SHOPPING CENTERS – CURRENT ISSUES AND CHALLENGES

AMERICAN COLLEGE OF REAL ESTATE LAWYERS
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SHOPPING CENTERS – CURRENT ISSUES AND CHALLENGES

DISCUSSION OUTLINE

I. Shopping Center Development – 2001
   A. Cornfields to Brownfields
   B. Urban
   C. Smart Growth, In-Fill Location
   D. CDAs, TIFs
   E. Redevelopment of Older Centers
   F. Approval Process

II. Economic and Retail Environment
   A. Fewer Retail Anchors
   B. More shopping center venues
   C. Less “traditional” experience
   D. Pressures of REITs (i.e., end of family-owned shopping center owner/manager)
   E. Institutional management of shopping centers (do they know what they’re doing?)
   F. E-Commerce – Arghh!

III. The REA – the rock upon which we all depend. “Are we married yet?”
   A. Defined terms, parties and exhibits
   B. Planning
   C. Off-Site and On-Site Improvements
   D. Construction
   E. Alteration and Expansions
   F. Opening Dates
   G. Term, Use and Operating Covenants
   H. Parking, Maintenance, Easements and other Common Areas
   I. Insurance, Damage, Destruction and Condemnation
   J. Assignment, Transfers and Financing
   K. Defaults

IV. Conclusion
ATTACHMENTS:

- International Council of Shopping Centers Memorandum on Construction of New Shopping Centers
- Forms of Letter of Intent between Developer and Department Store
- Amended and Restated Construction, Operation and Reciprocal Easement Agreement for Exton Square, Exton, Pennsylvania
September 28, 2000

One of the most common questions received by ICSC's Albert Sussman Library is how many malls are expected to be built over the next few years.

Table 1 below, completed in consultation with ICSC member developers, is the most definitive available list of regional and superregional malls over the next few years. Several additional centers are in either the proposal or early planning stages, so the list does not extend beyond the year 2002, when most of these later projects would likely be completed. In examining the list, it should be remembered that mall names can change, and even center sizes can expand or contract slightly depending on the leasing process.

Three observations can be made concerning the malls on the table:

1. **New malls are continuing to be built larger than those constructed in past years.** For the 2000-2002 period, 35 regional or superregional malls totaling 41,069,000 square feet of gross leasable area are scheduled to open, for an average of 1,173,400 sq. ft. By comparison, 29 malls totaling 33,291,000 sq. ft. opened from 1997 through 1999, for an average of 1,148,000 sq. ft. New malls are accommodating a greater variety of tenants—not only stores with consumer goods but also entertainment components with greater critical mass than ever before. These tenants need more space for their products as well as for such amenities as wider aisles, seating, and child care areas.

2. **With the start of the new millennium, shopping center developers continue to stretch the perception of what malls can be.** Not only are new malls larger than those of the past, but many are also experimenting with design formats that often blaze a different path from that of the traditional mall. These hybrids may combine indoor with outdoor settings; department stores with category killers, outlet or entertainment/lifestyle tenants; or some combination of the above. Value-oriented regional and superregional malls—those with a pronounced orientation toward outlet and off-price tenants as well as entertainment elements, typified by the Mills Corp.'s projects—continue to represent this trend, with eight appearing in the table. Now, however, other projects are also tinkering with the traditional format, including International Plaza in Tampa, where a village design connects into the mall's second level, and City Place, an upscale mixed-use retail-entertainment complex in West Palm Beach.

3. **The South's dominance of mall development activity also continues apace.** Eighteen of the 35 centers in the table are located in the region, with seven in the Northeast, six in the West and four in the Midwest.
All projects listed below have obtained the commitment of at least one anchor to locate the proposed center. In the case of the traditional malls, these anchors are full-line department stores or mass merchandisers such as Sears, Montgomery Ward or JC Penney. For value-oriented malls, these anchors are major category killer or outlet tenants. Power centers-open air centers that typically consist of several freestanding anchors and a minimal number of small specialty tenants—are not included on this list because they differ from malls in marketing orientation, design and size.

We wish to thank the ICSC Research Advisory Task Force and contacts on individual projects for their assistance in compiling this information.

Table 1

<table>
<thead>
<tr>
<th>Center City / State / Region</th>
<th>Developer</th>
<th>Projected Opening Date</th>
<th>GLA (000 SQ. FT.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flatiron Crossing Broomfield (Denver), CO (W)</td>
<td>Westcor Partners</td>
<td>08/11/00</td>
<td>1,500</td>
</tr>
<tr>
<td>The Galleria At Roseville Roseville, CA (W)</td>
<td>Urban Shopping Centers</td>
<td>08/00</td>
<td>1,008</td>
</tr>
<tr>
<td>Stonebriar Centre Frisco (Dallas), TX (S)</td>
<td>General Growth Properties</td>
<td>08/00</td>
<td>1,600</td>
</tr>
<tr>
<td>Opry Mills* Nashville, TN (S)</td>
<td>The Mills Corp.</td>
<td>05/11/00 (actual)</td>
<td>1,100</td>
</tr>
<tr>
<td>Arundel Mills* Baltimore, MD (S)</td>
<td>The Mills Corp./Simon Property Group</td>
<td>11/16/00</td>
<td>1,400</td>
</tr>
<tr>
<td>City Place** West Palm Beach, FL (S)</td>
<td>Palladium Group</td>
<td>10/27/00</td>
<td>600</td>
</tr>
<tr>
<td><strong>Subtotal, 2000</strong></td>
<td></td>
<td></td>
<td><strong>7,208</strong></td>
</tr>
<tr>
<td>Main Street Florida Jacksonville, FL (S)</td>
<td>The Oliver Group</td>
<td>May 2001</td>
<td>900</td>
</tr>
<tr>
<td>The Mall at Stonecrest Atlanta, GA (S)</td>
<td>Forest City Enterprises/Cadillac Fairview</td>
<td>Fall 2001</td>
<td>1,100</td>
</tr>
<tr>
<td>The Lakes Mall Muskegon, MI (M)</td>
<td>CBL &amp; Associates</td>
<td>8/15/01</td>
<td>700</td>
</tr>
<tr>
<td>The Mall At Wellington Green Wellington, FL (S)</td>
<td>Taubman Centers</td>
<td>10/05/01</td>
<td>1,300</td>
</tr>
<tr>
<td>Polaris Fashion Place Columbus, OH (M)</td>
<td>Glimcher Realty Trust</td>
<td>Fall 2001</td>
<td>1,500</td>
</tr>
<tr>
<td>Robinson Town Centre Pittsburgh, PA (N)</td>
<td>Forest City Enterprises</td>
<td>Fall 2001</td>
<td>1,200</td>
</tr>
<tr>
<td>The Shops at Willow Bend Plano (Dallas), TX (S)</td>
<td>Taubman Centers</td>
<td>08/03/01</td>
<td>1,500</td>
</tr>
</tbody>
</table>
### U. S. MALL OPENINGS, 2000-2002

<table>
<thead>
<tr>
<th>Center</th>
<th>City / State / Region</th>
<th>Developer</th>
<th>Projected Opening Date</th>
<th>GLA (000 SQ. FT.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Plaza</td>
<td>Tampa, FL (S)</td>
<td>Taubman Centers</td>
<td>09/14/01</td>
<td>1,260</td>
</tr>
<tr>
<td>Chandler Fashion Center</td>
<td>Chandler, AZ (W)</td>
<td>Westcor Partners</td>
<td>Fall 2001</td>
<td>1,300</td>
</tr>
<tr>
<td>Discover Mills*</td>
<td>Duluth (Atlanta), GA (S)</td>
<td>The Mills Corp.</td>
<td>Summer 2001</td>
<td>1,300</td>
</tr>
<tr>
<td>Dolphin Mall*</td>
<td>Miami, FL (S)</td>
<td>Taubman Centers / Swerdlow Real Estate Group</td>
<td>03/01/01</td>
<td>1,400</td>
</tr>
<tr>
<td>Centre of New England *</td>
<td>Coventry, RI (N)</td>
<td>Universal Properties Group</td>
<td>Summer 2001</td>
<td>1,400</td>
</tr>
<tr>
<td>Paseo Colorado***</td>
<td>Padadena, CA (W)</td>
<td>TrizecHahn</td>
<td>Fall 2001</td>
<td>560</td>
</tr>
<tr>
<td><strong>Subtotal 2001</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>15,420</strong></td>
</tr>
<tr>
<td>Prescott Gateway</td>
<td>Prescott, AZ (W)</td>
<td>Westcor Partners</td>
<td>Spring 2002</td>
<td>566</td>
</tr>
<tr>
<td>Triangle Town Center</td>
<td>Raleigh, NC (S)</td>
<td>Richard E. Jacobs Group</td>
<td>Spring 2002</td>
<td>1,200</td>
</tr>
<tr>
<td>The Streets at Southpoint</td>
<td>Durham, NC (S)</td>
<td>Urban Shopping Centers</td>
<td>Spring 2002</td>
<td>1,300</td>
</tr>
<tr>
<td>Brookhaven Towne Center</td>
<td>Yaphank, NY (N)</td>
<td>Breslin Realty / AVR Realty</td>
<td>Spring 2002</td>
<td>1,600</td>
</tr>
<tr>
<td>Frazer Galleria</td>
<td>Frazer Township, PA (N)</td>
<td>Zamias Services</td>
<td>2002</td>
<td>1,200</td>
</tr>
<tr>
<td>Monument Center</td>
<td>Toledo, OH (M)</td>
<td>General Growth Properties</td>
<td>Fall 2002</td>
<td>1,100</td>
</tr>
<tr>
<td>Jordan Creek Crossing</td>
<td>Des Moines, IA (M)</td>
<td>General Growth Properties</td>
<td>Fall 2002</td>
<td>1,000</td>
</tr>
<tr>
<td>Circle T Center</td>
<td>Fort Worth, TX (S)</td>
<td>General Growth Properties</td>
<td>Fall 2002</td>
<td>1,300</td>
</tr>
<tr>
<td>The Mall at Millenia</td>
<td>Orlando, FL (S)</td>
<td>Forbes Co. / Taubman Centers</td>
<td>Fall 2002</td>
<td>1,200</td>
</tr>
<tr>
<td>Cranberry Crossing</td>
<td>Cranberry Township, PA (N)</td>
<td>Commonwealth Development</td>
<td>Fall 2002</td>
<td>1,000</td>
</tr>
<tr>
<td>Short Pump Town Center</td>
<td>Richmond, VA (S)</td>
<td>Forest City Enterprises/ MJGT Associates</td>
<td>Summer 2002</td>
<td>1,100</td>
</tr>
<tr>
<td>Meadowlands Mills*</td>
<td>Carlstadt, NJ (N)</td>
<td>The Mills Corp. / Kan Am Empire Ltd.</td>
<td>2002</td>
<td>1,500</td>
</tr>
<tr>
<td>The Block at Midtown Atlanta*</td>
<td>Atlanta, GA (S)</td>
<td>The Mills Corp.</td>
<td>2002</td>
<td>1,200</td>
</tr>
<tr>
<td>Center</td>
<td>City / State / Region</td>
<td>Developer</td>
<td>Projected Opening Date</td>
<td>GLA (000 SQ. FT.)</td>
</tr>
<tr>
<td>------------------------------------------</td>
<td>-----------------------</td>
<td>----------------------------------</td>
<td>------------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>Grand Salt Lake Mall*</td>
<td>Salt Lake City, UT (W)</td>
<td>Forest City Enterprises/ KFR Properties</td>
<td>2002</td>
<td>1,500</td>
</tr>
<tr>
<td>The Mall at Bay Plaza</td>
<td>Bronx, NY (N)</td>
<td>Shopco Realty / Prestige Properties</td>
<td>Fall 2002</td>
<td>825</td>
</tr>
<tr>
<td>Village of Merrick Park @9</td>
<td>Coral Gables, FL (S)</td>
<td>The Rouse Co.</td>
<td>Fall 2002</td>
<td>850</td>
</tr>
</tbody>
</table>

| Subtotal, 2002                           |                       |                                  |                        | 18,441           |
| GRAND TOTAL                              |                       |                                  |                        | 41,069           |

* Value-oriented center
** Lifestyle center
*** An “urban village” – a mixed-use project with additional office and residential space not included in this table.
@9 Part of a mixed-use project with additional office and residential space not included in this table

Regions based on U.S. Census Bureau designations: N-Northeast; M-Midwest; S-South; W-West

This report was written by Michael Tubridy. For further information, please contact him at ICSC: (646) 728-3671.
FORM OF LETTER OF INTENT BETWEEN
DEVELOPER AND J.C. PENNEY COMPANY, INC.

Date

J. C. Penney Company, Inc.
P.O. Box 10001
Dallas, Texas  75301-2105

Attention:  Real Estate Department

RE: ________________________________

Ladies and Gentlemen:

The undersigned owns approximately _____ acres of land in __________________, which we are developing as an enclosed mall regional shopping center and we invite you to become an occupant thereof upon the following terms and conditions set forth in this proposal:

DEVELOPER: The Developer is _______________________________, a [corporation] [limited partnership] [general partnership], the principal address of which is ____________________________________.

PENNEY SITE: We shall convey to Penney a parcel of land (the “Penney Site”), the precise site to be adjusted subsequently so as to be of such size as will accommodate the building you propose to erect, including any proposed future expansion, and to accommodate a parking field capable of sustaining a _______ parking ratio at all times including after any expansion of your store. The consideration to be paid by Penney to Developer for the Penney Site, inclusive of Grading Work, Off-Site Improvements and On-Site Improvements, and all Impact Fees (i.e. Municipal assessments for utility expansion, usage or special taxes) will be $10.00. We shall furnish to you as promptly as possible the following:

(a) A survey of the Shopping Center showing the proposed Sites to be owned by Penney, any other Major and us and the acreage of each Site.

(b) A preliminary title report or interim title insurance binder issued by a national title insurance company covering the entire Shopping Center. At a later date, we shall furnish you, at our sole cost and expense, an up-to-date title policy issued by a title company acceptable to you covering the Penney Site in an amount acceptable to you. Such policy will insure that
title to the Penney Site is vested in you free and clear of all liens and encumbrances except such as you shall have approved; that the rights granted to you in the deed to the premises and in the Operating Agreement are valid and enforceable rights; that if there are any title exceptions, they do not prohibit the improvements and use of the premises as provided in the Operating Agreement; that the premises are zoned so as to permit such improvement and use; that all subdivision laws have been complied with; and that the Penney Site and the remainder of the Shopping Center are contiguous.

(c) A certification by the appropriate municipal or county official as to the zoning classification of the Shopping Center

(d) Evidence that all Federal and/or State Environmental Protection Agency approvals have been obtained.

(e) A copy of the applicable zoning ordinance.

(f) Such preliminary topographical surveys, engineering studies, soil boring reports and analysis as you may require.

(g) Such environmental surveys, studies and reports as you may require.

(h) A traffic study prepared by a recognized professional traffic consultant, which shall analyze the existing off-site roadway network and recommend necessary improvements thereto in order to insure proper traffic flow to and from the Shopping Center. Such traffic study shall include, but shall not be limited to, the following specific areas:

   (1) Site generation
   (2) Origin and destination of shoppers
   (3) Anticipated road traffic volumes
   (4) Planned street and highway improvements
   (5) Left turn storage requirements
   (6) Internal roadway configuration
   (7) On-site parking requirements

CONDITIONS OF CLOSING TITLE: You shall not be required to proceed with the transaction unless (i) you are able to obtain the title insurance described above, (ii) you are satisfied as respects the environmental conditions, soil conditions and grade of the Penney Site, (iii) you have determined that the Off-Site Improvements to be constructed pursuant to the Operating Agreement can in fact be installed, and (iv) the Shopping Center has been zoned in a manner permitting the improvement and use thereof provided for in the Operating Agreement.

TIME, PLACE AND MANNER OF CLOSING: We anticipate this transaction to be consummated not later than _________________ through the title company in escrow, with each party to the Operating Agreement paying an equal share of the title company's fee for acting as escrow agent. The deed shall be a general (full covenant) Warranty Deed, the tax stamps thereon to be paid for by us.
The following other department stores (hereinafter, with you, collectively referred to as the “Department Stores”) have committed to acquire title to the following portion of the Shopping Center and will construct a store building thereon of the following size:

<table>
<thead>
<tr>
<th>Department Store</th>
<th>Acreage of Site</th>
<th>Square Footage of Department Store Building</th>
</tr>
</thead>
</table>

The Shopping Center will be developed substantially in accordance with a preliminary plot plan dated ________________, prepared by ________________. Such plot plan is enclosed for informational purposes and shows among other things:

- (i) the delineation of the various Sites,
- (ii) the location of the proposed buildings,
- (iii) all adjoining streets and access roads to the Shopping Center,
- (iv) the proposed parking layout and interior roadways,
- (v) a specimen parking module, and
- (vi) statistical data showing individually and collectively the square footage of buildings, the number of parking spaces and the parking ratio.

Possession of the Penney Site will be delivered to you at the time of closing. You may, however, enter the premises at any time after you contract to purchase the property for the purpose of making tests, borings, surveys, etc.

Simultaneously with the acquisition by Penney of its Site, an Operating Agreement will be entered into among Developer, Penney and _______________________. The Operating Agreement and Supplemental Agreement will contain, among other things, all of the following provisions, and, to the extent that any of such provisions cannot be included in the Operating Agreement for one reason or another because of the resistance of the other Department Store, the same shall be included in the Supplemental Agreement.

1. **Project Architect and Design Engineer:** ________________ shall serve as Project Architect for the development of the Shopping Center and shall be responsible for the design of the air-conditioned mall (the “Enclosed Mall”) and Mall Store Buildings.

   ________________ shall serve as Design Engineer and shall be responsible for the design, supervision, and inspection of the On-Site Improvements.

   ________________ shall prior to ________________ submit to you for approval design development drawings and outline specifications for (i)
the grading work, (ii) the Off-Site Improvements, (iii) the On-Site Improvements, (iv) the facilities for which we are responsible, and (v) the facilities other than the Penney Building to be constructed on the Penney Site. Final plans and specifications for each of the foregoing five phases of the development work (which plans in the aggregate shall constitute the “design plan”) shall be submitted to you for approval within sixty days after you have approved the design development drawings and outline specifications for such phase.

2. **Grading Work:** Developer shall perform all grading for the Shopping Center which shall include clearing, grubbing, and removal of trees, shrubs, stumps, cutting, filling with clean granular fill, compaction of fill including compaction tests by a recognized testing laboratory, excavation and compaction of building pads to within 8" of finished floor grade, the making of such soil borings as shall be required during the course of grading, and the preparation of a foundation recommendation by a reputable engineer. If the soil report indicates “fat” clays, we shall also remove such clays to a depth of 3’ below the elevation established for the Penney Building and fill the removal area with granular fill so as to provide a low volume change zone. All grading work will be performed in accordance with Penney’s standard criteria, to the extent applicable, and in accordance with plans and specifications to be approved by you.

3. **Off-Site Improvements:** To the extent that the same are not performed by the county or municipality, as the case may be, or by public or private utilities, Developer will, at its expense, cause all Off-Site Improvements to be installed, including but not limited to (a) water, sanitary sewer, storm sewer, gas, electric and telephone lines to be brought to the boundary of the Shopping Center, all adequate to serve the Shopping Center, (b) the installation of all necessary access roads, ramps and other means of ingress and egress, and (c) the installation of all necessary and appropriate traffic signalization and traffic control devices.

4. **On-Site Improvements:** Developer will, at its expense, install all On-Site Improvements including but not limited to (a) the extension of all utility lines to within five (5) feet of building lines, in locations to be designated by you (you shall pay for the cost of all lateral service [specifically excluding any impact fees] connecting from the lines to within 5 feet of your building lines to your Building). Developer shall pay all connection fees, fees for storm water drainage and similar fees or municipal assessments for utility expansion applicable thereto, (b) the installation and paving of all parking areas, roadways, sidewalks (excluding building sidewalks, loading ramps and curbs) and other common facilities, (notwithstanding the foregoing, Developer shall install at Developer’s expense the curb and gutter adjacent to the Penney perimeter sidewalk), (c) the installation of exterior illumination which shall have the capability of providing 25% security lighting, uniformly distributed, and which shall yield a minimum maintained intensity at all points, measured at ground level as set forth on Exhibit
F hereto, (d) the installation of a storm drainage system, sanitary sewer system and water main loop, and (e) installation of sidewalks. All On-Site Improvements will be performed in accordance with Exhibit F to the extent applicable, and in accordance with plans and specifications to be approved by you. Before the work of constructing said improvements is begun, we will furnish you copies of loan commitments or other evidence showing that adequate funds are available to pay the cost thereof. Construction of the foregoing improvements shall be commenced by ________________________.

All utilities shall be underground and shall be completed at least 15 months in advance of your opening date and the completion of all base course paving at least 6 months prior thereto, and finish course paving at least 4 months prior thereto.

5. **Developer Facilities:** We shall construct an enclosed ________ level Enclosed Mall in the manner depicted on the plot plan, the design and architectural treatment of which shall be subject to your approval. The heating, ventilating and air-conditioning system for the mall shall be designed so as to provide the following temperatures standards:

   (i) **Heating Season:** A prevailing minimum indoor temperature of approximately ____F; with an outdoor temperature ranging to ____F;

   (ii) **Cooling Season:** A prevailing maximum indoor temperature of ____F and a relative humidity of 50% with an outside dry bulb temperature of ____F coincident with a wet bulb temperature of ____F;

We shall also construct Mall Store Buildings adjacent thereto having a floor area as shown on the attached plot plan or any revision thereof acceptable to you and us. We will construct fire corridors on the Developer Site between your Building and the Mall Store Buildings affording access to the nearest parking areas, such corridors to be of such width and character, and equipped with such safety devices and other features as shall be required by applicable law, ordinance or code to fulfill, at least, the existing requirements of your Building to the extent not fulfilled by other exits therein affording direct access to the parking areas.

6. **Penney Facilities:** You shall construct a retail department store building having at least _____ square feet of floor area (“Penney Building”). You have advised us that your anticipated building sizes are as follows:

<table>
<thead>
<tr>
<th>Penney Building:</th>
<th>sq ft</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Floor</td>
<td></td>
</tr>
<tr>
<td>Second Floor</td>
<td></td>
</tr>
<tr>
<td>Mechanical Equipment Penthouse</td>
<td></td>
</tr>
<tr>
<td>Covered Truck Dock Receiving Area</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>sq ft</th>
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<td></td>
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</tr>
</tbody>
</table>
The Penney Site will contain sufficient acreage to accommodate an additional ______ square feet of floor area in the Penney Building. This additional floor area may be constructed initially or may be incorporated in a future expansion of the Penney Building.

7. **Floor Area**: The term “Floor Area” shall mean, with respect to each building or structure on the Entire Premises, the number of square feet of floor area at each level or story (including basements, and floor area occupied for storage, but excluding mezzanines occupied for storage) lying within the exterior faces of exterior walls (except party walls as to which the center line, not the exterior faces, shall be used for measurement purposes) excluding, however, (i) penthouse or other physically separated areas used exclusively for mechanical, electrical, telephone or other operating equipment, (ii) patio or outside selling areas which are not heated or air conditioned, (iii) loading docks which are not heated or air conditioned, (iv) the upper levels of multideck stock areas, and (v) the Enclosed Mall except for areas occupied by kiosks.

