective insurance companies based upon an assignment from its insured. Each Owner shall give each such insurance company written notification of the terms of the mutual waivers contained in this Section and have said insurance policies properly endorsed, if necessary, to prevent the invalidation of such insurance coverage by reason of said waivers. The foregoing waiver shall be effective whether or not the Owners maintain the required insurance or give written notice of the waivers contained herein to their insurance companies. The provisions of this Section 14.6 are further subject to the provisions and limitations of Section 14.10 below.

14.7 **Use of Proceeds.** Except as otherwise provided herein, any loss covered by the insurance required to be carried by an Owner under Section 14.3 shall be adjusted with and paid by the insurance company by and to such Owner and upon receipt thereof, if the loss is in excess of \$500,000, the proceeds shall be deposited in a bank, trust or title company (selected by the respective Owner but reasonably approved by Developer) having an office in Denver or Johnstown, Colorado, to be held in trust or escrow to be paid out for the purpose of repair, replacement or rebuilding of the damaged premises as provided in

this Declaration; provided, however, in the event such Owner is not obligated to repair, replace or rebuild the damaged premises in accordance with Article IX, then the insurance proceeds shall be paid directly to Owner and shall not be required to be deposited in a bank, trust or title company. Notwithstanding any provision herein to the contrary, so long as the Scheels Owner is able to self insure as provided in this Declaration (and is, at the time of such loss, self insuring hereunder), the Scheels Owner shall not be obligated, irrespective of the amount of proceeds paid to it, to deposit such proceeds in such bank, trust or title company, and the Scheels Owner shall use such proceeds in accordance with the terms of this Article (if so required to rebuild, replace or rebuild). Upon presentation to the trustee or escrowee of proper material and labor bills and applicable lien waivers for such work completed and an architect certificate for completed work approving payment of such bills, the trustee or escrowee shall, as the work progresses, pay the amount of such bills to the persons, firms or corporations rendering or furnishing such labor, services or materials. After completion of the repair, replacement or rebuilding and after such bills in connection with such work have been paid in full, any remaining balance of the proceeds of such insurance shall be released and paid over by said trustee or escrowee to the Owner whose premises were so damaged. The Owner whose premises were so damaged agrees to pay all reasonable fees and charges made by the trustee or escrowee for acting as trustee or escrowee hereunder. In the event of a loss in the amount of \$500,000 or less, the proceeds shall be paid to the Owner whose premises were so damaged, which proceeds shall be applied to the cost of the repair, replacement or rebuilding of such premises if required to repair, rebuild, or replace. The Owner for whose benefit any property insurance is carried shall be responsible for and pay the cost of repair, replacement or rebuilding not covered by such insurance proceeds, including inadequate coverage and the amount of any deductibles.

14.8 Additional Insurance Requirements. Anything herein to the contrary notwithstanding, it is understood and agreed that the policy or policies providing the insurance which the Owners are obligated to maintain under the terms of Section 14.3 may be made payable to the holder of any first mortgage of the respective Owner's interest in the Shopping Center under a standard mortgagee clause, provided such Mortgagee agrees that it will, in the event of loss, hold the proceeds for payment of the costs of the repair, replacement or rebuilding (to the extent required under Article IX above) pursuant to the provisions of Section 14.7, as if it were the trustee thereunder.

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

14.10 Insurance Exceptions for Scheels. Notwithstanding anything to the contrary in this Declaration, for so long (but only for so long) as Scheels shall be the Scheels Owner and thereafter for so long (but only for so long) as a Related Corporation or any Successor Corporation of Scheels (a "**Scheels Company**") shall be the Scheels Owner (it being understood that the provisions of this Section 14.10 are "personal" to a Scheels Company and shall not inure to the benefit of any other Scheels Owner), (x) the Scheels Owner shall not be required to (i) name any other Owner as additional insured for any insurance Scheels Owner carries with respect to the Shopping Center, or (ii) furnish any Owner with any evidence of insurance or self-insurance, and (y) no Owner shall be permitted to purchase any insurance on behalf of

Scheels Owner (and seek reimbursement thereof in accordance with any self-help remedies granted to an Owner herein).

14.11 **Scheels Owner Self Insurance.** Scheels Owner shall be permitted to self insure upon the consent of Developer, which consent shall not be unreasonably withheld so long as the Scheels Owner's tangible net worth exceeds Fifty Million Dollars (\$50,000,000.00), in Constant Dollars. Any request to self-insure pursuant to this Section shall be accompanied by a copy of the Scheels Owner's financial statements audited by an independent certified public accountant. Thereafter, upon request of Developer, Scheels Owner shall deliver financial statements on an annual basis. In the event any Scheels Owner self-insures in accordance with the terms of this Declaration (including, in any case, maintenance of deductibles), then notwithstanding such self-insurance, the Scheels Owner shall pay, register, insure, defend, indemnify, and otherwise provide all of the same property and commercial general liability protection and coverage called for by this Declaration hereto without loss of coverage or protection to itself or to any other Owner as if such self-insured Scheels Owner were fully insured by a solvent third party insurance carrier as contemplated by this Declaration. All waivers, including but not limited to the waivers of subrogation, additional insured coverages and benefits, shall also continue and apply in all circumstances of self-insurance. Reasonable deductibles shall not be considered "self-insurance" for the purposes of this Section.

ARTICLE XV **DEFAULT AND REMEDIES**

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

15.2 **Default Interest.** Interest shall accrue on sums owed by a Defaulting Owner to a Non-Defaulting Owner and shall be payable from the date any such sum first became due hereunder until paid in full, at a

rate of interest (the "**Default Rate**") equal to the lesser of: (a) the floating rate which is equal to five percent (5%) per annum in excess of the annual rate of interest from time to time published in the Wall Street Journal as the Prime Rate or (b) the then maximum lawful rate of interest in Colorado applicable to the capacity of the Defaulting Owner and the nature of the debt.

15.3 **Additional Remedies.** Each Owner shall have and is hereby granted a non-exclusive right of entry and non-exclusive easements for and during the Term of this Declaration, in, over and under the Parcels of any other Defaulting Owner (excluding the right to enter any buildings or Stores thereon) for all purposes reasonably necessary, to enable the Non-Defaulting Owner (acting directly or through agents, contractors or subcontractors) to perform any of the terms, provisions, covenants or conditions of this Declaration on the part of the Defaulting Owner to be performed. Without limitation of the preceding sentence, the right of entry of the Scheels Owner shall extend to and include District's Parcel in the event of a default of the Developer under the terms of this Declaration and Developer represents and warrants that Scheels Owner shall at all times have the right to enter the District's Parcel for such purposes. In the event of a breach, or attempted or threatened breach, of any terms, provisions, covenants or conditions of this Declaration, the Non-Defaulting Owner shall be entitled forthwith to full and adequate relief by injunction, damages, and all other available legal and equitable remedies from the consequences of such breach.

ARTICLE XVI HAZARDOUS AND TOXIC MATERIALS

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

16.1 **Hazardous Material.** Except as to items commonly sold or used in sporting goods stores or Stores having other uses permitted herein (and which are used, stored, handled and disposed of in material compliance with Environmental Laws then in effect), no Owner shall keep, store, produce, permit to be kept, stored or produced, on or about such Owner's Parcel or any improvements thereon, for use, disposal, treatment, generation, storage or sale, any substance designated as, or containing components designated as hazardous, dangerous, toxic or harmful or which may be considered a Hazardous Material and/or is subject to regulation by any Environmental Law and/or other federal, state or local law, regulation, statute or ordinance now or hereinafter enacted. In addition, the Owners agree not to release or discard any Hazardous Materials on said Owner's Parcel, or any other Parcel within the Shopping Center. Notwithstanding the foregoing, Owners may store, handle and use the following chemicals, substances or materials if they are used, stored, handled and disposed of in material compliance with Environmental Laws then in effect: (i) chemicals, substances or materials routinely used in office areas; (ii) janitorial supplies, cleaning fluids or other chemicals, substances or materials reasonably necessary for the day-to-day operation or maintenance of the Owner's business and property or the business of any lessee of an Owner, (iii) chemicals, substances or materials reasonably necessary for the construction or repair of improvements on Owner's Parcel and (iv) fuel or other substances used in connection with a back-up electrical generator system. For so long as any party is the Owner of its respective Parcel, such Owner shall, at such Owner's sole cost and expense, promptly comply with all Environmental Laws and/or other

laws and ordinances and the orders, rules and regulations and requirements of all federal, state and municipal governments and appropriate departments, commissions, boards, and officers thereof, and the orders, rules and regulations of the Board of Fire Underwriters where the Parcel is situated, or any other body now or hereafter constituted exercising similar functions, foreseen or unforeseen, ordinary as well as extraordinary, and whether or not the same require structural repairs or alterations, which may be applicable to the Parcel or any improvements thereon, or the use or manner of use of such Parcel or improvements. Each Owner shall likewise observe and comply with the requirements of all policies of public liability, fire and all other policies of insurance at any time in force with respect to the Parcel, the improvements and equipment on the parcel or in the improvements. In addition, each Owner, at its cost and expense, shall comply with all laws, statutes, ordinances, rules and regulations of any governmental authority ("**Agency**") having jurisdiction thereof concerning environmental matters, including, but not limited to, any discharge into the air, waterways, sewers, soil or ground water of any substance or "pollutant". Upon prior reasonable notice and at times reasonably acceptable to such Owner, Developer and its agents and representatives shall have reasonable access to each Owner's Parcel and any improvements thereon for the purpose of ascertaining the nature of the activities being conducted thereon and to determine the type, kind and quantity of all products, materials and substances brought onto the Parcel(s) or any improvements thereon or made or produced thereon and if Developer or its agents shall in their inspection of the Parcel(s), damage the property, then they shall restore the property to its prior condition. Each Owner and all occupants of the Parcel or any improvements thereon claiming under Owner shall provide to Developer copies of all manifests, schedules, correspondence and other documents of all types and kinds when filed or provided to an Agency or otherwise required to be maintained by an Agency or as such are received from any Agency. Developer and its agents and representatives shall have the right to take samples in quantity sufficient for scientific analysis of all products, materials and substances present on the Parcel(s) or in any improvements thereon, including, but not limited to, samples of products, materials or substances brought onto or made or produced on the Parcel(s) or in any improvement thereon by an Owner or an occupant claiming under an Owner or otherwise present on the Parcel or any improvements thereon. If an Owner breaches the obligations stated in this Section, or if the presence of Hazardous Material on the Parcel or improvements thereon caused or permitted by an Owner results in contamination of the Parcel and/or improvements, or if contamination of the Parcel or improvements by Hazardous Material otherwise occurs for which such Owner is legally liable to Developer or any other Owner for damage resulting therefrom, then such Owner shall indemnify, defend and hold Developer and any other Owner harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the period during which such party is the Owner of such Parcel as a result of such contamination. Any Owner who is asked to "defend" Developer or another Owner shall have the right to select defense counsel. In the event the indemnified Owner desires to select its own counsel, it shall be at the indemnified Owner's sole expense and such defense shall be tendered immediately and in a manner that does not prejudice the rights of the indemnitor. Any indemnity under the provisions of this Section shall not apply to any claims brought separately against the indemnified Owner for a separate act or omission. This indemnification of Developer and all other Owners by each Owner includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the respective Parcel. Without limiting the foregoing, if the

presence of any Hazardous Materials on a Parcel caused or permitted by an Owner results in any contamination of the Parcel and/or improvements thereon, such contaminating Owner shall promptly take all actions at its sole expense as are required by applicable law to return the Parcel and/or improvements to the condition existing prior to the introduction of any such Hazardous Material. If a contaminating Owner does not promptly take such action to return the Parcel and for improvements to its/their prior condition as required, any other Owner shall have the right, but no obligation, to take such action as required by law to return the Parcel and for improvements at issue to their prior condition, immediately following notice to such contaminating Owner by such other Owner of its intent to take such action, and such contaminating Owner shall reimburse such other Owner for any costs incurred by such other Owner in connection therewith upon submission by such other Owner to said contaminating Owner of such costs.

16.2 **No Limitation of Rights or Benefits.** The terms of this Declaration shall not be construed to limit the rights and benefits afforded to Scheels or any subsequent Scheels Owner in any other document between Developer and Scheels.

ARTICLE XVII MISCELLANEOUS

17.1 **Modification.** Except as provided to the contrary herein, no modification, waiver, amendment, discharge, or change of this Declaration shall be valid unless the same is in writing and signed by the Scheels Owner and Developer. Subject to the terms of the preceding sentence, Developer may amend, modify, discharge, waive, or change this Declaration in its sole discretion; provided, however, that no such modification, waiver, amendment, discharge or change shall impose any materially greater obligation on or materially impair any right of an Owner or its Parcel unless such Owner has joined in the execution of such document.

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

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

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

17.5 **Subdivision.** Notwithstanding anything to the contrary contained in this Declaration, (i) no Owner, other than Developer, shall have the right, without Developer's consent, to further subdivide a Parcel or add additional land to its respective Parcel or to the Shopping Center; and (ii) neither Developer nor any other Owner may amend or otherwise modify the plat of the Shopping Center without the written approval of the Scheels Owner.

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

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

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

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

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

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

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

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

17.14 **Estoppel Certificate.** Each Owner shall issue to a requesting Owner (or to any Mortgagee, or any other Person reasonably specified by such requesting Owner), within thirty (30) days following written request of any such requesting Owner, an estoppel certificate stating:

- (i) whether the Owner to whom the request has been directed knows of any default under this Declaration of any other Owner, and if there are known defaults, specifying the nature thereof;
- (ii) whether to its knowledge this Declaration has been assigned, modified or amended in any way (or if it has, then stating the nature thereof);
- (iii) that to the Owner's knowledge this Declaration as of that date is in full force and effect (or, if such be not the case, the qualifications respecting such statement).

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

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

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

17.17 Excuses for Non-Performance. Each Owner shall be excused from performing any obligation or undertaking provided in this Declaration, except any obligation to pay any sums of money under the applicable provisions hereof, in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage; inability to procure or general shortage of labor, equipment, facilities, materials or supplied in the ordinary course on the open market; failure of normal transportation; strikes, lockouts, action of labor unions; condemnation, requisition; laws

or orders of governmental or civil or military authorities; breach or default of any other Owner of any of its obligations hereunder; failure to obtain necessary governmental approvals or permits despite the exercise of due diligence and good faith efforts by an Owner, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such Owner, other than the lack of or inability to obtain funds or causes which were reasonably foreseeable (collectively, "**Unavoidable Delays**").

17.18 Scheel's Separate Agreement. Concurrently with the execution of this Declaration, Developer and Scheels have entered into and recorded in the Official Records the Scheel's Separate Agreement (or a memorandum thereof) regarding certain obligations between Developer and Scheels, relating to construction costs, operating covenants, maintenance obligations and costs, and other matters with respect to this Declaration and the Shopping Center. In the event of and to the extent of any conflict between this Declaration and the Scheel's Separate Agreement, the Scheel's Separate Agreement shall control. No other Person shall be entitled to review the Scheel's Separate Agreement without the consent of Developer and the other party to the Scheel's Separate Agreement.

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

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

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

interest of Scheels in and to the Shopping Center at the time, and neither Scheels, nor any of its constituent partners, sub partners, members, managing members or agents, shall have any personal liability therefor, and each other Owner, on behalf of itself and all persons claiming by, through or under such Owner, hereby expressly waives and releases Scheels and such partners, sub partners, members, managing members or agents from any and all personal liability.

17.22 Continuous Operation. In no event shall Developer have any liability hereunder whatsoever for the failure of any subsequent Owner or Permittee of any Parcel to continuously operate and Developer has made no representation herein whatsoever that any tenant or Parcel Owner will continuously operate. Nothing contained in this Section 17.22, however, shall be interpreted to affect or otherwise change any agreement (including, without limitation, the Scheel's Separate Agreement or any other of the Separate Agreements) between Developer and the Scheels Owner or between Developer and any other Owner.

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

- EXHIBIT A-1: Legal Description of Developer's Parcels
- EXHIBIT A-2: Legal Description of Developer's District's Parcel
- EXHIBIT A-3: Legal Description of Scheel's Parcel
- EXHIBIT A-4: Legal Description of Scheel's District's Parcel
- EXHIBIT A-5: Legal Description of the Control Parcel
- EXHIBIT B: Site Plan
- EXHIBIT B-1: Site Plan marked with Access Roads
- EXHIBIT B-2: Site Plan marked with Scheel's Control Area
- EXHIBIT B-3: Site Plan marked with Scheel's Outdoor Area
- EXHIBIT B-4: Site Plan marked with Control Parcel
- EXHIBIT B-5: Scheel's Maintenance Area
- EXHIBIT C: Sign Criteria
- EXHIBIT D: Depiction of Abutting Access Road
- EXHIBIT E: Depiction of Permitted Expansion Areas of Shopping Center

17.24 Proprietary Rights. The trade names, trademarks, service marks (including, without limitation, all logos, emblems, designs or designating words or names) used by Scheels in connection with its operations from Scheel's Parcel are registered and/or the proprietary property of Scheels or its affiliates, and without the consent of Scheels, in its sole and absolute discretion, no usage of those marks or names shall be made by Developer or by any Owner, occupant, or tenant of the Shopping Center.

17.25 Scheel's Outdoor Area. Developer and Scheels acknowledge that although Scheel's Outdoor Area is located within District's Parcel, Developer represents, warrants and covenants that Scheels Owner and its Permittees have the right to conduct Outdoor Sales within Scheel's Outdoor Area, notwithstanding anything in this Declaration to the contrary.

17.26 Notices. All notices, approvals, consents, or requests given or made pursuant to this Declaration shall be in writing and either (i) sent by a nationally recognized overnight courier, (ii) personally delivered, or (iii) sent by registered or certified mail with the postage prepaid. Notices personally

delivered shall be deemed delivered on the date of delivery. Notices via overnight courier shall be deemed delivered on the business day next following deposit with such courier and certified or registered mail shall be deemed delivered four (4) business days after deposit with the U.S. Mail, as applicable. Notices to Developer shall be addressed to Johnstown Plaza LLC, 6917 W. 135th Street, Suite B-29, Overland Park, Kansas 66223, Attention: Allen D. Schlup. Notices to Scheels shall be addressed to Scheels All Sports, Inc., 4550 15th Avenue South, Fargo, North Dakota 58103, Attention: Steve M. Scheel, Chief Executive Officer. Such addresses may be changed from time to time by any Owner by serving notice as herein provided to the other Owners. Notwithstanding anything to the contrary herein, any Owner may give another Owner notice of the need for emergency repairs via facsimile with confirmation of receipt and delivery of the original notice by one of the above prescribed methods. If, at the time of the sending of any notice required or permitted to be given hereunder, the interests of any recipient Owner in its Parcel shall be encumbered by a first Mortgage and the notifying Owner has been notified in writing thereof and of the name and address of the Mortgagee, a copy of said notice shall also be sent to such mortgagee by one of the above prescribed methods at the address so given.

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

17.28 Name of Shopping Center. The name of the Shopping Center shall be Johnstown Plaza, and such name shall not be changed without the consent of the Scheels Owner having been first obtained, such consent not to be unreasonably withheld, delayed, or conditioned; provided, however, in the event (i) a third party claims rights to the name Johnstown Plaza and Developer, after evaluating such claim, determines in good faith that such claim has merit, or (ii) if the name is required to be changed by law or judicial or governmental order, the consent of the Scheels Owner shall not be required so long as the new name does not contain the name of another retailer or occupant of the Shopping Center. Among the various reasonable reasons the Scheels Owner can articulate in order reasonably to withhold consent concerning a name change of the Shopping Center, it shall be reasonable for the Scheels Owner to withhold its consent if the proposed name of the Shopping Center includes the name of another retailer or occupant of the Shopping Center.

ARTICLE XVIII
RULES AND REGULATIONS

Developer (and any other Owner to the extent applicable herein) shall not be responsible for the violation or nonperformance by any other Permittee of the Shopping Center with regard to these Rules and Regulations (the "**Rules and Regulations**"); provided, however, that Developer (and any other Owner to the extent applicable herein) agrees to use its commercially reasonable efforts to cause such Permittee to comply with these Rules and Regulations. To the extent that the provisions of these Rules and Regulations are inconsistent with the other express provisions of this Declaration, the other express provisions of this Declaration shall govern and control.

18.1 **Common Areas.** In addition to any other requirement in this Declaration, the Common Areas shall be maintained consistent with the following rules and regulations:

- (a) The surface of the sidewalks shall be maintained level, smooth, and evenly covered with the type of surfacing material originally installed thereon, or such substitute thereof that shall be in all respects equal thereto in quality, appearance, and durability;
- (b) All papers, debris, filth, and refuse shall be removed from the Shopping Center, and paved areas shall be washed or thoroughly swept as required;
- (c) All trash and rubbish containers located in the Common Area for the use of Permittees shall be emptied on a sufficiently regular basis. In the event Developer does not provide a trash hauler for the Shopping Center, Developer shall have the right to reasonably approve of any and all trash haulers contracted by Permittees and to reasonably approve of the hours of pick-up (but Developer shall not have approval over the trash hauler utilized by the Scheels Owner or hours of pick-up);
- (d) All landscaping shall be properly maintained, including removal of dead plants, weeds, and foreign matter and such replanting and replacement as the occasion may require;
- (e) All hard-surfaced markings shall be inspected at regular intervals and promptly repainted as the same shall become unsightly or indistinct from wear and tear, or other cause;
- (f) All storm drain catch basins shall be cleaned on a schedule sufficient to maintain all storm drain lines in a free-flowing condition and all mechanical equipment related to storm drain and sanitary sewer facilities shall be kept in proper working order;
- (g) All asphalt paving shall be maintained in a first class condition;
- (h) All surface utility facilities servicing the Common Areas shall be promptly repaired or replaced, as the occasion may require, upon the occurrence of any defect or malfunctioning;

- (i) All Common Area amenities, benches, and institutional, directional, traffic, and other signs shall be maintained in a clean and attractive surface condition and promptly repaired or replaced upon the occurrence of any defect or malfunctioning;
- (j) All lamps shall be promptly replaced when no longer properly functioning;
- (k) The improvements on and to the Common Areas shall be repaired or replaced with materials, apparatus, and facilities of quality at least equal to the quality of materials, apparatus, and facilities repaired or replaced;
- (l) The Owners shall use their diligent efforts to require their respective Permittees to comply with all regulations with respect to the Common Area, including, but not by way of limitation, posted speed limits, directional markings, and parking stall markings.

18.2 **Floor Areas.** In addition to any other requirement in this Declaration, the Floor Areas shall be maintained consistent with the following rules and regulations:

- (a) All Floor Area, including entrances and returns, doors, fixtures, windows, and plate glass shall be maintained by the Owner occupying such Floor Area in a safe, neat, and clean condition;
- (b) All trash, refuse, and waste materials shall be regularly moved from the premises of each Store within the Shopping Center, and until removal shall be stored (i) in adequate containers, which containers shall be covered with lids and shall be located in areas designated by Developer (if such container is located on Scheel's Parcel, then the container shall be located in an area designated by the Scheels Owner) so as not to be visible to the general public shopping in the Shopping Center, and (ii) so as not to constitute any health or fire hazard or nuisance to any Owner;
- (c) Except as otherwise provided in this Declaration, neither sidewalks nor walkways shall be used to display, store, or replace merchandise, equipment, or devices;
- (d) Except as otherwise provided in this Declaration, no advertising medium shall be utilized which can be heard or experienced outside the Floor Area of any Store, including without limiting the generality of the foregoing, flashing lights, search lights, loudspeakers, phonographs, radios, or television;
- (e) No use shall be made of the Shopping Center or any portion thereof which would (i) violate any law, ordinance, or regulation, (ii) constitute a nuisance, (iii) constitute an extra-hazardous use, or (iv) violate, suspend, or void any policy or policies of insurance on the Stores;
- (f) The Owners shall use their diligent efforts to require all trucks servicing their respective Stores to load and unload such trucks (i) prior to the hours the Shopping Center is open to business to the general public or (ii) so as not to unreasonably interfere with the operation of the other Stores within the Shopping Center;

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

18.3 **Conduct of Persons.** In addition to any other requirement in this Declaration, the Owners hereby establish the following rules and regulation for the use of roadways, walkways, and other common facilities (provided that such roadways, walkways, and other common facilities are located in or on Shopping Center Property) provided for the use of Permittees:

(a) No Person shall use any utility area, truck court, or other area reserved for use in the conduct of business, except for the specific purpose for which permission to use such area is given;

(b) No Person shall use the Parking Area except for the parking of motor vehicles during such period of time such Person or the occupants of such vehicles are customers, employees, or business invitees of the retail establishments within the Shopping Center;

(c) Except as otherwise provided in this Declaration, no Person shall, in or on any part of the Common Area within an Owner's Parcel without such Owner's permission:

(i) Vend, peddle, or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet, or other matter whatsoever, except as otherwise provided in this Declaration;

(ii) Exhibit any sign, placard, banner, notice, or other written material;

(iii) Distribute any circular, booklet, handbill, placard, or other material;

(iv) Solicit membership in any organization, group, or association or contribution for any purpose;

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

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

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

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

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

(SIGNATURE PAGES TO FOLLOW)

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

DEVELOPER

JOHNSTOWN PLAZA LLC, a Kansas limited liability company

By: *Allen Schlup*
Name: Allen D. Schlup
Its: Member

STATE OF KANSAS)
) SS.
COUNTY OF JOHNSON)

The foregoing instrument was acknowledged before me this 5th day of February, 2016, by Allen D. Schlup, the Owner of Johnstown Plaza LLC, a Kansas limited liability company under the laws of Kansas, on behalf of said company.

Amy Carroll
Notary Public

My Commission Expires:



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

SCHEELS

SCHEELS ALL SPORTS, INC., a North Dakota corporation

By:

Name:

Its:

Michelle Killoran
Michelle Killoran
CFO/VP of Finance

STATE OF NORTH DAKOTA)

COUNTY OF Cass)

SS.

The foregoing instrument was acknowledged before me this 3 day of February, 2016, by Michelle Killoran, the CFO of Scheels All Sports, Inc., a North Dakota corporation, on behalf of said corporation.

Rebecca L Adams
Notary Public

My Commission Expires: 12-22-18



EXHIBIT A-1

LEGAL DESCRIPTION OF DEVELOPER'S PARCELS

Lots 1, 3, and 4, Block 2, 2534 Filing No. 14, a subdivision of the Town of Johnstown, County of Larimer, State of Colorado.