8. **Shopping Center Opening Date**: We propose to open the Shopping Center in the ________________ of ______________. We would like for you to open your facilities simultaneous with us; however, in no event shall you be required to open (i) prior to twenty-eight (28) months from the date of closing of title, (ii) if the On-Site Improvements, the Off-Site Improvements or the Enclosed Mall shall not have been completed, (iii) if tenants occupying at least 80% of the Floor Area of the Mall Store Buildings shall not be ready to open for business, (iv) if the ________________ Department Store and the ________________ Department Store shall not be ready to open for business, or (v) between November 1 and January 2 of the succeeding year, between May 1 and August 1 of any year, or during the forty-five (45) day period prior to Easter Sunday.

9. **Operating Covenants**: We will operate the Entire Premises under the name ____________________________ for a period of ________ years and so long thereafter as the Penney Building is being operated. During such period, we will use our best efforts to keep all of the Floor Area in the Entire Premises fully occupied for retail purposes.

In order to induce you to make the covenants set forth as follows we warrant and represent to you that ______________ and ______________ have each covenanted to operate in the premises to be occupied by it in the Shopping Center a retail department store doing business under the name “__________________” and “__________________”, respectively, for at least the same period of time as you are required under these provisions to operate a retail department store in your Building, and Developer covenants to enforce the operating covenants of such other parties.

You covenant and agree that you will for a period of ______ years after the opening of the Penney Building to the public for business continually operate in
the Penney Building a retail department store under a name consisting of, or in which there appears, the word “Penney” or “JCPenney” or under the name under which a majority of Penney’s retail department stores are then being operated. Anything herein to the contrary notwithstanding, the foregoing operating covenant may be terminated by you on 30 days prior written notice if:

(i) either __________________ __________________________ or ______________________________ (or both of them) shall have failed to open a retail department store in their respective premises complying in all respects with such firm’s aforesaid covenant within three months after the date upon which you shall have opened the your Building to the public for business;

(ii) at any time during the ____ year period referred to in the immediately preceding paragraph of this article _______________ or ________________ shall for a period in excess of 60 days cease to operate a retail department store in its premises under the name “____________” or “____________”, as the case may be, or under such other name as it may then be using as part of an integrated department store chain operating under such name and containing not less than _________ stores in the (State of ______________) (______________, _____________ market area);

(iii) less than 80% of the Floor Area in the Mall Store Buildings shall be open for business and such condition shall have continued for a period of twelve (12) consecutive months;

(iv) any one or more of the conditions listed in the paragraph hereof captioned “Shopping Center Opening Date” shall not have been fulfilled within twelve (12) months after the opening of the your Building for business with the public; or

(v) any of the aforesaid covenants of _______________ or __________________________ shall have been terminated, cancelled or released by agreement, acquiescence or sufferance of Developer.

A temporary cessation of business by you or by any tenant or occupant of Floor Area in the Shopping Center shall not be deemed a cessation of business for purposes of this article if such cessation:

(1) is occasioned by the making of repairs, alterations, or renovations due to damage or destruction of the premises where such cessation of business occurs; or

(2) is caused by “Unavoidable Delay”.

It is not intended that the foregoing operating covenants of yours, _______________ or __________________________ should in any way serve to regulate the manner or hours of operation of business in the premises occupied by you or by said firms, nor prohibit any of them from leasing
or subleasing portions of their premises, licensing departments or granting concessions to other parties. We further acknowledge that the number and types of departments to be operated in your Building, the particular contents, wares, and merchandise to be offered for sale and the services to be rendered (including but not limited to banking, financial, insurance sales and services), the methods and extent of merchandising and storage thereof, and the manner of operating your store, in every respect whatsoever, shall be within the sole and absolute discretion of you.

We recognize that your permanent financing may involve a sale and leaseback and subsequent mortgage, and accordingly agree that if your landlord under your lease or any mortgagee should acquire possession of your Site, as a result of foreclosure or in lieu thereof, such party shall not be bound by any covenant to operate a retail store in the Penney Building.

10. Parking Ratio: Each Party’s Parcel shall at all times maintain at least ______ parking spaces for each 1,000 square feet of Floor Area located thereon.

11. Signs: All signs in the Shopping Center shall be in conformity with the sign criteria attached hereto as Exhibit A.

12. Common Facilities and Reciprocal Easements: Each party will grant to the other party reciprocal non-exclusive easements over the common facilities on its Site, i.e. the parking areas, roadways, sidewalks, air-conditioned mall, fire corridors, etc., to use without charge.

13. Attachment of Enclosed Mall to Penney Building: We shall have the right to attach the Enclosed Mall to your Building, but not to receive any structural support therefrom, provided you shall have approved the plans and specifications for such attachment. We shall have the obligation to furnish, install and maintain the flashing and seal between the Enclosed Mall and your Building, shall repair at our sole cost any damage to your Building caused by us in making or maintaining said attachment, and shall indemnify and hold you harmless from any and all claims, liability, cost and expense, whether in connection with personal injury, property damage or otherwise, which result from or arise out of the making or maintenance of said attachment. Each party shall be responsible for maintenance of that portion of the expansion joint erected by it, as shown in the final improvement plans and specifications.

14. Utility Easements: Each party will grant to each other party an easement to maintain, install, repair and replace all such underground utility facilities as are necessary in connection with the construction and operating of the Shopping Center. Any such easement shall survive the term of the Operating Agreement, but shall terminate at such time as the building serviced thereby is demolished and is not replaced with another building.

15. Common Area Lighting: Each party shall keep its parking area and other common facilities illuminated during such nighttime hours as any Department Store or tenants occupying 75% or more of the Floor Area of the Mall Store
Buildings are open for business. We will keep the Enclosed Mall open and air conditioned whenever any Department Store is open for business.

16. **Promotional Fund**: If a Promotional Fund shall be formed, you will contribute thereto for at least three (3) years, and you shall make an annual contribution thereto, effective as of the date on which tenants occupying at least 80% of the Floor Area of the Mall Store Buildings shall have opened for business, equal to the lower of (i) the product of the Floor Area of the Penney Building and ____, or (ii) the rate per square foot of Floor Area required to be paid by any other Department Store. Your three year membership is conditioned on (a) Developer making an annual contribution equal to 25% of the annual contributions required to be made thereto, other than Developer, (b) tenants occupying at least 80% of the Floor Area of the Mall Store Buildings are obligated under their leases to make fair contribution thereto, and (c) the other Department Stores are making a fair contribution thereto.

17. **Enclosed Mall Expenses**: In consideration of our heating, ventilating, air conditioning, lighting, operating and cleaning the Enclosed Mall and maintaining the heating, ventilating and air-conditioning equipment therefor, you will pay us, effective as of the date on which you and tenants occupying at least 80% of the Floor Area of the Mall Store Buildings shall have opened for business, an annual charge equal to the product of the Floor Area of the Penney Building and _______. Such annual square foot charge shall increase ______ per square foot on the fifth anniversary of your opening and every five years thereafter during the term of the Operating Agreement.

18. **Exterior Common Facilities Maintenance and Charge**: Until such time as you shall, at your election, undertake the maintenance of same yourself, we will maintain the parking areas and other common facilities on your Site in good order and condition, including, but not limited to removal of snow, ice and debris, repair of parking areas, restriping of parking areas, repairing parking area lighting, and replacing lighting elements and ballasts when necessary and maintaining all landscaped and planted areas, except between your Building and the perimeter sidewalks. The consideration thereof shall be an annual charge equal to the product of the Floor Area of your Building and ______________. Such annual square foot coverage shall increase ______ per square foot on the fifth anniversary of your opening and every five years thereafter during the term of the Operating Agreement.

19. **Insurance**: During the term of its operating covenant, each party will maintain property insurance upon all buildings and other structures (including all improvements, alterations, additions and changes thereto) which are located on its Site, with coverage for perils at least as broad as Insurance Services Office form CP 1030 (Causes of Loss-Special Form), with coverage extended for the perils of flood and earth movement, in an amount equal to 100% of the full insurable replacement cost (i.e., total cost less value of land and non-
destructibles such as foundations and underground utilities). Such insurance shall also contain an ordinance and law endorsement, debris removal coverage and a waiver of subrogation endorsement in favor of Penney. Throughout the term of the Operating Agreement each party will carry commercial general liability insurance written on an occurrence basis, including contractual liability insurance, against claims on account of bodily injury, death or property damage incurred upon any part of its Site. Such insurance shall have a combined single limit of not less than $5,000,000 per occurrence and $10,000,000 annual aggregate for bodily injury, death and property damage. Penney may self-insure if it so desires.

20. **Damage or Destruction**: If any party's facilities are damaged or destroyed by an insurable risk during the term of its operating covenant, such party shall replace or rebuild same to at least the size initially required. In the event any of our facilities are damaged or destroyed by an insurable risk, or by any other cause if the cost of such repair/reconstruction is not reasonably estimated to exceed $500,000, and you are operating, we shall replace or rebuild the same to at least the size initially required.

21. **Kiosks**: No kiosks (including push carts) shall be erected in the Enclosed Mall other than in locations specifically designated therefor on the Plot Plan; no kiosk shall exceed 8 feet in height or 200 square feet of floor area or be used for the purpose of dispensing food or beverages; nor shall there be any vending machines in the Enclosed Mall which dispense food or beverages. No kiosk shall be located within 150 feet of Penney's entrance to the Enclosed Mall. If Developer violates the kiosk's provisions, the Enclosed Mall maintenance charges shall permanently abate until Developer is in compliance.

22. **Term of Agreement**: The term of the Operating Agreement shall expire forty years after the opening date.

23. **Real Estate Taxes**: All taxes and assessments on the Shopping Center through the fiscal tax year during which you open your Building for business will be paid by us except that the taxes for such year levied on (or applicable to) the land conveyed to you will be prorated between us as of such date. A separate assessment of the Penney Site will be obtained.

24. **J. C. Penney Properties, Inc.**: It is understood that Penney may elect to acquire the Penney Site through J. C. Penney Properties, Inc. ("Properties") and that Properties would cause the Penney Building to be operated as a J. C. Penney Department Store. In the event Properties acquires the Penney Site, J. C. Penney Company, Inc. shall guaranty to Developer only all of Properties obligations under the Operating Agreement and Supplemental Agreement.

25. **Operating Agreement**: The Operating Agreement in addition to covering the matters mentioned above shall contain provisions (i) requiring each party to keep the Shopping Center clear of mechanics' and similar liens arising from work performed by or for such party and (ii) obligating each party to comply with all
laws and ordinances and the regulations of the local fire rating organization. The Operating Agreement shall provide for certain remedies (in addition to those provided by law) which may be invoked by either party in case of a default or breach by the other party, but no default under or breach of the Operating Agreement shall entitle any party to cancel it.

26. Out Parcels: The development of all out parcels shall be governed by the Out Parcel Restrictions annexed hereto as Exhibit B, which restrictions will be incorporated in a declaration of restrictive covenants recorded as a prior encumbrance against the out parcels.

27. Other Provisions: We are cognizant of the fact that the other department store will have a voice in the preparation of the Operating Agreement, that certain modifications to the foregoing might have to be made, that additional provisions will have to be added, and that the foregoing is not intended to be a complete itemization of all of the terms and provisions of the Operating Agreement, but only of the more salient ones. We are further cognizant of the fact that (i) you will be relying on the provisions of this proposal in presenting it to your Capital Appropriations Committee for approval, which approval is prerequisite to your acquiring title to your Site and executing the Operating Agreement, (ii) no acceptance or approval by you of this proposal, either verbal or written, shall be deemed to create an agreement between us and no such agreement shall be deemed to exist until the Operating Agreement has been executed and delivered by all parties thereto, and (iii) whatever funds we might have heretofore expended or will hereafter expend prior to the execution of such Operating Agreement, by way of planning or site work or otherwise, will have been expended at our peril.

We acknowledge that Penney negotiates many deals per year and that in each instance the deal negotiated is based on a different set of circumstances. We agree that no past negotiations with Penney on other deals and no existing or past documents to which Penney is or was a party shall serve as a basis in the preparation or negotiation of the documents that are the subject of this letter of intent.

Sincerely,
EXHIBIT "A"

SIGN CRITERIA FOR SHOPPING CENTER

1. There shall be no flashing, rotating, exposed light or moving signs or makers of any type.
2. There shall be no signs painted on the exterior surface of any building.
3. There shall be no freestanding or pylon signs other than (i) a pylon sign(s) to be erected and maintained by Developer at the location(s) shown therefor on the Plot Plan and which shall display only the name of the Shopping Center, and (ii) a pylon sign which may be erected by Penney and the other Department Stores in connection with their Additional Buildings.
4. All signs which front on the Enclosed Mall shall be (i) not more than four (4') feet in height, (ii) approximately flush with the wall of the building to which affixed, (iii) of a length which does not exceed 80% of the linear frontage of the store upon which it fronts, and (iv) of a design which is uniform with other signs similarly placed.
5. Signs which are under building canopies shall be (i) at right angles to the store front, (ii) of a design which is uniform with other signs similarly placed under building canopies, and (iii) not more than four and one-half (4 1/2') feet wide and twelve (12") inches high.
6. There shall be no rooftop signs, except that signs affixed to the sides of the Department Store’s mechanical equipment penthouses shall not be considered rooftop signs.
7. No signs will be permitted on the exterior of any Mall Store Buildings, except in the case of stores with customer entrances opening directly onto the parking areas; such signs shall neither exceed 3 feet in height nor have more square feet of area than the number of lineal feet of its sign facing the Enclosed Mall.
8. The provisions of paragraphs 4, 5 and 7 shall not apply to the Department Stores.
EXHIBIT B

OUT PARCEL RESTRICTIONS

A. SITE IMPROVEMENTS

1. Buffer Strip:
   A landscaped buffer strip at least 10 feet wide for landscaping only shall be maintained between the property line and the edge of the pavement around the perimeter of each peripheral parcel, (sometimes herein referred to as “out parcel”) and no above-ground improvements of any type shall be erected thereon.

2. Curbs:
   Concrete curbs shall be constructed on or adjacent to each out parcel in each of the following locations: (a) around the entire perimeter of the out parcel at the edge of the pavement to separate the paved area from the adjacent landscaped buffer; (b) on both sides of the landscaped buffer in those areas where the buffer separates the out parcel from the Shopping Center Site peripheral cruising lane and/or adjacent public roadways; (c) at all vehicular entrances to the out parcel from the peripheral cruising lane of the Shopping Center Site, adjacent public roadways, and contiguous out parcels. All such curbs shall be full depth 18” poured-in-place concrete type curbs; no bumper blocks, precast, extruded, or asphaltic curbs shall be utilized.

3. Parking:
   There shall be maintained on each out parcel the greater of: (a) at least six (6) automobile parking spaces of standard size for each 1,000 square feet of enclosed building area constructed on the out parcel, or (b) such number of automobile parking spaces as may be required by applicable law.

4. Utilities:
   (a) General - All utility lines and equipment shall be entirely underground.
   (b) Storm Sewers - The design shall be such so that the entire run-off will be contained within each out parcel, with no excess being discharged on adjacent parcels, adjacent peripheral roadways, or adjacent public highways. Storm water drainage shall be implemented by the use of catch basins and underground storm lines; no open ditches will be permitted.
   (c) Sanitary Sewers - No on-site septic system or sanitary sewer treatment facility will be permitted on any out parcel.

5. Traffic Flow:
   Pavement markings, directional signs and other traffic indicators upon each out parcel shall be in accordance with the “Manual On Uniform
Traffic Control Devices”, and shall provide for a traffic scheme compatible with that of the Shopping Center.

6. **Landscaping:**
   All buffer strips and other undeveloped land areas shall be landscaped with trees, shrubs, or suitable ground cover in a uniform manner consistent with the Shopping Center landscaping. All parking areas shall have internal landscaping which shall account for at least 10% of the parking area. All internal landscaping shall be protected from vehicular encroachment by concrete curbing.

B. **BUILDING CRITERIA**
   1. **Layout:**
      The size, placement, orientation and setback requirements of any building and other improvements on any out parcel shall be in conformity with Shopping Center plot plan.
   2. **Height:**
      No building or other improvement erected upon any out parcel shall be more than one story above grade or exceed 19’0” in height, measured from finished floor elevation to the top of the highest building protrusion or appurtenance, including roof-mounted equipment, decorative roof screening, etc.
   3. **Building Aesthetics:**
      Decorative screening and/or landscaping shall be installed so as to obscure from public view all trash rooms, trash holding receptacles, loading or service areas, mechanical or electrical equipment, storage facilities or bins, or other unsightly building appurtenances. Appropriate screening shall be provided to obscure all roof-mounted equipment and appurtenances, roof vents, etc. form public view.

C. **SIGN CRITERIA**
   1. **General Requirements and Prohibitions:**
      (a) No signs or other advertising devices shall be installed or permitted on any out parcel except to the extent specifically permitted thereby.
      (b) Painted lettering, symbols or identification of any nature may not be utilized.
      (c) Flashing, blinking, moving, animated or audible signs will not be permitted.
      (d) No exposed wiring, conduits, tubing, lamps, ballast boxes or raceways will be permitted.
      (e) All cabinets, conductors, transformers, ballasts, attachment devices, and other equipment shall be concealed.
      (f) The advertising or informative content of all signs shall be limited to letters designating the establishment name and/or type of establishment (which designation will be generally descriptive and shall not include any specification of the merchandise offered for
sale therein or the services rendered therein) and shall contain no advertising devices, slogans, symbols or marks.

2. **Building Mounted Sign(s):**
   - (a) Any building erected upon any out parcel which is readily visible to the public form only one direction may contain only one building mounted sign; any other building may contain only two signs, which shall be located on separate walls or facades of such building.
   - (b) The length of any building mounted sign shall not exceed the lesser of 40% of the length of the wall or facade upon which the sign is mounted or 30'0"; nor shall the height of any such sign exceed 36".
   - (c) No building mounted sign or any portion thereof may project above the parapet wall or top of the exterior wall or building facade upon which it is mounted.
   - (d) No rooftop signs of any type will be permitted.
   - (e) No signs perpendicular to the face of the building or facade will be permitted.
   - (f) The letters on all signs shall be script or individual block type. No boxed signs will be permitted, and all individual letters shall be illuminated.

3. **Freestanding Signs:**
   - (a) No freestanding sign or sign not attached to a building may be installed on any out parcel other than one permanently affixed freestanding monument type sign identifying the business or name of the occupant of the building.
   - (b) The maximum height from the bottom of the base to the top of any such monument type sign structure shall not exceed 5'0", and the maximum height of the sign panel shall not exceed 3'0".
   - (c) The maximum width of the sign structure shall not exceed 9'0".
   - (d) The maximum thickness of the structure shall not exceed 30".

D. **ACCESS**
Vehicular access between each out parcel and the peripheral cruising lane and the entrance/exitways of the Shopping Center Site shall be limited to the locations designated therefor on the Shopping Center plot plan, and no additional means of access shall be installed, nor shall any such means of access be relocated.

E. **MAINTENANCE**
Each out parcel shall be maintained in good order and condition and kept free of any accumulation of trash or debris, such maintenance to be at least equal to that provided for the Shopping center. Developer shall include such obligation in any lease or sale of any out parcel, and shall reserve effect means to enforce performance of such obligation by any purchaser or lessee of any out parcel.

F. **DECLARATION OF RESTRICTIVE COVENANTS**
The foregoing restrictions shall be incorporated in a declaration of restrictive covenants to be made by the owner(s) of each of the out parcels and recorded as a prior encumbrance against each out parcel, which declaration will provide
that such restrictions shall be deemed covenants running with the land, binding upon the owners, lessees and occupants of each out parcel, enuring to the benefit of and enforceable by Developer, the Department Stores and such other tenants and occupants of the Shopping Center upon whom Developer may wish to confer a direct right of enforcement, and not amendable without Tenant’s prior written consent.
EXHIBIT F

REQUIREMENTS FOR COMMON FACILITIES
AND OFF-SITE IMPROVEMENTS

INTRODUCTORY: The requirements set forth in this Exhibit F are intended to be complementary to those set forth in the [ Operating Agreement] [REA] and the Supplemental Agreement.

DESIGNS AND REPORTS:
1. Shall be prepared by a qualified registered Architect and/or Engineer not in the direct employ of Developer.
2. Shall be in accordance with all governmental laws, ordinances, codes and regulations, including but not limited to those of O.S.H.A.; Developer shall provide Penney with (1) hazardous materials studies and supplemental studies required by the initial investigation, (2) environmental impact studies (3) requisite Federal or State environmental and hazardous materials approvals; and (4) soils report; and (5) report of assessments, impact fees, and any other fees, listing and describing each and the amount thereof.

SPECIFIC APPROVAL RIGHTS OF PENNEY: In addition to any rights of approval granted to Penney in this Exhibit or the Supplemental Agreement of which this Exhibit forms a part, Penney shall at all times have the right of approval, as respects the Shopping Center, any expansion thereof, and all out-parcels, of:
1. any change from Exhibit B in the layout and detail of the parking area and other Common Facilities adjacent thereto;
2. traffic signs, road markings and signalization, all of which will be initially designed in accordance with the Manual on Uniform Traffic Control Devices;
3. the design criteria and preliminary and final working drawings and specifications for all on-site and off-site improvements, including but not limited to grading, drainage, utilities, landscaping and irrigation thereof, paving, lighting, striping, curbs and signing;
4. the design of the Enclosed Mall, including but not limited to dimensions, ceiling heights, decor, lighting, clerestories, skylights, finish materials, location and design of planters, ornamental furnishings, benches, stairways, elevators, escalators, kiosks and columns;
5. Screening, including but not limited to, all grade-level equipment and service areas, roof mounted equipment, vents, etc.; and
6. all building exteriors and exterior appurtenances, and signs thereon, except for Major Store Buildings.

GOVERNMENTAL APPROVALS: Developer represents and warrants to Penney that, except to the extent otherwise specifically noted on Exhibit B, it has obtained all federal,
state, county and municipal approvals prerequisite to the construction of (i) all roadways and highways shown on Exhibit B, and (ii) all parking areas, entrance/exitways, curb cuts, traffic lanes, and other exterior Common Facilities within the Entire Premises, as shown on Exhibit B.

**EARTHWORK:**
1. Shall be performed in manner satisfactory to Federal and/or State environmental protection agency, as the case may be.
2. Shall provide slope protection and erosion control.
3. Shall provide stream channelization, if required.
4. Shall be such as to prevent downstream silting and/or other pollution influences.
5. Shall provide for de-watering and/or drainage and ground water control, if required.

**GRADING:**
1. Grading shall include clearing, grubbing, removal of all unwanted construction, excavated materials, trees, to the extent not reusable or desired, shrubs, stumps, top soil and other organic or undesirable materials; cutting, filling with clean granular fill; compaction of fill, including compaction test by a recognized testing laboratory.
2. The building pad for the Penney Store Building shall be compacted, to a distance of 25 feet outside of the exterior building line (which exterior building line shall be deemed to include all appurtenant facilities including the loading dock and ramp thereto), to a minimum 95% of ASTM Specification D 1557-70 (modified proctor) density, brought to a grade 8 inches below the finished floor elevation. If the soils report indicates expansive clays, then such clays shall also be removed to a minimum depth of 3 feet below the elevation established for Penney's building and the removal area shall be filled with granular fill so as to provide a low volume change zone, or as otherwise recommended by the geotechnical engineer and approved by Penney.
3. The grading shall be accomplished in such a manner that the Penney Store Building may be constructed on normal spread footings (18 inches below grade for interior footings, and at frost level for exterior walls and column footings), good for a minimum soil pressure of 4,000 lbs. per square foot at the base of the footing elevation, with a maximum total settlement for footings limited to 1 inch, and the maximum differential settlement limited to ½ inch within a distance of 28 feet.
4. Sufficient laboratory compaction tests and field density tests shall be made by a qualified consulting soil engineer or testing laboratory and shall include, but not be limited to, (i) soil resistivity tests to be made in accordance with ASTM G-57 "Standard Method For Field Measurement Of Soil Resistivity Using The Werner Four-Electrode Method", a Soil Profile and Site Coefficient, "S", for seismic analysis in accordance with the 1988 Uniform Building Code, and (iii) such other data as required by
Penney's "Soil Engineering Criteria 01790". Test data and inspection report shall be furnished to Penney for its review and approval.

**LANDSCAPING:** The exterior Common Facilities, including but not limited to retention ponds, shall be landscaped in such a manner so as to create a natural setting complimentary to the improvements in the Shopping Center and so as to enhance the appearance of such improvements; all landscaped areas shall be equipped with an underground automatic sprinkler system, which system shall be indicated on the final landscape plan.

**UNDERGROUND UTILITIES:**

1. **Trenches:**
   Trenches for underground utility lines shall be backfilled with suitable material to 95% modified proctor density, but not until tests and inspections are completed. All sanitary sewer, storm sewer, water, gas and electric lines and appurtenant facilities within the Shopping Center shall be installed underground, and service for the Department Stores shall be connected directly to their main store buildings.

2. **Sanitary Sewers:**
   a. Shall be of extra strength cast iron soil pipe (ASTM A-74) or schedule 40 PVC (ASTM 1785) or reinforced concrete. Wyes, tees, installation, connections shall be in accordance with ASTM, AWWA and Local Codes Standards.
   b. Shall be laid straight and properly graded.
   c. Shall be no closer than 10' horizontally to a water supply main or service lines.
   d. If water and sewer lines cross, shall be fully encased in minimum of 4" concrete for a distance of 10' on each side of crossing, where they cross above water lines.
   e. Laterals to the Penney Store Building shall be the industry standard material used by the utility company and approved by Tenant.

3. **Storm Sewers:**
   a. Outside the perimeter of the Penney Store Building shall be of concrete pipe (ASTM A-74) schedule 40 PVC, (ASTM 1785) or reinforced concrete pipe. Wyes, tees, installation, connections shall be in accordance with ASTM, AWWA and Local Codes Standards.
   b. A minimum of 4 laterals to within 5' of building shall be provided for roof drainage and 1 lateral to the truck dock ramp trench drain for a total of 5 laterals.
   c. Provisions shall be made for stream channelization, siltation and holding or retention ponds and basins, if required to insure adequate storm drainage.
   d. There shall be no open storm drains permitted either within the Shopping Center or within the right-of-way of any street adjoining the Shopping Center, except to the extent specifically shown on Exhibit B.
e. Laterals to the Penney Store Building shall be the industry standard material used by the utility company and approved by Tenant.

4. **Domestic Water Service**:
   a. Soft Copper (ASTM B-88) K and L, ductile iron pipe (AWWA CI5L) with AWWA C 104 cement lining or PVC water pipe (ASTM D 1785) schedule 40 shall be used. Bell and spigot or flange joints shall be used.
   b. Thrust blocks shall be installed at all tees and elbows.
   c. Pressure test shall be run before backfill is installed.
   d. Pressure reducing valves shall be provided if required by Penney or Factory Mutual Engineering Association.
   e. Corrosive soils shall use type K copper, ductile iron with polyethylene bags, or schedule 40 PVC.
   f. Laterals to the Penney Store Building shall be the industry standard material used by the utility company and approved by Tenant.

5. **Fire Protection System**:
   a. Mains, piping, appurtenances, etc. shall be as specified in N.F.P.A. Pamphlet No. 13. Materials shall comply with the requirements of paragraph 4. above captioned "Domestic Water Service".
   b. Laterals shall be installed and connected to sprinkler system as specified by NFPA and as required by Factory Mutual Engineering Association. Materials to be used for laterals shall be approved by Tenant.
   c. O.S. & Y. valves and street boxes shall be installed at termination of each lateral for future connections.
   d. Water supply, pressure, rate of flow and degree of reliability shall be as required by Factory Mutual Engineering Association and local codes.
   e. Such supplementary water storage facilities, pressure pumps (including standbys), etc. shall be installed to ensure a constant rate of water pressure and as shall be necessary to meet the requirements of Factory Mutual Engineering and local codes.
   f. Loop mains to be installed around buildings.
   g. Fire hydrants shall be provided with maximum spacing of 300 feet with at least one hydrant located between 50 feet and 75 feet of a Penney's store entrance and as required by code.
   h. Corrosive soils shall have metallic piping protected with polyethylene bags.

6. **Gas Service**:
   If gas service is available, piping shall be in accordance with local utility requirements and obtained from Tenant’s chosen service provider.

7. **Telephone**:
   Conduits, manholes, etc. to be as specified by telephone company; however, Penney shall be served by separate cables not connected to
Developer’s service within its buildings. A dedicated service entrance independent of adjacent or attached buildings is required.

8. **Electric Service:**
   Shall consist of conduit and properly sized cable, as required by the public or private utility company supplying electricity and by Penney. If required by Penney, primary service shall be provided by Tenant’s chosen provider. The Penney Store Building shall be furnished its electric energy from a substation/transformer dedicated solely to the Penney Store Building and independent of any adjacent or attached buildings.

9. **Temporary Utility Operational Date:**
   Temporary utilities, power (400amp, 480/277V, 3 phase service for multi-level store or 200 amp, 480/277V, 3 phase service for single-level store), water, and telephone shall be brought to Penney's staging area, at Developer's expense, at a mutually agreed upon location, and at a mutually agreed upon date, but in any event prior to construction.

10. **Final Utility Operational Date:**
    All the water, sanitary sewer, electrical and gas (if any) systems shall be fully operational and the telephone service installed for the Penney Store Building at least six months in advance of Penney's opening date. The storm sewer system shall be fully operational at least ten months in advance of Penney's opening date.

**SITE ELECTRICAL:**

1. Light poles shall be concrete, aluminum or painted galvanized steel, with a maximum height 60', and 36” minimum above grade concrete bases. Transformers shall be installed in bases and accessible through access plates.

2. Light fixtures shall be H.I.D. type with absolute cut off above 85 degrees.

3. The security night lighting shall include 25% of the total Shopping Center site lighting fixtures (uniformly distributed) and shall be on a dusk to dawn basis.

4. All parking lot lighting on Penney's parcel shall be circuited and controlled by Developer.

5. All exterior lighting for the Shopping Center shall have a minimum maintained intensity at ground level as follows:
   (a) open parking areas and all sidewalks - one foot candle.
   (b) roadways - one and one half foot candles.
   (c) intersections of entrance/exitways and public roads - four foot candles.
   (d) sheltered parking areas and walkways - five foot candles.
   (e) 25% evenly distributed night lighting.

6. No low pressure sodium vapor luminaries or high mast lighting systems should be used.

**CURBS, GUTTERS AND RETAINING WALLS:**

1. Continuous raised concrete curbs and gutters shall be installed on both sides of all roads, for parking buffers, along the outside edge of all paving,
and to the extent shown on Exhibit B, around parking end islands and traffic islands.

2. Concrete curbs and gutters shall be installed at edge of all building sidewalks at Developer’s expense.

3. No asphalt curbs shall be utilized.

4. Ramps in lieu of curbs shall be provided for the handicapped adjacent to building entrances.

5. Retaining walls and/or earthen berms shall be installed to accomplish grade transitions for parking areas at Developer’s expense.

**PAVING:**

1. Shall be designed in accordance with "The Asphalt Handbook" and local Department of Transportation guidelines.

2. Shall be designed to insure smooth, quiet traffic surface, resistant to wear; shall be highly stable to resist rutting, shoving or other surface deformations; shall have a high coefficient of friction to resist skidding and provide proper traction; and shall be of sufficient impermeable density so as to be waterproof, to retard weathering and prevent damage from freezing and thawing.

3. Parking areas shall be equipped with necessary concrete bumpers, curbs and other control devices.

4. Parking areas shall be designed for 6,000 lb. single axle load ("Medium Traffic" classification).

5. Roadways, entrance ramps, truck maneuvering areas, entrance/exitways, etc. shall be designed for 15,000 lb. single axle load ("Heavy Traffic" classification).

6. The minimum slope of all paving shall be 1.5% and the maximum slope shall be 3% unless otherwise specifically noted on Exhibit B.

7. Roads and entrance/exitways within the Entire Premises shall have the following minimum widths, except to the extent otherwise shown on Exhibit B:
   
   (a) Two-way entrances - 24' wide roadway in each direction with 6' wide separation median.
   
   (b) One-way entrances or exits - 18'.
   
   (c) Interior one-way roadways - 16'.
   
   (d) Interior two-way roadways - 30'.
   
   (e) Ring Road - 34' to 44'.

8. The base course paving and finish course paving shall be installed at least six months and four months, respectively, in advance of Penney’s opening date.

**STRIPING AND PAINTING:**

1. Double (hairpin) striping shall be used to delineate parking spaces, except to the extent otherwise shown on Exhibit B.

2. 90° parking is required spaced with 9' wide stalls (perpendicular width) and 60' wide bay; 60° or 70% parking may be used if essential to maintain
parking ratio, spaced with 9' stalls (perpendicular width) and 53' wide bay, and 9' stalls (perpendicular width) and 55' wide bay, respectively.

3. Directional and informational arrows and buffer areas shall be painted, as required.

4. Curbs for fire lanes, no parking areas, etc., shall be painted.

5. Specially marked spaces for the handicapped shall be provided in close proximity to the sidewalk ramps in accordance with code.

TRAFFIC CONTROL DEVICES: Traffic control devices to insure safe access to and control traffic circulation in the Shopping Center shall be provided in accordance with the "Manual on Uniform Traffic Control Devices".

SCREENING OF EXTERIOR EQUIPMENT: All roof mounted equipment, vents, etc. on any building within the Shopping Center, and all grade-level equipment and service areas will be screened from view. All roof mounted equipment on any building within the Shopping Center shall be set back from the perimeter of the building as far as possible but at least 15 feet.

PERIPHERY PROPERTY MAINTENANCE: Any property owned or under the control of Developer, including any out-parcel, which is adjacent to the Shopping Center will be graded and suitably landscaped. If any such property is sold or leased, Developer will include such a covenant in the contract of sale or lease, as the case may be. Developer will use every reasonable effort to induce owners and occupants of adjacent lands to keep their property clean and sightly.

PERMISSIBLE BUILDING AREAS: No buildings or other structures shall be erected except within the areas designated therefor on Exhibit B.

SITE WORKING DRAWINGS: If there are any deviations on the final working drawings from Exhibit B, such deviations must be specifically pointed out to Penney for its review at the time working drawings are submitted to Penney, failing which such deviations shall be deemed disapproved notwithstanding Penney's approval unless specifically shown on Exhibit B.

DEVELOPER'S PERIPHERAL PARCELS: The number and location of the future buildings, curb cuts, parking requirements and signage requirements should be submitted for Penney's approval unless specifically shown on Exhibit B.

EXTERIOR SIGNS: Only stores having exterior customer entrances shall be permitted to maintain an exterior sign, and in no case shall there by any roof-top or freestanding signs except as specifically shown on Exhibit B.

PENNEY'S BUILDING: Final dimensions of Penney's building may vary from those shown on Exhibit B to accommodate final architectural design of said building.

SETBACK LINES: Developer represents and warrants that no setback lines or side or rear yards are required to be maintained within the Entire Premises, or if required, all buildings shown on Exhibit B are in compliance with all applicable setback and yard requirements.

EGRESS: Developer shall provide, adjacent to Penney's store building, whatever fire corridors and stair towers and of such width, character and in such proximity to Penney's store building, as may be required by local building code to fulfill Penney's exiting requirements.
EASEMENTS: Developer represents and warrants to Penney that except to the extent specifically shown on Exhibit B, no utility or access easements affect the Entire Premises.

SHOPPING CENTER EXPANSION: All of the foregoing general notes will also apply to any future expansion of the Shopping Center.
This letter will summarize our discussions concerning the arrangements which would be available to our ____________ division for entry into your proposed ____________ shopping center. Those proposed arrangements would be used by ____________’s management and our corporate departments in preparing analyses and budgets for submission to our Capital Expenditure Committee (CEC). The proposed arrangements are as follows:

1. A two-level enclosed mall, regional shopping center (Center) would be developed by you on a tract of approximately ______ acres presently owned or controlled by you and located in _______________________________________________________. You have told us (and we would, therefore, assume in our market studies) that the Center would contain a minimum of ______ square feet and a maximum of ______ square feet of mall store GLA, and that the Center as proposed to be built would have a total of four major occupants. These major occupants would be ____________ at no more than ______ square feet (inclusive of expansion rights) and no less than ______ square feet on two levels, Alfa Co. at no more than ______ square feet (inclusive of expansion rights) and no less than ______ square feet on two equal levels, Beta Co. at no more than ______ square feet (with no expansion rights) and no less than ______ square feet on two equal levels, and Charlie Co. at no more than ______ feet (with no expansion rights, and including in that square footage an attached TBA of no more than ______ square feet) and no less than ______ square feet (excluding TBA) on two levels. These major occupants would be located as shown on the attached proposed site plan. We would work together in the preparation and refinement of all aspects of the site plan, particularly as it relates to our operation and building and Tract configuration, and you would, in any event, consult with us in developing layout, architectural concepts (exterior and interior) and mall design of the Center, all of which, including the site plan, would be subject to our approval.

2. At the closing, we would purchase from you for the sum of one dollar ($1.00) a portion of the Center (_______ Tract) sufficient in size and so located to support a store of our maximum permissible size with adjacent parking area at a ratio (after expansion to our maximum permissible size) of 5.0 cars per 1,000 square feet of said maximum permissible size. ____________ would construct its store at its cost. We would own this property in fee simple and conveyance to us would be by general warranty deed,
subject only to current general ad valorem real estate taxes and recorded underground utility easements, if any, provided they do not affect the Center’s development and do not underlie our pad and permissible building area (nor perimeter sidewalks). Any special assessments, levies or charges made for any improvements installed on- or off-site to support the Center and for any improvements required on- or off-site because of the Center would be your obligation. You would pay the cost of any required stamps and/or any transfer taxes, and any escrow fees. General ad valorem real estate taxes on the ________ Tract would be prorated as of the date of closing, and, thereafter, we would be responsible for payment of general ad valorem real estate taxes charged against the ________ Tract, and would have no responsibility for taxes on the rest of the Center. If, at any time, assessments are levied on the Center or the ________ Tract as a result of the development of the Center or additional construction. Developer and not us would be responsible for the same. In addition, if ________ does not initially build to its maximum permissible size, ________’s expansion area would be considered common area while and to the extent ________ has not built thereon.

3. Without any cost or expense to us in any manner whatsoever, you would provide for the Center, our store and our Tract all on- and off-site common area improvements and developments, which by way of illustration and not limitation would include all the grading and related work (including without limitation all stripping, excavation, fill, compaction and other preparation) for the Center site, including our final pad area so as to allow our foundation construction of conventional spread footings [in and on the compacted fill], road improvements adjacent to the Center and leading thereto, all parking lot improvements, sidewalks, walkways, curbs, gutters, roadways, landscaped areas (except for landscaped areas between our perimeter sidewalk and our building which would be our responsibility), storm water disposal systems, sanitary sewer systems, and all utilities (permanent and temporary), parking lot lighting, construction roads and staging areas, and all other on- and off-site common improvements reasonably necessary for the operation and use of the Center and the ________ store. A minimum technical standard for the foregoing improvement work is reflected by our standard form of minimum specifications, a copy of which is attached, with which you would comply in all respects. The improvements would also comply with all laws, regulations, ordinances, and other requirements of [public] authorities with jurisdiction applicable thereto. We would not be obligated to incur any cost or expense in connection with said compliance, including, without limitation, costs and expenses associated with environmental controls and permits, acreage fees, impact fees, frontage fees and utility tap-in fees
other than nominal (not to exceed $1,000 in the aggregate) utility hook-up fees.

4. Subject to entering, at least 24 months before the scheduled Center opening date, into an agreement which would include an REA, JIA and other appropriate documents and delivery to us of our pad prepared in accordance with our minimum specifications, and subject to completion by you of all on- and off-site common improvements, building pad improvements and other development work in a timely fashion so as to allow commencement and prosecution by us of our construction work in accordance with an established construction schedule, and subject to all other majors being open [and obligated to be open], and completion and opening of Developer improvements (consisting of the two-level enclosed mall with at least 70% of each of the levels of the mall stores leased to tenants who are either to open on the same date or obligated to be open within 30 days of the ______ opening), we would agree to construct and to open a ______ store on the scheduled Center opening date. Subject to all of the foregoing, you and ______ would make good faith efforts to complete all requirements and open the Center and the ______ Store in Fall ____, but in no event would ______ be obligated to open earlier than Fall ____.

5. After we open, subject to your operation of a first-class enclosed mall regional shopping center for said period of time and subject to the other majors operating and being obligated to do so for the same period of time, under their respective trade names and under the same conditions as us, and subject to you not being in default under the REA, we would agree to operate a store in not less than ______ square feet [of floor area] under the name of _______________________ or such other name [then being] used in conjunction with the operation of the [majority of the] stores in _______________________ [then being] operated as anchors in regional shopping centers by [the division now known as _________________] for a period of ______ from the date of [our] [the center] opening, subject to being excused therefrom by virtue of causes beyond our control. We would have no other obligations to operate and would be able to freely sell or lease subject to the operating covenant, and to make changes to the store subject to the REA. Our hours of business and all other aspects of our operations would be determined by us in our sole discretion.

6. As further inducement for a commitment to build a store in your Center, you would pay us a capital contribution (Contribution) on the earlier of (A) the opening of our store or (B) the scheduled opening date of our store. If (A) or (B) were to occur in _________, the Contribution would be $______ per square foot of gross building area of the _________ store as certified by _________’s architect; if (A) or (B) were to occur in ________
(with neither having occurred in _________), the Contribution would be $______ per such square foot.

7. For the term of the REA [which shall be ______ from the (opening of the Center) (execution of the REA)], you would operate, light, maintain, replace and repair the common areas of the Center in a first-class [clean] condition according to standards set forth in the REA. From the date _________ opens its store for business to the public (subject to our right to withdraw our tract and stop our payment), we would pay you annually the sum of ten cents ($0.10) per square foot of our floor area in existence [, as defined in the REA,] as our sole contribution toward the cost incurred by you in performing this operation, lighting, maintenance, replacement and repair, but exclusive of any costs applicable to [the operation, lighting, maintenance, replacement and repair of] the enclosed mall to which cost we would not contribute at any time. Commencing with the sixth full year after we open, the ten cents ($0.10) limit on our contribution would be adjusted [upward] by the lower of (a) five cents ($0.05) or (b) the increase in your cost experience between the first full year of our operation and the fifth full year of our operation, for the operation, lighting, [and] maintenance, [replacement and repair] of the exterior common areas, and every five years thereafter by the lower of five cents ($0.05) or the [increase in] your cost experience [for such items] for the year preceding the year of adjustment as compared to [such] cost experience for the year in which the last adjustment was made. We would reserve the right to withdraw the _________ Tract from its maintenance by you and, in the event we should so withdraw the _________ Tract, we would not be obligated to make any contribution to [said costs incurred by] you, but would be obligated to operate, light, maintain, replace and repair the common areas on the _________ Tract under the same standards as were imposed on you. If the _________ Tract were withdrawn by reason of your failure to properly perform your obligations, you would reimburse us for all of our costs in performing this operation, lighting, maintenance, replacement and repair, in excess of the amount we would have paid to you for this same service under the terms mentioned above had we not withdrawn the _________ Tract.

8. We would join and remain a member of a Merchants Association or Marketing Fund (as would be selected by you) for a period of three years from the date of our opening on the conditions that the organizational documents of said Merchants Association/Fund were acceptable to us; that we had a membership on the Board of Directors of said Merchants Association or advisory committee of said Marketing Fund; that our annual per square foot contribution to the dues and assessments of said Merchants Association/Fund would not exceed five cents ($0.05) per
square foot of our floor area; that you were to contribute as Developer’s annual contribution to said Merchants Association/Fund an annual sum equal to at least twenty-five percent (25%) of all contributions to be paid thereto; that all other majors were members and would pay the same per square foot contribution that we would pay; and that at least ninety percent (90%) of your mall tenants were members and were paying at least five cents ($0.05) per square foot of floor area.

9. With regard to title matters, you would furnish us without cost to us, at such time prior to closing of the purchase of the _________ Tract as we would request an up to date title commitment issued by a title insurance company acceptable to us covering: (1) such Tract, and (2) our interests, rights and easements in the Center. You would also furnish us, without cost to us, an ALTA (Form B 1970) extended coverage policy of title insurance in an amount not less than $__________ issued by such company at the time of the closing of the purchase of such Tract. Such title insurance would insure that title to such Tract is vested in us free and clear of all liens and encumbrances (without mechanic’s lien [and survey] exceptions) except such as we would have approved in our sole discretion; that the rights granted to us in the deed to such Tract and in the REA were valid and enforceable rights; that the Center could be constructed and operated in accordance with all the terms, conditions and provisions of the REA; that such Tract and the remainder of the Center had access to public streets; and that the entire Center was zoned so as to permit construction and operation of the Center as contemplated by the REA. Such insurance would also insure against such other matters as our counsel would deem advisable.

10. The parking ratio for the _________ Tract and the entire Center would be 5.0 cars per thousand square feet of floor area. You would not permit or cause any action to be taken that would result in reducing the parking ratio to less than 5.0 cars per thousand square feet of floor area in the Center or change the layout or configuration of the Center.

11. In regard to the parking area lighting on the _________ Tract, you would install at your expense the circuit therefor which would run from the _____ electrical room to your meter and electrical room and which, through an override switch, would provide _______ with the ability to turn its common area lighting on and off. _________ would be allowed to use the lighting on its Tract beyond Center hours, as provided in the REA, for _______ hours per year without additional charge; if _______ were to use its lighting on its Tract for more than eight evenings per year after Center hours, then _________ would reimburse you for the cost thereof.
12. No kiosk or pushcart would be located within 150 feet of any mall entrance, and none would be located in other areas of the mall except where designated on the REA site plan.

13. The REA would be signed by all majors, and, in the REA or in the other documents, you would represent to us that: the construction, use and operation of the Center will not violate any applicable laws, regulations or ordinances including any with respect to zoning and environmental protection matters; that the Center complies with all environmental laws; that environmental laws do not require any remedial actions be taken at the Center; that if any hazardous material has been generated, handled, manufactured, treated, stored, used, transported, released, spilled, leaked, dumped, discarded or disposed of, at, on, under, from or to the Center, the same has been or will be fully, promptly and properly removed from the Center; that all on- and off-site improvements will be installed and can be used as contemplated; and that you will secure all necessary studies, reports, approvals and permits for the construction, use and operation of the Center within such time limits as will permit [all] [us, you and all other] occupants to open on schedule.