Lots 2, 3, 4, and 8, Block 3, 2534 Filing No. 13, a subdivision of the Town of Johnstown, County of Larimer, State of Colorado.

EXHIBIT A-2
LEGAL DESCRIPTION OF DEVELOPER'S DISTRICT'S PARCEL

Lot 2, Block 2, 2534 Filing No. 14, a subdivision of the Town of Johnstown, County of Larimer, State of Colorado.

EXHIBIT A-3
LEGAL DESCRIPTION OF SCHEEL'S PARCEL

Lot 6, Block 3, 2534 Filing No. 13, a subdivision of the Town of Johnstown, County of Larimer, State of Colorado.

EXHIBIT A-4
LEGAL DESCRIPTION OF SCHEEL'S DISTRICT'S PARCEL

Lot 5, Block 2, 2534 Filing No. 14, a subdivision of the Town of Johnstown, County of Larimer, State of Colorado.

Lots 1 and 7, Block 3, 2534 Filing No. 14, a subdivision of the Town of Johnstown, County of Larimer, State of Colorado.

Lot 4, Block 1, of Amended Plat of Lot 4, Block 1, Replat of Lot 2, Block 1, Replat of Lot 6, Block 1, 2534 Filing No. 4.

EXHIBIT A-5
LEGAL DESCRIPTION OF THE CONTROL PARCELS

Lot 3, Block 2, 2534 Filing No. 14, a subdivision of the Town of Johnstown, County of Larimer, State of Colorado.

Lot 8, Block 3, 2534 Filing No. 13, a subdivision of the Town of Johnstown, County of Larimer, State of Colorado.

EXHIBIT B
SITE PLAN

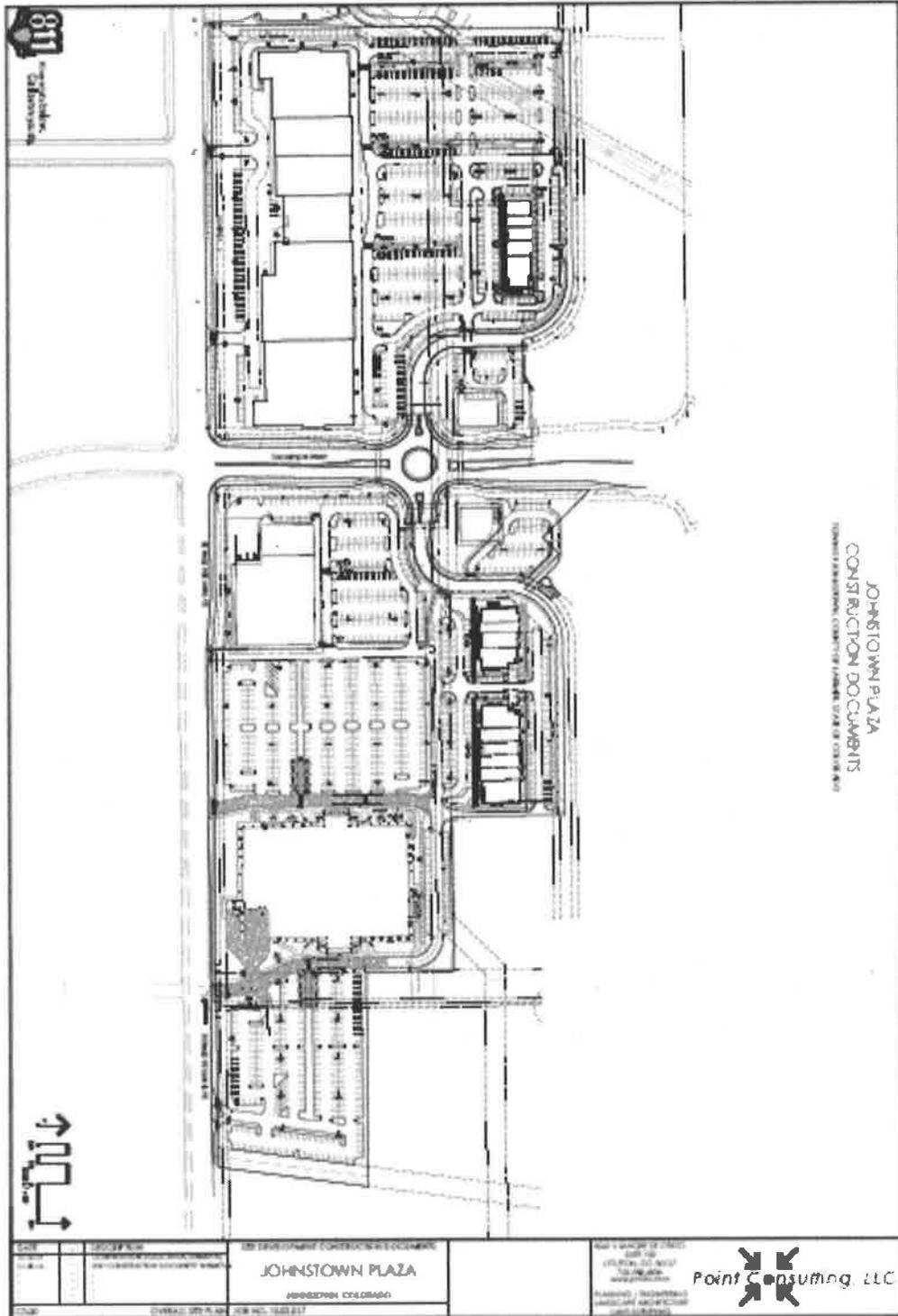


Exhibit B

EXHIBIT B-1
SITE PLAN WITH ACCESS ROADS

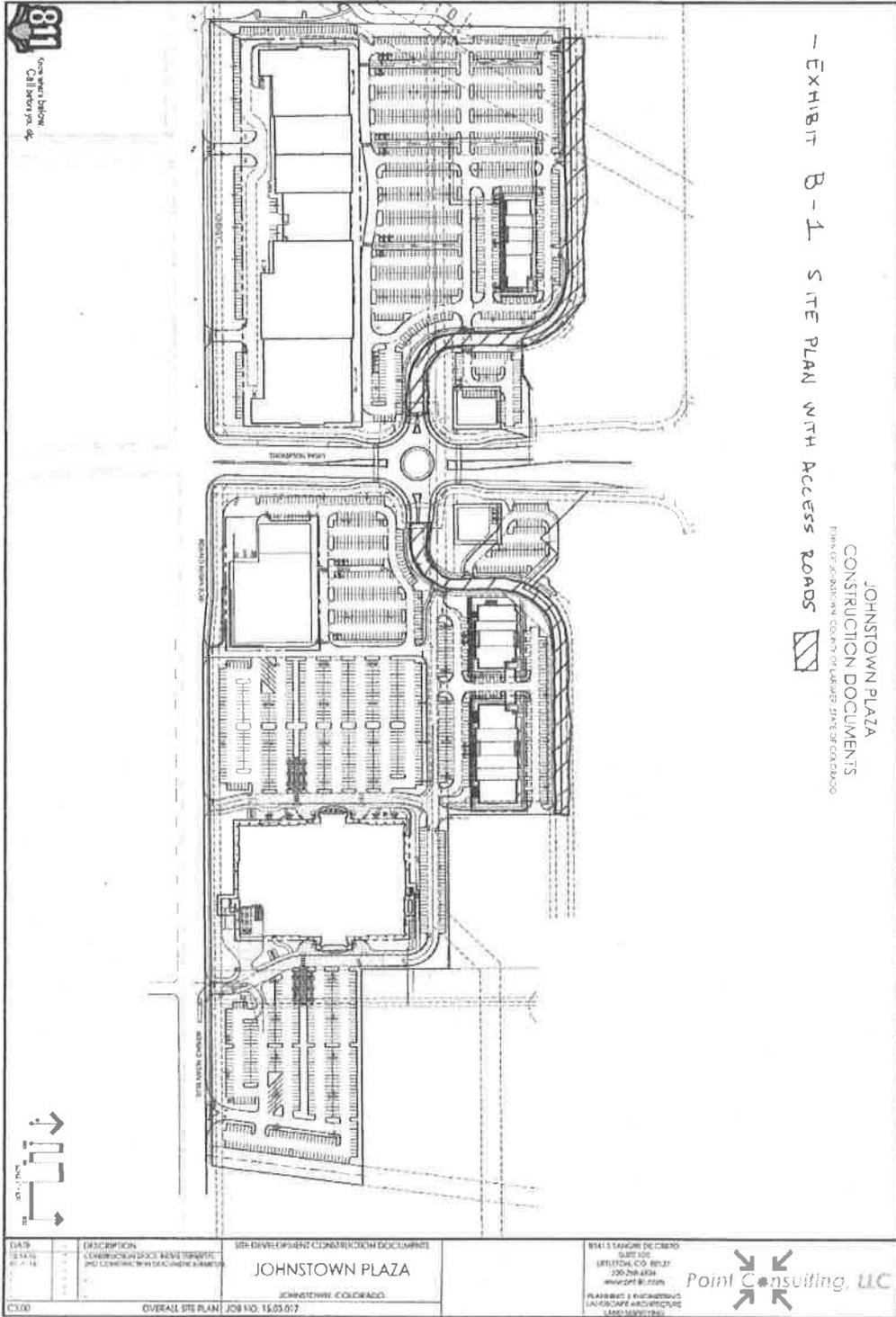


Exhibit B-1

EXHIBIT B-2
SITE PLAN WITH SCHEEL'S CONTROL AREA

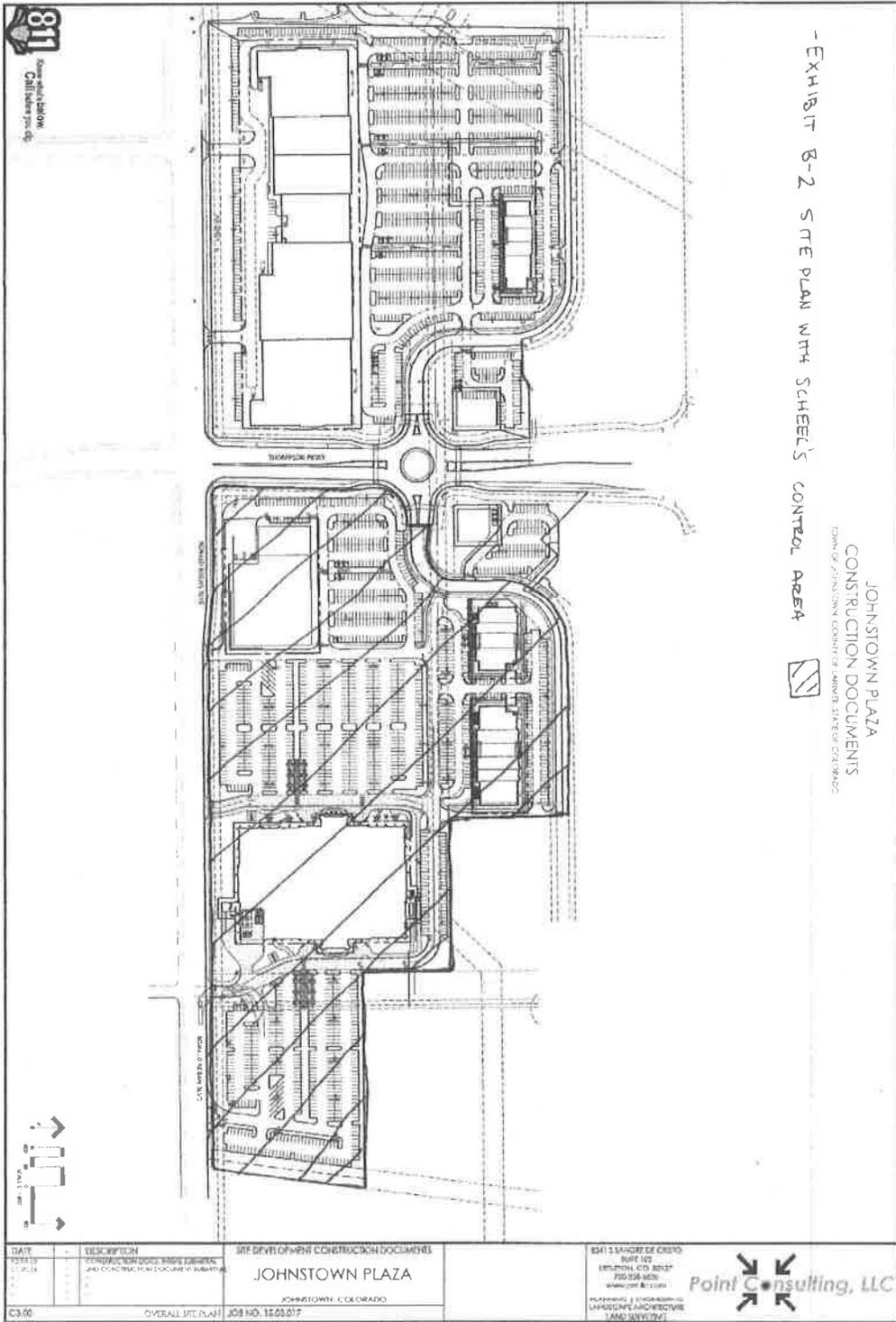


EXHIBIT B-3
SITE PLAN WITH SCHEEL'S OUTDOOR AREA

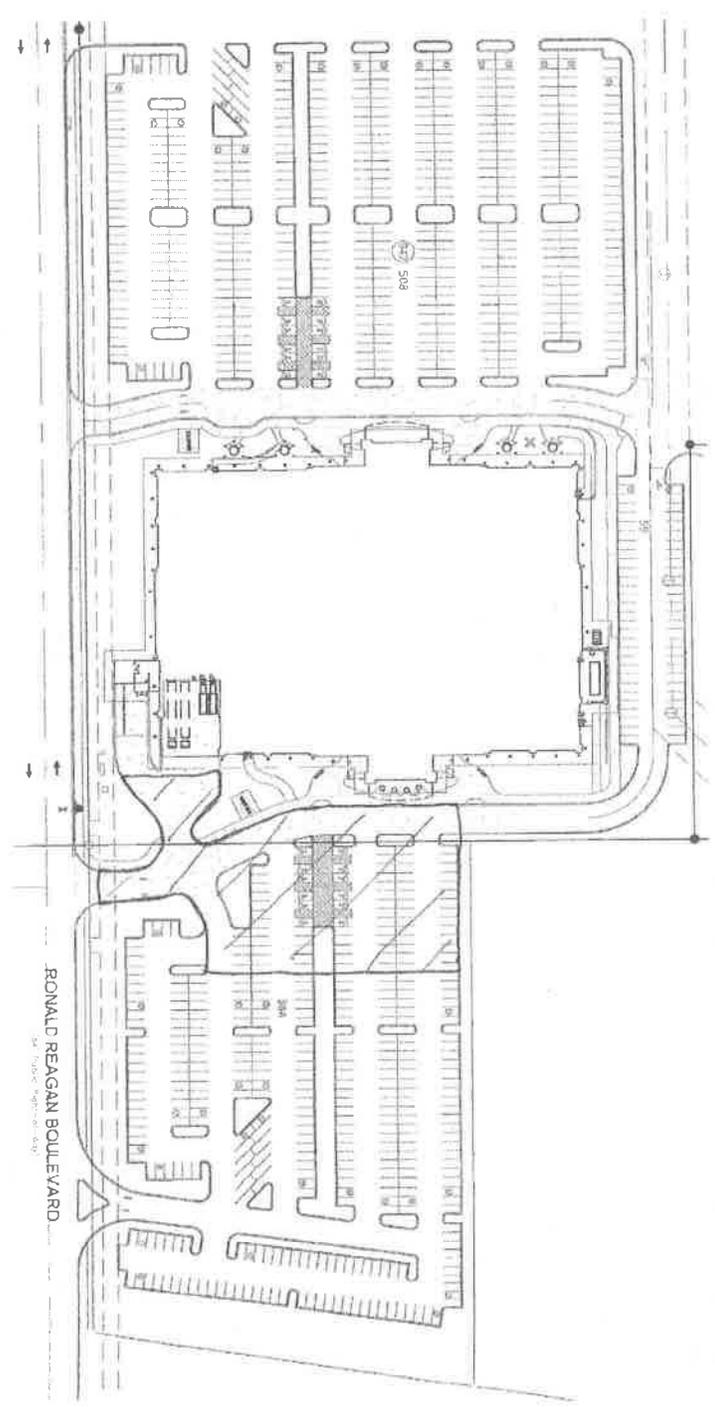


EXHIBIT B-3 SCHEEL'S OUTDOOR AREA



EXHIBIT B-4

SITE PLAN WITH THE CONTROL PARCEL

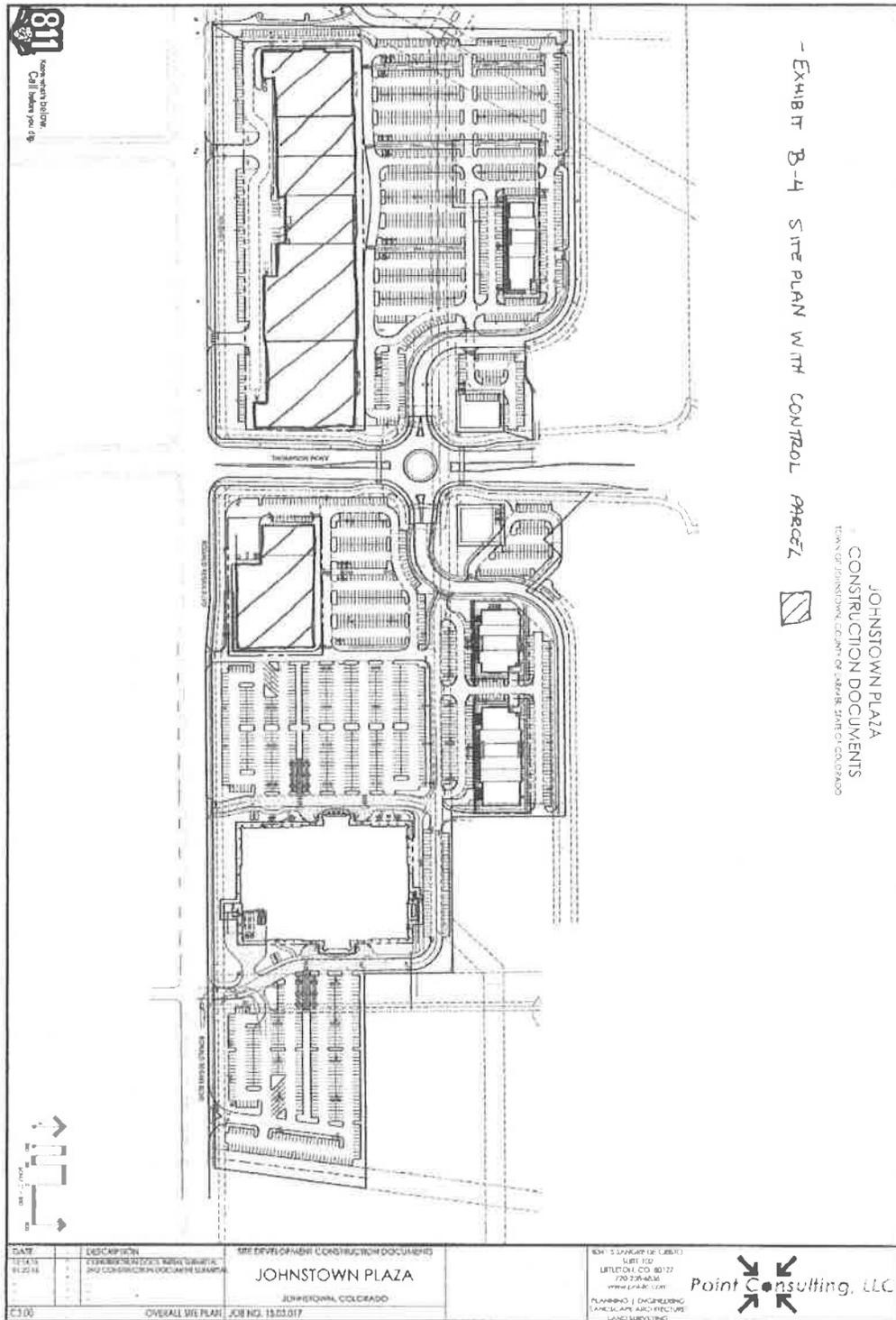


EXHIBIT B-5
SITE PLAN WITH SCHEEL'S MAINTENANCE AREA

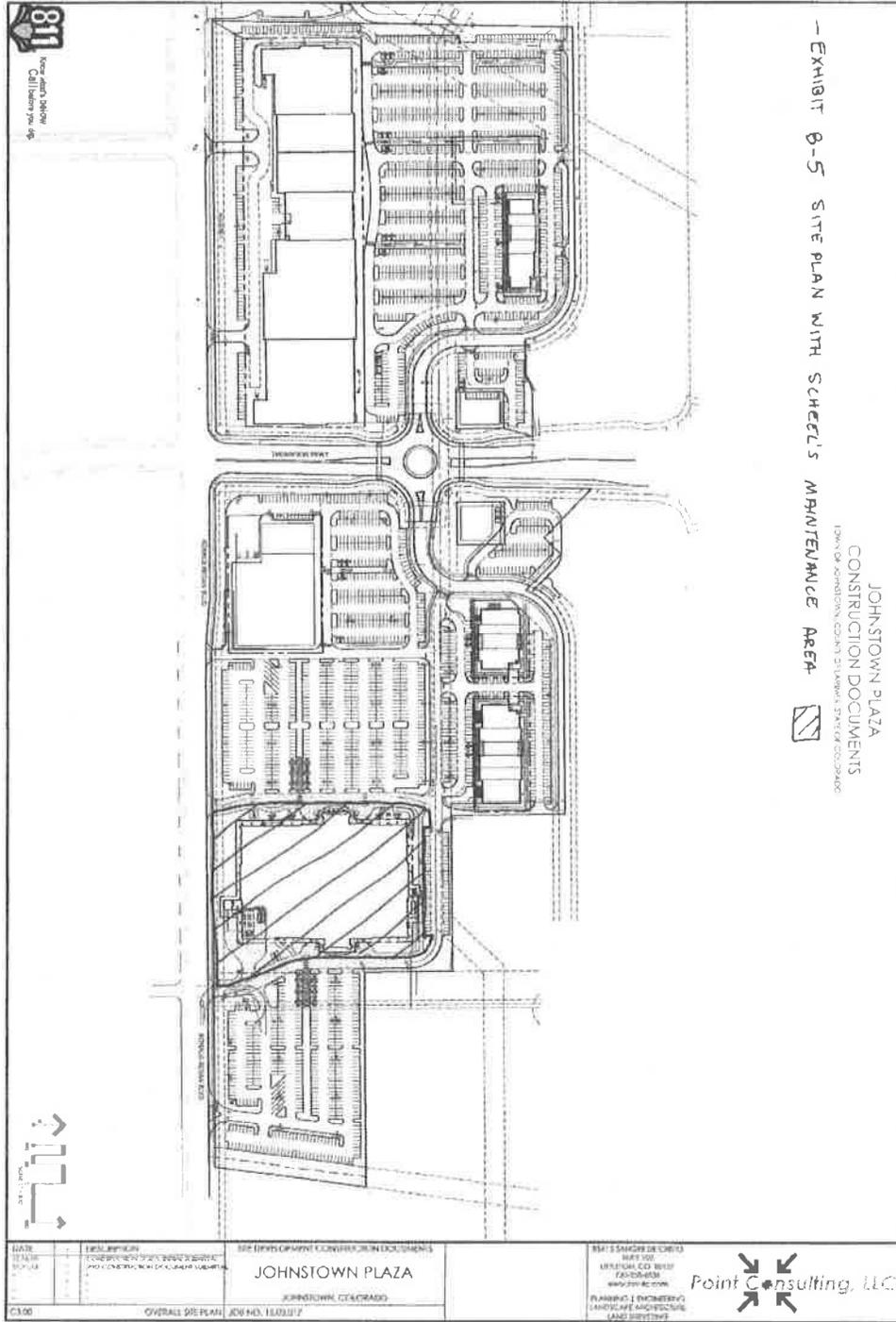


Exhibit B-5

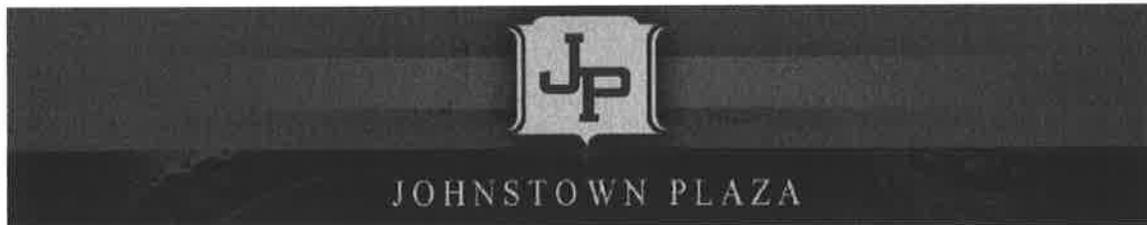
**EXHIBIT C
SIGN CRITERIA**

T E N A N T C R I T E R I A H A N D B O O K

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THIS TENANT SIGN CRITERIA DOES NOT APPLY TO OR CONTROL IN ANY MANNER THE SIGNAGE ON THE SCHEEL'S PARCEL, AND SUCH SIGNAGE SHALL ONLY BE SUBJECT TO ORDINANCES, REGULATIONS, OR REQUIREMENTS OF THE LOCAL, MUNICIPAL OR COUNTY GOVERNING BODIES HAVING LAWFUL JURISDICTION OVER THE SHOPPING CENTER PROPERTY.

S E C T I O N 7

Tenant Sign Criteria



T E N A N T C R I T E R I A H A N D B O O K

TENANT SIGN CRITERIA

Building Parameters:

Pad Site Tenant— Leasable area 0 - 13,999 s.f.

Small Shop Tenant— Leasable area 0 - 11,999 s.f.

Sub-Major Tenant— Leasable area 12,000 - 19,999 s.f.

Major Tenant - Leasable area more than 20,000 s.f.-119,999

Anchor Tenant - More than 120,000 s.f.

Tenant Signage Design Criteria

(also applies to Pad Site/Outlot Tenants)

In the event of any conflict between the following signage requirements and local governmental ordinances, the more stringent will prevail. Upon written notice from Landlord/Developer, Tenant/Pad Site tenant agrees to take such actions as may be necessary to comply at Tenant/Pad Site Tenant's expense, with applicable requirements.

The purpose of this section is to define and specify all exterior signage criteria for Johnstown Plaza. (Entrance monuments will be addressed in the architectural plans). Each Tenant/Pad Site Tenant shall provide signage package for its space as described below.

All sign packages shall be submitted in triplicate for approval at least one hundred twenty (120) days of Lease Commencement Date to Landlord/Developer and Landlord/Developer's Architect prior to fabrication and installation. At a minimum, such drawings must show locations, sizes, and styles of lettering, materials, and types of illumination, installation details and logo design. Upon approval, Landlord/Developer will issue a letter of approval to the tenant for use in obtaining a sign permit from the city.

If the plans are disapproved by Landlord/Developer, the Tenant/Pad Site Tenant shall resubmit them within fifteen (15) days from date of the notice of any disapproval by Landlord/Developer, or its Architect until such plans are finally approved by Landlord/Developer.

The cost of the fabrication, permitting and installation shall be the responsibility of each individual tenant. Sign construction is to be completed in compliance with local building codes and sign ordinances, and the instructions, limitations and criteria contained in this manual. Each sign will conform to the limitations listed in this document below.

Sign Types and Parameters

The following types and amounts of signs will be permitted:

Small Shop Tenant Sign Parameters

(0 - 11,999 s.f.)

- The maximum height for letters in the body of the sign is listed on the SIGNAGE SIZE KEY MAP. (max size at discretion of Landlord)
- Signs shall not extend more than 8" beyond the face of the surface to which the sign is mounted.
- One (1) wall/marquee sign will be allowed at the storefront, one (1) will be allowed at the rear facade, and one (1) additional will be allowed at the storefront if the tenant is an endcap.
- Signage shall be illuminated individual letters mounted to the face of the building. The use of a colored or frosted Plexiglas face is required. Individual faces shall be fabricated from flat, smooth one-eight inch (1/8") plexiglass. Letter returns shall be fabricated of .090 aluminum with .063 aluminum letter backs, fully welded. Retainers shall be one inch (1") trimcap or the equivalent and shall match the return. All letters shall be illuminated.

T E N A N T C R I T E R I A H A N D B O O K

- All signs must be illuminated from a concealed source. No exposed lamps, globes, tubes, etc. will be permitted.
- Marquee Signage: Allowed one (1) per storefront in lieu of Façade sign - 15 s.f. square feet maximum, letters shall be 16" maximum; maximum of two (2) total if an endcap. Sign shall be individually illuminated letters, pin mounted to existing projected metal marquees. All exposed conduit shall be concealed from public view and painted to match marquee structure. Exposed raceways behind letters are not permitted. Marquis signage is subject to Landlord and City review and will be approved on an individual basis and shall be treated as a primary sign.
- Blade Signage: Allowed one (1) per storefront, seven (7) square feet max. Letter height shall be six (6) inches max. Blade signs are only allowed if below a canopy. The blade sign shall be located on an elevation drawing, with clear height to bottom of sign indicated. Decorative brackets and sign design are to reflect the qualities of the tenant and the shopping center design in it's greater entirety.
- Plaque: A 4 sf wall mounted Plaque shall be allowed in lieu of a blade sign, in areas not under a canopy. Max letter height of 6".

Pad Site Sign Parameters
(0 - 13,999 s.f.)

- Tenant/Pad Site Tenant sign areas shall be on the building faces above the entrances and as part of the building design.
- The maximum height for letters in the body of the sign is listed on the SIGN SIZE KEY MAP (max size at discretion of Landlord/ Developer)
- The sign areas shall not exceed ten percent (10%) of the area of the facade.

- Maximum one sign per facade with a maximum of (3) three.
- Signage shall be illuminated individual letters mounted to the face Of the building. The use of a colored or frosted Plexiglas face is required. Individual faces shall be fabricated from flat, smooth one-eight inch (1/8") Plexiglas. Letter returns shall be fabricated of .090 aluminum with .063 aluminum letter backs. Retainers shall be one inch (1") trim cap or the equivalent and shall match the return. All letters shall be illuminated.
- Marquee Signage: Allowed one (1) per storefront in lieu of Façade sign - 15 s.f. square feet maximum, letters shall be 16" maximum; maximum of two (2) total if an endcap. Sign shall be individually illuminated letters, pin mounted to existing projected metal marquees. All exposed conduit shall be concealed from public view and painted to match marquee structure. Exposed raceways behind letters are not permitted. Marquis signage is subject to Landlord/Developer and City review and will be approved on an individual basis and shall be treated as a primary sign.
- One sign per building elevation with a maximum of (3) three total.
- All signs must be illuminated from a concealed source. No exposed lamps, globes, tubes, etc. will be permitted.
- Reverse channel halo lighting is encouraged.

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

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

T E N A N T C R I T E R I A H A N D B O O K

- The sign areas shall not exceed ten percent (10%) of the area of the facade.
- Maximum one sign per facade with a maximum of (3) three.
- Signage shall be illuminated individual letters mounted to the face of the building. The use of a colored or frosted Plexiglas face is required. Individual faces shall be fabricated from flat, smooth one-eighth inch (1/8") Plexiglas. Letter returns shall be fabricated of .090 aluminum with .063 aluminum letter backs. Retainers shall be one inch (1") trim cap or the equivalent and shall match the return. All letters shall be illuminated.
- All signs must be illuminated from a concealed source. No exposed lamps, globes, tubes, etc. will be permitted.
- Reversed halo lighting is encouraged.

Major Tenant

(More than 20,000 s.f. to 119,999)

- Tenant sign area shall be on the building faces above the entrances and as part of the building design.
- The maximum height for letters in the body of the sign is listed on the SIGNAGE SIZE KEY MAP. (max size at discretion of Landlord)
- The sign areas shall not exceed ten percent (10%) of the area of the storefront.
- Maximum one sign per facade with a maximum of (3) three.
- Signage shall be illuminated individual letters mounted to the face of the building. The use of a colored or frosted Plexiglas face is required. Individual faces shall be fabricated from flat, smooth one-eighth inch (1/8") Plexiglas. Letter returns shall be fabricated of .090 aluminum with .063 aluminum letter backs. Retainers

shall be one inch (1") trim cap or the equivalent and shall match the return. All letters shall be illuminated.

- All signs must be illuminated from a concealed source. No exposed lamps, globes, tubes, etc. will be permitted.
- Reverse channel halo lighting is encouraged.

Anchor Tenant

(More than 120,000 s.f.)

- Tenant sign area shall be on the building faces above the entrances and as part of the building design.
- The maximum height for letters in the body of the sign is listed on the SIGNAGE SIZE KEY MAP. (max size at discretion of Landlord)
- The sign areas shall not exceed ten percent (10%) of the area of the storefront.
- Maximum one sign per storefront with a maximum of (3) three.
- Signage shall be illuminated individual letters mounted to the face of the building. The use of a colored or frosted Plexiglas face is required. Individual faces shall be fabricated from flat, smooth one-eighth inch (1/8") Plexiglas. Letter returns shall be fabricated of .090 aluminum with .063 aluminum letter backs. Retainers shall be one inch (1") trim cap or the equivalent and shall match the return. All letters shall be illuminated.

General Sign Parameters

(also applies to Pad Site/Outlot Tenants)

- In general signs must be made up of individual illuminated letters; conventional box signs that include attractive and distinctive designs with details such as raised letters will be considered on an individual basis.

T E N A N T C R I T E R I A H A N D B O O K

- Lettering on all store signs shall be limited to business or trade name of the premises as it appears on the lease. No sign manufacturer's name, union labels, or other lettering shall be visible. Logo signs will be reviewed on an individual basis, but in general logos will not be allowed.
- Tag lines shall be allowed on an individual basis only and are subject to Landlord/Developer approval. Any allowable tag lines shall be individual illuminated letters (no box signs) and shall not exceed 10" in height. The width of the tag line shall not exceed the width established for the primary signage.
- No exterior sign or sign panel will be permitted to extend above any roof line.
- Any sign, notice or other graphic or video display, particularly self-illuminated signs, located within the store and which is easily visible from the shopping center will not be allowed. Illuminated Signs within 48" of a window are regarded as signage.
- Manufacturers' labels, underwriters' labels, clips, brackets, or any other form of extraneous advertising attachment or lighting devices shall be fully concealed from public view.
- No exposed lamps or tubing will be permitted.
- No exposed raceways, crossovers or conduits will be permitted.
- All signage returns shall be semi-glass black enamel finish or blend with adjacent building color.
- All cabinets, conductors, transformers and other equipment shall be concealed from public areas. Visible fasteners will not be permitted.
- All metal letters, including channel letters, shall be fabricated using fully-welded construction, with all welds ground smooth so as not to be visible.
- Acrylic or trimcap retainers used at the perimeter of sign letter faces shall match in color and finish the face or the sides of the sign.
- Threaded rods or anchor bolts shall be used to mount sign letters, which are spaced out from the building face. Angle clips attached to letter sides will not be permitted. All mounting attachments shall be sleeved and painted, and concealed.
- All signage whether halo illuminated or not, shall be pin mounted on building façade. Halo illuminated signage shall be pin mounted a minimum of 2" from building façade. Direct or internally illuminated signage shall be pin mounted a minimum of 1/2" and maximum of 1" from building face.
- Except as provided herein, no advertising placards, flags, balloons, banners, pennants, names, insignia, trademarks, or other descriptive materials shall be affixed or maintained upon the glass panes and supports of the storefront windows and doors, within 4' of the storefront without prior written approval of the Landlord / Developer. Painted, flashing, animated, audible, revolving, or other such signs that create animation are not permitted.
- Any Plexiglas sign faces shall not be clear.
- Sign illumination shall be internal and self contained.
- Non-illuminated signs on the inside of window are not regulated by ordinances.

T E N A N T C R I T E R I A H A N D B O O K

- All main signs are to be centered in the signage band.
- All electric signs and installation methods must meet UL standards and contain a UL label.
- At no time will hand-lettered, non-professional signs, or newspaper advertisements be displayed on the storefronts or within the Design Control Area.
- Decals or other signing indicating products lines or credit card acceptability shall not be permitted on the storefront glazing other than stores operating hours.
- All illuminated signs must be turned on during the Center's normal operating hours. The use of time clocks for sign and show window lighting is required. Lighting of signs shall be at hours required by Landlord/Developer.
- No logos will be allowed on Tenant/Pad Site Tenant storefronts without prior written approval.
- Double stacked lettering shall be allowed on an individual basis only and are subject to Landlord/Developer approval. Double stacked letters shall be a maximum 24" high individual letters and shall comfortably fit within the Landlord bulkhead as determined by the Landlord/Developer's Representative.
- Minimum height of all signage shall not be less than 60% of the maximum allowable letter height except for approved taglines.
- All signage is subject to the approval of the Landlord/Developer's Architect and the local authorities. Landlord/Developer has design discretion of overall size and height of letters and signs.
- Tenants are required to provide a concealed access panel from within the Tenant's leasable area, if applicable, to service and install exterior building signage.

Signs Not Permitted

(also applies to Pad Site/Outlet Tenants)

The following types of signs shall not be permitted:

- Signs such as die cut vinyl, gold or silver leaf, or paint.
- Boxed pallow or cabinet type Formed plastic or injection molded plastic signs.
- Banners or pennants without Special Event Permit from City.
- Signature signage (window sign or sign plate indicating name of shop or good sold) in addition to primary signage.
- Cloth, paper, cardboard and similar stickers or decals around or on surfaces on the storefront without prior written approval from Landlord/Developer.
- "Sale" sign, "Special Announcements" sign or other advertisement of any kind on the exterior without Special Event Permit from City or written approval from Landlord/Developer.
- Exposed neon signs.
- Animated, moving, rotating or flashing.
- Noise making.
- Additional signage of any kind within 4' of storefront windows.
- Awning signage.
- Use of the word "Outlet" in the signage text is prohibited.

Additional Signage

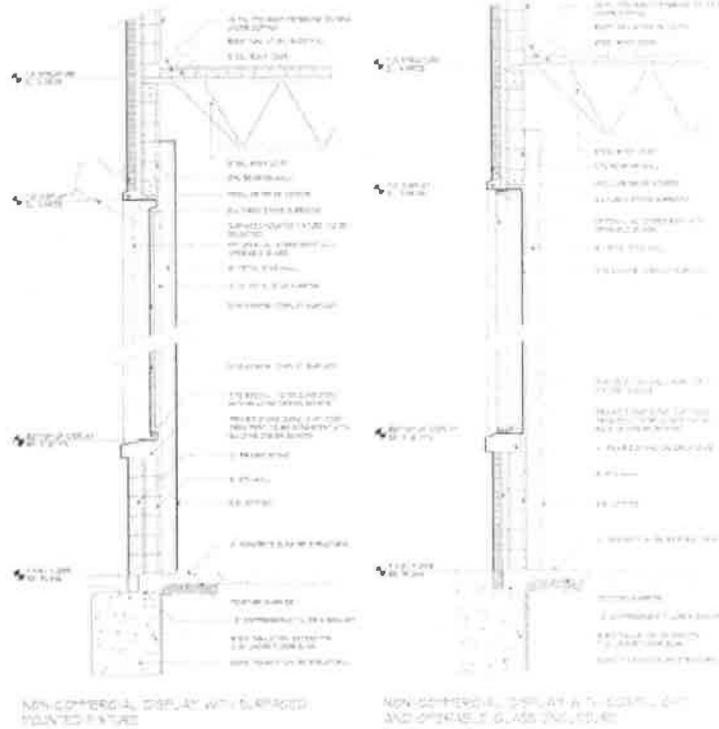
(also applies to Pad Site/Outlet Tenants)

Service doors to Tenant spaces throughout the project shall be standard 4", identification only (name and address number) and shall be installed by the Tenant. The Tenant shall not apply any signage or other wording to service doors. All terms also apply to Pad Site & Outlet Tenants.

- All signage must be shown to scale on the approved storefront elevation.
- All additional signage shall be submitted to the Landlord/ Developer's Representative for approval as specified in Section Two.
- Any minor deviations to this criteria will be reviewed on an individual basis and subject to Landlord/Developer approval.

Environmental Graphics

- Must be non-commercial graphics.
- Must be front lit with concealed or other non-exposed type lighting system. No backlit lighting is allowed.
- Glass is required and must be flush or recessed from facade opening.
- Graphics must integrate with building facade design.
- Designs must integrate with the overall shopping center design.



Directional Signage

- Sign must not exceed four (4) square feet in total size.
- Logo must not exceed one (1) square foot.
- Directional signage must not exceed three (3) square feet.
- Sign support structure for directional signage must not exceed five (5) feet in height unless a deviation is granted.
- A deviation is required to include directional signage on entry markers.

T E N A N T C R I T E R I A H A N D B O O K



^a Part Building - 3' max.

SIGNAGE SIZE - KEY MAP
JUN 30 2015



EXHIBIT D
DEPICTION OF ABUTTING ACCESS ROAD

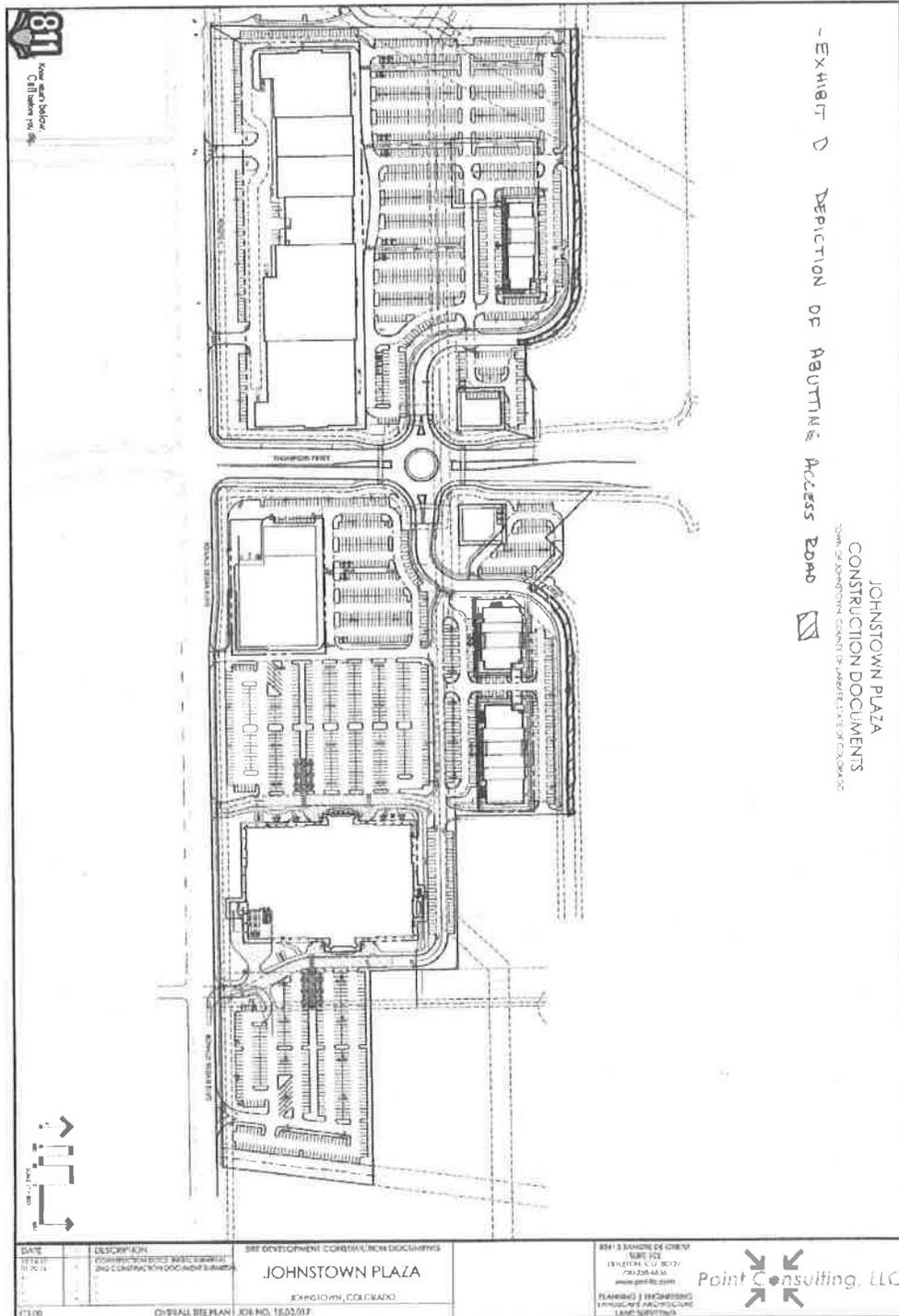


Exhibit E

EXHIBIT E
DEPICTION OF PERMITTED EXPANSION AREAS OF SHOPPING CENTER

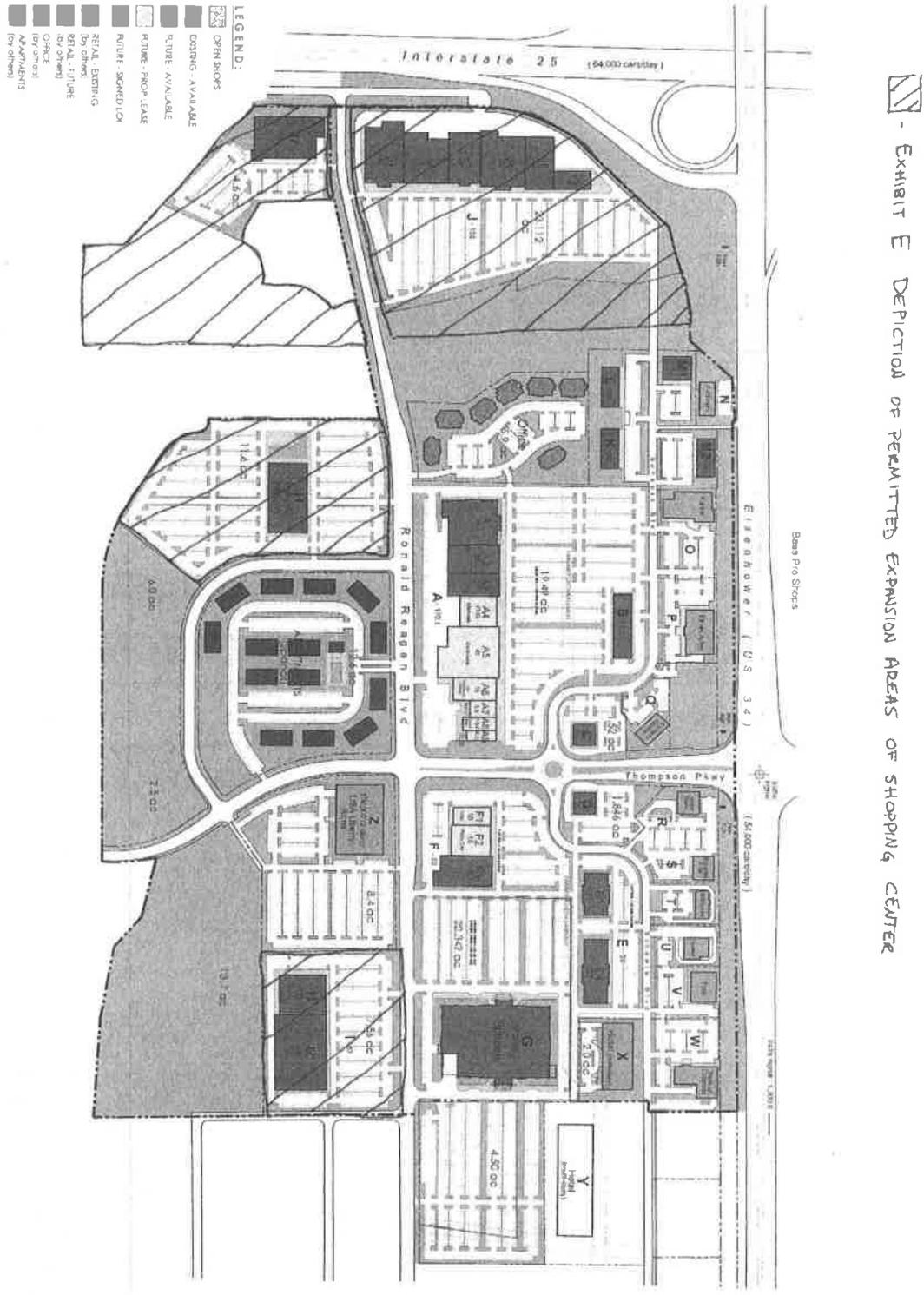


Exhibit E

**SUBSTITUTE EXHIBIT A-2 FOR RECORDING PURPOSES, ONLY, TO DECLARATION
REGARDING CONSTRUCTION, OPERATION, AND RECIPROCAL EASEMENTS**

LEGAL DESCRIPTION OF DEVELOPER'S DISTRICT'S PARCEL

The legal descriptions set forth on Exhibit A-2 to the Declaration Regarding Construction, Operation, and Reciprocal Easements have been removed from this original for recording purposes, only. The original, unrecorded instrument contains the completed Exhibit A-2.

**SUBSTITUTE EXHIBIT A-4 FOR RECORDING PURPOSES, ONLY, TO DECLARATION
REGARDING CONSTRUCTION, OPERATION, AND RECIPROCAL EASEMENTS**

LEGAL DESCRIPTION OF SCHEEL'S DISTRICT'S PARCEL

The legal descriptions set forth on Exhibit A-4 to the Declaration Regarding Construction, Operation, and Reciprocal Easements have been removed from this original for recording purposes, only. The original, unrecorded instrument contains the completed Exhibit A-4.

**DECLARATION REGARDING CONSTRUCTION,
OPERATION, AND RECIPROCAL EASEMENTS**

This Declaration Regarding Construction, Operation, and Reciprocal Easements (the "**Declaration**") is made this 5 day of February, 2016, by Johnstown Plaza LLC, a Kansas limited liability company ("**Developer**"), and Scheels All Sports, Inc., a North Dakota corporation ("**Scheels**").

RECITALS

A. Developer is the owner in fee of that certain real property located in the Town of Johnstown, County of Larimer, State of Colorado, more particularly described in (i) **Exhibit A-1** attached hereto ("**Developer's Parcels**"), and (ii) **Exhibit A-2** attached hereto ("**Developer's District's Parcel**").

B. Scheels is the owner in fee of that certain real property located in the Town of Johnstown, County of Larimer, State of Colorado, more particularly described in **Exhibit A-3** attached hereto ("**Scheel's Parcel**"), and (ii) **Exhibit A-4** attached hereto ("**Scheel's District's Parcel**", Developer's District's Parcel and Scheel's District's Parcel hereinafter together, "**District's Parcel**"). Developer's Parcels, Scheel's Parcel and District's Parcel are hereinafter collectively referred to as the "**Shopping Center Property**".

C. District's Parcel is anticipated to be sold and conveyed in fee simple to Johnstown Plaza Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado ("**District**").

D. Developer and Scheels desire and intend that Owners (as defined in Article I below) from time to time of Parcels (as defined in Article I below) in the Shopping Center Property be committed to operate their respective Parcels as an integrated shopping center for the mutual benefit of such Parcels and, therefore, wish to declare and establish certain reciprocal easements, covenants, and conditions with respect to the Parcels comprising the Shopping Center Property.

E. Developer and Scheels also desire (i) to make provision for regulation of construction of Stores (as defined in Article I below) on the various Parcels within the Shopping Center Property, as well as regulation of certain other improvements on and within the Shopping Center Property as are substantially consistent with the Site Plan attached hereto as **Exhibit B** and the terms of this Declaration, and (ii) to construct certain improvements necessary for the integrated use of the Shopping Center (as defined in Article I below) in the Common Area (as defined in Article I below).

F. In furtherance of the foregoing, Developer and Scheels, recognizing that, for the optimum development and operation of the Shopping Center as a unified and coordinated project, it is necessary that the Owners of the various Parcels within the Shopping Center Property be bound by certain restrictions, covenants and agreements respecting certain matters relating to construction, maintenance and operation of the Shopping Center (including, but not limited to, matters relating to the construction and maintenance of facilities on, and the operation, use and restrictions on the use of, the respective Parcels), and recognizing further that establishment of such restrictions, covenants and agreements will afford successor Owners of Parcels within the Shopping Center Property further assurances as an inducement to undertake development and/or operation on the various Parcels of the Shopping Center

Property, do hereby declare that the Shopping Center Property is and shall be henceforth subject to the terms, provisions, easements, restrictions, covenants and agreements of this Declaration hereinafter set forth, which easements, restrictions, covenants and other agreements are hereby established on the terms and conditions hereof such that the Shopping Center Property and each Owner of any Parcel or Parcels therein henceforth shall be subject to and bound by, the easements, covenants and restrictions hereinafter set forth, all so as to assure that all development on and within the Shopping Center Property will be in conformity herewith during the Term (as defined in Article X below).