The proposed arrangements reflected in this letter are to be held in strict confidence until we mutually agree that they are to be made public. Further, you agree that you will not make any press release relating to our discussions or the proposed arrangements under this letter without our prior approval of the release and its contents. No such release shall affect the terms and the nature of this letter.

As in all transactions of this nature, our entry into the Center would be conditioned on our receiving the approval of our CEC and our [mutual] agreement on all of the terms, both formal and substantive, of an REA reflecting the construction and operation of our store and the Center, as well as our [mutual] agreement on the form and substance of a JIA and all other documents incidental or appropriate in connection with our entry into the Center.

While we have not reached agreement and neither of us intends to be bound or to have any legal or equitable obligations to the other until we reach agreement on all the terms of an REA, JIA and other necessary or appropriate documents, and fully execute and deliver those documents, I believe this letter sets forth the arrangements we have discussed, and would appreciate your countersigning of the enclosed copy, and its return to us as soon as possible so we may move forward with our planning and initial submittal to CEC.
AMENDED AND RESTATED
CONSTRUCTION, OPERATION AND
RECIPROCAL EASEMENT AGREEMENT
among
EXTON SQUARE, INC.
THE MAY DEPARTMENT STORES COMPANY
J. C. PENNEY PROPERTIES, INC.
SEARS, ROEBUCK AND CO.
BOSCOV'S DEPARTMENT STORE, INC.
and
EXTON REALTY ASSOCIATES, L. P.
dated as of October 1, 1998

[The original copy of this document is recorded in the Office of the Recorder of Deeds of Chester County, Pennsylvania. Signatures, acknowledgements and exhibits have been omitted]
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Exhibit R  Reviewed and/or Approved Plans
AMENDED AND RESTATED CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT

THIS AMENDED AND RESTATED CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT (this Agreement) is made as of the first day of October, 1998, by and among EXTON SQUARE, INC., a Pennsylvania corporation ("Developer"), THE MAY DEPARTMENT STORES COMPANY, a New York corporation, in and limited by its capacity as tenant under and pursuant to the "S&C Lease" hereinafter defined (May), J. C. PENNEY PROPERTIES, INC., a Delaware corporation (Penney), SEARS, ROEBUCK AND CO., a New York corporation (Sears), BOSCOV DEPARTMENT STORE, INC., a Pennsylvania corporation (Boscov I) and EXTON REALTY ASSOCIATES, L.P., a Pennsylvania limited partnership ("Boscov II"; Boscov I and II being collectively hereinafter referred to as "Boscov") (May, Penney, Sears and Boscov, together with their respective successors, successors in interest and assigns, being hereinafter sometimes collectively referred to as the "Department Stores" or individually as a "Department Store."). WESTERN ASSOCIATES II, a Pennsylvania limited partnership (together with its successors, successors in interest and assigns, herein "Western") joins in the execution of this Agreement for the sole and limited purpose of subjecting and subordinating its fee title and other rights, title and interests in and to the May Property to the operation and effect of this Agreement, as more specifically set forth in Section 18.22 hereof.

STATEMENT OF BACKGROUND AND PURPOSE

1. Under date of January 22, 1971, Developer and Strawbridge & Clothier, a Pennsylvania corporation (S&C) entered into a certain Agreement (the "Original REA") with respect to the coordinated development, construction and operation of a shopping center on certain land in West Whiteland Township, Chester County, Pennsylvania, said Original REA being recorded in the Office of the Recorder of Deeds of Chester County, Pennsylvania (the "Recorder's Office") in Miscellaneous Deed Book 194, at Page 934.

2. The Original REA has been amended by (i) a certain Amendment, dated November 30, 1971, between S&C and Developer (the "First Amendment") recorded in the Recorder's Office in Miscellaneous Deed Book 194 at Page 1034, (ii) a certain Second Amendment to Agreement, dated June 12, 1972, between S&C, as fee owner of the "May Property" hereinafter defined, and Developer (the "Second Amendment") recorded in the Recorder's Office in Miscellaneous Deed Book 198 at Page 850, (iii) a certain Agreement, made November 30, 1972 as of November 30, 1971, among S&C, as tenant under the S&C Lease, Developer and S&C Exton, Inc. (S&C Exton), as owner of the fee title of the May Property.
(the "Third Amendment") recorded in the Recorder's Office in Miscellaneous Deed Book 202 at Page 514, (iv) a certain unrecorded Agreement, dated April 8, 1974, between Developer and S&C (the "Fourth Amendment"), (v) a certain Amendatory Agreement, dated April 4, 1977, between Developer and S&C (the Fifth Amendment), and (vi) certain letter agreements between Developer and S&C dated January, 1971 and July 16, 1971 (the Letter Agreements). The Original REA, as amended by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment and the Letter Agreements, is referred to herein as the "Existing REA". The land bound and encumbered by the Existing REA is described in Exhibit C and is referred to herein as the Existing Shopping Center Property.

3. By Deed dated May 3, 1972 and recorded in the Recorder's Office in Deed Book P 40 at Page 31, S&C conveyed the May Property (as hereinafter defined and described) and all buildings and other improvements thereon to S&C Exton. By Lease Agreement dated October 20, 1972 (a memorandum of which is recorded in the Recorder's Office in Deed Book 201 at Page 411) S&C Exton let and demised the May Property and all buildings and other improvements thereon to S&C (said Lease Agreement, as amended from time to time being referred to herein as the S&C Lease). By Deed dated December 29, 1980 and recorded in the Recorder's Office in Deed Book V-57 at Page 105, S&C Exton conveyed the May Property and all buildings and other improvements thereon to Western subject to agreements, reservations, conditions, rights of way and restrictions of record. By Assignment and Assumption of Lease and Other Department Store Contracts dated July 16, 1996 and recorded in the Recorder's Office in Deed Book 4061 at Page 721, S&C assigned to May all of its rights, obligations, title and interests in said the S&C Lease and May assumed and agreed to observe and perform the same. May continues to be the owner of the leasehold interest and estate in the May Property and all improvements thereon at the date hereof, including the May Building, and Western continues to be the owner of the reversionary fee interest and estate therein at the date hereof.

4. Pursuant to the Existing REA, Developer constructed and is now operating on the portion of the Existing Shopping Center Property owned by it an enclosed mall shopping center building containing 255,000 square feet of Floor Area and S&C heretofore constructed on the portion of the Existing Shopping Center Property then owned by it, and May (as S&C's successor in interest via the aforesaid Assignment) is now operating, a department store building containing 181,200 square feet of Floor Area, which said land, buildings, and other improvements constitute the Existing Shopping Center as hereinafter defined and described.

5. Concurrent herewith, Developer has ground leased to each of Penney, Sears and Boscov II portions of the Existing Shopping Center Property and each of Boscov, Penney and Sears has agreed to build a department store on its respective parcel. The portions of the Existing Shopping Center Property ground leased to Penney, Sears and Boscov II, as more particularly described herein, are referred to herein respectively as the Penney Property, Sears Property and Boscov Property.

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6. Developer desires to (i) expand its existing shopping center building by constructing an expansion thereof containing approximately 120,000 square feet of Floor Area connecting to each of the department store buildings of Penney, Sears, Boscov and May, (ii) construct two parking structures on the Developer Property (as hereinafter defined and described), (iii) relocate certain historic structures on the Developer Property, and (iv) provide for and do certain site work in connection therewith.

7. In order to provide the additional parking and access facilities required for the shopping center expansion and new department store buildings, Developer desires to add to its property covered by the Existing REA certain adjacent parcels of land owned by Developer, the same being the Additional Developer Property, as hereinafter defined and described.

8. The parties hereto desire to (i) amend the Existing REA, and as so amended, restate the Existing REA in its entirety in this Agreement, to provide, among other things, for the expansion of the Existing Shopping Center, (ii) amend, confirm and expand the grant of certain existing easements, and (iii) make Penney, Sears and Boscov parties to this Agreement, so that hereafter this Agreement shall govern the rights of the parties hereto. Notwithstanding the execution of this Agreement, Developer and May desire that each of the indemnities and easements in the Existing REA shall continue in full force and effect from the date thereof and, to the extent restated in this Agreement, the same shall continue according to the terms hereof and shall be binding on, and inure to the benefit of, the parties hereto, including Penney, Sears and Boscov. In addition, and notwithstanding the execution of this Agreement, the rights and obligations of Developer and/or May under the Existing REA that accrued prior to or are due to occurrences prior to the Effective Date (as hereinafter defined) shall be controlled by the Existing REA as between such parties (but not as to third parties, including Penney, Sears and Boscov); and, except to the extent that easements are vacated or created pursuant to this Agreement, the priority of easements and real property encumbrances established by the Existing REA shall not be affected by this Agreement.

9. Capitalized terms used in this Statement of Background and Purpose shall have the respective meanings as hereinabove and/or as hereinafter set forth.

IN CONSIDERATION of the foregoing and of the mutual covenants and agreements herein contained, the parties hereto and the other entities and persons joining herein, intending to be legally bound hereby, covenant and agree that, from and after the Effective Date hereof, the Existing REA shall be and is hereby further amended and restated in its entirety as follows:

ARTICLE 1 EXHIBITS AND DEFINITIONS

ARTICLE 1 EXHIBITS AND DEFINITIONS

Section 1.1. Exhibits

Attached hereto and forming a part of this Agreement are the following Exhibits, which, for the purpose of identification, have been signed or initialed by the parties hereto or their attorneys:
Exhibit A - Survey of Entire Property delineating and setting forth certified legal descriptions for each of the May Property, Penney Property, Sears Main Building Property, Sears Auto Center Property, Boscov Property and Developer Property.

Exhibit B - Legal Description of the Entire Property.

Exhibit C - Legal Description of the Existing Shopping Center Property

Exhibit D - Legal Description of the Additional Developer Property

Exhibit E - Legal Description of the May Property.

Exhibit F - Legal Description of the Penney Property.

Exhibit G - Legal Description of the Sears Main Building Property.

Exhibit H - Legal Description of the Sears Auto Center Property.

Exhibit I - Legal Description of the Boscov Property.

Exhibit J - Legal Description of the Developer Property.

Exhibit K - Legal Description of the Easement Property

Exhibit L - Legal Description of the Access Corridor

Exhibit M - Site Plan, consisting of 6 sheets as follows:

Exhibit M-1 entitled “Site Plan”
Exhibit M-2 entitled “Building Plan Lower Level”
Exhibit M-3 entitled “Building Plan Upper Level”
Exhibit M-4 entitled "Lower Level Amenity Plan"
Exhibit M-5 entitled "Upper Level Amenity Plan"
Exhibit M-6 entitled "Parking Plan"

Exhibit N - Sign Criteria.

Exhibit O - Construction Phasing Plan.

Exhibit P - Certain Easements and Agreements Affecting the Entire Property
Section 1.2. Certain Defined Terms

Section 1.2. Certain Defined Terms: As used herein the term:

(a) **Access Corridor** means all that tract or parcel of land described in Exhibit L and shown on Exhibit A.

(b) "**Access Roads**" means those roads providing ingress to, and egress from, the Ring Road and to and from public streets and roads, all as each is more particularly shown and designated on the Site Plan as "Access Road". Developer hereby represents and warrants that each of the "Access Roads" is on and a part of Developer Property and may be used for the purposes and in the manner herein set forth and/or intended and as shown on the Site Plan.

(c) **Additional Developer Property** means all that tract or parcel of land described in Exhibit D and shown on Exhibit A.

(d) **Appurtenant Easements** means those instruments granting easement rights to Developer listed in Exhibit P under the heading **Appurtenant Easements**.

(e) "**Boscov Building**" means the building and facilities described in Section 5.4(a) and such replacement building, buildings or facilities from time to time constructed on the Boscov Property.

(f) "**Boscov Common Area**" means the Common Area on the Boscov Property from time to time.

(g) **Boscov Lease** means that certain lease, of even date herewith, between Developer and Boscov II, whose obligations thereunder are guaranteed by Boscov I, demising the Boscov Property to Boscov II, a memorandum of which is intended to be recorded simultaneously herewith in the Recorder’s Office.

(h) "**Boscov Property**" means all that tract or parcel of land described in Exhibit I and shown on Exhibit A.

(i) **Boscov Trade Name Area** means Bucks, Chester, Delaware, Montgomery and Philadelphia Counties in Pennsylvania and New Castle County in Delaware.
(j) "Building" or "Buildings" means any one or more of the Developer Building, the May Building, the Penney Building, the Sears Main Building, the Sears Auto Center Building or the Boscov Building, as the context requires.

(k) "Common Area" means those areas, facilities and improvements which are intended for use by the public and/or for the mutual use and benefit of two (2) or more of the parties and their respective permittees, including, without limiting the generality of the foregoing, the Ring Road, the Access Roads, Parking Area, the Mall (other than those areas which from time to time are leased or licensed to Tenants for kiosk use within the areas identified on Exhibit M-4 and M-5), driveways, truckways, delivery passages, walkways, exit corridors, planted areas, landscaped areas, any civic center, public meeting rooms and facilities and public rest rooms, all as generally shown on the Site Plan and/or in the Developer Final Plans, but not including (i) the Penney Building, (ii) the May Building, (iii) the Sears Buildings, (iv) the Boscov Building, and (v) areas within the Developer Building designed for lease or leased or licensed to Tenants or licensees (provided, however that the areas leased or licensed to kiosk operators as expressly permitted herein shall be deemed to be Common Area to the extent that the same shall not be actually occupied for such use from time to time). As used herein, the term "kiosks" shall include mobile merchandising units, commonly known as "pushcarts."

(l) Department Store and Department Stores have the meanings ascribed to them in the opening paragraph of this Agreement.

(m) "Developer Building" means the building or buildings and facilities presently constructed on Developer Property pursuant to the Existing REA and shall also include the Developer Building Expansion from and after the time at which it is completed and made ready to open for business as well as any replacement building or buildings and facilities hereafter constructed in accordance with the terms of this Agreement, excluding exterior Developer Common Area.

(n) Developer Building Expansion means that certain expansion of the existing Developer Building to contain approximately 120,000 square feet of Floor Area and the Mall Extension, all as more particularly shown on the Site Plan, and to be constructed pursuant to the provisions of Section 5.1.

(o) "Developer Common Area" means the Common Area on the Developer Property from time to time.

(p) "Developer Property" means all that tract or parcel of land described in Exhibit J and shown on Exhibit A, and includes the Additional Developer Property.
(q) **Easement Property** means all that tract or parcel of land described in Exhibit K and shown on the Site Plan.

(r) **East Parking Structure** means that certain multi-level parking structure, providing parking spaces to accommodate the parking of approximately 650 automobiles, in the location shown therefor on the Site Plan as East Parking Structure.

(s) "** Entire Property" means all that tract or parcel of land described in Exhibit B and shown on Exhibit A and, in its entirety, is comprised of the Penney Property, May Property, Sears Main Building Property, Sears Auto Center Property, Boscov Property and Developer Property.

(t) **Existing REA** has the meaning ascribed to it in paragraph 2 of the Statement of Background and Purpose.

(u) **Existing Shopping Center** means the Existing Shopping Center Property and the buildings and improvements thereon constructed by Developer and S&C pursuant to the Existing REA. Existing Shopping Center does not include the Additional Developer Property or any of the buildings or improvements thereon or the Developer Building Expansion.

(v) **Existing Shopping Center Property** means all that tract or parcel of land described in Exhibit C, being the same tract or parcel of land as the Development Areas" defined and described in the Existing REA.

(w) "**Floor Area**" means the area of square feet of floor covered and enclosed within a building, whether rented or rentable or not, measured to the exterior face of each exterior wall of such building and to the center line of each interior common wall, (without deduction for walls or columns), but not including (i) elevators, stairs or escalators, (ii) Common Area, (iii) mechanical equipment penthouses, (iv) mezzanines used exclusively for storage or offices, (v) backroom offices and separately designated non-selling areas used primarily for mechanical, telephone, electrical and computer or other similar operating equipment and separate tenant storage areas leased or licensed to Tenants, (vi) truck docks and service/loading areas, including covered (but not enclosed) receiving areas adjacent thereto, and (vii) that portion of the Developer Building, not exceeding 10,000 square feet in area, used exclusively for management and promotion offices.

(x) **Guernsey Cow** means that certain structure located on the Developer Property in the area designated "Guernsey Cow" on the Site Plan.

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(y) "include" and "including" shall be deemed to contain the phrase "without limitation."

(z) "Legal Requirements" means all federal, state and local laws, statutes, regulations, rules, orders, ordinances and requirements now or hereafter in effect, of all governmental or municipal authorities having jurisdiction over the particular matter in question.

(aa) Mall means the enclosed, sprinklered, air-conditioned and heated mall located within the Developer Building as shown on the Site Plan and includes the Mall Extension from and after its completion.

(bb) Mall Extension means that certain extension of the Mall as contemplated by Section 5.1.

(cc) Massey House means that certain historic structure located on the Developer Property in the area designated Massey House on the Site Plan.

(dd) "May Building" means the building described in Section 5.5 and any replacement building or buildings, constructed from time to time on the May Property, excluding the May Common Area (if any).

(ee) "May Common Area" means the Common Area (if any) on the May Property from time to time.

(ff) "May Property" means all that tract or parcel of land described in Exhibit E and shown on Exhibit A.

(gg) May Supplemental Agreement means that separate unrecorded agreement, of even date herewith, between May and Developer, which is incorporated herein as an addendum to this Agreement as between Developer and May only.

(hh) May Trade Name Area means Bucks, Chester, Delaware, Montgomery and Philadelphia Counties in Pennsylvania, New Castle County in Delaware, Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem Counties in New Jersey and Cecil County in Maryland.

(ii) Mortgage and Mortgages means any one or more mortgages, deeds of trust, deeds to secure debt, trust indentures, sale-leasebacks, lease-subleasebacks, security agreements, or any similar security or title retention device, including any leasehold mortgage, which shall, from time to time, create a consensual first or second lien or encumbrance upon the property, interest or rights of any party in its respective property and which shall be security for one or more notes, bonds or
other evidences of indebtedness issued by a party to any entity or held by such entity. The term Mortgage shall also include any partnership agreement, joint venture agreement or joint ownership agreement pursuant to which an Institutional Lender acquires an ownership interest or equity in the property of a party or contributes equity or capital to finance acquisition or development of the property of a party; provided, in any event, that (i) whichever of the parties hereto enters into such partnership agreement, joint venture agreement or joint ownership agreement, such party shall retain management control over all operations of the partnership, joint venture or property, except upon the default of such party under the partnership agreement, joint venture agreement or joint ownership agreement, and (ii) if there is a transfer to such partnership or joint venture or joint owner, the partnership or joint venture or joint owner shall assume all the obligations of the transferor as provided in Article 16 (but an Institutional Lender’s liability for the performance of the undertakings of the transferor shall be limited to the Institutional Lender’s interest in the property transferred). The term Mortgage shall not be deemed or construed to include any default or self-help lien created or arising for the benefit of any party hereto or any mechanic’s lien.

(jj) Mortgagee means the holder of a Mortgage or the lender in whose favor a Mortgage shall have been created (or if such Mortgage is a deed of trust or trust indenture, the holder of any note, bond or other evidence of indebtedness secured thereby), the fee owner or sublessor following a sale-leaseback or lease-subleaseback, or any equity participant or joint owner (other than the mortgagor) in a partnership agreement, joint venture agreement or joint ownership agreement which constitutes a Mortgage and provided such equity participant or joint owner is an Institutional Lender, together with any successor, assignee or designee selected by the Mortgagee to take title to the property that was encumbered by the Mortgage upon foreclosure or deed or assignment in lieu thereof, or conveyance under any joint venture, partnership agreement or joint ownership agreement constituting a Mortgage.

(kk) "open for business" or "is open for business" or "shall open for business" and like references means (i) with respect to the Developer, when the exterior of the Developer Building has been substantially completed and Tenants of the Developer Building occupy at least 65% of the Floor Area of the Developer Building and are open in their respective Floor Areas for business with the public (substantially evenly divided on and throughout each level of the Mall) and the Mall (including all exterior entrances to and from same) is open to the public for business, and (ii) with respect to each of May, Penney, Sears and Boscov, when not less than 100,000 square feet of Floor Area in each of the May Building, the Penney Building, the Sears Main Building or the Boscov Building, as the case may be, are open for business with the public.
(II) "Operating Covenant Period" or "Operating Covenant Periods" means any one or more of the Developer Operating Covenant Period, the Penney Operating Covenant Period, the May Operating Covenant Period, the Sears Operating Covenant Period or the Boscov Operating Covenant Period, as the context requires.

(mm) "Parking Area" means paved areas, parking decks and multilevel facilities (in locations permitted under this Agreement), including the West Parking Structure and the East Parking Structure, used exclusively for parking automobiles and/or for access to such areas, including pedestrian bridges, and driveways, perimeter roads and landscaped areas adjacent thereto, all as located on the Entire Property or being Appurtenant Easements and shown on the Site Plan.

(nn) "Penney Building" means the building and facilities described in Section 5.2(a) and such replacement building, buildings or facilities from time to time constructed on the Penney Property.

(oo) "Penney Common Area" means the Common Area on the Penney Property from time to time.

(pp) Penney Lease means that certain lease, of even date herewith, between Developer and Penney demising the Penney Property to Penney, a memorandum of which is intended to be recorded simultaneously herewith in the Recorder's Office.

(qq) "Penney Property" means all that tract or parcel of land described in Exhibit F and shown on Exhibit A.

(rr) Penney Trade Name Area means Bucks, Chester, Delaware, Montgomery and Philadelphia Counties in Pennsylvania, New Castle County in Delaware, Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem Counties in New Jersey, and Cecil County in Maryland.

(ss) "Property" or "Properties" means any one or more of the Developer Property, the Boscov Property, the Sears Property, the Penney Property or the May Property, as the context requires.

(tt) Restrictive Agreements means those agreements imposing restrictions on portions of the Entire Property listed in Exhibit P under the heading Restrictive Agreements.
(uu) "Retail Department Store" means an integrated conventional retail store containing a number of departments for the sale of diversified goods.

(vv) "Ring Road" means the area designated as "Ring Road" on the Site Plan.

(ww) S&C Lease has the meaning ascribed to it in paragraph 3 of the Statement of Background and Purpose.

(xx) Sears Auto Center Building means the building and facilities described in Section 5.3(b) and such replacement building, buildings or facilities from time to time constructed on the Sears Auto Center Property.

(yy) "Sears Auto Center Property" means all that tract or parcel of land described in Exhibit H and shown on Exhibit A.

(zz) "Sears Buildings" means the Sears Main Building and the Sears Auto Center Building.

(aaa) "Sears Common Area" means the Common Area on the Sears Property from time to time.

(bbb) Sears Lease means that certain lease, of even date herewith, between Developer and Sears demising the Sears Main Building Property and Sears Auto Center Property to Sears, a memorandum of which is intended to be recorded simultaneously herewith in the Recorder’s Office.

(ccc) Sears Main Building means the building and facilities described in Section 5.3(a) and such replacement building, buildings or facilities from time to time constructed on the Sears Main Building Property.