G. Notwithstanding anything to the contrary set forth in this Declaration, inasmuch as District was primarily created for the purpose of providing on District's Parcel non-exclusive public parking and ingress, egress, and access to such public parking, and to coordinate with public utility companies to provide underground public utilities through District's Parcel to Developer's Parcels and Scheel's Parcel, this Declaration shall not be recorded against District's Parcel in the Official Records until such time, if at all, as District's Parcel or any portion thereof is reconveyed to Developer, Scheels, or any successor or assign of either or both, including any subsequent Owner of a Parcel, or is otherwise no longer under the ownership and control of a quasi-municipal corporation and political subdivision of the State of Colorado or any other governmental entity intended to succeed to the rights and privileges of such corporation and subdivision (and, notwithstanding that such recording may not take place, this Declaration shall automatically encumber District's Parcel as of such date of reconveyance, transfer, or release). However, as between any Owners from time to time of any Parcel, District's Parcel shall during the entirety of the Term constitute a Parcel of the Shopping Center Property, deemed Common Area, and shall be subject to the terms, provisions, easements, restrictions, covenants and agreements of this Declaration. Without limitation of the foregoing, Developer, on its own behalf and on behalf of its successors and assigns, covenants and agrees to comply with the terms and provisions of this Declaration as if District's Parcel were a Parcel of the Shopping Center Property and shall cause District's Parcel to at all times be and remain in compliance with the terms of this Declaration, and represents and warrants that Scheels and the Scheels Owner shall have all rights with respect to District's Parcel and remedies against Developer and its successors and assigns as if this Declaration were recorded against District's Parcel and Developer was the Owner thereof, and for any failure of District's Parcel to be in compliance with the terms of this Declaration. Notwithstanding anything to the contrary set forth in this Declaration, in no event shall Scheels or the Scheels Owner have any liability to Developer or any Owner for a failure of any District's Parcel to be in compliance with the terms of this Declaration. In the event, and at the time, of any reconveyance, transfer, or release as contemplated above, Developer shall provide written notice to the Scheels Owner of such event and the Scheels Owner, without consent by any party including, without limitation, Developer or any other Owner, shall have the right to record this Declaration against District's Parcel to confirm the effectiveness of this Declaration against the same.

ARTICLE I DEFINITIONS

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

"Access Road(s)" shall mean those certain access ways and entrances shown and designated as such on **Exhibit B-1**.

"Abutting Access Road" is the northerly ½ of the roadway depicted on the plan attached hereto as **Exhibit D** and incorporated herein by this reference, which northerly ½ lies contiguous to but outside of the Shopping Center, the southerly ½ of such roadway being a portion of the Access Roads.

"Building Areas" shall mean the areas of the Shopping Center within which Stores (which for the purpose of this Declaration shall include any appurtenant canopies, supports, loading docks, truck docks, turn-around loading delivery areas or the portions of truck ramps serving any Store, and other outward extensions, as well as attached trash compactors and utility transformers) and any Outdoor Sales area may be constructed, placed, or located; such areas being Developer's Parcels and Scheel's Parcel.

"Common Area(s)" shall be the portion of the Shopping Center Property intended for the nonexclusive use by the Owners and their Permittees, in common with other users as permitted by this Declaration. Common Areas shall include, but not be limited to, common utility lines and systems, parking areas, Access Roads, driveways, lanes, entrances, public restrooms, public halls and hallways, walkways, sidewalks, public elevators, escalators and stairs located within or about the parking areas and sidewalks (not to include any such facilities interior to a Store), landscaping, a Shopping Center management office, any detention or retention ponds, areas, and drainage facilities. The Common Area shall include all areas surrounding Developer's Stores outside the actual footprint of Developer's Stores and still within Developer's Parcels, all areas surrounding Scheel's Store outside the actual footprint of Scheel's Store and still within Scheel's Parcel, and all areas within District's Parcel.

"Constant Dollars" shall mean the value of the U.S. dollar to which such phrase refers, as adjusted from time to time. An adjustment shall occur on first of April of the sixth calendar year following the date of this Declaration, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number; provided that the amount so calculated, and as previously increased in accordance with the provisions hereof, may never decrease by virtue of such calculation. **"Base Index Number"** shall be the level of the Index for the year this Declaration commences; the **"Current Index Number"** shall be the level of the Index for the year preceding the adjustment year; the **"Index"** shall be the consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (1982-84=100) or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then a substitute index selected by Developer of comparable statistics computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

"Control Parcel" means the parcels of land more particularly described in **Exhibit A-5** attached hereto and depicted on **Exhibit B-4** Site Plan.

"Defaulting Owner" is defined in Section 15.1 below.

"Developer" as used in this Declaration shall refer to Johnstown Plaza LLC, a Kansas limited liability company, and each successor to such party as Owner of the Control Parcel.

"Developer's Parcels" is defined in Paragraph A of the Recitals above.

"Developer's Stores" shall mean the structures and improvements constructed and contained within Developer's Parcels, as designated on the Site Plan.

"District's Parcel" is defined in Paragraph A of the Recitals above.

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

"Floor Area" shall mean the gross number of square feet of floor space within a specified area (e.g., the Shopping Center, a building, specific leased premises), from time to time, of all floors in such structure, whether roofed or not, whether or not actually occupied, including basement space and subterranean areas, measured from the exterior faces or the exterior lines of the exterior walls (including basement wall) and all permanent Outdoor Sales areas. The term **"Floor Area"** shall not include any of the following: (a) The upper levels of any multi-deck stock areas created for convenience to increase the usability of space for stock purposes; (b) Areas, whether physically separated or whether otherwise required by building codes, which are used exclusively to house mechanical, electrical, telephone, telecommunications, and HVAC equipment, and other such building operating equipment; (c) All interior or exterior truck loading areas, truck tunnels, and truck parking, turn around and dock areas and ramps; (d) All Common Area; and (e) Mezzanines and any interior second story not open to customers and incidental to ground floor retail operations.

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

addressed under any Environmental Law or otherwise deemed to be hazardous, harmful, dangerous, toxic, or a pollutant.

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

"Non-Defaulting Owner" is defined in Section 15.1 below.

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

"Official Records" shall mean the land records of Larimer County, Colorado.

"Operator" is defined in Section 8.1 below.

"Outdoor Sales" shall mean any use by a Permittee for temporary or permanent sales, displays, and/or customer seating or other activities, which areas are located outside of the structure of such Permittee's Store. Outdoor Sales are subject to Developer's approval, except for Outdoor Sales on Scheel's Parcel or within the Scheel's Outdoor Area. Outdoor Sales are subject to the approval of the Scheels Owner in its sole discretion, except for Outdoor Sales on Developer's Parcels.

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

"Owner" and **"Owners"** as used in this Declaration shall initially mean Developer with respect to the Shopping Center Property (except that it shall mean Scheels with respect to the Scheel's Parcel) until Developer and/or Scheels, as applicable, and subject to Article XII, has transferred fee title in and to a Parcel(s) to another Person; and thereafter as to the Parcel so transferred, shall mean the successor or successors to Developer or Scheels, as applicable, as so determined in accordance with the provisions of Article XII.

"Parcel" or **"Parcels"** shall mean any one or more of Developer's Parcels, Scheel's Parcel, or District's Parcel, as context requires.

"Parking Area" shall mean those portions of the Common Area used for the parking of motor vehicles, including incidental and interior roadways, pedestrian stairways, walkways, curbs, and landscaping within or adjacent to areas used for parking of motor vehicles, together with all improvements to the Common Area which at any time are erected thereon.

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

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

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

"Real Property Taxes" is defined in Section 13.1 below.

"Related Corporation" shall mean a corporation, partnership, or other business entity, which directly or indirectly, controls, is controlled by, or is under common control with, another corporation, partnership, or business entity. If more than fifty percent (50%) of the voting stock of a corporation shall be owned by another corporation, partnership, or other business entity, the corporation whose stock is so owned shall be deemed to be controlled by the corporation, partnership, or other business entity owning such stock.

"Rules and Regulations" are defined in Article XVII below.

"Scheel's Control Area" shall mean that portion of Developer's Parcels and District's Parcel which is identified on the **Exhibit B-2** Site Plan as Scheel's Control Area.

"Scheel's Maintenance Area" is defined in Article VII below.

"Scheel's Operating Covenant" the operating covenant relating to Scheel's Parcel set forth in that certain agreement by and between Developer and Scheels and recorded against Scheel's Parcel.

"Scheel's Outdoor Area" shall mean that portion of District's Parcel which is identified on the **Exhibit B-3** Site Plan as Scheel's Outdoor Area.

"Scheels Owner" shall mean the Owner from time to time of Scheel's Parcel.

"Scheel's Parcel" is defined in Paragraph A of the Recitals above.

"Scheel's Store" shall mean the structures and improvements constructed and contained within Scheel's Parcel, as designated on the Site Plan.

"Scheel's Separate Agreement" shall mean that certain agreement entered into or to be entered into by and between Scheels and Developer, as more particularly described in Section 17.18 below.

"Separate Agreement" shall mean any separate agreement entered into by and between any Owner of any Parcel and Developer or its successors or assigns; provided, however, that the same shall not include Scheel's Separate Agreement.

"Shopping Center" shall initially mean the property consisting of Developer's Parcels, Scheel's Parcel, and District's Parcel; provided, however, that Developer shall have the right to expand the Shopping Center from time to time by the addition of one or more of the parcels depicted on the plan attached hereto as **Exhibit E** and incorporated herein by this reference, but only so long as such expansion is evidenced by a recorded instrument amending this Declaration, and provided that the written consent of the Scheels Owner is first obtained.

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

"Sign Criteria" is defined in Section 4.5 below.

"**Site Plan**" shall mean the Site Plan attached hereto as **Exhibit B** and incorporated herein by this reference.

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

"**Store**" or "**Stores**" shall mean Scheel's Store and/or Developer's Stores, as the context may appropriately require.

"**Term**" is defined in Article X below.

"**Transfer**" means a conveyance by way of sale, assignment, lease, grant or transfer, including, without limitation, the same portion of a "Sale and Leaseback" (as defined in Section 12.2) and/or "Assignment and Sub leaseback" (as defined in Section 12.2), but excluding the making of a Mortgage.

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

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

ARTICLE II EASEMENTS

Developer and Scheels hereby declare, establish, create, grant and convey, for the benefit of each of the Parcels and the owners thereof from time to time, the following easements in, to, over, and across the Common Area of the Shopping Center Property; provided, however, that the easements described in this Article II shall be subject and subordinate to the separate easement rights granted to or for the benefit of the Scheel's Parcel or the Scheels Owner on or prior to the date of this Declaration.

2.1 Access Easements.

(a) Each of the Parcels and the Owners thereof shall have nonexclusive easements in, to, over and across the Common Area, including driveways (provided, however, that such Common Areas, including driveways, are on Shopping Center Property), and the Abutting Access Road, for vehicular (including service vehicles) and pedestrian ingress and egress, and access and the right of access over established circulation roads, and ways between the public streets adjacent to the Shopping Center and any Parcel situated in the Shopping Center Property.

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

(c) Developer shall have a non-exclusive easement in, to, over and across the Common Area of each Parcel (provided, however, that such Parcels and Common Areas are on Shopping Center Property) for the purpose of accessing, repairing, replacing or maintaining the Common Area.

(d) Notwithstanding that the land underlying the Abutting Access Road is not within the Shopping Center, Developer, on its own behalf and on behalf of its successors and assigns,

covenants and agrees that each Owner from time to time of any Parcel shall during the entirety of the Term have the right to utilize the Abutting Access Road for the purpose of ingress and egress to and from any Parcel and the Access Road(s) to publicly dedicate rights of way, and that the Abutting Access Road shall be treated as Common Area, including, without limitation, for purposes of Developer's maintenance obligations under Article VIII of this Declaration, notwithstanding that the owner(s) from time to time of the Abutting Access Road, or their designee including any association of such owners, may be designated from time to time to perform such maintenance. Without limitation of the foregoing, Developer, on its own behalf and on behalf of its successors and assigns, covenants and agrees to comply with the terms and provisions of this Declaration as if the Abutting Access Road were a Parcel of the Shopping Center Property and shall cause the Abutting Access Road to at all times be and remain in compliance with the terms of this Declaration, and represents and warrants that the Scheels Owner shall have all rights with respect to the Abutting Access Road and remedies against Developer and its successors and assigns as if this Declaration were recorded against the Abutting Access Road and the owner(s) thereof were a party hereto, and for any failure of the Abutting Access Road to be in compliance with the terms of this Declaration.

2.2 Utility Easements. Each of the Parcels and the Owners thereof shall have nonexclusive easements in, to, over, across and under the Common Area for the benefit of and appurtenant to each for the purposes of installation, repair, replacement and maintenance of sewers, water and gas pipes and systems, electrical power conduits, telephone conduits, lines and wires, and other public utilities beneath the ground surface at a location or locations reasonably approved in writing by (i) Developer with respect to Developer's Parcels and (ii) the Scheels Owner with respect to Scheel's Parcel and with respect to the Scheel's Control Area; provided that in all cases, in the performance of such installation, repair, replacement and/or maintenance: (a) adequate provision shall be made for the safety and convenience of all persons using the surface of such areas; (b) the areas and facilities (including without limitation paving and landscaping) shall be replaced or restored to the condition in which they were prior to the performance of such work by the Owner performing such work; (c) the other Owners shall be held harmless and indemnified by the Owner performing or causing to be performed such work against claims, damages and losses, including court costs and reasonable attorneys' fees arising from the performance of such work or use of such easements; (d) except in the event of an emergency, Developer and any Owner that is affected by such work shall be notified in writing not less than thirty (30) days prior to commencement of such work; (e) such work shall not conflict with other utility lines, conduits and facilities, and shall have been previously reasonably approved by all owners of such lines, conduits and facilities which are situated within 20 feet of any point of such proposed line, conduit or facility; (f) such work shall not unreasonably interfere with the normal and usual operation of the servient Owner's respective Parcel, customer parking or the Shopping Center; and (g) such work shall be scheduled in a manner intended to minimize, to the extent reasonably practicable, performance of any such work between November 1 to January 4 or during the thirty (30) day period prior to Easter, it being understood that the foregoing limitations in no way restricts performance of such work in the event of an emergency, if required by applicable governmental authorities and/or with respect to any initial construction or restoration following a casualty upon a Parcel in accordance with the terms of this Declaration. Franchises granted to public utilities for such utilities shall constitute compliance with the foregoing provisions. In addition, each Owner shall be obligated to perform such other acts, and to execute, acknowledge and/or deliver such instruments, documents and other materials as Developer or an Owner may request in order

to document any such easement in a commercially reasonable manner. Any servient Owner shall have the right, upon not less than sixty (60) days of notice to the benefited Owner or Owners, at any time and from time to time, to move and relocate any such facility within such servient Owner's Parcel; provided, however, that (i) such relocation shall be made at the relocating-servient Owner's sole cost and expense, (ii) neither the relocation nor the relocated facility shall interfere with, nor increase the cost of, utility service to any benefited Owner, nor unreasonably interfere with the operation of any business being conducted on the Parcel of any benefited Owner, and (iii) such work shall otherwise comply with the terms of this Section. Nothing in this Section shall be deemed to limit the Scheel's Owner from performing its initial construction and installation of utilities (including, without limitation, upon areas of the Shopping Center Property outside of Scheel's Parcel, in accordance with its initial construction plans approved by Developer.

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

- (a) The easement is non-exclusive;
- (b) All facilities installed pursuant to the easement shall be underground, except for ground mounted transformers, fire hydrants, manholes and manhole covers which shall be flush with adjacent grade, and except as otherwise shown on plans approved by grantor;
- (c) The grantor retains the right to use the surface areas as grantor sees fit, provided and so long as such uses are not inconsistent with the easement rights herein established;
- (d) The grantor reserves the right to require the grantee to relocate its facilities (and vacate the easement) to another location on the grantor's Parcel, subject to the conveyance of a similar easement, all at the grantor's cost and expense; provided that such relocation shall not be commenced (except in case of emergency) during the months of November, December or January without the prior consent of each Owner on whose Parcel such relocation will take place;
- (e) The grantee shall not, in its use or installation, interfere with other installations and easements in the area; and shall protect its facilities against uses of the surface made by the grantor and others;
- (f) The grantee shall make adequate provisions for the safety and convenience of all persons using the area and following installation or other work, shall replace and restore the areas and improvements (including without limitation paving and landscaping) to the condition in which they were immediately prior to performance of such installation and work;

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

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

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

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

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

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

2.7 Construction Easements. Developer hereby declares, establishes and creates, for the benefit of Scheel's Parcel, a non-exclusive easement over and across Developer's Parcels and Developer's District's Parcel, and Scheels hereby declares, establishes and creates, for the benefit of Scheel's Parcel, a non-exclusive easement over and across Scheel's District's Parcel, all for the purpose of storing materials and performing any work to the extent reasonably necessary to permit the construction, maintenance, repair, replacement, restoration or reconstruction of any and all improvements on Scheel's Parcel, provided that in the exercise of its easement rights granted by this Section, the Scheels Owner shall not unreasonably interfere with the performance by Developer of its obligations under this Declaration or the Scheel's Separate Agreement. Developer may impose reasonable limitations on the exercise of the Scheels Owner's rights under this Section 2.7, including establishing paths or areas of ingress and egress, staging

areas for construction equipment and activities and hours of the day or days of the week during which the Scheels Owner may use the easements established and created pursuant to this Section 2.7. Developer shall have the right to grant similar non-exclusive easements over Developer's Parcels, subject to similar limitations contained in this Section including, but not limited to, the imposition by Developer of reasonable limitations on the exercise by any such Owner of its rights under such easement, including establishing paths or areas and ingress and egress, staging areas for construction equipment and activities and hours of the day or days of the week during which such Owner may use the easement granted pursuant to this Section so that the Scheels Owners' business operations shall not be interfered with or interrupted. No owner other than the Scheels Owner may stage any construction or store any construction equipment anywhere within the Scheel's District's Parcel lying east of the Scheel's Parcel and, without limitation of the preceding. No later than one-hundred twenty (120) days prior to the date Scheels intends to initially open its Store for business to the public, no construction staging area or construction related closure shall be located anywhere on the Common Areas within Scheel's Control Area without Scheel's consent.

2.8 Unimpeded Access Between Parcels. Subject to Scheel's and Developer's rights and obligations with respect to the maintenance of Common Area, it is declared and established that the Owners at all times during the Term of this Declaration shall have free access over Common Area between each Parcel and the remainder of the Shopping Center Property, that such access will not be impeded and that such access will be maintained in a manner consistent with the Site Plan for the Shopping Center, as same may be modified in accordance with the provisions of this Declaration.

2.9 Use by Permittees. Subject to the Rules and Regulations, the use of all easements provided for in this Article, and the use of the entire Common Area in or on Shopping Center Property will, in each instance, be nonexclusive, and for the use and benefit of all Permittees, except as otherwise expressly stated herein, including, but not limited to, any exclusive easement reserved or dedicated by Scheels or granted by the District to Scheels.

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

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

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

2.13 **Parking Easements.** Except for any exclusive parking rights granted or reserved for the benefit of the Scheel's Parcel in a deed, easement, declaration, or other instrument recorded in the Official Records, each of the Parcels and the Owners thereof, shall have non-exclusive easements in, to, over, and across the Common Area for the purpose of parking vehicles of Permittees in the Parking Areas thereon. Without limitation of the other terms and conditions of this Declaration, Developer and Scheels acknowledge that although certain Parking Areas are located within District's Parcel, Developer represents, warrants and covenants that Scheels Owner shall have access in, to, over, and across District's Parcel for the purpose of parking vehicles of Permittees in the Parking Areas thereon.

2.14 **Assurances Regarding Separate Agreements.** Developer represents and warrants for the benefit of the Scheels Owner that nothing in any Separate Agreement shall diminish any of the rights granted in favor of Scheels in this Declaration or in the Scheel's Separate Agreement or contained in any other agreement between Developer and Scheels.

ARTICLE III CONSTRUCTION REQUIREMENTS

3.1 **Construction Compatibility.** No improvements shall be constructed, erected, expanded or altered on the Parcels until the plans and specifications for same (including, but not limited to, site layout, exterior building materials and colors, and landscaping) have been approved in writing by Developer. Each Owner shall, during the period prior to commencement of construction, consult with the Project Architect and Developer concerning the exterior design, color treatment and exterior materials to be used in the construction, of all buildings and structures, including sidewalks, on its respective Parcel(s). Each Owner shall cause its respective architect to work in good faith with the Project Architect and Developer so that the buildings to be erected and constructed will have an overall cohesive and related architectural continuity and will be in harmony with the balance of the Shopping Center improvements. Any improvements constructed, erected, expanded or altered on the Parcels shall be in accordance with the Site Plan. Notwithstanding anything in this Declaration to the contrary, Developer and all Owners expressly waives its right of objection, approval and enforcement with respect to the design, construction, reconstruction or restoration of any Building located on the Scheel's Parcel including, without limitation, any interior Building areas. In addition to the foregoing, the Scheels Owner shall have the approval rights set forth in Section 4.7, notwithstanding anything in this Declaration to the contrary.

3.2 **Performance of Construction.** Each Owner shall be bound to perform all construction on its respective Parcel or Parcels, (i) in accordance with the applicable plans and specifications as approved in

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

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

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

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

3.6 **Safety Measures; Initial Condition.** Each Owner shall at all times take any and all safety measures reasonably required to protect the other Owners from injury or damage caused by or resulting from the performance of its construction. Without limitation of the foregoing, until the commencement of development of any Parcel within the Shopping Center Property, Developer or any successor Owner of such Parcel shall maintain such Parcel in a first class condition, free of debris, piles of dirt, weeds, and other unnatural conditions and accumulations, and shall mow the same regularly.

3.7 **Architects Certificates.** During the Term of this Declaration, all architects employed in connection with any construction on the Owners' respective Parcels shall be certified architects licensed to practice in the State of Colorado or will affiliate with an architect so licensed. Upon request of an Owner, the Owner to whom such request is made shall cause the architect who prepared plans and specifications for any construction on an owner's Parcel to deliver a certificate to the Owner making the request, stating the actual Floor Area constructed. Each Owner shall cause its architect, upon request, to give notice to the other Owners by a certificate stating the actual Floor Area and any net change of Floor Area on such Owner's Parcel; provided, however, the Scheels Owner shall only be required to deliver such certificate to Developer.

3.8 **Site Development Agreement.** Developer and Scheels acknowledge that Developer and Scheels have agreed to enter into a site development agreement governing certain aspects of developing the Shopping Center (the "**Site Development Agreement**"). In the event that this Article III and the Site Development Agreement conflict, then the terms of the Site Development Agreement shall prevail.

ARTICLE IV SHOPPING CENTER DEVELOPMENT RESTRICTIONS

4.1 **Common Area.** Except as shown on the Site Plan and as provided below, no improvements may be built or maintained or allowed in the Common Area in or on Shopping Center Property other than parking lots, curbs, driveways, lights, sidewalks, signs, landscaping, trash receptacles or enclosures and other improvements normally found in a parking lot or common area without Developer's and Scheels Owner's written consent, which consent may be arbitrarily withheld by Developer and the Scheels Owner in their sole discretion.

4.2 **Certain Closures, Alterations, Etc.** Except as otherwise prohibited herein, Developer reserves the right from time to time without notice to any Owner (except as further provided below), to close temporarily any of the Common Area in connection with the performance by Developer of its repair and maintenance obligations, provided that any such work shall, to the extent reasonably practicable, be scheduled in a manner intended to minimize interference with the ordinary conduct of business within the Shopping Center. Before taking such action, Developer shall notify the Scheels Owner as well as the owner of the Parcel on which such temporary closure will occur as to the location, duration and extent of such repair and maintenance. In particular, but without limitation, any such closure shall be scheduled in a manner intended to minimize, to the extent reasonably practicable, performance of any such work between November 1 to January 4 or during the thirty day period prior to Easter, it being understood that the foregoing limitation in no way restricts closure in the event of an emergency, if required by applicable governmental authorities and/or with respect to any initial construction or restoration following a casualty

upon a Parcel in accordance with the terms of this Declaration. Subject to the terms of this Article, Developer further reserves the right from time to time without notice to any Owner (i) to make changes to the Common Area, including, without limitation, driveways, ramps, entrances, exits, passages, stairways and other ingress and egress, landscaped areas, loading and unloading areas, and walkways; (ii) to add additional Stores, to expand existing stores, or to enlarge and change, redevelop, redesign any improvements or enlarge and/or change any Building Area; (iii) to use the Common Area while engaged in making additional improvements, repairs or alterations to the Shopping Center or to any adjacent land, or any portion thereof; and (iv) to do and perform such other acts and make such other changes in, to or with respect to the Shopping Center and Common Area or the expansion thereof as Developer may, in the exercise of sound business judgment, reasonably deem to be appropriate.

4.3 Roof Top Equipment; Trash Enclosures. Roof top mechanical and telecommunications equipment (including, without limitation, any antennae or satellite dishes) shall be screened from public view from adjacent public streets and highways and in a manner satisfactory to Developer. Any trash facility shall be screened from public view from adjacent public streets and highways on all four sides or in a manner otherwise satisfactory to Developer. The trash facility on Scheel's Parcel shall comply with all applicable laws, ordinances and rules and regulations of all governmental agencies having jurisdiction over such matters.

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

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

Shopping Center Property. Further, the Scheels Owner shall have all signage rights afforded to it under the Scheel's Separate Agreement, Site Development Agreement, and other instruments and agreements between Developer and/or any governmental authority and the Scheels Owner.

4.6 **Lighting.** Subject to the other terms of this Section, the Owner of each Parcel shall implement a lighting plan relative to the Common Area located on such Parcel, and install lighting pursuant to said plan. The accent lighting, exterior building lighting and interior building lighting on each Parcel is not subject to this Declaration. The lighting plans for each Parcel, including the installation thereof, shall, as applicable, comply with the Scheel's Separate Agreement, the Site Development Agreement, any and all applicable government rules, laws, ordinances, regulations and statutes, and any requirements of this Declaration. After completion of the lighting system on an applicable Parcel and during the remaining Term of this Declaration, each Parcel shall, at Developer's cost and expense, be fully illuminated each day from dusk until at least the end of Normal Business Hours (including, without limitation, repair and replacement of bulbs and ballasts), and with respect to lighting in the Common Area within the Scheel's Control Area, during such additional hours as reasonably requested by the Scheels Owner, and the level of lighting within the Scheel's Control Area must be reasonably acceptable to the Scheels Owner. During the Term of this Declaration (and thereafter so long as the Store utilizing the following described license exists, subject to a reasonable period to permit reconstruction or replacement of such Store if the same shall be destroyed, damaged, or demolished), the Owner of each Parcel and is hereby granted an irrevocable license for the purpose of permitting the lighting from one Parcel to incidentally shine on the adjoining Parcel.

4.7 **Changes to Scheel's Control Area.** In addition to the other restrictions set forth in this Declaration, and without limitation of any of the terms of the Scheels Separate Agreement, neither Developer nor any other Person or Owner shall, without the Scheels Owner's express written consent, which may be withheld in its sole and absolute discretion, do, make, or allow (i) any improvements or changes to the Common Areas within Scheel's Control Area depicted on **Exhibit B-2**, including without limitation, each Parking Area, traffic patterns, exterior lighting, exterior signage, driveways, ramps, entrances, exits, passageways, stairways, and other ingress and egress, landscaped areas, loading and unloading areas, and walkways, or (ii) any improvement or structure within the Scheel's Control Area to exceed fifty feet (50') in height, inclusive of parapets, and other architectural embellishments as measured from the finished floor elevation of such structure. To the fullest extent allowed under applicable law, the terms of this Section 4.7 shall survive the termination of the Declaration and shall continue in perpetuity.

4.8 **Parking Ratio and Standards.** During the entire Term of this Declaration, the Parking Area (including, without limitation, within District's Parcel) shall be maintained or caused to be maintained by Developer in accordance with the Site Plan and the requirements of the governmental authorities applicable to the Shopping Center so that the overall Parking Area of the Shopping Center contains the number of parking spaces to satisfy a ratio of no less than four and one-half (4.5) parking spaces for each one thousand (1,000) square feet of Floor Area located within the Shopping Center Property, or such greater ratio as is required by law.

4.9 **Parking Charges.** No metered or other direct parking charge shall be made by any Owner or District on any of its land included in the Shopping Center or District's Parcel or by their successors or

assigns and Developer shall not allow any Owner or any other party to impose such charges anywhere in the Shopping Center Property, it being the intention of Developer that the right to park in the Common Area shall be free of any charge whatsoever except that Developer may charge a fee if it provides valet parking services provided that no such valet parking service shall be provided in the Scheel's Control Area without the prior approval of the Scheels Owner, in its sole discretion. In the event that, notwithstanding the foregoing provisions, parking upon any portion of District's Parcel requires payment of parking charges by the District or the town of Johnstown, then Developer shall provide for free ticket validation, without cost or reimbursement by the Scheels Owner or its Permittee, to the Scheels Owner and its Permittees.

4.10 **Employee Parking.** Neither Developer nor any Owner or Person, except for the Scheels Owner, shall establish or allow employee parking areas within Scheel's Control Area. Prior to the opening of Scheel's Store, the Scheels Owner and Developer shall mutually designate a permitted area within Scheel's Control Area to be used by Scheel's employees for parking their cars. The Scheels Owner shall use commercially reasonable efforts to cause its employees to park in such permitted employee parking areas, but the Scheels Owner shall not be responsible for violation of this parking restriction by other Permittees.

ARTICLE V USE RESTRICTIONS AND COVENANTS

5.1 **Use In General.** Subject to the limitations and terms set forth below, the Shopping Center shall only be used during the Term hereof for retail and other businesses common to first class shopping centers and mixed use developments located in the State of Colorado. None of the restrictions within this Article 5 shall be deemed to prevent Scheel's Parcel from being used as a typical sporting goods store or as a Scheels large format store, or any of the components thereof, as same evolves from time to time. None of the following uses or operations will be made, conducted or permitted on or with respect to all or any part of the Shopping Center at any time:

- (a) any gas or service station or automobile service facility;
- (b) any residential use, elderly care facility, or nursing home;
- (c) any noise or sound that is reasonably objectionable due to intermittence, beat, frequency, shrillness or loudness;
- (d) any obnoxious odor;
- (e) any excessive quantity of dust, dirt, or fly ash; provided however, this prohibition shall not preclude the sale of soils, fertilizers, or other garden materials or building materials in containers if incident to the operation of a home improvement or other similar store;
- (f) any fire, explosion or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks;

- (g) any assembly, manufacture, distillation, refining, smelting, agriculture or mining operations;
- (h) any mobile home or trailer court, labor camp, junkyard, mortuary, stock yard or animal raising. Notwithstanding the foregoing, (1) pet shops shall be permitted within the Shopping Center; and (2) the foregoing shall not prohibit the temporary installation of construction trailers during periods of construction, reconstruction or maintenance;
- (i) any drilling for and/or removal of subsurface substances;
- (j) any dumping of garbage or refuse, other than in enclosed receptacles intended for such purpose;
- (k) any automobile, truck, trailer or recreational vehicle sales, rental, leasing or body and fender repair operation;
- (l) any flea market and/or swap meet;
- (m) any massage parlor, adult book shop, movie house or other establishment selling or exhibiting pornographic materials or other pornographic use; provided, however, that such restrictions shall not preclude the (i) showing of films in any first rate motion picture theater operated in the Shopping Center, so long as such motion picture theater does not show any picture that has received an "NC-17" rating (or the equivalent or a more restrictive rating) from the Motion Picture Association of America or any successor to the Motion Picture Association of America which rates motion pictures or any other pictures that are considered pornographic by the Town of Johnstown, (ii) sale or rental of adult books, magazines or videos (including, without limitation, video cassettes, DVDs, laserdiscs and other like media) as an incidental part of the business of a general purpose bookstore or retailer carrying a general selection of books, magazines and video products (such as, by way of example and without limitation, Target, Best Buy and Blockbuster Video) normally found in a first class shopping center or (iii) massages in connection with a beauty salon, spa operation or massage therapy operation which are normally found in a first class shopping center;
- (n) any abortion clinic or drug rehabilitation clinic;
- (o) any warehouse or industrial use;
- (p) any self-storage facility;
- (q) any tattoo or body piercing parlor;
- (r) any public or private nuisance;

(s) any cemetery, mortuary or similar service establishment;

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

(u) any pawn shop;

(v) any establishment selling drug related paraphernalia;

(w) any convenience store;

(x) any roller-skating rink, bowling alley, teenage discotheque, discotheque, dance hall, video game parlor, pool room, card club, bingo parlor, facility containing gaming equipment (other than for the retail sale thereof), or carnival activities; provided, the foregoing shall not preclude (i) any restaurant otherwise properly operating within the Shopping Center from having a dance floor for the enjoyment of its patrons therein, so long as incidental to the operation of the restaurant; (ii) use and operation of video games within restaurants otherwise permitted in the Shopping Center, so long as incidental to the operation thereof; and (iii) use and operation of an entertainment/restaurant complex, which serves food and beverages and provides an array of interactive entertainment attractions such as billiards, shuffleboard, simulators, virtual reality and traditional carnival-style amusements and games of skills (such as, by way of example and without limitation, Dave & Buster's, ESPN Zone or 810 Zone);

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

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

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

(bb) any unemployment agency, service or commission;

(cc) any hotel, motel, or other forms or short-term or temporary living quarters, sleeping apartments or lodging rooms;

(dd) any gambling facility, casino or similar operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall or parlor;

(ee) any bar, tavern or nightclub; provided, however, that the foregoing shall not prohibit (i) the operation of a bar, tavern, or nightclub as a part of any restaurant being operated in the Shopping Center, so long as the sale of alcohol from such bar, tavern or nightclub does not exceed forty-five percent (45%) of such restaurant's gross sales, (ii) sale of beer, wine and liquor incidental to the operation of any first-rate theater operated in the Shopping Center in accordance

with the terms of this Declaration, (iii) a so-called "wine bar" or "martini bar" or (iv) any use otherwise permitted pursuant to the terms of subsection (hh) below;

(ff) any office use, other than: (1) retail offices, providing services commonly found in a similar first-class shopping center in the Denver, Colorado, metropolitan area (for example, financial services, real estate brokerage, insurance agency, banking, travel agency);

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

The use restrictions set forth in Sections 5.1(c) through (k), (m), (n), (r), (v), (dd) and (gg) are hereinafter collectively referred to as the "**Surviving Use Restrictions.**"

Without limitation of the other terms of this Declaration if, in addition to the Developer's Parcels any additional parcels of land within the Shopping Center or within a one-quarter (1/4) mile radius of the Shopping Center shall become within the ownership of Developer or any person or entity affiliated with or controlled by Developer, then, from and after such point, any such parcels of land shall thereafter be deemed to be encumbered by the use restrictions in this Article 5. Developer shall notify the Scheels Owner in writing no less than thirty (30) days in advance of any such change in ownership and shall cause such restrictions to be recorded against any such parcel simultaneously with the acquisition thereof, in form and substance reasonably satisfactory to the Scheels Owner. For purposes of this paragraph, "control" shall mean the possession of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.

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

(a) No Owner shall cause, maintain or permit any nuisance in, on or about the Shopping Center. Developer shall be permitted to grant the right to allow any Permittee to conduct Outdoor Sales within any of Developer's Parcels, including the right to allow Permittees of the Shopping Center to conduct, from time to time (and not on a permanent basis), sales in the sidewalk areas immediately adjacent to such Permittee's Store; provided, however, (i) in no event shall any such sales be located in Scheel's Control Area without the prior written approval of the Scheels Owner, provided that restaurant patios, outdoor dining areas, or outdoor seating areas located on any of Developer's Parcels shall not be prohibited by this restriction; (ii) such sales shall comply with any required governmental approval; and (iii) any such sales may not result in the material interfere with pedestrian access and movement.

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

Owner's Parcel over the rates which would otherwise apply unless such Permittee shall pay the increased insurance cost on demand.

ARTICLE VI COMPLIANCE WITH LAWS

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

ARTICLE VII MAINTENANCE OF IMPROVEMENTS

7.1 **Maintenance of Improvements.** Except as otherwise provided herein (including without limitation Developer's maintenance of the Common Area as set forth in Article VIII), each Owner shall, for the benefit of the Owners at all times during the Term of this Declaration, maintain, or cause to be maintained, the exterior of Stores and other improvements, including (without limitation) Common Area, from time to time located on such Owner's Parcel in a first class condition and in good order, maintenance, and repair consistent with similar first class shopping centers located in Larimer County, Colorado, and in accordance with this Declaration. Such obligations shall include maintenance of all improvements and Common Areas located on such Owner's Parcel including, but not limited to, any sidewalks, curbs, landscaping, and other improvements which are located between the exterior face of such Owner's Store and the exterior curb face of the perimeter sidewalk located around such Owner's Store, whether located on such Owner's Parcel or not, except that with respect to the Scheel's Parcel such obligation shall instead include all improvements and Common Areas within the area identified on the **Exhibit B-5** Site Plan as Scheel's Maintenance Area (such area, "**Scheel's Maintenance Area**"). For purposes of this Article VII, Article VIII below, and wheresoever else the term Scheel's Maintenance Area is used, Developer and Scheels acknowledge and agree that a portion of the Scheel's Maintenance Area lies within the District's Parcel, but such fact shall not limit the rights and obligations of the Scheels Owner hereunder. Without limitation of the foregoing, Developer, on its own behalf and on behalf of its

successors and assigns, represents, and warrants and covenants that during the Term the Scheels Owner shall have the right to enter upon the District's Parcel for the purpose of performing its maintenance and other obligations, or performing Developer's or any other Owner's obligations in the event that the Scheels Owner, in its sole discretion, elects to exercise any self-help remedy, under this Declaration and under any other agreement including, without limitation, the Scheel's Separate Agreement, with respect to the Scheel's Maintenance Area or any other portion of the Common Areas.

ARTICLE VIII

OPERATION AND MAINTENANCE OF COMMON AREA

8.1 **Maintenance of Common Area.** During the Term hereof, Developer will do or cause to be done, with respect to the Common Area, and Scheels Owner with respect to Common Area within the Scheel's Maintenance Area, will do or cause to be done, the following: (i) maintain, repair and/or replace, or cause to be maintained, repaired and/or replaced, the Common Area so as to keep it in first class condition consistent with other first class shopping centers in Larimer County, Colorado, (ii) clean the Common Area and keep same free of rubbish and other hazards to persons using such area, (iii) subject to the terms of Section 4.6 herein provide lighting facilities (including bulbs and ballasts) and properly light the Common Area and (iv) maintain the landscaping within the Common Area. Such obligations shall include, without limitation, providing adequate security protection services (if similarly situated shopping centers located in the Larimer County, Colorado trade market area are provided security protection services or if Developer otherwise determines same to be reasonably necessary or appropriate), except that Developer shall provide all such security protection services within the Scheel's Maintenance Area, maintaining, repairing and replacing all above and underground utilities, common utilities and other utility conduits and lines and sewers located within the Shopping Center (except within those utility easements granted to any governmental authority or utility company, which has maintenance and repair obligations thereover, and except for service drops exclusively serving improvements on a particular Parcel, rather than the Shopping Center as a whole, which service drops shall be the maintenance responsibility of the Owner utilizing same, and except that Developer shall maintain all such utility conduits and lines and sewers within the Scheel's Maintenance Area), maintaining, repairing, repainting and replacing all directional/way-finding signs, maintaining, repairing and replacing all irrigation systems, maintaining and replacing as necessary the plants located within the landscaped and planted areas, resurfacing and restriping all Parking Areas in the Common Areas, and repairing all holes or breaks in the paving in the Common Area within a reasonable time after the same appear, causing all garbage receptacles of all occupants of buildings as well as those located in the Common Area to be emptied as needed, collection and disposal of all paper and trash in all Common Area each day as needed and sweep all sidewalks, all drives adjacent to all Stores and other buildings located in the Shopping Center as needed, and remove, and treat, ice and remove snow from the exposed areas as soon as practicable. Developer shall, to the extent reasonably practicable, endeavor in good faith to schedule any extraordinary work to be performed in accordance with the foregoing provisions in a manner intended to minimize interference with the ordinary conduct of business within the Shopping Center. In particular, but without limitation, any such extraordinary work reasonably expected to cause a temporary closing of any of the Common Area shall be scheduled in a manner intended to minimize, to the extent reasonably practicable, performance of any such work between November 1 to January 4 or during the thirty day period prior to Easter, it being understood that the foregoing limitation in no way restricts closure in the

event of an emergency or if required by applicable governmental authorities. With respect to the portions of the Common Areas which are the Developer's obligation to operate and maintain, Developer will have the right to select from time to time a person or persons other than Developer to operate and maintain the Common Area or portions thereof ("**Operator**"), provided that such selection will not diminish Developer's obligations to maintain and operate the Common Area and otherwise comply with the terms of this Declaration. The Owners of all Parcels within the Shopping Center (except for the Scheels Owner) will be required to pay Developer's expenses in connection with maintenance of such Common Area in accordance with this Declaration. Any contributions from the Scheels Owner to contribute to Developer's expenses in connection with maintenance of such Common Area shall be set forth in the Scheel's Separate Agreement.

8.2 Default of Developer/Self-Help by the Scheels Owner. In the event of a default by Developer in performing the services or maintenance of the Common Area and other obligations as required by Section 8.1 hereof or of any of the other terms of this Declaration or of the Scheel's Separate Agreement, the Scheels Owner may provide notice of such default to Developer specifying the nature of such default and Developer shall be allowed thirty (30) days to cure such default, or if such default cannot be cured within thirty (30) days, Developer shall commence curing such default within such time and shall diligently pursue such cure to completion within a reasonable time thereafter. In the event of an emergency (including, but not limited to, Developer's failure to remove accumulated snow or ice within a reasonable time) such notice of default shall be sent by fax to Developer and Developer shall immediately cure such default or immediately commence to cure such default and diligently pursue completion of such cure within a reasonable time thereafter. In the event that Developer fails to cure such default within the requirements of this Section then, without limitation of any other remedies provided for in this Declaration or in the Scheel's Separate Agreement, the Scheels Owner may elect to perform the Common Area maintenance specified in any such notice to Developer provided under this Section and, if not reimbursed within twenty (20) days of demand of the same, to deduct the cost and expense incurred by the Scheels Owner in performing such common area maintenance, including interest on such expenses at the Default Rate, from any payments due from the Scheels Owner under the Scheel's Separate Agreement.

8.3 Succession to Maintenance Obligations. It is understood and agreed that the obligations of Developer hereunder to maintain the Common Area and administer the provisions of this Declaration respecting Common Area obligations and the Overall Common Area Obligations shall attach to and run with title to the Control Parcel such that the Owner or Owners from time to time of the Control Parcel shall jointly and severally (if more than one) be responsible for the performance of the obligations of Developer arising under this Declaration and pertaining to the Shopping Center and the obligations of Developer under the Scheels Separate Agreement, and not just the obligations of Developer hereunder pertaining specifically to Developer's Parcels. From and after conveyance of the Control Parcel by Developer to another Person, any other Person succeeding to Developer's interest as Owner of any of Developer's Parcels other than the Control Parcel shall have no liability or obligation for performance of the obligations of Developer arising under the Declaration and pertaining to the Shopping Center; provided that the foregoing shall in no way absolve any such Owner of the obligation to perform the obligations of an Owner pertaining specifically to the Parcel of Parcels of such Owner.

ARTICLE IX
RESTORATION

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

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

9.3 **Common Area.** In the event of damage or destruction of any Common Area improvement erected or placed on any Parcel (including District's Parcel), whether by fire or other casualty, the Owner of such Parcel agrees to take all such action as may be required under applicable municipal ordinances and other laws, rules and regulations with respect to any such damage or destruction and to promptly remove all debris resulting from such damage or destruction and commence, in accordance with Section 9.4 below, to repair, replace and rebuild such damaged Common Area. In the event of damage or destruction of any Common Area improvement on District's Parcel, and notwithstanding anything to the contrary in this Declaration, Developer warrants and covenants that all requirements of this Section 9.3 and Section 9.4 shall be met or shall be caused to be met by Developer, at no cost to the Scheels Owner, with respect to District's Parcel, regardless of the cause of the damage, including without limitation, if caused by a party under an oil or gas lease or the holder of a mineral or water right in the process of extracting the same, or otherwise exercising its rights.

9.4 **Duty to Commence and Complete Rebuilding.** Subject to Sections 9.1 through 9.3, each Owner agrees to commence any required repair, replacement and rebuilding within six (6) months after such damage or destruction, or sooner if possible, and thereafter use due diligence in order to cause any building or other improvement which such Owner is required to repair, replace and rebuild pursuant to this Article to be completed and ready for occupancy within twelve (12) months after such damage or destruction occurs or as soon thereafter as is practicable under the circumstances, so long as such repair, replacement and rebuilding is diligently and continuously carried to full completion. Each Owner agrees that prior to commencing any such repair, replacement and rebuilding, such Owner shall comply with the

requirements set forth in Article III of this Declaration and other applicable provisions of this Declaration with respect to construction, except as to any such requirement that may be modified under this Article. All such repaired, replaced and rebuilt Stores, Common Area and other improvements shall be repaired, replaced and rebuilt to as good a condition, to the same general appearance, and on the same level or story as the Store, Common Area and other improvements were immediately prior to such damage or destruction.

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

ARTICLE X TERM

10.1 This Declaration and each term, easement, covenant, restriction and undertaking of this Declaration shall be effective for a term ("**Term**") commencing as of the date hereof and shall terminate on the earlier of (1) June 1, 2065, (2) such date as the Owners may elect by written notice of termination executed by all of the Owners and recorded in the Official Records, or (3) such earlier termination as provided pursuant to and in accordance with this Declaration (the "**Expiration Date**"); provided, however, that the Term may, as provided in the succeeding sentence, be extended beyond such Expiration Date for a maximum of three (3) independent ten (10) year terms (each, an "**Extended Term**") (for a total of thirty (30) years beyond the initial Term); provided, further that no such expiration or termination shall affect the provisions and easements hereof that by their Term survive expiration. The Owner of the Control Parcel or the Scheels Owner may, prior to the expiration of the Term or then Extended Term (as applicable), deliver notice to the other Owners indicating that such Electing Owner elects to extend the Term of this Declaration for the next succeeding Extended Term. In such event, such Electing Owner shall unilaterally record a statement or other notice with the Official Records indicating such election to extend the Term of this Declaration (with such statement or notice to include evidence that such Owner elected to extend the Term of this Declaration as provided herein) within thirty (30) days of the expiration of the Term or then Extended Term (as applicable). In the event a statement or other notice is not filed with the Official Records within such thirty (30) day time period, this Declaration shall be deemed terminated. The following terms shall survive the termination of this Declaration and shall continue in perpetuity: (i) Section 4.8 above; (ii) prohibition against obstructions in Section 4.4 above; (iii) compliance with laws requirement in Article VI above; (iv) the rights and easements set forth in Article II

above; (v) the hazardous and toxic materials provision of Article XVI below; (vi) the Surviving Use Restrictions; and (vii) the restrictions specified in Section 4.7 above.

10.2 As provided in Paragraph G of the Recitals of this Declaration, notwithstanding that this Declaration is not initially (and, subject to the provisions of said Paragraph G, may never be) recorded against District's Parcel in the Official Records, as between any Owners from time to time of any Parcel, District's Parcel shall during the entirety of the Term constitute a Parcel of the Shopping Center Property, deemed Common Area, and shall be subject to the terms, provisions, easements, restrictions, covenants and agreements of this Declaration. Without limitation of the foregoing, Developer, on its own behalf and on behalf of its successors and assigns, covenants and agrees to comply with the terms and provisions of this Declaration as if District's Parcel were a Parcel of the Shopping Center Property and shall cause District's Parcel to at all times be and remain in compliance with the terms of this Declaration, and represents and warrants that Scheels and the Scheels Owner shall have all rights with respect to District's Parcel and remedies against Developer and its successors and assigns as if this Declaration were recorded against District's Parcel and District were a party hereto, and for any failure of District's Parcel to be in compliance with the terms of this Declaration.

ARTICLE XI EMINENT DOMAIN

11.1 **Awards to each owner.** As between the Owners, any damage or other award resulting from or arising out of a condemnation or other taking for public or quasi-public purposes (a "**Condemnation**") of all or any portion of such Owner's Parcel(s) shall belong to such Owner without deduction therefrom for any present estate or interest of any other Owners and such other Owners hereby assign to the Owner whose Parcel was subject to the Condemnation all of such other Owner's right, title and interest in and to such damages or awards. Any damage or other award resulting from a Condemnation of any portion of the District's Parcel shall for all purposes herein be deemed to belong to and have been paid to Developer and shall be used for restoration as specified in Section 11.2 herein. This provision shall not act to prevent any other Owner from filing for or recovering its own separate award for any loss related to its Parcel and/or Store.

11.2 **Parking Areas.** If any portion of the Parking Area within the Shopping Center shall be taken by Condemnation with the result that the Shopping Center or any Parcel thereof is not thereafter in compliance with the parking requirements of this Declaration, Developer, after receipt of any Condemnation award or damages resulting therefrom or equitably attributable thereto, as determined in Section 11.1 (the "**Allocable Awards**"), shall promptly use all of said Allocable Award to create, to the extent reasonably possible, additional surface parking facilities in the Shopping Center in order that the Shopping Center will comply with the parking ratio required by this Declaration. First priority shall be to create additional surface parking facilities as close as possible to the Parcel or Parcels which are subject to the Condemnation. Notwithstanding the foregoing, Developer shall have no obligation to restore Parking Area unless the Owner of the Parcel on which such Parking Area is to be restored approves of the location and configuration of the Parking Area to be restored (such approval not to be unreasonably withheld, delayed, or conditioned) and no Owner shall be obligated to provide or permit additional Parking Area upon its Parcel in case of a Condemnation of Parking Area contemplated by this Section 11.2, unless such

Owner has given its consent to the location and layout thereof (such consent not to be unreasonably withheld, delayed, or conditioned), if the Parking Area so taken by Condemnation was not contained within such Parcel of the Owner at issue. In the event that there is not enough usable land available to restore surface parking facilities to comply with the required parking ratio, all Owners shall negotiate in good faith in an effort to agree upon an area within the Shopping Center where a parking deck could be constructed so as to replace the Parking Area lost by Condemnation, and if the Owners are able to reach such Agreement (as well as agreement on the precise location, design and cost of such parking deck), each Owner shall make available to Developer any Allocable Award paid to such Owner with respect to Condemnation of its Parking Area (to the extent not utilized for provision of replacement surface Parking Area as aforesaid) and Developer thereafter shall construct the parking deck so agreed upon, so long as same is allowed by applicable law under the circumstances, in order to comply with the required parking ratio; provided that Developer shall have no obligation to construct any such Parking Deck if the cost to Developer of constructing same (both "hard costs" and "soft costs") shall be in excess of the amount of the Allocable Awards paid to Developer, as reasonably determined by Developer, unless agreement likewise is reached among the Owners to provide for payment of the balance of the cost of such parking deck by the Owners over and above the Allocable Awards. In the event that the Allocable Awards shall be insufficient to completely restore the amount of parking required to comply with the parking ratio set out in Section 4.8 (and if the Owners have not hereafter agreed to fund the excess costs as contemplated herein), then the parking ratio set out in Section 4.8 shall be reduced to a ratio as near as possible to the requirements of Section 4.8 without the necessity for Developer's expenditure of any additional funds. If the Condemnation damages or award attributable to the Parking Area within a Parcel are not expended by Developer to create additional surface parking facilities, and Developer, within 120 days following Developer's receipt of such damages or award, shall not have committed to construct a parking deck as provided above, the Condemnation damages or award shall be returned to the Owner of such Parcel subject to Condemnation.

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

defense of any condemnation proceeding or the pursuit of any rights, remedies or awards available to Developer pursuant to such condemnation.