(ddd) "Sears Main Building Property" means all that tract or parcel of land described in Exhibit G and shown on Exhibit A.

(eee) Sears Property means, collectively, the Sears Auto Center Property and the Sears Main Building Property.

(fff) Sears Trade Name Area means Bucks, Chester, Delaware, Montgomery and Philadelphia Counties in Pennsylvania, New Castle County in Delaware, Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem Counties in New Jersey, and Cecil County in Maryland.
"Shopping Center" means the land comprising the Entire Property and the buildings and improvements thereon, as same may exist from time to time, including after the Shopping Center Expansion.

Shopping Center Expansion means the buildings and improvements to be constructed by Developer, Penney, Sears and Boscov pursuant to Sections 5.1, 5.2, 5.3 and 5.4 respectively.

Sign Criteria means the criteria governing all signs on the Entire Property set forth in Exhibit N.

"Site Plan" means the Site Plan attached hereto as Exhibit M and forming a part of this Agreement, as more particularly described in Section 1.1 hereof.

"Supplemental Agreement" or Supplemental Agreements means, as the context requires, any or all of the Boscov Lease, May Supplemental Agreement, Penney Lease and Sears Lease. No Supplemental Agreement is binding upon or effective against any party not a party thereto and, in the event of any conflict, the provisions of this Agreement will control in all respects as between a non-party thereto and one or more of the parties thereto.

"Tenant" means any firm, individual person, company, corporation or other entity leasing, occupying or having the right to occupy Floor Area within the Developer Building.

Trade Name Area or Trade Name Areas means, as the context requires any or all of the Boscov Trade Name Area, the May Trade Name Area, the Penney Trade Name Area or the Sears Trade Name Area.

West Parking Structure means that certain multi-level parking structure, providing parking spaces to accommodate the parking of approximately 700 automobiles, in the location shown therefor on the Site Plan as West Parking Structure.

Zook House means that certain historic structure currently located on the Developer Property to be relocated to the area designated “Zook House” on the Site Plan as provided in Article 4.

Section 1.3. Index of Other Defined or Special Words or Terms: The following words and terms are defined in this Agreement on the pages indicated and such definitions are in addition to those words and terms defined in Section 1.2:
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Section 1.4. Effective Date of Agreement

This Agreement shall be effective and the term hereof shall commence as of the date hereof (the Effective Date).

ARTICLE 2
PLANNING

Section 2.1. Approved Plans

2.1.1. Site Plan: With respect to the redevelopment of the Entire Property, the parties have agreed upon the Site Plan showing, among other things, the following:

(a) the boundaries of the Developer Property, Additional Developer Property, Boscov Property, May Property, Penney Property, Sears Main Building Property and Sears Auto Center Property;
the locations, gross building area and estimated Floor Area each of the Developer Building, Developer Building Expansion, Boscov Building, May Building, Penney Building, Sears Main Building, Sears Auto Center Building, East Parking Structure and West Parking Structure;

c) the locations of roadways, entrances, exits, landscaped areas and other surface improvements (excluding utility facilities), as they will be configured, on the Entire Property, including the Access Roads, Ring Road and abutting roadways and highways;

d) the areas within Developer Building designed for lease to Tenants ("Leasable Areas");

e) Parking Areas and specified number of spaces therein; and

(f) the Kmart site (of which the Easement Property is a part), including the Kmart store building and parking spaces thereon.

2.1.2. **Technical Specifications**

In addition to the Site Plan, Developer and Sears have agreed to certain outline specifications for On-Site Improvements and Off-Site Improvements (the "Sears Technical Specifications") attached as an exhibit to the Sears Lease setting forth Sears’ minimum standards and criteria to be observed and strictly adhered to by Developer in preparing plans for the On-Site Improvements and the Off-Site Improvements and including a construction schedule (the "Sears Construction Schedule") establishing dates for preparation of certain plans and construction deadlines as between Developer and Sears. In addition, Developer and Penney have agreed to certain outline specifications for On-Site Improvements and Off-Site Improvements (the "Penney Technical Specifications") attached as an exhibit to the Penney Lease setting forth Penney's minimum standards and criteria to be observed by Developer in preparing plans for the On-Site Improvements and the Off-Site Improvements and including a construction schedule (the "Penney Construction Schedule") establishing dates for preparation of certain plans and construction deadlines as between Developer and Penney. Further, Developer and Boscov have agreed in the Boscov Lease to certain specifications for the preparation of the building pad for the Boscov Building by Developer (the Boscov Technical Specifications) and a construction schedule (the Boscov Construction Schedule) establishing dates for preparation of certain plans and construction deadlines as between Developer and Boscov. The Sears Technical Specifications, Penney Technical Specifications and Boscov Technical Specifications are herein collectively referred to as the "Technical Specifications", and the Sears Construction Schedule, Penney Construction Schedule and Boscov Construction Schedule are herein collectively referred to as the "Construction Schedule". Each of the other parties hereto acknowledges and agrees that May has neither approved the Technical Specifications and Construction Schedule, nor is bound thereby in any manner whatsoever.
Developer, Sears, Penney and Boscov agree that the planning of the facilities and improvements initially to be constructed on the Entire Property shall conform to the Technical Specifications (to the extent provided in the Sears Lease, Penney Lease and/or Boscov Lease) and the plans described on Exhibit R, and, in all events, the parties hereto agree that all of such facilities and improvements shall conform to the Site Plan and that such facilities and improvements shall be so designed as to be suitable for use as a first class regional shopping center and so as to insure exterior architectural compatibility among the Developer Building, May Building, Boscov Building, Sears Buildings and Penney Building. To the extent that plans and specifications described in Section 2.3(a) and relating to the Entire Property (excluding the Penney Property, the Sears Main Building Property, the Sears Auto Center Property and the Boscov Property) are not set forth on Exhibit R, such plans and specifications shall be subject to May's approval (which approval, notwithstanding anything herein to the contrary, including without limitation Section 2.2, may be withheld because such plans and specifications fail to comply with May's standard minimum technical specifications in effect on the date of this Agreement).

2.1.3. Plans Reviewed and/or Approved as of the Date of this Agreement

Prior to the execution of this Agreement, each of the parties hereto has reviewed and/or approved the plans described in Exhibit R, to the extent each such party has rights to review and/or approval pursuant hereto or pursuant to the terms of any Supplemental Agreement.

Section 2.2. Coordination of Planning

The planning of the facilities and improvements to be constructed on the Entire Property, to the extent required by the following provisions to this Agreement or pursuant to any Supplemental Agreement, shall be coordinated through consultation of the parties respective architects and engineers with one another and the exchange and approval of certain plans and specifications to the end that all such facilities and improvements shall be architecturally and functionally harmonious. In order to assure such coordination, where plans and specifications prepared by one party are required hereunder to be approved by or furnished to one or more of the other parties the submission and approval of same shall be accomplished in accordance with the following procedure:

(a) The party required to prepare such plans and specifications (the "Originating Party") shall submit the same to each party whose review and/or approval thereof is required (the "Approving Party") not later than the date provided herein or in the applicable Supplemental Agreement.

(b) Within thirty (30) days after such plans and specifications have been received by the Approving Party, such party shall give the Originating Party notice of its approval or disapproval thereof, specifying in the case of the latter its reasons therefor. Approval of such plans and specifications shall not be unreasonably
withheld, delayed or conditioned by the Approving Party and may be withheld only if:

(i) the plans and specifications do not conform to or are not consistent developments of the Site Plan, the applicable Technical Specifications, Exhibit R or other plans and specifications (if any) previously approved by the Approving Party; or

(ii) the improvements and facilities depicted on the plans and specifications are not architecturally and functionally harmonious with the other improvements and facilities to be constructed on the Entire Property; or

(iii) the plans and specifications do not meet the requirements of this Agreement or the applicable Supplemental Agreement.

(c) The Originating Party will, promptly following receipt of a notice of disapproval, undertake to amend and modify the plans and specifications so as to conform to the requirements of this Agreement and each applicable Supplemental Agreement and, upon completion thereof, the same shall be approved in writing by the Approving Party.

(d) If the Approving Party shall fail to give notice of its approval or disapproval within thirty (30) days after receipt of any plans and specifications submitted to it for its approval, or of any required modification or amendment thereof, the Originating Party shall so notify the Approving Party (the "Second Notice"), and if the Approving Party shall continue to fail to give notice of its approval or disapproval within ten (10) days after receipt of such Second Notice, the same shall be deemed to have been approved by the Approving Party.

(e) Upon approval of the plans and specifications by the Approving Party as provided herein, the same shall not be modified or amended thereafter by the Originating Party in any material respect without the approval of the Approving Party, which approval shall not be unreasonably withheld, delayed or conditioned.

If there shall be a bona fide dispute between the Originating Party and the Approving Party as to whether the plans and specifications or any amendment or modification thereof conform to the requirements of this Agreement or the Supplemental Agreement between the Originating Party and the Approving Party, such dispute shall be submitted for arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association by a panel of three (3) neutral arbitrators, each with at least ten (10) years experience in the design or development of regional shopping centers, appointed in the manner specified in such Rules. In
the event that at the time of any arbitration hereunder, the American Arbitration Association is no longer in existence for the purpose of determining the method of conducting the arbitration including, but not limited to, the manner of selecting the arbitrators, the term "American Arbitration Association" as used in this Agreement shall include any organization which at the time in question is performing the services with respect to commercial arbitration in the Commonwealth of Pennsylvania being performed by the American Arbitration Association on the Effective Date. The decision rendered in such arbitration shall be final and binding upon the parties and shall be enforceable in any court of competent jurisdiction.

Section 2.3. Plans for Which Approval is Required

Section 2.3. Plans for Which Approval is Required: The plans and specifications which are required to be approved hereunder and the party whose approval of same is required are set forth below and the same shall be submitted to the Approving Party for approval, from time to time as soon as practicable after same have been prepared:

(a) The following plans and specifications are to be prepared by Developer and submitted to each of the Department Stores for its approval:

(i) Preliminary plans and specifications for the On-Site Improvements and the Off-Site Improvements.

(ii) Preliminary plans (including, where appropriate, architectural elevations and exterior design studies) for the structural grid systems and exterior portions of the Developer Building Expansion.

(iii) Preliminary plans and specifications for the foundations of the Developer Building Expansion.

(iv) Final plans and specifications for the On-Site Improvements and the Off-Site Improvements, in sufficient detail to permit construction thereof.

(v) Final plans and specifications for the exterior portions of the Developer Building Expansion in sufficient detail to permit construction thereof.

The plans and specifications described in clauses (i), (ii) and (iii) above, as finally approved by the Department Stores, are referred to herein as the "Developer Preliminary Plans" and the plans and specifications described in clauses (iv) and (v) above, as finally approved by the Department Stores, are referred to herein as the "Developer Final Plans."
(b) The following plans and specifications are to be prepared by Penney and submitted to Developer for its approval:

(i) Preliminary plans and specifications (including, where appropriate, architectural elevations and exterior design studies) for the foundations, structural grid system and exterior portion of the Penney Building. Such plans and specifications, as finally approved by Developer, are referred to herein as the Penney Preliminary Plans.

(ii) Final plans and specifications for the exterior portions of the Penney Building in sufficient detail to permit construction thereof. Such plans and specifications, as finally approved by Developer, are referred to herein as the "Penney Final Plans."

(c) The following plans and specifications are to be prepared by Sears and submitted to Developer for its approval in accordance with the provisions of the Sears Lease:

(i) Preliminary plans (including, where appropriate, architectural elevations and exterior design studies) for the foundations, structural grid system and exterior portions of the Sears Buildings. Such plans are referred to herein as the "Sears Preliminary Plans."

(ii) Final plans for the exterior portions of the Sears Buildings in sufficient detail to permit construction thereof. Such plans are referred to herein as the "Sears Final Plans."

(d) The following plans and specifications are to be prepared by Boscov and submitted to Developer for its approval:

(i) Preliminary plans and specifications (including, where appropriate, architectural elevations and exterior design studies) for the foundations, structural grid system and exterior portions of the Boscov Building. Such plans and specifications, as finally approved by Developer, are referred to herein as the "Boscov Preliminary Plans."

(ii) Final plans and specifications for the exterior portions of the Boscov Building in sufficient detail to permit construction thereof. Such plans and specifications, as finally approved by Developer, are referred to herein as the "Boscov Final Plans."
Section 2.4. Compliance with Underlying Requirements, etc.: Each party's plans and specifications provided for in this Agreement shall conform to the Site Plan, the provisions of this Agreement and the applicable Technical Specifications, shall comply with all Legal Requirements applicable to its Property and shall be in accordance with the orders, rules and regulations of each party's respective fire insurance rating organization. Notwithstanding the foregoing, however, any party's plans may depart from the orders, rules or regulations of its fire insurance rating organization but only if such party bears any additional cost to the other parties resulting from such departure and only if such departure shall not result in any party's Building being uninsurable.

Section 2.5. Building Locations to Be Controlled By Site Plan: The location of all buildings and facilities in the Shopping Center shall be controlled by the Site Plan; no buildings or other facilities may be erected on the Entire Property except within the Building footprints shown on sheet M-3 of the Site Plan; no additional building or facility may be built, nor may any building be expanded after the initial construction thereof, except in an area designated for future development or expansion on the Site Plan or otherwise specifically permitted herein; and no multi-level parking facility, building structure, or other material improvement or obstruction of any kind (other than landscaping and site amenities shown on any party's Final Plans) may be placed, permitted or maintained on the Entire Property or any portion thereof, except as shown on the Site Plan or otherwise specifically permitted herein, unless in all such events all of the parties agree in writing on a modification hereof and of the Site Plan, which agreement may be withheld by any party in its sole and absolute discretion. Each party agrees, however, that: (i) except with respect to building walls interfacing or forming a common wall with the building(s) of another party or parties, minor encroachments by building walls beyond the Building footprints shown on sheet M-3 of the Site Plan (the term "minor" shall mean those encroachments not exceeding two (2') feet measured from the applicable Building footprint(s)) will be permitted; (ii) canopies, overhangs or other projections may be constructed by a party on its Property and beyond its Property, provided that the same shall be shown on such party's Final Plans approved by the other parties as herein provided and provided further that nothing in this Section 2.5 shall give any party the right to construct or maintain any portion of its Building or any canopy, overhang, or other projection (including any support therefor) on or over the Property of another party beyond that permitted in Section 12.3; and (iii) the parties may install signage not shown on the Site Plan provided the same is in accordance with the Sign Criteria.

Section 2.6. Buildings to be Independently Supported: Except as provided by Section 12.2, each party's Building shall be supported independently and shall not encroach upon any other party's building nor use any footings, pedestals or structural columns of any other party's Building for support, unless such other party shall agree in writing.

ARTICLE 3
-20-
OFF-SITE IMPROVEMENTS

ARTICLE 3  OFF-SITE IMPROVEMENTS

Section 3.1.  "Off-Site Improvements" Defined

Section 3.1.  Off-Site Improvements Defined: The term "Off-Site Improvements" means such of the following improvements not presently in place and, except where otherwise noted, to be installed off the Entire Property:

(a) A new traffic signal to be installed at the location designated as New Traffic Signal on the Site Plan.

(b) Widening of Route 100 from Route 30 to Swedesford Road, including new turn lanes at the intersections, as shown on the Site Plan.

(c) Widening of Route 30 at its intersection with Route 100, as shown on the Site Plan.

(d) Any additional improvements such as guard rails, fences, relocation of utility lines, and the like, that may reasonably be necessary to operate the Shopping Center.

Section 3.2.  Completion of Off-Site Improvements

Section 3.2.  Completion of Off-Site Improvements: Developer will endeavor in good faith to cause the Off-Site Improvements to be completed in accordance with the Construction Phasing Plan attached hereto as Exhibit O (the "Construction Phasing Plan") which has been jointly and mutually agreed upon and identified by the parties hereto (a copy of which each party hereto hereby acknowledges has been furnished to it), and shall cause the construction and installation of the Off-Site Improvements to be completed in all material respects in accordance with the Developer Final Plans.

Section 3.3.  Construction Cost

Section 3.3.  Construction Cost: None of the Department Stores shall be responsible, directly or indirectly, for the construction cost of the Off-Site Improvements and any special assessment and/or benefit tax or charge with respect thereto, and such construction cost, to the extent not properly borne by public authority, public or private utilities or other third parties, shall be paid by Developer.

ARTICLE 4  ON-SITE IMPROVEMENTS

Section 4.1.  "On-Site Improvements" Defined

Section 4.1.  On-Site Improvements Defined: The term "On-Site Improvements" means the following work or improvements to be performed or installed on the Entire Property:
(a) Grading of those portions of the Entire Property upon which Buildings or other
improvements are to be constructed, including clearing and grubbing, removal of
trees, shrubs and stumps, removal of top soil, cutting and filling, all in
accordance with the Developer Final Plans and consistent with the Technical
Specifications (where applicable), and including compaction tests by a
recognized testing laboratory, sub-soil studies, surveying and engineering work
in connection therewith. The work to be done by Developer pursuant to this
clause (a) is referred to herein as the "Grading Work."

(b) Extension of the electric, water (both fire and domestic), gas, if available,
telephone, storm water discharge, and sanitary sewer discharge (including the
relocation of any existing facilities, if necessary) to be installed underground
each to such point or points as shown on the applicable Final Plans (provided, in
any event, that all utility lines shall be brought to within five feet (5') of the
building line of each of the Boscov Building, Penney Building and Sears Main
Building) and construction of on-site storm water drainage facilities, if
appropriate, to connect to the storm water drainage system as approved by
governmental authority. Developer represents and warrants that the utility
facilities to be installed and/or extended pursuant to this clause (b), together with
the existing off-site utility facilities, are and shall be sufficient to service the
Shopping Center. Developer represents and warrants that the utility facilities to
be installed and/or extended pursuant to this clause (b), including, without
limitation, electricity, the storm water drainage system, water (both fire and
domestic) and the on-site and off-site sanitary sewer discharge system, together
with the existing on-site and off-site utility facilities, shall be sufficient, as of the
Effective Date, to service the Shopping Center, including the Shopping Center
Expansion and the May Future Expansion.

(c) Construction and installation (including reconstruction or reconfiguration, as
necessary, of existing improvements) of the improvements constituting the
exterior Common Area including landscaping and planting (except that each
Department Store shall be responsible for its own landscaping and planting
within the area between its Building line and curb line), sidewalks and
walkways, sculpture, flags, fountains, planters, benches, retaining walls, paving,
striping of Parking Areas, concrete curbing and gutters, guard rails, fences, the
Ring Road, Access Roads, entrances and exits, traffic controls and signs,
Shopping Center and Department Store identification signs for traffic control,
and lighting fixtures with electrical wiring therefor; but not including (i) any
Common Area for which any of the other parties is responsible, as provided in
Article 5 hereof, or (ii) any dock, corridors or delivery facilities which serve only
one party or any cost or expense related thereto.
(d) Construction of the West Parking Structure, including the pedestrian bridges connecting the same to the Sears Main Building and the Boscov Building, in accordance with the Developer Final Plans.

(e) Construction of the East Parking Structure, including the pedestrian bridge connecting the same to the Penney Building, in accordance with the Developer Final Plans.

(f) Relocation of the Zook House to the location shown therefor on the Site Plan.

(g) Until the Parking Areas are surfaced, construction staging areas for each party's Property and an all-weather gravel (or equal) construction haul road or roads providing access to each party's Property, to be located as shown on the Construction Phasing Plan. Each party shall fence and maintain its own construction staging area during the course of construction, and the construction haul road will be maintained by Developer during the course of construction.

Section 4.2. Completion of the On-Site Improvements: Developer shall cause the On-Site Improvements to be completed in all material respects in accordance with the Developer Final Plans and will endeavor in good faith to cause such completion in accordance with the Construction Phasing Plan referred to in Section 3.2 hereof. The construction cost of the On-Site Improvements shall be paid by Developer.

ARTICLE 5
CONSTRUCTION

ARTICLE 5 CONSTRUCTION
Section 5.1. Construction of Developer Improvements: After approval of the Developer Final Plans in accordance with the provisions of Article 2, Developer shall commence and prosecute with due diligence to completion in accordance with the Construction Phasing Plan, at its sole cost and expense, the construction of the improvements described below (herein "Developer Improvements") in all material respects in accordance with the Developer Final Plans and in accordance with the provisions of this Agreement and, as applicable, the Supplemental Agreements. Developer shall cause the construction of the Developer Improvements to proceed in an orderly and coordinated manner and will use its diligent and commercially reasonable efforts to minimize interference with the construction and/or normal operations of all parties hereto, the Existing Shopping Center, the Mall and the May Building and May Property. The Developer Improvements to be constructed by Developer pursuant to this Section 5.1 are as follows:

(a) An expansion and modification of the existing Developer Building (the "Developer Building Expansion") having a Floor Area of approximately
120,000 square feet, including an enclosed, sprinklered, air-conditioned and heated extension of the existing Mall (the "Mall Extension") connected to the Boscov Building, the May Building and the Penney Building, located as shown on the Site Plan, which shall be constructed and equipped in accordance with the following requirements:

(i) the Mall Extension shall include such smoke detecting devices, smoke vents, sprinklers and drains as may be required by applicable building code and in accordance with the requirements of Developer's fire insurance rating organization; and

(ii) the heating, ventilating and cooling system in the Mall Extension shall be so designed and operated as to (x) cool the Mall Extension to a maximum of 76°F. (within a tolerance of 2°F) dry bulb and 50% relative humidity (within a tolerance of 5%) when the outside temperatures are 91°F. dry bulb temperature and 76°F. wet bulb and when internal loads consist of actual installed lighting and an average of one person per 100 square feet in the Mall Extension and (xx) heat the Mall Extension to 70°F. (plus or minus 2°F to account for thermostat differential) when the outside temperature is 0°F. and when internal loads are the same as described in clause (x) above.

(b) All Common Area on Developer Property not included (if any) in On-Site Improvements.

The parties acknowledge that Developer has constructed and is operating on the Developer Property the Developer Building (not including the Developer Building Expansion, which has not yet been constructed) consisting of 255,000 square feet of Floor Area opening onto each level of the Mall.

Section 5.2. Construction of Penney Improvements

Section 5.2. Construction of Penney Improvements: After approval of the Penney Final Plans in accordance with Article 2 and after completion of the Grading Work on the Penney Property, Penney shall, at its expense, complete the construction on the Penney Property of the improvements described below in all material respects in accordance with the approved Penney Final Plans and in accordance with the provisions of this Agreement and the Penney Lease. Penney shall cause the construction of such improvements to proceed in an orderly and coordinated manner and will use its diligent efforts to minimize interference with the construction and normal operations of the other parties hereto. The improvements to be constructed by Penney on the Penney Property are as follows:

(a) A Retail Department Store building (the "Penney Building") having an aggregate Floor Area of not less than 115,000 square feet, nor more than 125,000 square
feet, on two approximately equal levels, both of which shall have openings onto the Mall. The Penney Building shall include any and all truck docks, delivery corridors and other delivery facilities serving the Penney Building exclusively.

(b) All Common Area between the inner curb of the Ring Road (except by the north side of the Penney Building, where improvements to be constructed by Penney shall be between the exterior wall of the East Parking Structure) and the exterior walls of the Penney Building.