ARTICLE XII TRANSFER OR CONVEYANCE

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

12.2 **Sale Leaseback.** In the event the whole of the interest of such Owner in and to the Parcel in which it has an interest is Transferred, but a new interest is created in such Owner simultaneously with such transfer by way of leasehold or similar possessory arrangement (i.e., a Sale and Leaseback or Assignment and Sub-leaseback), or in the event such Owner shall Transfer its interest in said Parcel or any part thereof by deed of trust or other security instrument as security for indebtedness, then none of the rights or obligations conferred upon such Owner with regard to the interest Transferred shall be transferred by such Owner by virtue of the transaction at issue, but all of the rights and obligations of such Owner shall remain in such Transferor Owner so long as it retains any possessory interest in and to said Parcel other than as a beneficiary under the terms of a deed of trust or mortgage. In the event the interest of such Owner shall cease and terminate, then upon such termination the rights and obligations (to the extent thereafter to be performed) of such Owner shall vest in the Transferor Owner's successor Transferee in accordance with this Article (but such Transferee, in such event, shall not be personally liable for the performance of any term, covenant, obligation or condition as to any matter which arose prior to the Transfer).

12.3 **Multiple Ownership.** In the event there shall be more than one record owner comprising the Owner of a Parcel ("Co-Owners"), then not less than fifty-one percent (51%) in interest of such Co-Owners shall designate one of their number to act on behalf of all of such Co-Owners in the exercise of the rights granted to an Owner under this Declaration. So long as such designation remains in effect, such designee shall be the Owner hereunder and shall have the power to bind such Parcel and such Co-Owners, and the other Co-Owners shall not be deemed to be Owners. Any such designation must be in writing and served upon the other Owners by registered or certified mail, and must be recorded in the Official Records. In the absence of such written designation, the acts of the Owner whose interest is so divided with respect to the exercise of the rights vested by this instrument shall be binding upon all Co-Owners until such time as written notice of such designation is given and recorded in the Official Records. All Co-Owners shall be jointly and severally liable with respect to all the terms, obligations, covenants and conditions under this Declaration during their period of ownership (subject to Section 12.4 below).

12.4 **Release.** Whenever the rights and obligations conferred upon any of the Owners are vested in another Owner or Owners pursuant to the provisions of this Article, the Transferor shall be released or discharged from the obligations thereafter accruing under the terms of this Declaration, and the

Transferee(s) of such interest shall be bound by the covenants and restrictions herein contained, subject to the terms herein. Notwithstanding the foregoing, (i) no such Owner shall be so released until notice of such Transfer has been given in the manner set forth below, at which time the Transferring Owner's personal liability for unaccrued obligations shall terminate, and (ii) in no event shall Developer be released, if at all, until such time as Developer's obligations under the Site Development Agreement have been fully performed. An Owner transferring all or any portion of its interest in the Shopping Center shall give notice to the other Owners of such Transfer and shall include therein at least the following information: (i) the name and address of the new Owner; (ii) a copy of the legal description of the portion of the Shopping Center so Transferred; and (iii) a copy of the instrument evidencing such Transfer and the assumption by the Transferee as provided herein. Until notice of such Transfer is given, the Transferring Owner shall (for purposes of this Declaration only) be the Transferee's agent.

ARTICLE XIII TAXES

13.1 **Calculation and Payment of Real Property Taxes.** To the fullest extent possible, real estate taxes and general and special assessments (collectively, "**Real Property Taxes**") levied and assessed against any Owner's Parcel and any Store or other improvements thereon, shall be separately assessed by the taxing authority and all Owners shall cooperate reasonably with Developer and each other as needed to have separate tax parcel status given to each Parcel hereunder; provided, however, that nothing herein shall require Developer to obtain separate tax assessments for any Parcel, Store or other improvements, except that the Scheel's Parcel shall in all events be separately assessed and the Scheels Owner shall have no obligation to pay any portion of Real Property Taxes on any portion of the Shopping Center other than the Scheel's Parcel. Each Owner shall pay or cause to be paid on or before the date such Real Property Taxes become delinquent, all such Real Property Taxes levied and assessed on its Parcel and any Store or other improvements thereon, except as otherwise provided herein. Such Real Property Taxes may be paid in installments where installments are permitted by the taxing authorities. In the event an Owner shall deem any Real Property Taxes (including the rate thereof or the assessed valuation of the property in question or any other aspect thereof) assessed against such Owner by the taxing authority to be excessive or illegal, such Owner shall have the right, at its own cost and expense, to contest the same by appropriate proceedings, and nothing contained in this Section 13.1 shall require such Owner to pay any such Real Property Taxes as long as the amount or validity thereof shall be contested in good faith, and in the reasonable opinion of counsel for such Owner, the Owner's Parcel and, without limitation, the easements and rights established hereby in favor of other Owners with respect thereto, shall not thereby be in danger of being forfeited. If, notwithstanding the above provisions, any Parcels shall not be separately assessed, but instead are assessed as part of a larger parcel which includes more than one Parcel hereunder, then until such time as the Parcels at issue are separately assessed, the Owners of the Parcels that are assessed together shall coordinate to make timely payment of all Real Property Taxes pertaining to such Parcels so that same will be fully paid without penalty or interest, or if a discount shall be available for early payment prior to the last day that such discount is available (unless such Owners agree to the contrary). Any Owner not so performing as required above shall pay all interest, penalties, late charges and lost discount amounts incurred as a result of such Owner's failure to perform and shall reimburse the performing Owner for any amounts with respect thereto paid by the performing Owner. In the case of such joint assessment, the Owner of each Parcel shall be responsible for a share of the Real Property

Taxes assessed and applicable solely to such Owner's Parcel, as determined by reference to the records of the applicable taxing authority, including, without limitation, any work sheets and other documents compiled by the assessor. In the event it is not possible in such fashion to determine the specific Real Property Taxes applicable to each such Parcel by reference to the foregoing records, each Owner shall pay its proportionate share of the bill for Real Property Taxes at issue, calculated as follows: (i) as to any Real Property Taxes assessed against land, each Owner shall pay such Owner's proportionate share of the Real Property Taxes assessed against the land comprising the larger parcel based on a fraction, the numerator of which shall be the number of acres (to the nearest 1/100th of an acre) in the Parcel at issue and the denominator of which shall be the total number of acres in the aggregate of all Parcels assessed in such tax bill (to the nearest 1/100th of an acre); and (ii) as to any Real Property Taxes assessed against buildings, each Owner shall pay such Owner's fair and equitable share of the Real Property Taxes assessed against all the buildings of the jointly assessed Parcels, as reasonably determined by Developer, which share shall be consistent with the assessed value of the building(s) on the Parcel at issue (if such value is available) or the assessed value of similarly situated buildings in Larimer County, Colorado to the extent the actual assessed value of the building(s) is not available. To the extent that District's Parcel is subject to Real Property Taxes, Developer agrees to pay such Real Property Taxes without cost or charge to the Scheels Owner.

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

ARTICLE XIV **INDEMNIFICATION AND INSURANCE**

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

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

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

14.3 Casualty Coverage. In order to assure performance of their respective obligations under this Declaration, it is agreed that commencing as of the date any Owner (or District) commences construction with respect to its respective Parcel(s) and thereafter for the Term of this Declaration, such Owner (or District) shall carry property insurance on an all risk basis on its respective Store(s) in an amount sufficient to avoid the effect of any coinsurance provisions of such policies and in any event in an amount not less than the full replacement value of such Store(s) excluding, in each case, foundation, footing and excavation costs, with reasonable deductibles, and otherwise in accordance with the requirements set forth in this Article. Operator shall maintain or cause to be maintained property insurance on an all risk basis covering the Common Area in an amount not less than the full replacement value of said Common Area, otherwise in accordance with the requirements set forth in this Article. All such insurance shall be carried with financially responsible companies authorized to do business in the State of Colorado and meeting the standards set forth in this Article. In the event District does not cause District's Parcel to meet the insurance standards set forth in this Article, then Developer shall cause District's Parcel to meet the insurance standards set forth in this Article at no cost to the Scheels Owner.

14.4 Liability Coverage. Each Owner shall carry (or cause to be carried) with insurance companies authorized to do business in the State of Colorado, commercial general liability insurance written on an occurrence basis covering its legal liability in connection with claims for personal injury or death and property damage incurred upon or about its Parcel(s) and within any Store(s) constructed on its Parcel(s) in accordance with the requirements of this Article; provided, however, that so long as Developer (or Operator as applicable) is obligated to maintain the Common Area pursuant to the terms of this Declaration, no Owner other than Developer shall be required to maintain such liability insurance on any portion of the Common Area located on such Owner's Parcel. Similarly, Developer shall carry (or cause to be carried) with insurance companies authorized to do business in the State of Colorado, commercial general liability insurance written on an occurrence basis covering legal liability for claims for personal injury or death or property damage incurred upon or about the Common Area in accordance with the requirements of this Article. Developer shall be shown as an additional insured on each Owner's commercial general liability insurance for personal injury or death and property damage incurred upon or about its Parcel. All such commercial general liability insurance shall have minimum limits in Constant Dollars, of \$1,000,000.00 per occurrence, with an annual aggregate limit of \$2,000,000.00 for personal or bodily injury and damage to property, and an umbrella policy with an annual aggregate limit of \$5,000,000.00. In the event District does not cause District's Parcel to meet the insurance standards set forth in this Article, then Developer shall cause District's Parcel to meet the insurance standards set forth in this Article, at no cost to the Scheels Owner.

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

14.6 Waiver of Subrogation. Each Owner (the "**Waiving Owner**"), by accepting a deed to its Parcel, shall be deemed to have waived any rights the Waiving Owner may have against the other Owners (including but not limited to a direct action for damages) on account of any loss or damage suffered by the Waiving Owner (whether or not such loss or damage is caused by the fault, negligence or other tortious conduct, acts or omissions of the other Owners or their respective officers, directors, employees, agents, contractors or invitees), to its property, Parcel and the improvements thereon, its contents or to any other portion of the same arising from any risk covered by or which could be covered by the forms and type of property insurance required to be carried by the Owners, respectively, under Section 14.3 of this Declaration. Each Waiving Owner further, on behalf of its insurance companies insuring the property of such Waiving Owner against any such loss, waives any right of subrogation that such Waiving Owner or its insurers may have against the other Owners or their respective officers, directors, employees, agents, contractors or invitees and all rights of their respective insurance companies based upon an assignment from its insured. Each Owner shall give each such insurance company written notification of the terms of the mutual waivers contained in this Section and have said insurance policies properly endorsed, if necessary, to prevent the invalidation of such insurance coverage by reason of said waivers. The foregoing waiver shall be effective whether or not the Owners maintain the required insurance or give written notice of the waivers contained herein to their insurance companies. The provisions of this Section 14.6 are further subject to the provisions and limitations of Section 14.10 below.

14.7 Use of Proceeds. Except as otherwise provided herein, any loss covered by the insurance required to be carried by an Owner under Section 14.3 shall be adjusted with and paid by the insurance company by and to such Owner and upon receipt thereof, if the loss is in excess of \$500,000, the proceeds shall be deposited in a bank, trust or title company (selected by the respective Owner but reasonably approved by Developer) having an office in Denver or Johnstown, Colorado, to be held in trust or escrow to be paid out for the purpose of repair, replacement or rebuilding of the damaged premises as provided in

this Declaration; provided, however, in the event such Owner is not obligated to repair, replace or rebuild the damaged premises in accordance with Article IX, then the insurance proceeds shall be paid directly to Owner and shall not be required to be deposited in a bank, trust or title company. Notwithstanding any provision herein to the contrary, so long as the Scheels Owner is able to self insure as provided in this Declaration (and is, at the time of such loss, self insuring hereunder), the Scheels Owner shall not be obligated, irrespective of the amount of proceeds paid to it, to deposit such proceeds in such bank, trust or title company, and the Scheels Owner shall use such proceeds in accordance with the terms of this Article (if so required to rebuild, replace or rebuild). Upon presentation to the trustee or escrowee of proper material and labor bills and applicable lien waivers for such work completed and an architect certificate for completed work approving payment of such bills, the trustee or escrowee shall, as the work progresses, pay the amount of such bills to the persons, firms or corporations rendering or furnishing such labor, services or materials. After completion of the repair, replacement or rebuilding and after such bills in connection with such work have been paid in full, any remaining balance of the proceeds of such insurance shall be released and paid over by said trustee or escrowee to the Owner whose premises were so damaged. The Owner whose premises were so damaged agrees to pay all reasonable fees and charges made by the trustee or escrowee for acting as trustee or escrowee hereunder. In the event of a loss in the amount of \$500,000 or less, the proceeds shall be paid to the Owner whose premises were so damaged, which proceeds shall be applied to the cost of the repair, replacement or rebuilding of such premises if required to repair, rebuild, or replace. The Owner for whose benefit any property insurance is carried shall be responsible for and pay the cost of repair, replacement or rebuilding not covered by such insurance proceeds, including inadequate coverage and the amount of any deductibles.

14.8 Additional Insurance Requirements. Anything herein to the contrary notwithstanding, it is understood and agreed that the policy or policies providing the insurance which the Owners are obligated to maintain under the terms of Section 14.3 may be made payable to the holder of any first mortgage of the respective Owner's interest in the Shopping Center under a standard mortgagee clause, provided such Mortgagee agrees that it will, in the event of loss, hold the proceeds for payment of the costs of the repair, replacement or rebuilding (to the extent required under Article IX above) pursuant to the provisions of Section 14.7, as if it were the trustee thereunder.

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

14.10 Insurance Exceptions for Scheels. Notwithstanding anything to the contrary in this Declaration, for so long (but only for so long) as Scheels shall be the Scheels Owner and thereafter for so long (but only for so long) as a Related Corporation or any Successor Corporation of Scheels (a "**Scheels Company**") shall be the Scheels Owner (it being understood that the provisions of this Section 14.10 are "personal" to a Scheels Company and shall not inure to the benefit of any other Scheels Owner), (x) the Scheels Owner shall not be required to (i) name any other Owner as additional insured for any insurance Scheels Owner carries with respect to the Shopping Center, or (ii) furnish any Owner with any evidence of insurance or self-insurance, and (y) no Owner shall be permitted to purchase any insurance on behalf of

Scheels Owner (and seek reimbursement thereof in accordance with any self-help remedies granted to an Owner herein).

14.11 Scheels Owner Self Insurance. Scheels Owner shall be permitted to self insure upon the consent of Developer, which consent shall not be unreasonably withheld so long as the Scheels Owner's tangible net worth exceeds Fifty Million Dollars (\$50,000,000.00), in Constant Dollars. Any request to self-insure pursuant to this Section shall be accompanied by a copy of the Scheels Owner's financial statements audited by an independent certified public accountant. Thereafter, upon request of Developer, Scheels Owner shall deliver financial statements on an annual basis. In the event any Scheels Owner self-insures in accordance with the terms of this Declaration (including, in any case, maintenance of deductibles), then notwithstanding such self-insurance, the Scheels Owner shall pay, register, insure, defend, indemnify, and otherwise provide all of the same property and commercial general liability protection and coverage called for by this Declaration hereto without loss of coverage or protection to itself or to any other Owner as if such self-insured Scheels Owner were fully insured by a solvent third party insurance carrier as contemplated by this Declaration. All waivers, including but not limited to the waivers of subrogation, additional insured coverages and benefits, shall also continue and apply in all circumstances of self-insurance. Reasonable deductibles shall not be considered "self-insurance" for the purposes of this Section.

ARTICLE XV DEFAULT AND REMEDIES

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

15.2 Default Interest. Interest shall accrue on sums owed by a Defaulting Owner to a Non-Defaulting Owner and shall be payable from the date any such sum first became due hereunder until paid in full, at a

rate of interest (the "**Default Rate**") equal to the lesser of: (a) the floating rate which is equal to five percent (5%) per annum in excess of the annual rate of interest from time to time published in the Wall Street Journal as the Prime Rate or (b) the then maximum lawful rate of interest in Colorado applicable to the capacity of the Defaulting Owner and the nature of the debt.

15.3 **Additional Remedies.** Each Owner shall have and is hereby granted a non-exclusive right of entry and non-exclusive easements for and during the Term of this Declaration, in, over and under the Parcels of any other Defaulting Owner (excluding the right to enter any buildings or Stores thereon) for all purposes reasonably necessary, to enable the Non-Defaulting Owner (acting directly or through agents, contractors or subcontractors) to perform any of the terms, provisions, covenants or conditions of this Declaration on the part of the Defaulting Owner to be performed. Without limitation of the preceding sentence, the right of entry of the Scheels Owner shall extend to and include District's Parcel in the event of a default of the Developer under the terms of this Declaration and Developer represents and warrants that Scheels Owner shall at all times have the right to enter the District's Parcel for such purposes. In the event of a breach, or attempted or threatened breach, of any terms, provisions, covenants or conditions of this Declaration, the Non-Defaulting Owner shall be entitled forthwith to full and adequate relief by injunction, damages, and all other available legal and equitable remedies from the consequences of such breach.

ARTICLE XVI **HAZARDOUS AND TOXIC MATERIALS**

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

16.1 **Hazardous Material.** Except as to items commonly sold or used in sporting goods stores or Stores having other uses permitted herein (and which are used, stored, handled and disposed of in material compliance with Environmental Laws then in effect), no Owner shall keep, store, produce, permit to be kept, stored or produced, on or about such Owner's Parcel or any improvements thereon, for use, disposal, treatment, generation, storage or sale, any substance designated as, or containing components designated as hazardous, dangerous, toxic or harmful or which may be considered a Hazardous Material and/or is subject to regulation by any Environmental Law and/or other federal, state or local law, regulation, statute or ordinance now or hereinafter enacted. In addition, the Owners agree not to release or discard any Hazardous Materials on said Owner's Parcel, or any other Parcel within the Shopping Center. Notwithstanding the foregoing, Owners may store, handle and use the following chemicals, substances or materials if they are used, stored, handled and disposed of in material compliance with Environmental Laws then in effect: (i) chemicals, substances or materials routinely used in office areas; (ii) janitorial supplies, cleaning fluids or other chemicals, substances or materials reasonably necessary for the day-to-day operation or maintenance of the Owner's business and property or the business of any lessee of an Owner, (iii) chemicals, substances or materials reasonably necessary for the construction or repair of improvements on Owner's Parcel and (iv) fuel or other substances used in connection with a back-up electrical generator system. For so long as any party is the Owner of its respective Parcel, such Owner shall, at such Owner's sole cost and expense, promptly comply with all Environmental Laws and/or other

laws and ordinances and the orders, rules and regulations and requirements of all federal, state and municipal governments and appropriate departments, commissions, boards, and officers thereof, and the orders, rules and regulations of the Board of Fire Underwriters where the Parcel is situated, or any other body now or hereafter constituted exercising similar functions, foreseen or unforeseen, ordinary as well as extraordinary, and whether or not the same require structural repairs or alterations, which may be applicable to the Parcel or any improvements thereon, or the use or manner of use of such Parcel or improvements. Each Owner shall likewise observe and comply with the requirements of all policies of public liability, fire and all other policies of insurance at any time in force with respect to the Parcel, the improvements and equipment on the parcel or in the improvements. In addition, each Owner, at its cost and expense, shall comply with all laws, statutes, ordinances, rules and regulations of any governmental authority ("Agency") having jurisdiction thereof concerning environmental matters, including, but not limited to, any discharge into the air, waterways, sewers, soil or ground water of any substance or "pollutant". Upon prior reasonable notice and at times reasonably acceptable to such Owner, Developer and its agents and representatives shall have reasonable access to each Owner's Parcel and any improvements thereon for the purpose of ascertaining the nature of the activities being conducted thereon and to determine the type, kind and quantity of all products, materials and substances brought onto the Parcel(s) or any improvements thereon or made or produced thereon and if Developer or its agents shall in their inspection of the Parcel(s), damage the property, then they shall restore the property to its prior condition. Each Owner and all occupants of the Parcel or any improvements thereon claiming under Owner shall provide to Developer copies of all manifests, schedules, correspondence and other documents of all types and kinds when filed or provided to an Agency or otherwise required to be maintained by an Agency or as such are received from any Agency. Developer and its agents and representatives shall have the right to take samples in quantity sufficient for scientific analysis of all products, materials and substances present on the Parcel(s) or in any improvements thereon, including, but not limited to, samples of products, materials or substances brought onto or made or produced on the Parcel(s) or in any improvement thereon by an Owner or an occupant claiming under an Owner or otherwise present on the Parcel or any improvements thereon. If an Owner breaches the obligations stated in this Section, or if the presence of Hazardous Material on the Parcel or improvements thereon caused or permitted by an Owner results in contamination of the Parcel and/or improvements, or if contamination of the Parcel or improvements by Hazardous Material otherwise occurs for which such Owner is legally liable to Developer or any other Owner for damage resulting therefrom, then such Owner shall indemnify, defend and hold Developer and any other Owner harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the period during which such party is the Owner of such Parcel as a result of such contamination. Any Owner who is asked to "defend" Developer or another Owner shall have the right to select defense counsel. In the event the indemnified Owner desires to select its own counsel, it shall be at the indemnified Owner's sole expense and such defense shall be tendered immediately and in a manner that does not prejudice the rights of the indemnitor. Any indemnity under the provisions of this Section shall not apply to any claims brought separately against the indemnified Owner for a separate act or omission. This indemnification of Developer and all other Owners by each Owner includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the respective Parcel. Without limiting the foregoing, if the

presence of any Hazardous Materials on a Parcel caused or permitted by an Owner results in any contamination of the Parcel and/or improvements thereon, such contaminating Owner shall promptly take all actions at its sole expense as are required by applicable law to return the Parcel and/or improvements to the condition existing prior to the introduction of any such Hazardous Material. If a contaminating Owner does not promptly take such action to return the Parcel and for improvements to its/their prior condition as required, any other Owner shall have the right, but no obligation, to take such action as required by law to return the Parcel and for improvements at issue to their prior condition, immediately following notice to such contaminating Owner by such other Owner of its intent to take such action, and such contaminating Owner shall reimburse such other Owner for any costs incurred by such other Owner in connection therewith upon submission by such other Owner to said contaminating Owner of such costs.

16.2 **No Limitation of Rights or Benefits.** The terms of this Declaration shall not be construed to limit the rights and benefits afforded to Scheels or any subsequent Scheels Owner in any other document between Developer and Scheels.

ARTICLE XVII MISCELLANEOUS

17.1 **Modification.** Except as provided to the contrary herein, no modification, waiver, amendment, discharge, or change of this Declaration shall be valid unless the same is in writing and signed by the Scheels Owner and Developer. Subject to the terms of the preceding sentence, Developer may amend, modify, discharge, waive, or change this Declaration in its sole discretion; provided, however, that no such modification, waiver, amendment, discharge or change shall impose any materially greater obligation on or materially impair any right of an Owner or its Parcel unless such Owner has joined in the execution of such document.

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

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

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

17.5 **Subdivision.** Notwithstanding anything to the contrary contained in this Declaration, (i) no Owner, other than Developer, shall have the right, without Developer's consent, to further subdivide a Parcel or add additional land to its respective Parcel or to the Shopping Center; and (ii) neither Developer nor any other Owner may amend or otherwise modify the plat of the Shopping Center without the written approval of the Scheels Owner.

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

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

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

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

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

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

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

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

17.14 **Estoppel Certificate.** Each Owner shall issue to a requesting Owner (or to any Mortgagee, or any other Person reasonably specified by such requesting Owner), within thirty (30) days following written request of any such requesting Owner, an estoppel certificate stating:

- (i) whether the Owner to whom the request has been directed knows of any default under this Declaration of any other Owner, and if there are known defaults, specifying the nature thereof;
- (ii) whether to its knowledge this Declaration has been assigned, modified or amended in any way (or if it has, then stating the nature thereof);
- (iii) that to the Owner's knowledge this Declaration as of that date is in full force and effect (or, if such be not the case, the qualifications respecting such statement).

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

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

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

17.17 Excuses for Non-Performance. Each Owner shall be excused from performing any obligation or undertaking provided in this Declaration, except any obligation to pay any sums of money under the applicable provisions hereof, in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage; inability to procure or general shortage of labor, equipment, facilities, materials or supplied in the ordinary course on the open market; failure of normal transportation; strikes, lockouts, action of labor unions; condemnation, requisition; laws

or orders of governmental or civil or military authorities; breach or default of any other Owner of any of its obligations hereunder; failure to obtain necessary governmental approvals or permits despite the exercise of due diligence and good faith efforts by an Owner, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such Owner, other than the lack of or inability to obtain funds or causes which were reasonably foreseeable (collectively, "**Unavoidable Delays**").

17.18 Scheel's Separate Agreement. Concurrently with the execution of this Declaration, Developer and Scheels have entered into and recorded in the Official Records the Scheel's Separate Agreement (or a memorandum thereof) regarding certain obligations between Developer and Scheels, relating to construction costs, operating covenants, maintenance obligations and costs, and other matters with respect to this Declaration and the Shopping Center. In the event of and to the extent of any conflict between this Declaration and the Scheel's Separate Agreement, the Scheel's Separate Agreement shall control. No other Person shall be entitled to review the Scheel's Separate Agreement without the consent of Developer and the other party to the Scheel's Separate Agreement.

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

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

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

interest of Scheels in and to the Shopping Center at the time, and neither Scheels, nor any of its constituent partners, sub partners, members, managing members or agents, shall have any personal liability therefor, and each other Owner, on behalf of itself and all persons claiming by, through or under such Owner, hereby expressly waives and releases Scheels and such partners, sub partners, members, managing members or agents from any and all personal liability.

17.22 Continuous Operation. In no event shall Developer have any liability hereunder whatsoever for the failure of any subsequent Owner or Permittee of any Parcel to continuously operate and Developer has made no representation herein whatsoever that any tenant or Parcel Owner will continuously operate. Nothing contained in this Section 17.22, however, shall be interpreted to affect or otherwise change any agreement (including, without limitation, the Scheel's Separate Agreement or any other of the Separate Agreements) between Developer and the Scheels Owner or between Developer and any other Owner.

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

EXHIBIT A-1: Legal Description of Developer's Parcels
EXHIBIT A-2: Legal Description of Developer's District's Parcel
EXHIBIT A-3: Legal Description of Scheel's Parcel
EXHIBIT A-4: Legal Description of Scheel's District's Parcel
EXHIBIT A-5: Legal Description of the Control Parcel
EXHIBIT B: Site Plan
EXHIBIT B-1: Site Plan marked with Access Roads
EXHIBIT B-2: Site Plan marked with Scheel's Control Area
EXHIBIT B-3: Site Plan marked with Scheel's Outdoor Area
EXHIBIT B-4: Site Plan marked with Control Parcel
EXHIBIT B-5: Scheel's Maintenance Area
EXHIBIT C: Sign Criteria
EXHIBIT D: Depiction of Abutting Access Road
EXHIBIT E: Depiction of Permitted Expansion Areas of Shopping Center

17.24 Proprietary Rights. The trade names, trademarks, service marks (including, without limitation, all logos, emblems, designs or designating words or names) used by Scheels in connection with its operations from Scheel's Parcel are registered and/or the proprietary property of Scheels or its affiliates, and without the consent of Scheels, in its sole and absolute discretion, no usage of those marks or names shall be made by Developer or by any Owner, occupant, or tenant of the Shopping Center.

17.25 Scheel's Outdoor Area. Developer and Scheels acknowledge that although Scheel's Outdoor Area is located within District's Parcel, Developer represents, warrants and covenants that Scheels Owner and its Permittees have the right to conduct Outdoor Sales within Scheel's Outdoor Area, notwithstanding anything in this Declaration to the contrary.

17.26 Notices. All notices, approvals, consents, or requests given or made pursuant to this Declaration shall be in writing and either (i) sent by a nationally recognized overnight courier, (ii) personally delivered, or (iii) sent by registered or certified mail with the postage prepaid. Notices personally

delivered shall be deemed delivered on the date of delivery. Notices via overnight courier shall be deemed delivered on the business day next following deposit with such courier and certified or registered mail shall be deemed delivered four (4) business days after deposit with the U.S. Mail, as applicable. Notices to Developer shall be addressed to Johnstown Plaza LLC, 6917 W. 135th Street, Suite B-29, Overland Park, Kansas 66223, Attention: Allen D. Schlup. Notices to Scheels shall be addressed to Scheels All Sports, Inc., 4550 15th Avenue South, Fargo, North Dakota 58103, Attention: Steve M. Scheel, Chief Executive Officer. Such addresses may be changed from time to time by any Owner by serving notice as herein provided to the other Owners. Notwithstanding anything to the contrary herein, any Owner may give another Owner notice of the need for emergency repairs via facsimile with confirmation of receipt and delivery of the original notice by one of the above prescribed methods. If, at the time of the sending of any notice required or permitted to be given hereunder, the interests of any recipient Owner in its Parcel shall be encumbered by a first Mortgage and the notifying Owner has been notified in writing thereof and of the name and address of the Mortgagee, a copy of said notice shall also be sent to such mortgagee by one of the above prescribed methods at the address so given.

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

17.28 Name of Shopping Center. The name of the Shopping Center shall be Johnstown Plaza, and such name shall not be changed without the consent of the Scheels Owner having been first obtained, such consent not to be unreasonably withheld, delayed, or conditioned; provided, however, in the event (i) a third party claims rights to the name Johnstown Plaza and Developer, after evaluating such claim, determines in good faith that such claim has merit, or (ii) if the name is required to be changed by law or judicial or governmental order, the consent of the Scheels Owner shall not be required so long as the new name does not contain the name of another retailer or occupant of the Shopping Center. Among the various reasonable reasons the Scheels Owner can articulate in order reasonably to withhold consent concerning a name change of the Shopping Center, it shall be reasonable for the Scheels Owner to withhold its consent if the proposed name of the Shopping Center includes the name of another retailer or occupant of the Shopping Center.

ARTICLE XVIII
RULES AND REGULATIONS

Developer (and any other Owner to the extent applicable herein) shall not be responsible for the violation or nonperformance by any other Permittee of the Shopping Center with regard to these Rules and Regulations (the "**Rules and Regulations**"); provided, however, that Developer (and any other Owner to the extent applicable herein) agrees to use its commercially reasonable efforts to cause such Permittee to comply with these Rules and Regulations. To the extent that the provisions of these Rules and Regulations are inconsistent with the other express provisions of this Declaration, the other express provisions of this Declaration shall govern and control.

18.1 **Common Areas.** In addition to any other requirement in this Declaration, the Common Areas shall be maintained consistent with the following rules and regulations:

- (a) The surface of the sidewalks shall be maintained level, smooth, and evenly covered with the type of surfacing material originally installed thereon, or such substitute thereof that shall be in all respects equal thereto in quality, appearance, and durability;
- (b) All papers, debris, filth, and refuse shall be removed from the Shopping Center, and paved areas shall be washed or thoroughly swept as required;
- (c) All trash and rubbish containers located in the Common Area for the use of Permittees shall be emptied on a sufficiently regular basis. In the event Developer does not provide a trash hauler for the Shopping Center, Developer shall have the right to reasonably approve of any and all trash haulers contracted by Permittees and to reasonably approve of the hours of pick-up (but Developer shall not have approval over the trash hauler utilized by the Scheels Owner or hours of pick-up);
- (d) All landscaping shall be properly maintained, including removal of dead plants, weeds, and foreign matter and such replanting and replacement as the occasion may require;
- (e) All hard-surfaced markings shall be inspected at regular intervals and promptly repainted as the same shall become unsightly or indistinct from wear and tear, or other cause;
- (f) All storm drain catch basins shall be cleaned on a schedule sufficient to maintain all storm drain lines in a free-flowing condition and all mechanical equipment related to storm drain and sanitary sewer facilities shall be kept in proper working order;
- (g) All asphalt paving shall be maintained in a first class condition;
- (h) All surface utility facilities servicing the Common Areas shall be promptly repaired or replaced, as the occasion may require, upon the occurrence of any defect or malfunctioning;

- (i) All Common Area amenities, benches, and institutional, directional, traffic, and other signs shall be maintained in a clean and attractive surface condition and promptly repaired or replaced upon the occurrence of any defect or malfunctioning;
- (j) All lamps shall be promptly replaced when no longer properly functioning;
- (k) The improvements on and to the Common Areas shall be repaired or replaced with materials, apparatus, and facilities of quality at least equal to the quality of materials, apparatus, and facilities repaired or replaced;
- (l) The Owners shall use their diligent efforts to require their respective Permittees to comply with all regulations with respect to the Common Area, including, but not by way of limitation, posted speed limits, directional markings, and parking stall markings.

18.2 Floor Areas. In addition to any other requirement in this Declaration, the Floor Areas shall be maintained consistent with the following rules and regulations:

- (a) All Floor Area, including entrances and returns, doors, fixtures, windows, and plate glass shall be maintained by the Owner occupying such Floor Area in a safe, neat, and clean condition;
- (b) All trash, refuse, and waste materials shall be regularly moved from the premises of each Store within the Shopping Center, and until removal shall be stored (i) in adequate containers, which containers shall be covered with lids and shall be located in areas designated by Developer (if such container is located on Scheel's Parcel, then the container shall be located in an area designated by the Scheels Owner) so as not to be visible to the general public shopping in the Shopping Center, and (ii) so as not to constitute any health or fire hazard or nuisance to any Owner;
- (c) Except as otherwise provided in this Declaration, neither sidewalks nor walkways shall be used to display, store, or replace merchandise, equipment, or devices;
- (d) Except as otherwise provided in this Declaration, no advertising medium shall be utilized which can be heard or experienced outside the Floor Area of any Store, including without limiting the generality of the foregoing, flashing lights, search lights, loudspeakers, phonographs, radios, or television;
- (e) No use shall be made of the Shopping Center or any portion thereof which would (i) violate any law, ordinance, or regulation, (ii) constitute a nuisance, (iii) constitute an extra-hazardous use, or (iv) violate, suspend, or void any policy or policies of insurance on the Stores;
- (f) The Owners shall use their diligent efforts to require all trucks servicing their respective Stores to load and unload such trucks (i) prior to the hours the Shopping Center is open to business to the general public or (ii) so as not to unreasonably interfere with the operation of the other Stores within the Shopping Center;

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

18.3 Conduct of Persons. In addition to any other requirement in this Declaration, the Owners hereby establish the following rules and regulation for the use of roadways, walkways, and other common facilities (provided that such roadways, walkways, and other common facilities are located in or on Shopping Center Property) provided for the use of Permittees:

(a) No Person shall use any utility area, truck court, or other area reserved for use in the conduct of business, except for the specific purpose for which permission to use such area is given;

(b) No Person shall use the Parking Area except for the parking of motor vehicles during such period of time such Person or the occupants of such vehicles are customers, employees, or business invitees of the retail establishments within the Shopping Center;

(c) Except as otherwise provided in this Declaration, no Person shall, in or on any part of the Common Area within an Owner's Parcel without such Owner's permission:

(i) Vend, peddle, or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet, or other matter whatsoever, except as otherwise provided in this Declaration;

(ii) Exhibit any sign, placard, banner, notice, or other written material;

(iii) Distribute any circular, booklet, handbill, placard, or other material;

(iv) Solicit membership in any organization, group, or association or contribution for any purpose;

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

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

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

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

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

(SIGNATURE PAGES TO FOLLOW)

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

DEVELOPER

JOHNSTOWN PLAZA LLC, a Kansas limited liability company

By: *Allen D. Schlup*
Name: Allen D. Schlup
Its: Authorized Member

STATE OF KANSAS)
) SS.
COUNTY OF JOHNSON)

The foregoing instrument was acknowledged before me this 4 day of February, 2016, by Allen D. Schlup, the Owner of Johnstown Plaza LLC, a Kansas limited liability company under the laws of Kansas, on behalf of said company.

A. Carroll
Notary Public

My Commission Expires:



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

SCHEELS

SCHEELS ALL SPORTS, INC., a North Dakota corporation

By: *Michelle Killoran*
Name: Michelle Killoran
Its: CFO/VP of Finance

STATE OF NORTH DAKOTA)
)
COUNTY OF Cass) SS.

The foregoing instrument was acknowledged before me this 3 day of February, 2016, by Michelle Killoran, the CFO of Scheels All Sports, Inc., a North Dakota corporation, on behalf of said corporation.

Rebecca L Adams
Notary Public

My Commission Expires: 12-22-18

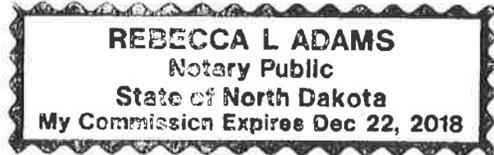


EXHIBIT A-1

LEGAL DESCRIPTION OF DEVELOPER'S PARCELS

Lots 1, 3, and 4, Block 2, 2534 Filing No. 14, a subdivision of the Town of Johnstown, County of Larimer, State of Colorado.

Lots 2, 3, 4, and 8, Block 3, 2534 Filing No. 13, a subdivision of the Town of Johnstown, County of Larimer, State of Colorado.

**SUBSTITUTE EXHIBIT A-2 FOR RECORDING PURPOSES, ONLY, TO DECLARATION
REGARDING CONSTRUCTION, OPERATION, AND RECIPROCAL EASEMENTS**

LEGAL DESCRIPTION OF DEVELOPER'S DISTRICT'S PARCEL

The legal descriptions set forth on Exhibit A-2 to the Declaration Regarding Construction, Operation, and Reciprocal Easements have been removed from this original for recording purposes, only. The original, unrecorded instrument contains the completed Exhibit A-2.

EXHIBIT A-3
LEGAL DESCRIPTION OF SCHEEL'S PARCEL

Lot 6, Block 3, 2534 Filing No. 13, a subdivision of the Town of Johnstown, County of Larimer, State of Colorado.

**SUBSTITUTE EXHIBIT A-4 FOR RECORDING PURPOSES, ONLY, TO DECLARATION
REGARDING CONSTRUCTION, OPERATION, AND RECIPROCAL EASEMENTS**

LEGAL DESCRIPTION OF SCHEEL'S DISTRICT'S PARCEL

The legal descriptions set forth on Exhibit A-4 to the Declaration Regarding Construction, Operation, and Reciprocal Easements have been removed from this original for recording purposes, only. The original, unrecorded instrument contains the completed Exhibit A-4.

EXHIBIT A-5
LEGAL DESCRIPTION OF THE CONTROL PARCELS

Lot 3, Block 2, 2534 Filing No. 14, a subdivision of the Town of Johnstown, County of Larimer, State of Colorado.

Lot 8, Block 3, 2534 Filing No. 13, a subdivision of the Town of Johnstown, County of Larimer, State of Colorado.

**EXHIBIT B
SITE PLAN**

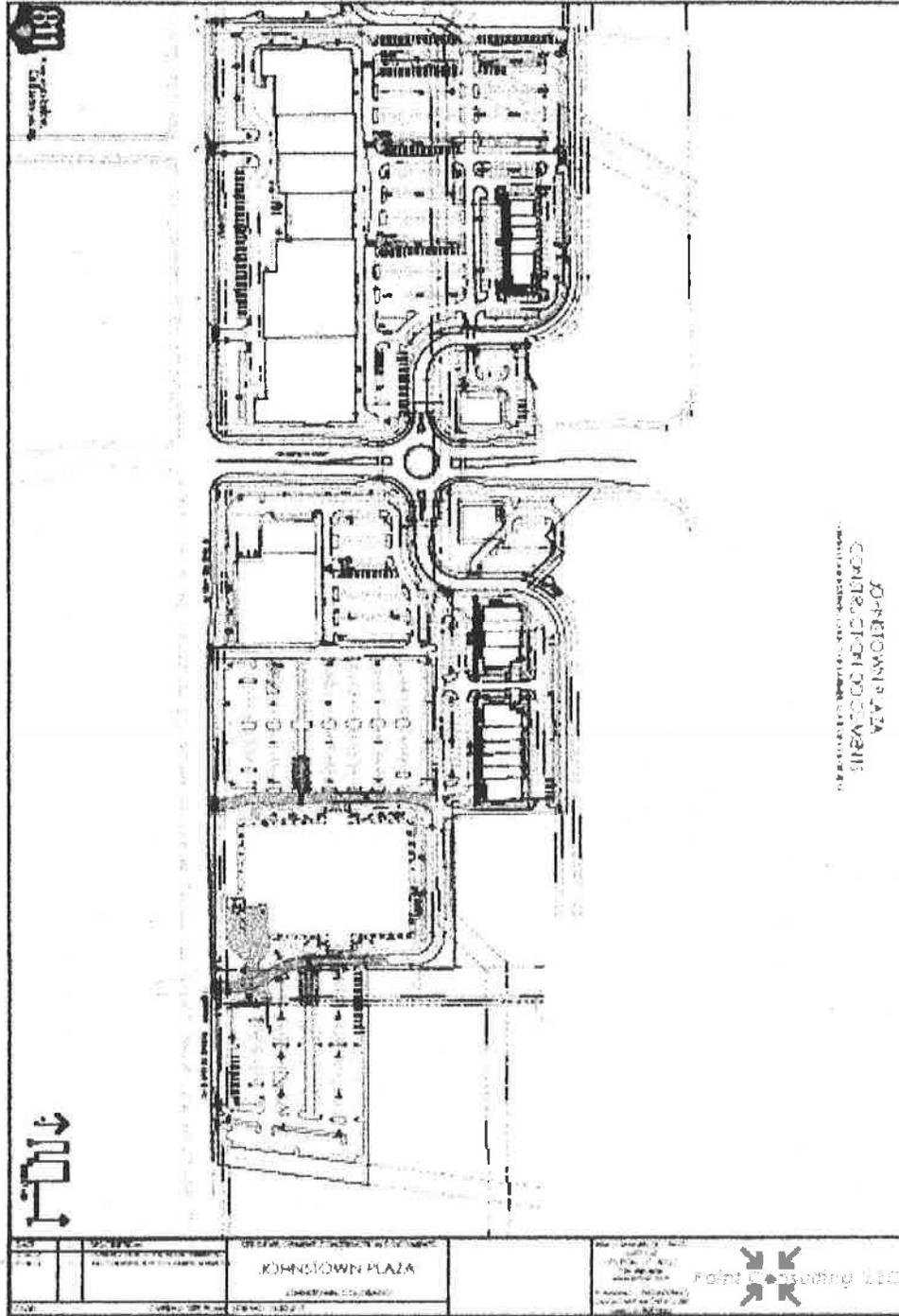


Exhibit B

EXHIBIT B-1
SITE PLAN WITH ACCESS ROADS

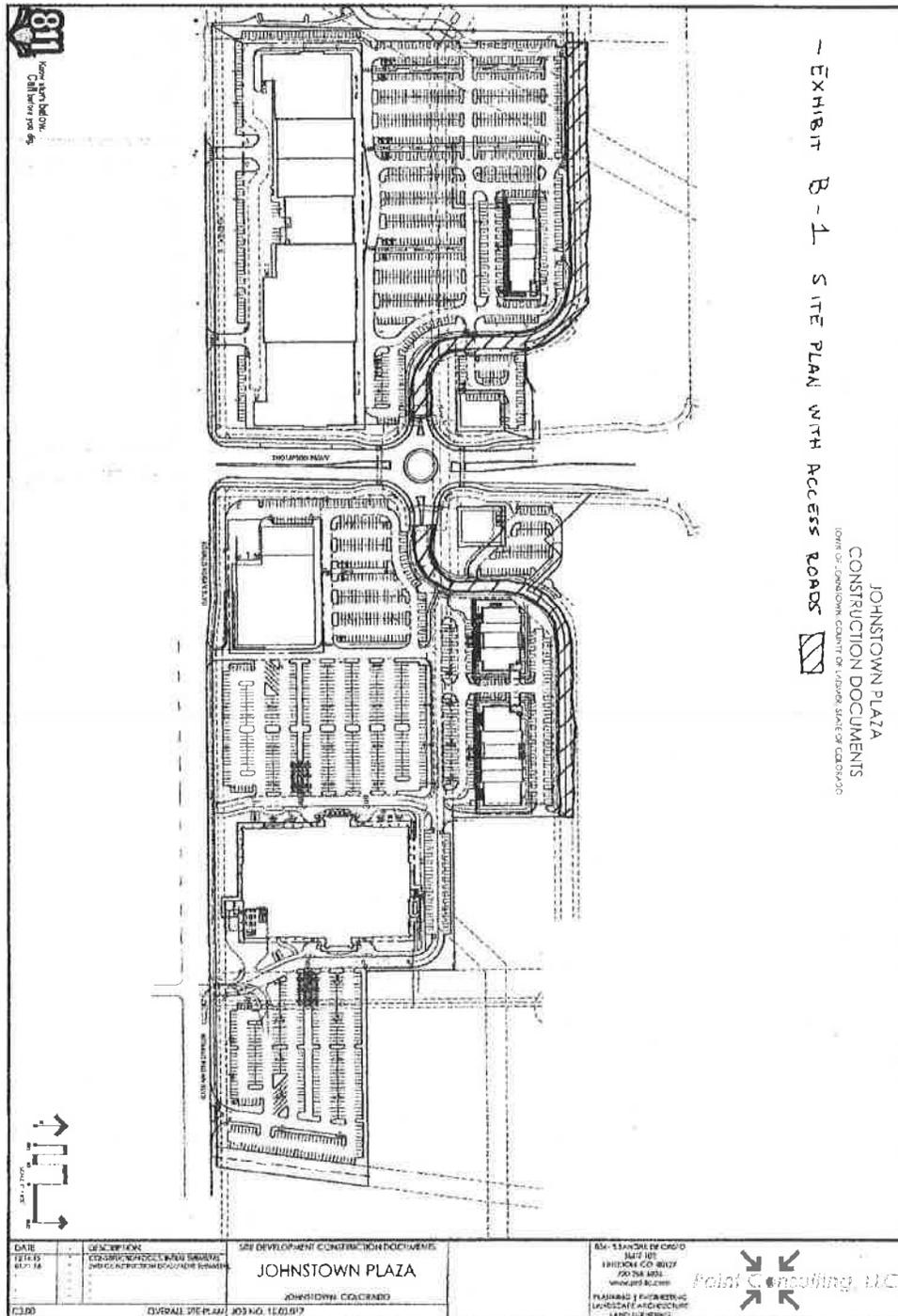
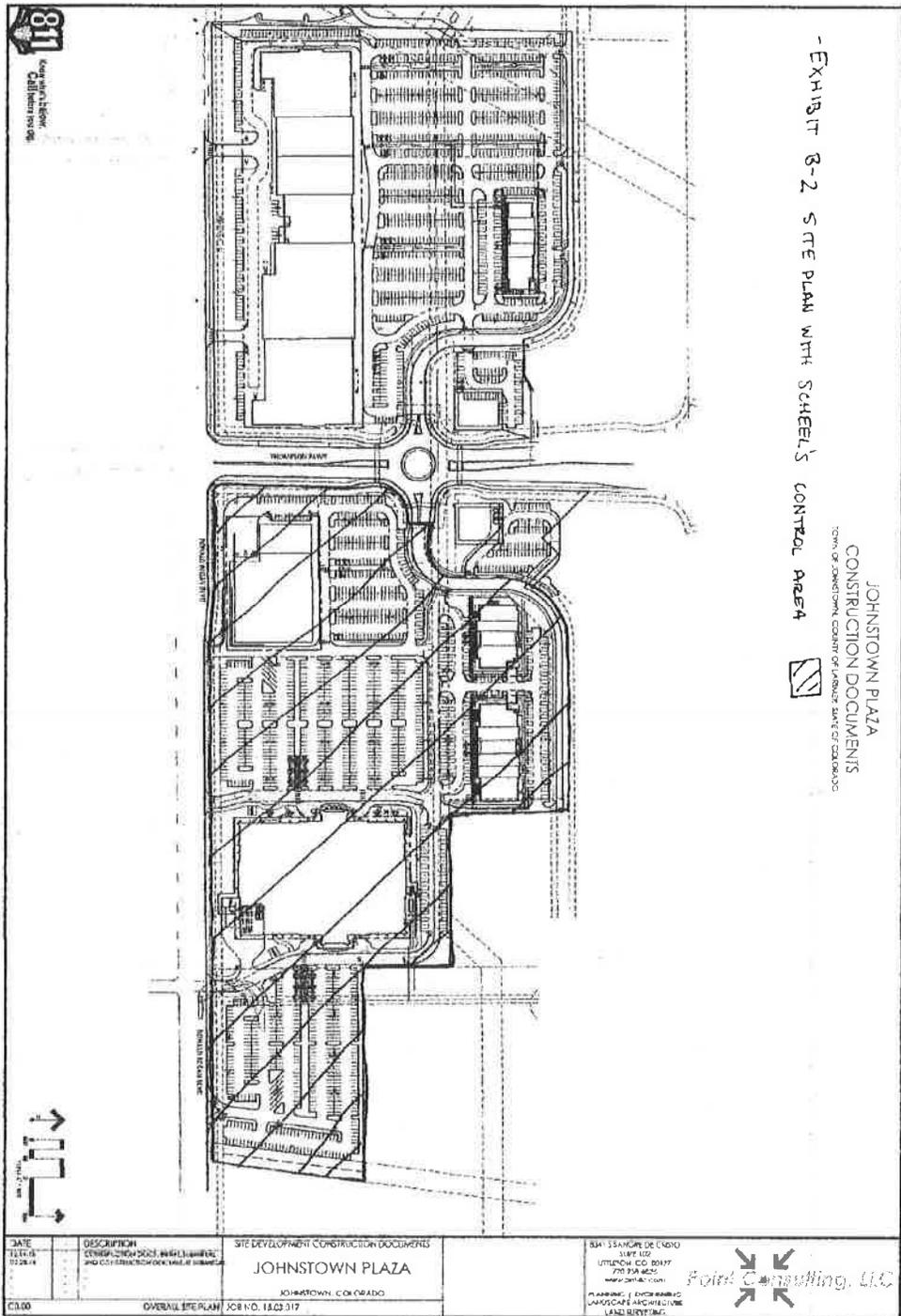


Exhibit B-1

EXHIBIT B-2
SITE PLAN WITH SCHEEL'S CONTROL AREA



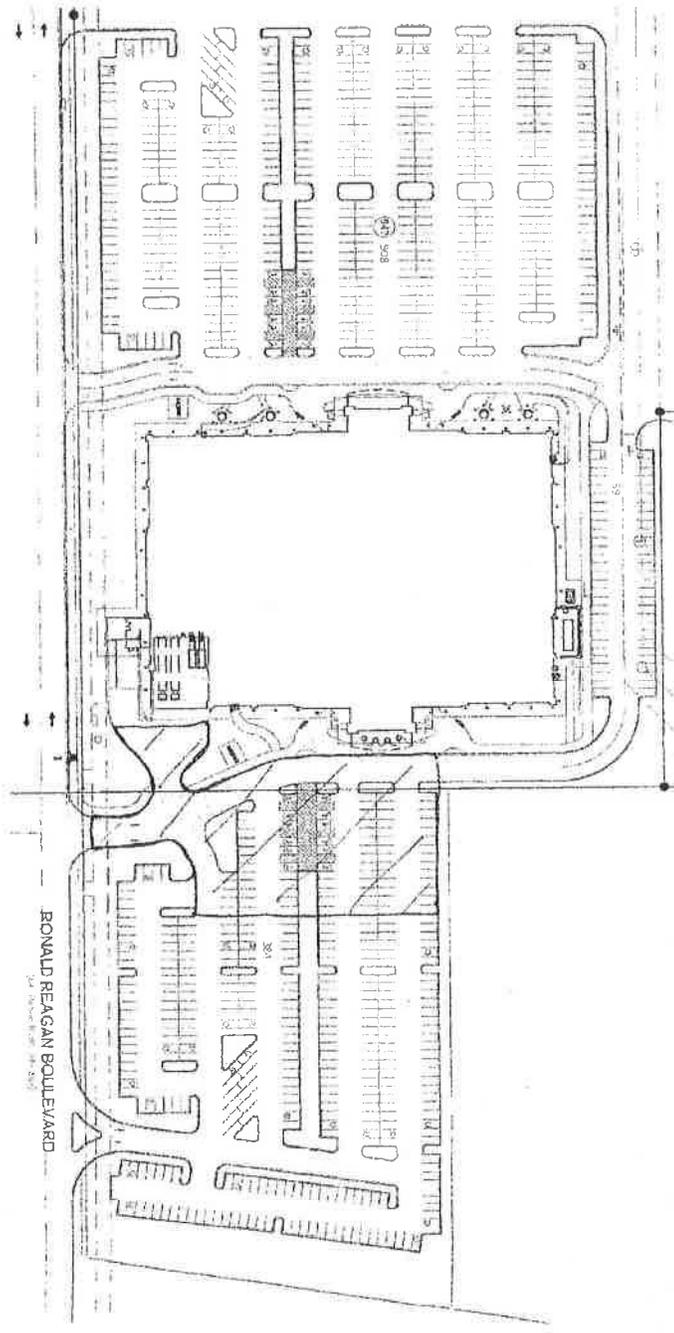
JOHNSTOWN PLAZA
 CONSTRUCTION DOCUMENTS
 CITY OF JOHNSTOWN, COUNTY OF LINCOLN, STATE OF COLORADO