Section 5.3. Construction of Sears Improvements:
After completion of the On-Site Improvements in accordance with the Sears Technical Specifications on the Sears Main Building Property and the Sears Auto Center Property, Sears shall, at its expense, complete the construction on the Sears Main Building Property and Sears Auto Center Property of the improvements described below in all material respects in accordance with the Sears Final Plans and in accordance with the provisions of this Agreement and the Sears Lease. Sears shall cause the construction of such improvements to proceed in an orderly and coordinated manner and use its diligent efforts to minimize interference with the construction and normal operations of the other parties hereto. The improvements to be constructed by Sears on the Sears Property are as follows:

(a) A Retail Department Store building (the "Sears Main Building") on the Sears Main Building Property having an aggregate Floor Area of not less than 120,000 square feet, nor more than 130,000 square feet, on two approximately equal levels, the lower level of which shall have openings onto the Mall. The Sears Main Building shall include any and all truck docks, delivery corridors and other delivery facilities serving the Sears Main Building exclusively.

(b) A building (the Sears Auto Center Building) on the Sears Auto Center Property, designed to be used for the sale of automobile tires, supplies (other than gasoline) and other automotive accessories, having a Floor Area not exceeding 12,000 square feet.

(c) All Common Area in the area between the exterior walls of the Sears Main Building and the back face of the perimeter curbs on the Sears Main Building Property, as well as all Common Area in the area between the exterior walls of the Sears Auto Center Building and the back face of the perimeter curbs on the Sears Auto Center Property.

Section 5.4. Construction of Boscov Improvements:
After approval of the Boscov Final Plans in accordance with Article 2 and after completion of the Grading Work on the Boscov Property, Boscov shall, at its expense, complete the construction on the Boscov Property of the improvements described below in all material respects in accordance with the approved Boscov Final Plans and in accordance with the
provisions of this Agreement and the Boscov Lease. Boscov shall cause the construction of such improvements to proceed in an orderly and coordinated manner and will use its diligent efforts to minimize interference with the construction and normal operations of the other parties hereto. The improvements to be constructed by Boscov on the Boscov Property are as follows:

(a) A Retail Department Store building (the "Boscov Building") having an aggregate Floor Area of not less than 175,000 square feet, nor more than 185,000 square feet, on two approximately equal levels, both of which shall have openings onto the Mall. The Boscov Building shall include any and all truck docks, delivery corridors and other delivery facilities serving the Boscov Building exclusively.

(b) All Common Area between the inner curb of the Ring Road and Truck Ingress/Egress Pathway and the exterior walls of the Boscov Building (except by the Lower Level Parking on the southeast side of the Boscov Building, where improvements to be constructed by Boscov shall be between the exterior walls of the Boscov Building and the back face of the curb separating the Lower Level Parking from the sidewalk in front of the Boscov Building), as shown on the Site Plan. In no event shall Boscov be responsible for construction of Common Areas between the inner curb of the Ring Road and the inner curb of the Truck Ingress/Egress Pathway.

Section 5.5. May Building Section 5.5. May Building: The parties acknowledge that May has constructed and is operating on the May Property a Retail Department Store building (the May Building), which presently contains 181,200 square feet of Floor Area on two approximately equal levels, both of which have entrances onto the Mall.

Section 5.6. Zoning; Permits; Compliance with Laws Section 5.6. Zoning; Permits; Compliance with Laws: Developer represents and warrants to each of the Department Stores that the Legal Requirements applicable to the Entire Property and/or to each Property and Building permit the construction and operation thereon of the Shopping Center as currently existing and as to be modified and expanded as contemplated by Articles 3, 4, and 5 and Section 6.5 of this Agreement, including the Boscov Building, May Building, Penney Building, Sears Main Building, Sears Auto Center Building, Developer Building, and Common Area. Developer represents and warrants to May that, to the best of its knowledge and belief, the Legal Requirements applicable to the Entire Property and the May Property and May Building permit, as of the Effective Date, the construction and operation thereon of the May Future Expansion (including additional Parking Area for the May Future Expansion). Subject to the foregoing, each party shall obtain, at its expense, all local governmental approvals, authorizations, permits and certificates which may be necessary to permit it to carry out and complete its construction and operation activities hereunder. Developer shall furnish to Boscov, May, Penney and Sears (and Boscov, Penney and Sears shall each furnish Developer) with one complete reproducible set of the working drawings and specifications for all improvements to be constructed hereunder by such furnishing party and with one reproducible copy of each amendment or modification.
thereof. In addition, Developer shall furnish to any of Boscov, May, Penney or Sears requesting the same, such additional copies of those portions of Developer Final Plans relating to the Off-Site Improvements and On-Site Improvements (including site plans, traffic plans showing curb cuts, and drainage plans) as may be required by such requesting party in order to obtain the approvals, authorizations, permits or certificates mentioned in the third sentence of this Section 5.6. With respect to its construction activities hereunder, but without in any manner whatsoever intending to limit, restrict, diminish or modify Developer's representations and warranties in the first two sentences of this Section 5.6, each party agrees that such construction will comply with all Legal Requirements of all applicable governmental authorities and with such orders, rules and regulations as may now or hereafter be adopted by its respective fire insurance rating organization, except that a party need not comply with the orders, rules or regulations of its fire insurance rating organization if such party bears any additional cost to the other parties resulting from such non-compliance and if such non-compliance does not result in any party's Building(s) being uninsurable.

Section 5.7. Coordination of Construction Activities

In order to facilitate the coordination of construction of the Shopping Center Expansion, Developer, Boscov, Penney and Sears each will consult, and will require its contractors to consult, with the other such parties and their contractors from time to time and will use reasonable efforts to coordinate its construction activities with those of the other such parties. Developer, May, Boscov, Penney and Sears will jointly prepare a schedule which will provide among other things for a timely exchange of information and approvals in order to enable each such party to meet its planning and construction obligations under this Agreement. Boscov, Penney and Sears each agrees that, within fourteen (14) days after Developer shall request, such party will relocate its construction staging area to a hard surfaced area as Developer shall reasonably require in order to meet its paving and construction schedule, provided, however, that each such party shall not be required to do so more than one time.

Section 5.8. Certificates as to Floor Area

Upon completion of construction of each party's Building(s), and as often thereafter as there shall be any change in the Floor Area therein,
each party shall furnish upon request to each of the other parties a certificate of the number of square feet of Floor Area contained in such party's Building(s).

ARTICLE 6
ALTERATIONS AND EXPANSIONS

Section 6.1. No Change Unless Permitted Hereunder: Each party agrees that upon completion of the improvements and facilities to be constructed pursuant to Articles 4 and 5, it will not alter, modify or change the level, size or location of any Building, or erect additional buildings, or change the size, location, arrangement or level of any Parking Area on its Property, as reflected by the Site Plan, except as permitted or required in this Agreement. Developer and May each agree with respect to the Existing Shopping Center that it will not alter, modify or change the level, size or location of any Building, or erect additional Buildings, or change the size, location, arrangement or level of any Parking Area on its Property, as reflected by the Site Plan, except as permitted or required in this Agreement.

Section 6.2. Permitted Alterations: Subject to the provisions of Sections 9.7, 6.3, 6.4 and 6.5, each party shall have the right, at its own cost without the consent of the other parties hereto, to make such interior, structural and/or non-structural alterations, decorations, changes, and/or improvements in, on and to its Building not amounting to expansions thereof or additions thereto as such party may deem necessary or desirable, provided however, without the prior written consent of the other parties hereto (which consent may be withheld by any of such parties in their sole and absolute discretion), no party hereto shall (i) alter or change the required entrances of its Building into and/or onto the Mall, (ii) alter or change the exterior of its Building or any Common Area on its Property in any manner which is not architecturally and functionally harmonious with the remainder of the Shopping Center, or (iii) adversely interfere with or otherwise adversely affect any heating, ventilating, air conditioning, plumbing, security systems, fire protection or utility systems of the Shopping Center or any part thereof. All such alterations, decorations, changes or improvements shall be made in a first-class manner and the party making the same shall cause such activity to proceed in an orderly and coordinated manner and will use its diligent efforts to minimize interference with the normal operations of the other parties hereto.

Section 6.3. Permitted Expansion by May: May may construct, at its expense, additional Floor Area (not exceeding 40,000 square feet) once during the term of this Agreement by a vertical expansion of the May Building ("May Future Expansion") not exceeding a height of 65 feet (as measured in accordance with the West Whiteland Township zoning ordinance) within the footprint of the existing May Building. In the event that May shall elect to construct less than 40,000 square feet of additional Floor Area, May shall not be entitled to further expand the May Building during the term of this Agreement. May shall give Developer nine (9) months' written notice in advance of its commencement of
construction, which notice shall specify the number of square feet of Floor Area which May intends to add to the May Building and May's expected construction schedule for the May Future Expansion. Each party hereto (other than May) covenants and agrees that it will not take any action to impede or impair May's ability to avail itself of or satisfy all Legal Requirements and obtain a building permit to construct the May Future Expansion in accordance with the terms of this Agreement. Floor Area added to the May Property pursuant to this Section 6.3 shall be deemed to be Floor Area for purposes of this Agreement when such Floor Area is completed, ready for occupancy, and open for business with the general public. In the event of the expiration or other termination of the S&C Lease, if the May Future Expansion has been commenced but not completed at such time, Western shall either (x) complete construction of the May Future Expansion, (y) demolish any partial construction, clear away the ruins and leave the May Property in as safe and sightly condition as existed immediately before commencement of construction, or (z) give notice to Developer within thirty (30) days after the expiration or other termination of the S&C Lease that it intends to do neither of the foregoing. In the event Western gives such notice to Developer, Developer shall have the right and obligation to enter onto the May Property to either (x) complete construction of the May Future Expansion or (y) demolish any partial construction, clear away the ruins and leave the May Property in as safe and sightly a condition as existed immediately before commencement of construction of the May Future Expansion. In such event, Developer shall (i) enter upon and use only such portions of the May Property as are reasonably necessary to the accomplishment of said purpose; (ii) perform such work in accordance with the construction standards provided for in Articles 5 and 6 hereof, and (iii) indemnify and save Western harmless in the manner set forth in Section 13.3 hereof.

Section 6.4. Approval of Plans and Specifications for May Future Expansion:
Section 6.4. Approval of Plans and Specifications for May Future Expansion:
If May desires to construct an expansion of the May Building as permitted in Section 6.3, May shall furnish to Developer, for information purposes only, the plans therefor, and construction of
such expansion shall be carried out, pursuant to the procedure set forth in the May Supplemental Agreement.

Section 6.5. Permitted Additional Entrance by May

Section 6.5. Permitted Additional Entrance by May: May intends to construct an additional entrance to the May Building from the Mall on the upper level thereof at the location designated Additional May Entrance on the Site Plan. May and Developer shall have the responsibilities and obligations with respect thereto as are set forth in the May Supplemental Agreement.

ARTICLE 7
OPENING DATES

Section 7.1. Opening Dates for Existing Shopping Center:

Section 7.1. Opening Dates for Existing Shopping Center: Developer hereby confirms that the Developer Building and the May Building were first opened for business on March 15, 1973.

Section 7.2. Grand Opening of Shopping Center Expansion:

Section 7.2. Grand Opening of Shopping Center Expansion: Boscov and Sears shall each endeavor in good faith, subject to Unavoidable Delay, to cause its construction to be completed on a schedule to allow each of such parties to cause its Building(s) to be open for business with the public at a coordinated grand opening on the weekend of October 2, 1999, or on such other date between October 2, 1999 and October 30, 1999 as may be mutually agreed upon by Developer, Boscov and Sears, provided that they notified the other parties hereto of such other date by no later than September 2, 1999 (the "First Grand Opening Date") and recognizing that none of Developer, Boscov or Sears is obligated to agree to a First Grand Opening Date on a date other than the weekend of October 2, 1999. Penney shall endeavor in good faith, subject to Unavoidable Delay, to cause its construction to be completed on a schedule to allow it to cause its Building to be open for business with the public at a coordinated grand opening on May 3, 2000 (notwithstanding the provisions of the penultimate sentence of this Section 7.2), or on such other date between May 3, 2000 and August 10, 2000 as may be mutually agreed upon by Developer and Penney, provided that they notified the other parties hereto of such other date by no later than April 3, 2000 (the “Second Grand Opening Date”) and recognizing that neither Developer nor Penney is obligated to agree to a Second Grand Opening Date on a date other than May 3, 2000. Developer shall endeavor in good faith, subject to Unavoidable Delay, to cause its construction to be completed on a schedule to allow Developer to cause the new Mall food court to be open for business with the public on the First Grand Opening Date and to cause the remainder of the Developer Building Expansion to be open for business with the public on the Second Grand Opening Date. Boscov, Penney and Sears each shall have the right to open for business prior to its applicable Grand Opening Date, provided that no general advertising announcing a grand opening and referring to any date prior to the applicable Grand Opening Date is done without the consent of the Developer. In the event that any one of Developer, Boscov, Penney or Sears fails or is unable to open for business on the applicable Grand Opening Date, the remainder of such parties may open for business, but shall not be obligated to open for business until all of the other such parties open for business. In any
event, Boscov and Sears shall not be obligated to open for business until Developer is open for business in the new Mall food court, and Penney shall not be obligated to open for business until the last to occur of the following: (i) Developer shall have completed the Off-Site Improvements, the On-Site Improvements and the Developer Improvements; (ii) at least sixty-five percent (65%) of the Floor Area in the Developer Building is occupied and open for business; and (iii) May and either one of Boscov or Sears shall have opened their respective Buildings for business with the general public. Notwithstanding the foregoing provisions of this Section 7.2 (other than the provisions of the second sentence of this Section 7.2), none of Boscov, Penney or Sears shall be required to initially open its facilities for business with the public between November 1 of any year and January 31 of the following year, or during the forty-five (45) day period prior to Easter Sunday in any year, or between May 1 and August 1 of any year, if, as a result of Unavoidable Delay, or by reason of the operation of the provisions of the next preceding sentence, such party's opening of its Building for business with the public would otherwise be required to occur during one of such periods. In addition, Boscov shall not be required to initially open its facilities for business with the public on or between February 1 and April 15 of any year.

Section 7.3. Recording Opening Dates

Section 7.3. Recording Opening Dates: Developer, Boscov, Penney and Sears each shall, upon request made by any party hereto following the opening for business of such party's Building(s), execute and exchange a written agreement in recordable form reasonably satisfactory to each party which will set forth such opening date, and such date shall be the opening date referred to herein for such party.

ARTICLE 8
MERCHANTS ASSOCIATION/PROMOTION FUND

Section 8.1. Contributions

Section 8.1. Contributions: Developer has heretofore established a merchants association (the Merchants Association) for the purpose of creating and maintaining a fund for the general promotion and welfare of the Shopping Center as a whole. Each Department Store shall become and remain a member of the Merchants Association and shall make contributions thereto as required in its Supplemental Agreement or Lease with Developer. Notwithstanding anything to the contrary which may be contained in this Agreement, or in any Article of Incorporation, Corporate Charter or By-Laws of the Merchants Association, each Department Store covenants and agrees that Developer may in its sole discretion elect to provide the Merchants Association with any or all of the following, and each Department Store further expressly authorizes the Merchants Association to reimburse Developer for providing: (i) the services of a marketing manager and all staff deemed necessary by Developer to carry out effectively the promotion and public relations objectives of the Merchants Association; (ii) such reasonable space as may be necessary to carry out the functions of the marketing manager and his or her staff; and (iii) such office equipment, supplies, telephones and other related costs as may be deemed necessary by Developer to service fully the
marketing manager and his or her staff. The Merchants Association shall appoint Developer as its agent for the collection of the Merchants Association contributions with the right, joint and several, to collect and enforce on behalf of the Merchants Association all debts owing by any Department Store to the Merchants Association. The Merchants Association shall be a third party beneficiary of each Department Store's obligations under this Section 8.1, as modified or supplemented by its respective Supplemental Agreement.

**Section 8.2. Promotion Fund:** At its option, Developer may establish, in lieu of the Merchants Association, a promotion or marketing fund (Promotion Fund) having the same general purposes as the Merchants Association. If Developer elects to establish a Promotion Fund, the obligations of the Department Stores to contribute to the Merchants Association shall be applicable to the Promotion Fund in lieu of the Merchants Association. In the event Developer elects to form a Promotion Fund in lieu of the Merchants Association and an advisory committee (the "Promotion Advisory Council") is formed for the purpose of assisting Developer in planning the programs of promotion and advertising of the Shopping Center, each Department Store may maintain a member on the Promotion Advisory Council; provided that each Department Store shall be entitled to select members of the Promotion Advisory Council only during such period or periods with respect to which such Department Store shall make the financial contributions to the Promotional Services Program described in its respective Supplemental Agreement. Nothing herein shall be construed to give the Promotion Advisory Council authority to determine, discuss, or in any way control the pricing practices, types or brands of merchandise, lines of business, manner or method of individual store advertising, identity of replacement Tenants, or any other similar competitive control of the business practices of Tenants or other occupants of the Shopping Center. It is acknowledged that Western has no present rights or obligations under Section 8.1 or this Section 8.2, and it is agreed that Western shall have no rights or obligations under said Sections 8.1 and 8.2 in the event of the expiration or other termination of the S&C Lease.

**ARTICLE 9**

**TERM; USE AND OPERATING COVENANTS**

**Section 9.1. Term of Agreement:** Unless sooner terminated in accordance with its terms, this Agreement shall terminate on that date (the "Termination Date") which is the earlier to occur of (i) the eighty-fifth (85th) anniversary of the date hereof, or (ii) such time after the expiration of the Boscov Operating Covenant Period, the May Operating Covenant Period, the Penney Operating Covenant Period and the Sears Operating Covenant Period as none of the Boscov Building, the May Building, the Penney Building or the Sears Main Building shall be used for retail purposes; provided, however, that: (a) no termination of this Agreement pursuant to this Section 9.1 shall extinguish, reduce or otherwise affect (x) the easements granted in Sections 12.2, 12.3, 12.4, 12.6, 12.8 and 12.9 hereof, (xx) the perpetual easements granted in Section 12.7, or (xxx) the easements granted in Section 12.5
with respect to the use of the Ring Road or Access Roads, subject, however, to the right of the party on whose Property any part of the Ring Road or the Access Roads may be located to relocate the same consistent with such party's use of its Property upon sixty (60) days prior notice to the other parties (provided, however, that such relocation shall be made at the sole cost and expense of the party undertaking such relocation and such relocation and the relocated roads shall not interfere with any other party's access to its Property or unreasonably interfere with the conduct or operation of its business, and the easements granted under Section 12.5 shall automatically extend and apply to any such relocated roads, and upon request the parties hereto shall so confirm by instrument reasonably satisfactory to the parties); (b) easements granted to public utility companies for a term or terms beyond the Termination Date, shall not so terminate; and (c) such termination shall not limit or affect (1) the indemnities, given by each of the parties to the others pursuant to this Agreement, or (2) any remedy at law, or in equity, or under this Agreement of any party against any other party with respect to any liability or obligations arising or to be performed under this Agreement prior to the Termination Date. If this Agreement is terminated pursuant to this Section 9.1, the parties agree that, upon request of any party hereto, they will execute and deliver such documents, including those in recordable form, as may be necessary or desirable to preserve, define and describe the Common Area easements and other provisions which are to survive termination of this Agreement pursuant to the provisions of this Section 9.1.

Section 9.2. Developer Operating Covenant:

9.2.1. Operating Covenant: During the Developer Operating Covenant Period (as hereinafter defined), Developer shall continually manage and operate the Developer Property (including the Developer Building as it currently exists and the Developer Building Expansion from and after its completion and opening for business) as a first-class enclosed mall regional shopping center and for no other purpose, except as may be otherwise herein provided. Developer shall use diligent efforts to cause the Floor Area of the Developer Building to be occupied with a balanced and diversified grouping of retail tenants offering an appropriate mix of merchandise and such incidental service enterprises as are customarily a part of a first class enclosed mall regional shopping center. The term Developer Operating Covenant Period used herein means that portion of the term of this Agreement terminating on the latest to occur of (i) the tenth (10th) anniversary of the opening for business of the Developer Building Expansion, (ii) the date upon which either (a) a Retail Department Store shall no longer be operating in the entire upper level of the May Building or (b) a retail store or stores shall no longer be operating at each Mall entrance in the lower level of the May Building, or (iii) the date upon which Retail Department Stores having Floor Areas of at least 100,000 square feet each shall no longer be operated in at least two of the Boscov Building, Penney Building, May Building and Sears Main Building.

9.2.2. Use: Developer agrees that, during the Developer Operating Covenant Period, the Developer Property will be maintained and used primarily for retail businesses (including restaurant and entertainment uses) and parking incidental thereto, but may
also include from time to time such non-retail businesses and uses as are customarily found in regional shopping centers having regard for the then current practice of regional shopping centers, except to the extent limited or prohibited in any of the Supplemental Agreements.

9.2.3. Post Operating Covenant Obligations: After the Developer Operating Covenant Period and during the remainder of the term of this Agreement, Developer shall remain subject to and obligated by the terms of this Agreement other than the provisions of Subsections 9.2.1 and 9.2.2 hereinabove.

Section 9.3. May Operating Covenant:

9.3.1 Operating Covenant: From and after the First Grand Opening Date (as it may be extended only by reason of Unavoidable Delay, but in no event beyond October 1, 2000) and provided that Boscov, Sears and Developer are then open, and then obligated to be open, for business with the general public in their respective Buildings and, as to the Developer, in the new Mall food court and in accordance with and pursuant to their respective Operating Covenants set forth in Sections 9.4.1, 9.6.1 and 9.2.1, respectively, May, or May's Successors (as hereinafter defined), shall continually operate or cause to be continually operated on the May Property, under the trade name "Strawbridge & Clothier" or "Strawbridge's," or such other name permitted from time to time pursuant to the provisions of Section 9.3.2 hereof, until the earlier of (i) May 16, 2009 or (ii) the tenth (10th) anniversary of the First Grand Opening Date, a two-story Retail Department Store, having a Floor Area of not less than 100,000 square feet. The period during which May, or May's Successors, shall be obligated to operate a Retail Department Store pursuant to this Subsection 9.3.1 is referred to herein as the "May Operating Covenant Period." During the May Operating Covenant Period, May, or May's Successors, shall (i) cause such Retail Department Store to be open for business with the public during such days and hours as they shall determine in their sole and absolute discretion, but for at least forty (40) hours per week and (ii) maintain on each level into the Mall at least two entrances to and from the May Building, during all periods in which both the May Building and the Mall are open for business; in the event that an entrance of the May Building to and from the immediately abutting portion of the Mall, as aforesaid, ceases to be open for twelve (12) consecutive months for any reason other than one or more Permitted Cessations, then, subject to the review and approval of Western (to the extent it has approval rights under the S&C Lease) and to the reasonable review and approval of May and subject otherwise to the provisions of Section 6.2 hereof, (i) Developer, at no cost or expense to Western or May, shall have the right to convert the Common Area in such portion of the Mall so adjacent to such closed entrance into leasable space for Tenants of the Mall and to make such alterations to the Common Area and such closed entrance to the May Building in order to accomplish same, and (ii) May shall remove its May Remote Sign existing at or in connection with such closed entrance; provided, however, that, in no event, without the prior written consent and approval of each of May and Western (which may be withheld, conditioned and/or delayed in their respective sole and absolute discretions), shall Developer's exercise of its right as aforesaid result in there being less than two (2) entrances of the May Building to and from the Mall on each level thereof at locations selected by May and Western. The term "May's Successors" used herein means any entity (a) with or into which May
consolidates or merges, or (b) which acquires all or substantially all of the assets of May or all or a majority of the outstanding stock of May, or (c) to which May assigns all of its rights and obligations hereunder as contemplated by clause (vi) of Subsection 16.1.2. All references in this Article 9 to "May" shall be deemed to include May's Successors. It is acknowledged and agreed that the obligations set forth in this Subsection 9.3.1 are the personal obligations of May and May's Successors, and shall not be binding upon Western under any circumstances, including in the event of the expiration or other termination of the S&C Lease.