- EXHIBIT B-2 SITE PLAN WITH SCHEEL'S CONTROL AREA

DATE 11.14.18 12.28.18	DESCRIPTION GENERAL NOTES, DETAILS, SCHEDULES AND CONSTRUCTION DOCUMENTS	SITE DEVELOPMENT CONSTRUCTION DOCUMENTS JOHNSTOWN PLAZA JOHNSTOWN, CO COLORADO	834 155 AVENUE DE LINDO SUITE 102 UTTLETON, CO 80437 703.281.4600 www.foit.com PLANNING ENGINEERING LANDSCAPE ARCHITECTURE LAND SURVEYING 
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Exhibit B-2

EXHIBIT B-3
SITE PLAN WITH SCHEEL'S OUTDOOR AREA



— EXHIBIT B-3 SCHEEL'S OUTDOOR AREA 

EXHIBIT B-4

SITE PLAN WITH THE CONTROL PARCEL

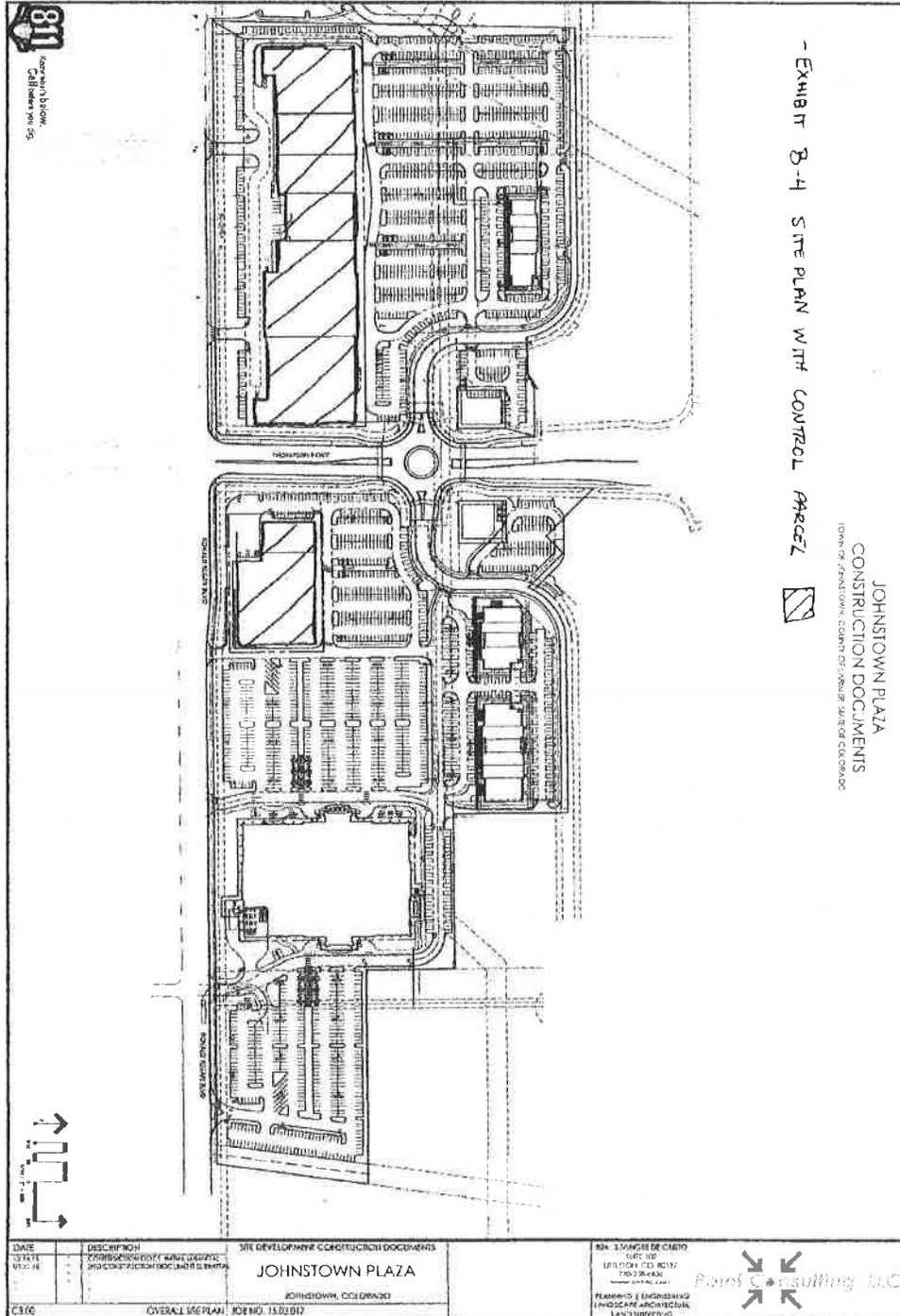


Exhibit B-4

EXHIBIT B-5
SITE PLAN WITH SCHEEL'S MAINTENANCE AREA

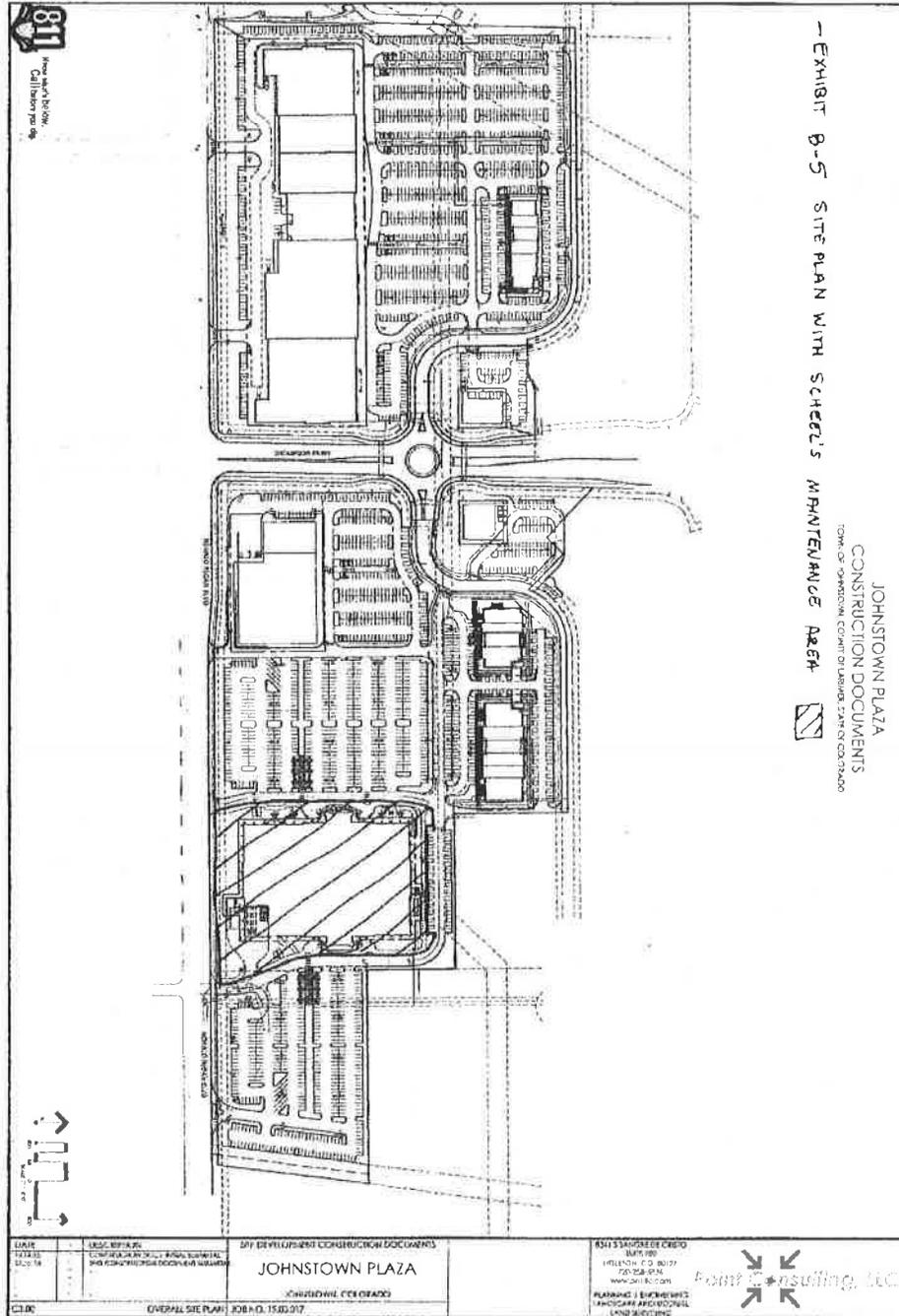


Exhibit B-5

**EXHIBIT C
SIGN CRITERIA**

T E N A N T C R I T E R I A H A N D B O O K

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THIS TENANT SIGN CRITERIA DOES NOT APPLY TO OR CONTROL IN ANY MANNER THE SIGNAGE ON THE SCHEEL'S PARCEL. AND SUCH SIGNAGE SHALL ONLY BE SUBJECT TO ORDINANCES, REGULATIONS, OR REQUIREMENTS OF THE LOCAL, MUNICIPAL OR COUNTY GOVERNING BODIES HAVING LAWFUL JURISDICTION OVER THE SHOPPING CENTER PROPERTY.

S E C T I O N 7

Tenant Sign Criteria



JOHNSTOWN PLAZA

TENANT SIGN CRITERIA

Building Parameters:

Pad Site Tenant— Leasable area 0 – 13,999 s.f.

Small Shop Tenant— Leasable area 0 – 11,999 s.f.

Sub-Major Tenant— Leasable area 12,000 – 19,999 s.f.

Major Tenant – Leasable area more than 20,000 s.f.-119,999

Anchor Tenant – More than 120,000 s.f.

Tenant Signage Design Criteria

(also applies to Pad Site/Outlot Tenants)

In the event of any conflict between the following signage requirements and local governmental ordinances, the more stringent will prevail. Upon written notice from Landlord/Developer, Tenant/Pad Site tenant agrees to take such actions as may be necessary to comply at Tenant/Pad Site Tenant's expense, with applicable requirements.

The purpose of this section is to define and specify all exterior signage criteria for Johnstown Plaza. (Entrance monuments will be addressed in the architectural plans). Each Tenant/Pad Site Tenant shall provide signage package for its space as described below.

All sign packages shall be submitted in triplicate for approval at least one hundred twenty (120) days of Lease Commencement Date to Landlord/Developer and Landlord/Developer's Architect prior to fabrication and installation. At a minimum, such drawings must show locations, sizes, and styles of lettering, materials, and types of illumination, installation details and logo design. Upon approval, Landlord/Developer will issue a letter of approval to the tenant for use in obtaining a sign permit from the city.

If the plans are disapproved by Landlord/Developer, the Tenant/Pad Site Tenant shall resubmit them within fifteen (15) days from date of the notice of any disapproval by Landlord/Developer, or its Architect until such plans are finally approved by Landlord/Developer.

The cost of the fabrication, permitting and installation shall be the responsibility of each individual tenant. Sign construction is to be completed in compliance with local building codes and sign ordinances, and the instructions, limitations and criteria contained in this manual. Each sign will conform to the limitations listed in this document below.

Sign Types and Parameters

The following types and amounts of signs will be permitted.

Small Shop Tenant Sign Parameters

(0 - 11,999 s.f.)

- The maximum height for letters in the body of the sign is listed on the SIGNAGE SIZE KEY MAP. (max size at discretion of Landlord)
- Signs shall not extend more than 8" beyond the face of the surface to which the sign is mounted.
- One (1) wall/marquee sign will be allowed at the storefront, one (1) will be allowed at the rear facade, and one (1) additional will be allowed at the storefront if the tenant is an endcap.
- Signage shall be illuminated individual letters mounted to the face of the building. The use of a colored or frosted Plexiglas face is required. Individual faces shall be fabricated from flat, smooth one-eight inch (1/8") plexiglass. Letter returns shall be fabricated of .090 aluminum with .063 aluminum letter backs, fully welded. Retainers shall be one inch (1") trimcap or the equivalent and ball match the return. All letters shall be illuminated.

- All signs must be illuminated from a concealed source. No exposed lamps, globes, tubes, etc. will be permitted.
- Marquee Signage: Allowed one (1) per storefront in lieu of Façade sign - 15 s.f. square feet maximum, letters shall be 16" maximum; maximum of two (2) total if an endcap. Sign shall be individually illuminated letters, pin mounted to existing projected metal marquees. All exposed conduit shall be concealed from public view and painted to match marquee structure. Exposed raceways behind letters are not permitted. Marquis signage is subject to Landlord and City review and will be approved on an individual basis and shall be treated as a primary sign.
- Blade Signage: Allowed one (1) per storefront, seven (7) square feet max. Letter height shall be six (6) inches max. Blade signs are only allowed if below a canopy. The blade sign shall be located on an elevation drawing, with clear height to bottom of sign indicated. Decorative brackets and sign design are to reflect the qualities of the tenant and the shopping center design in it's greater entirety.
- Placque: A 4 sf wall mounted Placque shall be allowed in lieu of a blade sign, in areas not under a canopy. Max letter height of 6".
- Maximum one sign per facade with a maximum of (3) three.
- Signage shall be illuminated individual letters mounted to the face Of the building. The use of a colored or frosted Plexiglas face is required. Individual faces shall be fabricated from flat, smooth one-eight inch (1/8") Plexiglas. Letter returns shall be fabricated of .090 aluminum with .063 aluminum letter backs. Retainers shall be one inch (1") trim cap or the equivalent and shall match the return. All letters shall be illuminated.
- Marquee Signage: Allowed one (1) per storefront in lieu of Façade sign - 15 s.f. square feet maximum, letters shall be 16" maximum; maximum of two (2) total if an endcap. Sign shall be individually illuminated letters, pin mounted to existing projected metal marquees. All exposed conduit shall be concealed from public view and painted to match marquee structure. Exposed raceways behind letters are not permitted. Marquis signage is subject to Landlord/Developer and City review and will be approved on an individual basis and shall be treated as a primary sign.
- One sign per building elevation with a maximum of (3) three total.
- All signs must be illuminated from a concealed source. No exposed lamps, globes, tubes, etc. will be permitted.

Pad Site Sign Parameters
(0 - 13,999 s.f.)

- Tenant/Pad Site Tenant sign area shall be on the building faces above the entrances and as part of the building design.
- The maximum height for letters in the body of the sign is listed on the SIGN SIZE KEY MAP (max size at discretion of Landlord/ Developer)
- The sign areas shall not exceed ten percent (10%) of the area of the facade.

- Reverse channel halo lighting is encouraged.

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

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

T E N A N T C R I T E R I A H A N D B O O K

- The sign areas shall not exceed ten percent (10%) of the area of the facade.
- Maximum one sign per facade with a maximum of (3) three.
- Signage shall be illuminated individual letters mounted to the face of the building. The use of a colored or frosted Plexiglas face is required. Individual faces shall be fabricated from flat, smooth one-eight inch (1/8") Plexiglas. Letter returns shall be fabricated of .090 aluminum with .063 aluminum letter backs. Retainers shall be one inch (1") trim cap or the equivalent and shall match the return. All letters shall be illuminated.
- All signs must be illuminated from a concealed source. No exposed lamps, globes, tubes, etc. will be permitted.
- Reversed halo lighting is encouraged.

Major Tenant

(More than 20,000 s.f. to 119,999)

- Tenant sign area shall be on the building faces above the entrances and as part of the building design.
- The maximum height for letters in the body of the sign is listed on the SIGNAGE SIZE KEY MAP. (max size at discretion of Landlord)
- The sign areas shall not exceed ten percent (10%) of the area of the storefront.
- Maximum one sign per facade with a maximum of (3) three.
- Signage shall be illuminated individual letters mounted to the face of the building. The use of a colored or frosted Plexiglas face is required. Individual faces shall be fabricated from flat, smooth one-eight inch (1/8") Plexiglas. Letter returns shall be fabricated of .090 aluminum with .063 aluminum letter backs. Retainers

shall be one inch (1") trim cap or the equivalent and shall match the return. All letters shall be illuminated.

- All signs must be illuminated from a concealed source. No exposed lamps, globes, tubes, etc. will be permitted.
- Reverse channel halo lighting is encouraged.

Anchor Tenant

(More than 120,000 s.f.)

- Tenant sign area shall be on the building faces above the entrances and as part of the building design.
- The maximum height for letters in the body of the sign is listed on the SIGNAGE SIZE KEY MAP. (max size at discretion of Landlord)
- The sign areas shall not exceed ten percent (10%) of the area of the storefront.
- Maximum one sign per storefront with a maximum of (3) three.
- Signage shall be illuminated individual letters mounted to the face of the building. The use of a colored or frosted Plexiglas face is required. Individual faces shall be fabricated from flat, smooth one-eight inch (1/8") Plexiglas. Letter returns shall be fabricated of .090 aluminum with .063 aluminum letter backs. Retainers shall be one inch (1") trim cap or the equivalent and shall match the return. All letters shall be illuminated.

General Sign Parameters

(also applies to Pad Site/Outlot Tenants)

- In general signs must be made up of individual illuminated letters; conventional box signs that include attractive and distinctive designs with details such as raised letters will be considered on an individual basis.

T E N A N T C R I T E R I A H A N D B O O K

- Lettering on all store signs shall be limited to business or trade name of the premises as it appears on the lease. No sign manufacturer's name, union labels, or other lettering shall be visible. Logo signs will be reviewed on an individual basis, but in general logos will not be allowed.
- Tag lines shall be allowed on an individual basis only and are subject to Landlord/Developer approval. Any allowable tag lines shall be individual illuminated letters (no box signs) and shall not exceed 10" in height. The width of the tag line shall not exceed the width established for the primary signage.
- No exterior sign or sign panel will be permitted to extend above any roof line.
- Any sign, notice or other graphic or video display, particularly self-illuminated signs, located within the store and which is easily visible from the shopping center will not be allowed. Illuminated Signs within 48" of a window are regarded as signage.
- Manufacturers' labels, underwriters' labels, clips, brackets, or any other form of extraneous advertising attachment or lighting devices shall be fully concealed from public view.
- No exposed lamps or tubing will be permitted.
- No exposed raceways, crossovers or conduits will be permitted.
- All signage returns shall be semi-gloss black enamel finish or blend with adjacent building color.
- All cabinets, conductors, transformers and other equipment shall be concealed from public areas. Visible fasteners will not be permitted.
- All metal letters, including channel letters, shall be fabricated using fully-welded construction, with all welds ground smooth so as not to be visible.
- Acrylic or trimcap retainers used at the perimeter of sign letter faces shall match in color and finish the face or the sides of the sign.
- Threaded rods or anchor bolts shall be used to mount sign letters, which are spaced out from the building face. Angle clips attached to letter sides will not be permitted. All mounting attachments shall be sleeved and painted, and concealed.
- All signage whether halo illuminated or not, shall be pin mounted on building façade. Halo illuminated signage shall be pin mounted a minimum of 2" from building façade. Direct or internally illuminated signage shall be pin mounted a minimum of 1/2" and maximum of 1" from building face.
- Except as provided herein, no advertising placards, flags, balloons, banners, pennants, names, insignia, trademarks, or other descriptive materials shall be affixed or maintained upon the glass panes and supports of the storefront windows and doors, within 4' of the storefront without prior written approval of the Landlord / Developer. Painted, flashing, animated, audible, revolving, or other such signs that create animation are not permitted.
- Any Flexiglas sign faces shall not be clear.
- Sign illumination shall be internal and self contained.
- Non-illuminated signs on the inside of window are not regulated by ordinances.

T E N A N T C R I T E R I A H A N D B O O K

- All main signs are to be centered in the signage band.
- All electric signs and installation methods must meet UL standards and contain a UL label.
- At no time will hand-lettered, non-professional signs, or newspaper advertisements be displayed on the storefronts or within the Design Control Area.
- Decals or other signing indicating products lines or credit card acceptability shall not be permitted on the storefront glazing other than stores operating hours.
- All illuminated signs must be turned on during the Center's normal operating hours. The use of time clocks for sign and show window lighting is required. Lighting of signs shall be at hours required by Landlord/Developer.
- No logos will be allowed on Tenant/Pad Site Tenant storefronts without prior written approval.
- Double stacked lettering shall be allowed on an individual basis only and are subject to Landlord/Developer approval. Double stacked letters shall be a maximum 24" high individual letters and shall comfortably fit within the Landlord bulkhead as determined by the Landlord/Developer's Representative.
- Minimum height of all signage shall not be less than 60% of the maximum allowable letter height except for approved taglines.
- All signage is subject to the approval of the Landlord/Developer's Architect and the local authorities. Landlord/Developer has design discretion of overall size and height of letters and signs.
- Tenants are required to provide a concealed access panel from within the Tenant's leasable area, if applicable, to service and install exterior building signage

Signs Not Permitted

(also applies to Pad Site/Outlot Tenants)

The following types of signs shall not be permitted:

- Signs such as die cut vinyl, gold or silver leaf, or paint.
- Boxed pillow or cabinet type Formed plastic or injection molded plastic signs.
- Banners or pennants without Special Event Permit from City.
- Signature signage (window sign or sign plate indicating name of shop or good sold) in addition to primary signage.
- Cloth, paper, cardboard and similar stickers or decals around or on surfaces on the storefront without prior written approval from Landlord/Developer.
- "Sale" sign, "Special Announcements" sign or other advertisement of any kind on the exterior without Special Event Permit from City or written approval from Landlord/Developer.
- Exposed neon signs.
- Animated, moving, rotating or flashing.
- Noise making.
- Additional signage of any kind within 4' of storefront windows.
- Awning signage.
- Use of the word "Outlet" in the signage text is prohibited.

Additional Signage

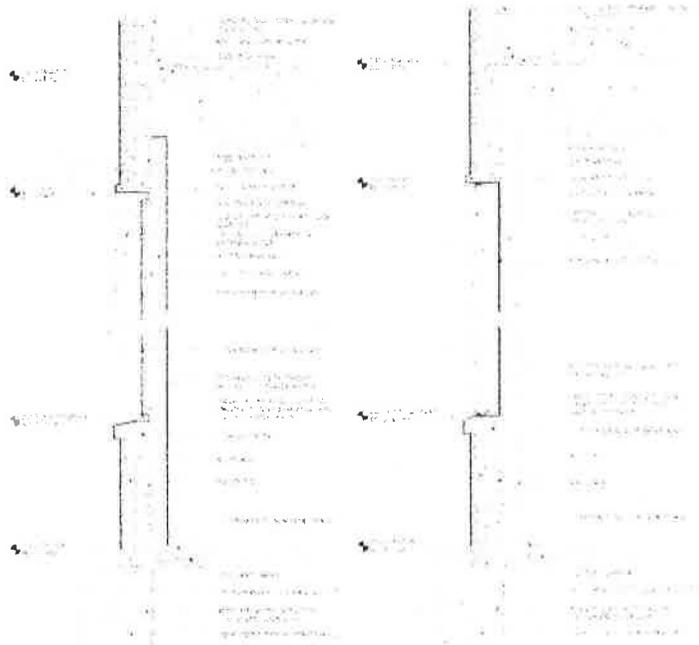
(also applies to Pad Site/Outlot Tenants)

Service doors to Tenant spaces throughout the project shall be standard 4" identification only (name and address number) and shall be installed by the Tenant. The Tenant shall not apply any signage or other wording to service doors. All terms also apply to Pad Site & Outlot Tenants.

- All signage must be shown to scale on the approved storefront elevation.
- All additional signage shall be submitted to the Landlord/ Developer's Representative for approval as specified in Section Two.
- Any minor deviations to this criteria will be reviewed on an individual basis and subject to Landlord/Developer approval.

Environmental Graphics

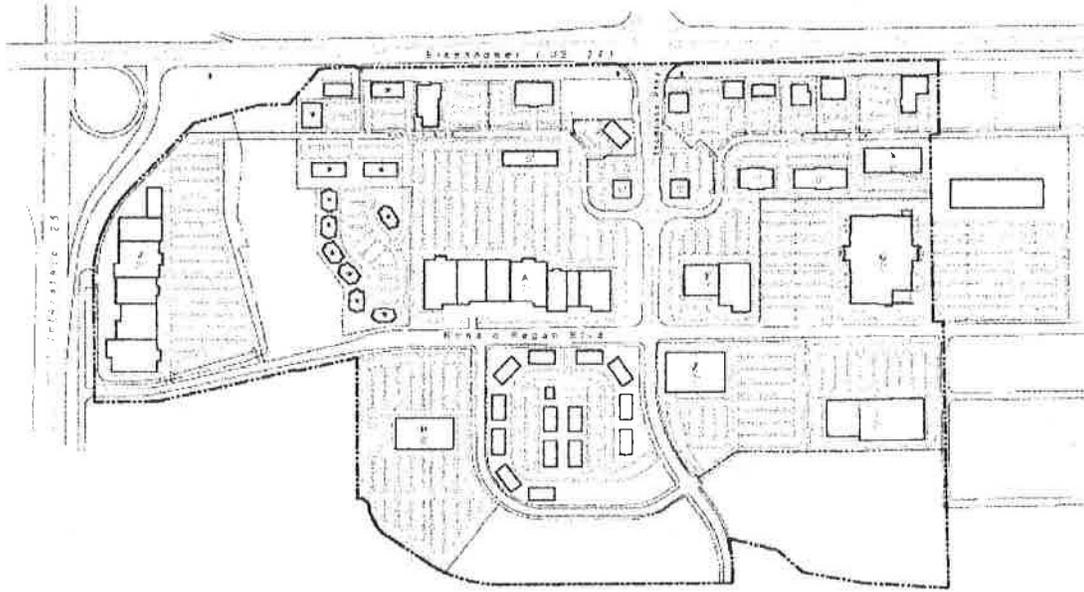
- Must be non-commercial graphics.
- Must be front lit with concealed or other non-exposed type lighting system. No backlit lighting is allowed.
- Glass is required and must be flush or recessed from facade opening.
- Graphics must integrate with building facade design.
- Designs must integrate with the overall shopping center design.



Directional Signage

- Sign must not exceed four (4) square feet in total size.
- Logo must not exceed one (1) square foot.
- Directional signage must not exceed three (3) square feet.
- Sign support structure for directional signage must not exceed five (5) feet in height unless a deviation is granted.
- A deviation is required to include directional signage on entry markers.

T E N A N T C R I T E R I A H A N D B O O K



* See Building Plans

SIGNAGE SIZE - KEY MAP 1
DATE: 11/2/73

EXHIBIT D
DEPICTION OF ABUTTING ACCESS ROAD