9.3.2 Change of Trade Name: In the event that one of the permitted trade names set forth in Subsection 9.3.1 is not used for operations in its Retail Department Store, May may, notwithstanding any contrary provisions of this Section 9.3, change the name under which such operations are carried on if such name change either (i) applies to a majority of the then-existing stores in the May Trade Name Area operated, as of the date hereof, by May's Strawbridge's or Hecht division under the name "Strawbridge & Clothier" or "Strawbridge's" or (ii) follows or is in connection with an entity becoming May's Successor as above provided in Section 9.3.1 and such name change is applicable to a majority of the then-existing stores in the May Trade Name Area having a Floor Area in excess of 100,000 square feet operated, as of the date hereof, under the name "Strawbridge & Clothier" or "Strawbridge's".

9.3.3 Post Operating Covenant Use: After the expiration or sooner termination of the May Operating Covenant Period and provided that May is still the tenant under the S&C Lease, May shall remain subject to the then-applicable terms of this Agreement except that the May Building shall not be required to be used and/or operated, in whole or in part(s), for any purposes and may be vacant and/or closed, in whole or in part(s); provided, however, that (regardless of whether May is still the tenant under the S&C Lease) (i) for the remainder of the Developer Operating Covenant Period, if operated at all, any use(s) of the May Building (to the extent used and/or operated) shall be one or more retail uses (including related and/or incidental uses) and shall comply with any other then-applicable terms of this Agreement, and (ii) after the expiration or other termination of the Developer Operating Covenant Period, if operated at all, any use(s) of the May Building (to the extent used and/or operated) shall be one or more lawful uses which shall not be incompatible with the then uses and operation of the Developer Building and shall comply with any then-applicable terms of this Agreement.

9.3.4 Parties Having Benefit of May Operating Covenant: The covenants, obligations and agreements of May set forth in Section 9.3 are made expressly to, with and for the benefit of Developer and its successors and assigns only, but not to, with or for the benefit of any one or more of Boscov, Sears and Penney, and Boscov, Sears and Penney each hereby acknowledges such and disclaims any right to enforce, directly or indirectly, such covenants, obligations and agreements.

9.3.5 Release Conditions: Notwithstanding the other provisions of Section 9.3, May shall automatically be released from the covenants, agreements and obligations set forth in Subsection 9.3.1, and the May Operating Covenant Period shall automatically terminate, if:
(i) On or before November 25, 1999 (as such date may be extended only by reason of Unavoidable Delay but, in no event, beyond October 1, 2000), Developer has not completed construction of the new Mall food court, and caused it to be open for business with the public, or either Sears or Boscov is not open for business in its Building and operating as herein provided in Subsections 9.6.1 or 9.4.1, as the case may be, regardless of whether its Operating Covenant is then in effect; or

(ii) On or before the First Grand Opening Date (as it may be extended only by reason of Unavoidable Delay but, in no event beyond April 1, 2000), Developer has not acquired Premises E (as shown on Sheet 1 of the Survey) from the United States Postal Service and all other land (either by fee title or Appurtenant Easement) underlying the Ring Road, Access Roads and Parking Areas; or

(iii) After the First Grand Opening Date, less than sixty-five percent (65%) of the Floor Area in the Developer Building is leased, occupied and open (as provided in Section 9.2.1) for a period of twelve (12) consecutive calendar months for reason other than Permitted Cessation thereafter occurring; or

(iv) Either (1) on or before August 10, 2000 (as such date may be extended only by reason of Unavoidable Delay but, in no event, beyond May 3, 2001, Penney has not opened for business in its Building and operating as herein provided, or (2) after opening for business in its Building, any two of Penney, Sears and Boscov are not operating for reason other than Permitted Cessation after the opening thereof, or are not legally required to be open and operating, under their respective trade names of "J.C. Penney", "Sears" and "Boscov" or, as to Penney and Sears (but not Boscov) such other trade name as they are permitted hereunder to operate, as a Retail Department Store in their respective Buildings and in the manner as otherwise provided in Subsections 9.5.1, 9.6.1 and 9.4.1, respectively; or

(v) On or before November 1, 2000 (irrespective of Permitted Cessation and/or Unavoidable Delay), Developer has not completed construction of the overbuild portion of the Developer Building Expansion, and caused at least sixty-five percent (65%) of the Floor Area in the overbuild portion of the Developer Building Expansion to be then leased, occupied and open for business with the public as provided in Section 9.2.1; or
(vi) Developer is not operating, for reasons other than Unavoidable Delay, a first-class enclosed mall regional shopping center as provided in Section 9.2; or

(vii) Developer is in default under the provisions of this Agreement or the May Supplemental Agreement beyond any applicable cure period thereafter.

Section 9.4. Boscov Operating Covenant

9.4.1. Operating Covenant

For a period of fifteen (15) years from and after the opening for business of the Boscov Building (the Boscov Operating Covenant Period), Boscov, or Boscov’s Successors (as hereinafter defined), shall continually operate or cause to be continually operated, a Retail Department Store having a Floor Area of at least 100,000 square feet (which shall be approximately evenly distributed on both levels) in the Boscov Building, and during the first ten (10) years of such period (the Boscov Nameplate Period), such Retail Department Store shall be operated under the trade name Boscov’s or under any trade name permitted under Subsection 9.4.2. During the Boscov Operating Covenant Period, Boscov, or Boscov’s Successors, shall (i) cause such Retail Department Store to be open for business with the public during such days and hours as Boscov shall determine, but for at least fifty (50) hours each week, and (ii) maintain entrances into the Boscov Building from both levels of the Mall during all periods in which the Boscov Building and the Mall are open for business. The term Boscov’s Successors used herein means any entity or entities (a) with or into which Boscov I consolidates or merges, or (b) which acquires all or substantially all of the assets of Boscov I or all or a majority of the outstanding stock of Boscov I, or (c) to which Boscov assigns all of its rights and obligations hereunder as contemplated by clause (vi) of Subsection 16.1.2. All references in this Article 9 to "Boscov" shall be deemed to include Boscov's Successors.

9.4.2. Change of Trade Name

Boscov may, notwithstanding contrary provisions of this Section, change the trade name under which operations in the Boscov Building are carried on if such name change applies to a majority of the then-existing stores (i.e., both Boscov I and Boscov II stores) in the Boscov Trade Name Area having a Floor Area in excess of 100,000 square feet previously operated under the name Boscov's.

9.4.3. Release Conditions

Notwithstanding the provisions of Subsection 9.4.1, Boscov shall be released from its covenant to operate if:

(i) the owner or operator of the May Building shall not have covenanted and agreed to continuously operate at the Shopping Center until the earlier of (i) May 16, 2009 or (ii) the tenth (10th) anniversary of the First Grand Opening Date and either of the owners or operators of the Penney Building and the Sears Main Building shall not have covenanted and
agreed to continuously operate at the Shopping Center for a period no less than the Boscov Nameplate Period, or

(ii) both Penney and Sears shall not have opened their respective Buildings for business with the general public within twelve (12) months after the opening for business with the general public of the Boscov Building, or

(iii) Developer has not completed construction of the Developer Building Expansion, and caused at least sixty-five percent (65%) of the Floor Area in the Developer Building Expansion to be open for business with the public, for reasons other than Unavoidable Delay or Permitted Cessation, on or before September 1, 2000, or

(iv) By the First Grand Opening Date, for reasons other than Unavoidable Delay, Developer has not acquired Premises E (as shown on Sheet 1 of the Survey) from the United States Postal Service and all other land (either by fee title or Appurtenant Easement) underlying the Ring Road, Access Roads and Parking Areas, or

(v) after the Developer Building Expansion has been opened for business with the general public, less that sixty-five percent (65%) of the Floor area in the Developer Building is occupied and open for business, for reasons other than Permitted Cessation, for a period of twelve (12) consecutive calendar months following notice of such condition given to Developer by Boscov, or

(vi) either of Penney or Sears, having both initially opened their respective Buildings for business with the general public, shall permanently discontinue operations in their respective Buildings for reasons other than Permitted Cessations or otherwise fail to materially comply with their respective operating covenants and Developer shall not have secured a comparable replacement within one (1) year thereafter, or

(vii) during the portion of the Boscov Operating Covenant Period following the Boscov Nameplate Period (the Boscov Additional Operating Period), the owner or operator of the May Building shall permanently discontinue operations therein, and both of the owners or operators of the Penney Building and Sears Main Building shall not have covenanted and agreed to operate at the Shopping Center during the Boscov Additional Operating Period;

provided, however, that nothing in this Subsection shall require Sears or Penney to covenant and agree directly with Boscov with respect to the operation of the Sears Main Building or the
Penney Building, it being agreed that any requirement herein for an operating covenant with respect thereto shall be satisfied if such covenant is made by Sears and Penney in favor of Developer.

9.4.4. Post Operating Covenant Use

9.4.4. Post Operating Covenant Use: After the Boscov Operating Covenant Period shall have expired or after Boscov shall have been released from its covenant to operate pursuant to Subsection 9.4.3, and, in either event, during the remainder of the term of this Agreement, Boscov and the Boscov Property shall remain subject to the terms of this Agreement, except that Boscov shall not be required to operate a Retail Department Store in the Boscov Building; provided, however, that any use of the Boscov Building shall be a retail use which shall not be incompatible with the operation of a first-class retail enclosed mall regional shopping center in the Developer Building, provided Developer is operating the Developer Building as a first-class retail enclosed mall regional shopping center, and shall comply with all of the other terms of this Agreement.

9.4.5. Parties Having Benefit of Boscov Operating Covenant

9.4.5. Parties Having Benefit of Boscov Operating Covenant: The covenants and agreements of Boscov set forth in Subsection 9.4.1 are made expressly to, with and for the benefit of Developer and its successors and assigns only, but not with May, Sears and Penney, and May, Sears and Penney each hereby disclaims any right to enforce such covenants and agreements.

Section 9.5. Penney Operating Covenant

9.5.1. Operating Covenant

9.5.1. Operating Covenant: For a period of ten (10) years from and after the opening for business of the Penney Building (the Penney Operating Covenant Period), Penney, or Penney’s Successors (as hereinafter defined), shall continually operate or cause to be continually operated, a Retail Department Store having a Floor Area of at least 80,000 square feet (which shall be approximately evenly distributed on both levels) in the Penney Building, under the trade name J.C. Penney or under any trade name permitted under Subsection 9.5.2. During the Penney Operating Covenant Period, Penney, or Penney’s Successors, shall (i) cause such Retail Department Store to be open for business with the public during such days and hours as Penney shall determine, and (ii) maintain entrances into the Penney Building from both levels of the Mall during all periods in which the Penney Building and the Mall are open for business. The term Penney’s Successors used herein means any entity (a) with or into which Penney consolidates or merges, or (b) which acquires all or substantially all of the assets of Penney or all or a majority of the outstanding stock of Penney, or (c) to which Penney assigns all of its rights and obligations hereunder as contemplated by clause (vi) of Subsection 16.1.2. All references in this Article 9 to "Penney" shall be deemed to include Penney's Successors.

9.5.2. Change of Trade Name

9.5.2. Change of Trade Name: Penney may, notwithstanding contrary provisions of this Section, change the trade name under which operations in the Penney Building are carried on if such name change applies to a majority of
the full line department stores now operated under the name "J. C. Penney" in the Penney Trade
Name Area.

9.5.3. Release Conditions

9.5.3. Release Conditions: Notwithstanding the provisions of Subsection 9.5.1, Penney shall be released from its covenant to operate upon thirty (30) days’ notice to Developer if:

(i) after the Developer Building Expansion has been opened for business with the general public, less than sixty-five percent (65%) of the Floor Area in the Developer Building is occupied and open for business, for reasons other than Permitted Cessation, for a period of twelve (12) consecutive calendar months following notice of such condition given to Developer by Penney, or

(ii) May discontinues operations in the May Building under a trade name permitted under this Agreement for a period in excess of sixty (60) days, for reasons other than Permitted Cessation, or

(iii) after the initial opening for business of the Boscov Building and the Sears Main Building, both Boscov and Sears discontinue operations in their respective Buildings under trade names permitted under this Agreement for a period in excess of sixty (60) days, for reasons other than Permitted Cessation, or

(iv) any of the Off-Site Improvements to be constructed by Developer pursuant to Article 3 hereof or any of the On-Site Improvements on or servicing the Penney Property to be constructed by Developer pursuant to Article 4 hereof shall not have been completed within twelve (12) months after the opening for business with the general public of the Penney Building, or

(v) both Boscov and Sears shall not have opened their respective Buildings for business with the general public within twelve (12) months after the opening for business with the general public of the Penney Building, or

(vi) in the event May shall have closed the May Building for business with the general public for renovation or expansion of the May Building at any time during construction of the Shopping Center Expansion, May shall not have reopened the May Building for business with the general public within twelve (12) months after the opening for business with the general public of the Penney Building, or

(vii) By the First Grand Opening Date, for reasons other than Unavoidable Delay, Developer has not acquired Premises E (as shown on Sheet 1 of the
Survey) from the United States Postal Service and all other land (either by fee title or Appurtenant Easement) underlying the Ring Road, Access Roads and parking Areas, or

(viii) Developer shall have agreed with May, Boscov or Sears to terminate its covenant to operate as set forth in Subsections 9.3.1, 9.4.1 and 9.6.1 respectively, or

(ix) any of May, Boscov or Sears, having opened its respective Building for business with the general public, shall be in breach or anticipatory breach of its covenant to operate and Developer shall fail or refuse to expeditiously use its best efforts to enforce the same, provided that if despite such expeditious use of its best efforts, Developer shall be unable to enforce such operating covenant or prevent a breach thereof, Penney shall not be entitled to terminate its operating covenant pursuant hereto.

9.5.4. Post Operating Covenant Use

9.5.4. Post Operating Covenant Use: After the Penney Operating Covenant Period shall have expired or after Penney shall have been released from its covenant to operate pursuant to Subsection 9.5.3, and, in either event, during the remainder of the term of this Agreement, Penney and the Penney Property shall remain subject to the terms of this Agreement, except that Penney shall not be required to operate a Retail Department Store in the Penney Building; provided, however, that any use of the Penney Building shall be a retail use which shall not be incompatible with the operation of a first-class retail enclosed mall regional shopping center in the Developer Building, provided Developer is operating the Developer Building as a first-class retail enclosed mall regional shopping center, and shall comply with all of the other terms of this Agreement.

9.5.5. Parties Having Benefit of Penney Operating Covenant

9.5.5. Parties Having Benefit of Penney Operating Covenant: The covenants and agreements of Penney set forth in Subsection 9.5.1 are made expressly to, with and for the benefit of Developer and its successors and assigns only, but not with Boscov, May or Sears, and Boscov, May and Sears each hereby disclaims any right to enforce such covenants and agreements.

Section 9.6. Sears Operating Covenant

9.6.1. Operating Covenant

9.6.1. Operating Covenant: For a period of fifteen (15) years from and after the opening for business of the Sears Main Building (the Sears Operating Covenant Period), Sears, or Sears Successors (as hereinafter defined), shall continually operate or cause to be continually operated, a Retail Department Store having a Floor Area of at least 100,000 square feet (with at least 25% of such Floor Area on each of the two levels) in the Sears Main Building under the trade name Sears, Sears, Roebuck and Co or any trade name permitted under Subsection 9.6.2. During the Sears Operating Covenant Period, Sears, or Sears' Successors, shall (i) cause such Retail Department Store to be open for business with the public seven (7) days each week (subject to applicable laws and ordinances), during
hours as Sears shall determine, but for at least fifty (50) hours each week, and (ii) maintain an
entrance into the Sears Main Building from the Mall during all periods in which the Sears Main
Building and the Mall are open for business. The term Sears Successors used herein means
any entity (a) with or into which Sears consolidates or merges, or (b) which acquires all or
substantially all of the assets of Sears or all or a majority of the outstanding stock of Sears, or (c)
to which Sears assigns all of its rights and obligations hereunder as contemplated by clause (vi)
of Subsection 16.1.2. All references in this Article 9 to "Sears" shall be deemed to include Sears' Successors.

9.6.2. Change of Trade Name: Sears may, notwithstanding contrary provisions of this Section, change the trade name under which operations in the Sears Main Building are carried on if such name change applies to a majority of the full line department stores now operated under the name "Sears" in the Sears Trade Name Area.

9.6.3. Release Conditions: Notwithstanding the provisions of Subsection 9.6.1, Sears shall be released from its covenant to operate if:

(i) Developer has not completed construction of the Developer Building Expansion, and caused at least sixty-five percent (65%) of the Floor Area in the Developer Building Expansion to be open for business with the public, for reasons other than Unavoidable Delay or Permitted Cessation, on or before September 1, 2000, or

(ii) By the First Grand Opening Date, for reasons other than Unavoidable Delay, Developer has not acquired Premises E (as shown on Sheet 1 of the Survey) from the United States Postal Service and all other land (either by fee title or Appurtenant Easement) underlying the Ring Road, Access Roads and Parking Areas, or

(iii) after the Developer Building Expansion has been opened for business with the general public, Tenants shall not be occupying and open for business in at least sixty five percent (65%) of the Floor Area of the Developer Building, reasonably and evenly distributed in total space and type of operation through each wing and/or level thereof, for reasons other than Permitted Cessation, for a period of twelve (12) consecutive calendar months following notice of such condition given to Developer by Sears, or
(iv) after the initial opening for business of the Boscov Building and the Penney Building, at least two (2) Department Stores other than Sears are not open and operating Retail Department Stores in their respective Buildings for reasons other than Permitted Cessation. Developer shall have a period of twelve (12) months after receipt of notice from Sears to cure, provided that, if a replacement department store (acceptable to Sears) is found by Developer within said twelve (12) month period, such replacement department store shall have six (6) months to open from the date it takes possession of the premises in question, and the aggregate time from the date of Sears notice to the opening of the new department store shall not exceed eighteen (18) months, or

(v) Developer is not operating, for reasons other than Unavoidable Delay, a first-class enclosed mall regional shopping center as provided in Section 9.2.

9.6.4. Post Operating Covenant Use

After the Sears Operating Covenant Period shall have expired or after Sears shall have been released from its covenant to operate pursuant to Subsection 9.6.3, and, in either event, during the remainder of the term of this Agreement, Sears and the Sears Property shall remain subject to the terms of this Agreement, except that Sears shall not be required to operate a Retail Department Store in the Sears Main Building; provided, however, that any use of the Sears Main Building shall be a retail use which shall not be incompatible with the operation of a first-class retail enclosed mall regional shopping center in the Developer Building, provided Developer is operating the Developer Building as a first-class retail enclosed mall regional shopping center, and shall comply with all of the other terms of this Agreement.

9.6.5. Parties Having Benefit of Sears Operating Covenant

The covenants and agreements of Sears set forth in Subsection 9.6.1 are made expressly to, with and for the benefit of Developer and its successors and assigns only, but not with Boscov, May or Penney, and Boscov, May and Penney each hereby disclaims any right to enforce such covenants and agreements.

9.6.6. Use of Sears Auto Center Building

During the Sears Operating Covenant Period, Sears shall not be required to operate the Sears Auto Center Building, but if it does operate the Sears Auto Center Building, the same shall be used only as a store specializing in the sale and installation of tires, batteries, automobile accessories and lubricants and the servicing of motor vehicles (not including body work or the sale of gasoline), except that Sears may use a portion of the Sears Auto Center Building, not exceeding 4,000 square feet, as a product service outlet for the drop-off and on-site repair of small appliances; provided, however, that (i) in no event shall there be any repair or use of gasoline engines, and (ii) no such use of the Sears Auto Center Building shall increase the number of parking spaces required to be provided and maintained by Developer or any other
party under applicable law or this Agreement. From and after the expiration of Sears Operating Covenant Period and for the remainder of the term of this Agreement, Sears may use the Sears Auto Center Building only for such uses or for other lawful uses commonly found in first-class regional enclosed mall shopping centers in the Philadelphia metropolitan area if the Developer Property is then being operated as a first-class regional enclosed mall and, if not, then for any lawful use, subject, however, to Developer’s right under the Sears Lease to terminate the Sears Lease as to the Sears Auto Center Property.

Section 9.7. Permitted Cessations

Section 9.7. Permitted Cessations: Any Permitted Cessation by any party hereto shall not constitute a breach on the part of the party so ceasing business of its covenant to operate. The term Permitted Cessation used herein means any temporary cessation of business occasioned by Unavoidable Delay or which is reasonably necessary in order to permit the party in question to make repairs, alterations, improvements, replacements, or additions to its Building(s) as permitted or required herein, provided, that such party shall not close any portion or all of its Building(s) for a period longer than

(i) one (1) year, for the purpose of making repairs or replacements made necessary by Condemnation, fire or other casualty; or

(ii) one hundred twenty (120) days, with respect to any other repairs, alterations, improvements, replacements or additions to the Building(s) of such party permitted or required herein,

unless, in either instance, a longer period is reasonably required, in which event the parties shall endeavor in good faith to agree upon a reasonable extension of such one (1) year or one hundred twenty (120) days (as the case may be) limitation. If the parties shall fail to agree upon whether or the extent to which any such extension is reasonable or is necessary, the dispute shall be determined by arbitration in Philadelphia, Pennsylvania in accordance with the Commercial Arbitration Rules of the American Arbitration Association, before a panel of three arbitrators, each of whom shall have had at least ten (10) years experience (either direct or as an adviser or consultant) in the construction or development of complex commercial buildings or in the management and operation of regional enclosed mall shopping centers in the United States. The award of the arbitrators shall be final and binding on the parties and may be enforced by any court having jurisdiction.

Section 9.8. Operations

Section 9.8. Operations: The parties acknowledge that it is their mutual intent that the Shopping Center be operated as a first-class retail enclosed mall regional shopping center which shall provide a broad range of merchandise and services consistent with the size of the Shopping Center and which shall be attractive both in its physical characteristics and in its appeal to customers and trade. In furtherance of this intent, Developer and the Department Stores each covenants with the other that in connection with its operation on its Property, it will not:
(a)  Use or permit the use of any objectionable advertising medium such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, radio or broadcast within the Shopping Center in such manner that any sounds reproduced, transmitted or produced shall be directed primarily beyond the interior of its Building, and will keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the interior of its Building;

(b)  cause or permit objectionable odors to emanate or be dispelled upon its Property;

(c)  permit the parking of delivery vehicles so as to unreasonably interfere with the use of any driveway, walk, Parking Area, Ring Road, Access Road, Mall or other Common Area or receive or ship articles of any kind outside the designated loading areas for its Building;

(d)  subject to the requirements of, and limitations imposed by, applicable, laws, ordinances and/or governmental rules and regulations, permit any solicitations, demonstrations or itinerant vending in the Common Area, unless the same shall be part of promotional activities of the Shopping Center which are approved by the Merchants Association or Promotion Advisory Council and do not unreasonably interfere with the commercial operations of any party or any Tenant;

(e)  operate any outdoor sales area (provided, however, that Sears shall not be prohibited hereby from displaying seasonal items on the sidewalks on its Property);

(f)  permit any use of its Property or any part thereof in a manner likely to injure the reputation of the Shopping Center or which will violate the laws of any applicable unit of government; or permit any part of its Property to be used for any disreputable or immoral purpose;

(g)  permit undue accumulations of garbage, trash, rubbish or any other refuse, and will remove the same at its own expense, and will keep such refuse in proper containers in the interior of its buildings or other places designated therefor until called for to be removed;

(h)  cause or permit any obstruction in any manner of any portion of Common Area, except as permitted herein;

(i)  conduct or permit any bankruptcy sale, unless directed by order of court, or any fire or "going out of business" or similar type of sale;
(j) permit any sign, symbol or advertisement to be placed on or adjacent to the exterior walls (including both interior and exterior surfaces of windows and all surfaces facing the Mall), of, or above, any Building in the Shopping Center, except signs complying with the Sign Criteria;

(k) operate its heating or air-conditioning equipment in such a manner as to drain heat or air-conditioning from any other party's Building; or

(l) commit any act or omission constituting its breach of its obligations (if any) under the terms of any of the Appurtenant Easements or Restrictive Agreements that are binding upon it.

Section 9.9. May Remote Signs

Section 9.9. May Remote Signs: May may, at its sole cost and expense, install and maintain one or more remote identification signs (each of which is referred to herein as a May Remote Sign) in the locations designated May Remote Sign Location on the Site Plan. The location of each such sign within such area and the size and design of such sign shall be subject to Developer's approval, which shall not be unreasonably withheld, delayed and/or conditioned. May, at its sole cost and expense, shall comply with the requirements of all applicable laws, ordinances and regulations in the erection, operation and maintenance of each May Remote Sign.

Section 9.10. Environmental Indemnity

Section 9.10. Environmental Indemnity: Developer, each Department Store, and Western shall, from and after the date hereof, conduct all their respective operations on the Shopping Center in such a manner as to keep the Shopping Center free of (a) Hazardous Substances Contamination (as defined below) and (b) Hazardous Substances (as defined below) other than those typically present in connection with the maintenance and/or operation of a first class regional enclosed mall shopping center, all of which Hazardous Substances shall be handled in every respect in accordance with all applicable laws or regulations. In connection therewith, Developer, each Department Store, and Western shall and do hereby indemnify, defend and hold harmless each other from and against any liability, loss, cost, damage, expense and attorneys' or other professionals' fees incurred by the other by reason of (i) the introduction of Hazardous Substances onto the Shopping Center by or at the direction of the indemnifying party, its representatives, employees, contractors and subcontractors and (ii) Hazardous Substances Contamination of the Shopping Center by the indemnifying party, its representatives, employees, contractors and subcontractors. "Hazardous Substances" means (A) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6902 et seq.), as amended from time to time, and regulations promulgated thereunder, (B) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended from time to time, and regulations promulgated thereunder, (C) any waste, material or pollutant defined as or included in the definition of "hazardous wastes", "hazardous substances", "hazardous materials" or toxic substances or words of similar
import under any other applicable federal, state, municipal or local law or regulation, (D) oil or petroleum or petroleum products, (E) any quantity of asbestos, (F) any quantity of polychlorinated biphenyls, (G) underground storage tanks, whether empty, filled or partially filled with any substance, (H) the quantity of any substance which is prohibited by any law or regulation relating to hazardous or toxic substances or materials and (I) the quantity of a substance which is inherently dangerous and which by any law or regulation from time to time requires special handling or notification of any federal, state or local governmental entity in its collection, storage, treatment or disposal; and "Hazardous Substances Contamination" means the presence on, under or in, or the release or emanation from, the Shopping Center Property or the Buildings, soil, ground water, surface water, air or other elements thereon of Hazardous Substances in quantities or at levels which exceed those permitted by law, regulation or, in the absence of law or regulation, generally accepted practice as of the date of this Agreement.

Section 9.11. Shopping Center Name

Section 9.11. Shopping Center Name: During the term of this Agreement, the Shopping Center shall be known and operated under the name "Exton Square" unless some other name shall be chosen by Developer and approved in writing in advance by the Department Stores.

ARTICLE 10
PARKING

Section 10.1. Minimum Parking to be Provided

Section 10.1. Minimum Parking to be Provided: From and after the date of this Agreement and prior to the Second Grand Opening Date, Developer shall at all times provide Parking Area on Developer Property, the Easement Property and/or the Access Corridor as shown on the Construction Phasing Plan. Commencing on the Second Grand Opening Date and thereafter during the term of this Agreement, Developer shall at all times provide Parking Area on Developer Property, the Easement Property and/or the Access Corridor sufficient to provide parking spaces to accommodate the parking of the number of automobiles required by any applicable zoning or other law, ordinance or regulation, but, in any event, not less than four and five-tenths (4.5) standard size automobiles for each one thousand (1,000) square feet of Floor Area contained in all Buildings, buildings, structures and other improvements on the Entire Property (not including, however, the Zook House, the Guernsey Cow or the Massey House) and/or on other properties having the use of any such Parking Areas, taking into account all parking provided on such other properties; provided, however, that Developer shall not be obligated to provide Parking Area with respect to any Floor Area constructed by any party hereto (other than if constructed by Developer) in excess of the maximum Floor Area which such party is permitted to construct and maintain herein; and provided, further, that after the expiration of the Boscov Operating Covenant Period, the May Operating Covenant Period, the Penney Operating Covenant Period and the Sears Operating Covenant Period, during such time and from time to time from and after which any part of the Boscov Building, the May Building, the Penney Building or either Sears Building is unoccupied for a period in excess of twelve (12) consecutive months for reason other than Permitted
Section 10.2. Additional Parking Area Following May Expansion

Section 10.2. Additional Parking Area Following May Expansion: If May shall elect to expand the May Building pursuant to Section 6.3, Developer shall provide additional Parking Area as required in Section 10.1 in order to accommodate such expansion. Any such additional Parking Area may be provided either (i) at ground level on the Developer Property, (ii) by the construction of one or more additional levels on the East Parking Structure or the West Parking Structure, or (iii) by the construction of an additional parking deck in a location designated as a “Future Parking Deck Permissible Building Area” on the Site Plan. Construction of the additional Parking Area shall be completed on or before the later to occur of (a) the date which is twelve (12) months after May shall have given the requisite notice under Section 6.3 or (b) the date on which the May Future Expansion is first open for business with the general public. Developer shall use the diligent efforts to cause West Whiteland Township to permit May to open the May Future Expansion for business with the public prior to Developer's completion of the additional Parking Area required herein. Developer acknowledges and agrees that any additional parking constructed by Developer shall be included within the term "Parking Area" and therefore to be maintained by Developer as Common Area pursuant to the provisions of Article 11 hereof.

Section 10.3. Employee Parking

Section 10.3. Employee Parking: The parties agree that on or before the First Grand Opening Date they will jointly designate certain portions of the Parking Areas as the only areas to be used for parking by employees of Developer, the Department Stores and the Tenants. Such designation shall not be substantially altered without the prior approval of each of the parties hereto, and Developer will use reasonable efforts to require its employees and the employees of the Tenants, and each Department Store will use reasonable efforts to require its employees employed at its Building(s), to park in the areas so designated.
ARTICLE 11
MAINTENANCE

Section 11.1. Maintenance, Lighting and Security of Buildings and Common Area:
Except during the periods and as otherwise provided in Section 11.2 for another party's obligations to be performed by Developer with respect to Common Area (if any) on such other party's Property, during the term of this Agreement each party, at no expense to any of the other parties, shall maintain, or cause to be maintained, its Property and the Buildings and other improvements thereon and/or therein (including, without limitation, all Common Area) in good order, condition and state of repair in accordance with the standards of first-class regional enclosed mall shopping center operations, and will keep, or cause to be kept, all display windows and signs well lighted during any period when such Building(s) is (are) open for business and for reasonable periods after such business hours. Without limiting the generality of the foregoing, such obligations of each of the parties under this Section 11.1 shall include the following specific items:

(a) Keeping and maintaining the exterior of all Buildings, all sidewalks, walkways, roadways, Parking Area, Access Roads, Ring Road and other Common Area in a good, safe, and clean condition and in good operating order, condition and state of repair;

(b) Keeping and maintaining the mechanical and electrical facilities and systems, including the lighting facilities, heating, ventilating, air-conditioning and sprinkler systems, and activated or manually operated exterior doors, in a good, safe and clean condition and in good operating order, condition and state of repair;

(c) Inspecting all asphalt paving at regular intervals and maintaining the same in first-class condition;

(d) Painting or otherwise refinishing all wall surfaces and ceilings from time to time as necessary;

(e) Regularly cleaning, sealing and waxing of floors or other similar cleaning and maintenance appropriate for the type of floor materials utilized;

(f) Removing promptly, to the extent reasonably practicable, snow, ice, surface water, rubbish, litter, and debris;

(g) Keeping repaired, distinct and legible all directional signs and pavement signs and striping in and/or with respect to the Parking Area and other Common Areas;
(h) Repairing, replacing, and renewing lighting in the Common Area, and the tubes, bulbs and ballasts therefor, as may be necessary;

(i) Caring for and replanting all landscaped and planted areas;

(j) Maintaining and repairing, as necessary, any utility lines traversing its Property, including the inspection, cleaning and maintenance of storm drainage basins and storm drainage and sanitary sewer lines at such intervals as shall be required to keep the same in a free flowing condition at all times; provided, if any utility line or facility is damaged by a party or its agents, servants, employees or contractors, then such damage shall be repaired at the sole cost and expense of the party responsible for such damage;

(k) When any one party's Building is open for business and for a period of one-half hour thereafter, keeping the exterior lighting at the following minimum maintained intensities at ground level:

(i) open Parking Areas (other than landscaped areas, but including entrances, exits and roadways constituting a part thereof) and sidewalks lighted to an average intensity of not less than one (1) foot-candle;

(ii) the Ring Road and Access Roads lighted to an average intensity of not less than one and one-half (1-1/2) foot-candles;

(iii) intersections of Access Roads and public roads lighted to an average intensity of not less than two and one-half (2-1/2) foot-candles;

(iv) sheltered Parking Areas and walkways lighted to an average intensity of not less than five (5) foot-candles;

and, during all other period of darkness, keeping not less than twenty-five percent (25%) of the light fixtures serving such areas lighted; and

(l) The employment of such security personnel as shall be reasonably adequate for the purpose of maintaining a reasonable degree of order in and on the Common Area.

In the event of the expiration or other termination of the S&C Lease, Western shall not be subject to the foregoing provisions of this Section 11.1, but shall be obligated to keep and maintain the May Property and the May Building in good repair and in a clean and safe condition; provided, however, that in the event Western or a Successor in Interest or a tenant of Western or such Successor in Interest re-opens the May Building for business as a Retail Department Store, such party shall be bound by the foregoing provisions of this Section 11.1.
Section 11.2. Developer's Obligations; Contributions by Department Stores

Section 11.2. Developer's Obligations; Contributions by Department Stores: During the periods hereinafter described, Developer, at its expense (but subject to such party's contributions hereinafter mentioned), shall perform all of the obligations of each of the Department Stores pursuant to Section 11.1 hereof with respect to the Common Area on its Property, other than (i) the Boscov Building, (ii) the May Building and the improvements located on the May Interior Loading Area, (iii) the Penney Building, (iv) the Sears Buildings, (v) the perimeter sidewalks around the Boscov Building, the Penney Building and the Sears Buildings and the areas inside the curb around each Department Store's Building(s), if any, (vi) the repair of any utility line or facility damaged by any Department Store or the agents, servants, employees or contractors of any Department Store, and (vii) the repair of any damage to any of the Common Area caused by the construction activities of any Department Store or the agents, servants, employees or contractors of any Department Store, which damage shall be repaired by and at the cost and expense of such party causing such damage. No default by Developer in the performance of such obligations shall be deemed to be a default by any Department Store. Developer's obligations as to the Common Area on any Department Store's Property (other than the May Property) shall begin on the first day on which construction of the Common Area on such Department Store's Property shall have been completed and, at Developer's option, shall terminate when such Department Store ceases to use its Building (or, in the case of Sears, the Sears Main Building) as a Retail Department Store or when such Department Store's Operating Covenant Period shall expire, whichever shall last occur. Developer's obligation as to the May Common Area will begin on the date hereof and shall terminate when all of Developer's easement rights in the Access Corridor terminate pursuant to Section 12.7. Each of the other parties shall pay Developer, as its sole and only contribution towards all costs incurred by Developer in connection with the Common Area of the Shopping Center and the Entire Property, including the Common Area on each party's Property, the sums set forth in its respective Supplemental Agreement. Notwithstanding such payments, each party shall remain obligated for the cost of repairs of damaged Common Area during construction and damaged utility lines and facilities as referred to and provided in clauses (vi) and (vii) above.

In the event no Supplemental Agreement is in effect with respect to any one of the Properties at any time during the Term of this Agreement, the owner of such Property shall pay Developer, as its sole and only contribution towards all costs incurred by Developer in connection with the Common Area of the Shopping Center and the Entire Property, including the Common Area on each party's Property, that sum determined by multiplying the costs incurred by Developer pursuant to the provisions of Section 11.1 hereinafore by a fraction, the numerator of which shall be the Floor Area of the Building situated on such Property and the denominator of which shall be the aggregate square footage of the Developer Building, May Building, Penney Building, Sears Main Building, Sears Auto Center Building and Boscov Building. Such payment shall be made in monthly installments in such amounts as are estimated and billed by Developer, each installment being due on the first day of each calendar month. Within one hundred twenty (120) days after the end of each fiscal year of Developer, Developer shall deliver to such owner a
statement of Developer's costs under Section 11.1 hereinabove for such fiscal year, and the monthly installments paid or payable shall be adjusted between Developer and such owner, and each shall pay to the other, within fifteen (15) days of receipt of such statement, such amounts as may be necessary to effect such adjustment. Upon reasonable notice, Developer shall make available for such owner's inspection, at Developer's office, during normal business hours, Developer's records relating to Developer's costs under Section 11.1 hereinabove for such preceding fiscal year.

ARTICLE 12
EASEMENTS

Section 12.1. Reciprocal Common Area Easements

Each party hereby grants to the others, and to their respective successors and assigns, their tenants, subtenants, concessionaires, licensees, and the respective officers, employees, agents, customers, and invitees of each, for the benefit of each grantee's Property within the Entire Property only, the non-exclusive right, privilege and easement for the term of this Agreement to use the Common Area of the grantor's Property (excluding the Access Roads and Ring Road, easements over which are provided in Section 12.5 hereof) for the respective purposes for which such Common Area are designed (subject, however, to Developer's right to appropriate any part of such Common Area on the Developer Property for purposes of expansion of existing Parking Area or construction of additional Parking Area permitted by this Agreement) in common with the grantor and the other tenants, subtenants, concessionaires and licensees of the Entire Property, and the respective officers, employees, customers, agents, and invitees of each, without payment of any fee or other charge being made therefor. In addition to the foregoing, Developer hereby grants to the other parties to this Agreement, and to their respective successors and assigns, their tenants, subtenants, concessionaires, licensees, and the respective officers, employees, agents, customers and invitees of each, for the benefit of each grantee's Property within the Entire Property only, the non-exclusive right to exercise, in common with Developer, the rights, privileges and easements granted to Developer pursuant to the Appurtenant Easements.

Each party shall have the right, at least once in each calendar year to erect barriers or chains for the purpose of blocking off access to portions of the Common Area on its Property in order to avoid the possibility of dedicating the same for public use or creating prescriptive rights therein. Such barriers or chains shall be erected for such purposes, if possible, at a time or upon a day when the Shopping Center is not open for business.

Section 12.2. Easements for Underground Supports and Minor Encroachments

While it is the intention of the parties to confine their improvements to the limits of their respective Properties, it is recognized that this result is not always achieved in a multi-ownership shopping center development. Accordingly, each party hereby grants to the
others and to their respective successors and assigns for the benefit of each grantee's Property within the Entire Property only the non-exclusive right and easement to install, maintain, repair and replace such footings and underground supports, consistent with the load bearing limitations of the soil, along their respective common property lines, extending not more than six (6) feet under the servient tenement, as shall be necessary in connection with the construction by each party of its original Building and for minor encroachments of building walls not to exceed two (2) feet beyond property boundary lines. At the request of any party, the parties hereto will enter into an agreement in recordable form reasonably satisfactory to the parties describing the easements provided for hereby in accordance with a survey made at the joint expense of the parties, or, alternatively, shall describe said easements in the memorandum of lease between Developer and Department Store relating to the properties encumbered and benefited by such easements. Each such easement for such underground footings or supports, and for minor encroachments, for buildings in use at the time of termination of this Agreement shall continue until such underground supports or footings or encroachments are no longer being used with the right upon reconstruction to continue the use of such easements.

Section 12.3. Sign and Canopy Easements

Each party hereby grants and shall grant to the others and to their respective successors and assigns for the benefit of each grantee's Property within the Entire Property only the non-exclusive right and easement in connection with the construction and operation of the grantee's Buildings to install, maintain, repair, and replace signs, canopies, roofs, building overhangs, and other like projections and encroachments attached to the grantee's Buildings and extending into the grantor's Property, provided, however, that no such projection shall interfere with the operations of the grantor or tenants in its or their Buildings or in any event exceed an encroachment of five (5) feet.

Section 12.4. Utility Easements

Each party hereby grants and agrees to grant to the others and to their respective successors and assigns for the benefit of each grantee's Property included within the Entire Property only, the non-exclusive right and easement in perpetuity to install, maintain, repair, and replace utility facilities, such as water, gas, electric, and telephone lines, and storm and sanitary sewers, underground and within the grantor's Property at the places shown for such utility facilities on the plans and specifications therefor to the extent shown thereon or at such places as the same may presently be existing or ultimately may be installed after completion of the Off-Site Improvements and On-Site Improvements. Any party hereto upon whose Property any such utility facilities shall have been installed shall have the right, upon sixty (60) days' prior notice to the other parties, at any time or from time to time both during and after the term hereof, to move and relocate such facilities to such place on its Property as it shall designate; provided, however, that such relocation shall be made at the sole cost and expense of the party requesting such relocation and that such relocation or relocated facility shall not interfere with, decrease the service or increase the cost of, any other party's utility service or interfere with the conduct or operation of its business.
Section 12.5. Easement for Access Roads and Ring Road

Section 12.5. Easement for Access Roads and Ring Road: Each party hereby grants to each of the other parties and to their respective successors and assigns, their tenants, subtenants, concessionaires, licensees, and the respective officers, employees, agents, customers and invitees of each, for the benefit of each other and each party's Property within the Entire Property only, perpetual easements for pedestrian and vehicular traffic over the Access Roads and Ring Road on its Property for the purposes of providing ingress to and egress from the grantee's Property and access between said Property and other property and public roads with the following rights and subject to the following restrictions and reservations: grantors of the Access Roads and Ring Road easements agree not to obstruct or interfere in any way with the free flow of pedestrian and vehicular traffic over the Access Roads and Ring Road, except to the extent necessary for reasonable repair and maintenance, traffic regulation and control, and to prevent a dedication thereof or the accrual of any rights to the public therein. Developer represents and warrants to each of the parties that the Access Roads and Ring Road are entirely on the Entire Property or land over which the Entire Property is (or will be, upon consummation of the Agreements listed in Section 12.9 hereof) benefitted by an Appurtenant Easement.

Section 12.6. Maintenance, Repair and Construction Easements

Section 12.6. Maintenance, Repair and Construction Easements: Each party hereby grants and agrees to grant to the others and to their respective successors and assigns (including the grantee or Tenant named in any deed or lease of any portion of the Developer Property permitted by Section 9.2 and the successors and assigns of any such grantee or Tenant) for the benefit of each grantee's Property included within the Entire Property only, the non-exclusive right and easement for the purpose of maintaining, repairing, constructing or reconstructing any of the Building(s) or improvements of the grantee located in such proximity to the grantor's Property, to the extent that such Building(s) or improvements can, as a practical matter, be so maintained, repaired, constructed or reconstructed only from the grantor's respective Property and only to the extent that any such maintenance, repair, construction or reconstruction is required or permitted hereunder; such easements shall permit the grantee and its employees, agents and contractors to enter upon and use such parts of the grantor's respective Property as are adjacent to the perimeter of said improvements to such extent, in such manner (including, without limitation, the erection of scaffolding) and for so long as is reasonably necessary to the accomplishment of said purposes; provided, however, and on condition that, each grantee under this Section 12.6 shall (i) enter upon and use only such portions of grantor's Property as are necessary, in accordance with good construction practices, for the maintenance, repair, construction or reconstruction of the grantee's Building(s) or improvements (but in no event enter upon the Floor Area of a party hereto), (ii) perform any such work in accordance with the construction standards provided for in Article 5 and Article 6, as applicable, (iii) indemnify and save the grantor harmless in the manner set forth in Section 13.3, (iv) endeavor in good faith to schedule such maintenance, repair, construction or reconstruction so as to minimize the period of time during which the grantee must use the grantor's Property and, except in case of emergency or the initial construction of the Shopping Center Expansion, to avoid the use of grantor's property for maintenance, repair, construction or reconstruction during the period beginning July 10th and
ending on August 10th of any year or beginning on November 1st in any year and ending on January 15th of the following year, and (v) shall restore the portion of the grantor's respective Property so used to the same or as good condition as immediately before such work was begun. In addition to and without limiting the foregoing, no such use by any grantee of any grantor's Property under this Section 12.6 and no such scaffolding as may be erected by it, shall interrupt the business being conducted on the particular grantor's Property so used or unreasonably interfere therewith, and upon the request of the grantor, the grantee will modify its work and/or schedule so as to avoid any such interruption or interference.

Section 12.7. Easement for Buildings and Facilities in Access Corridor

Section 12.7. Easement for Buildings and Facilities in Access Corridor: In addition to the other easements granted herein, May and Western hereby grant and confirm the grant to Developer of a perpetual and irrevocable easement appurtenant to the Developer Property for pedestrian and vehicular traffic over, and for the installation at Developer's own cost of sewers, water pipes, gas, electric and telephone lines and other utility lines serving the Shopping Center under, the Access Corridor, and for the construction, maintenance and use thereon of Parking Area, the Developer Building, and any other Common Area shown on the Site Plan as situated within said Access Corridor. The right of pedestrian and vehicular traffic over the Access Corridor shall be possessed and enjoyed by Developer and by all of the Tenants, sublessees, employees, customers, patrons and other invitees claiming under Developer, including Penney, Sears and Boscov. The easements provided for in this Section 12.7, in respect of the Developer Building, Parking Area and other Common Area on or above the surface of the ground, shall terminate upon the expiration or termination of this Agreement as provided in Section 9.1. The other easements provided for in this Section 12.7 shall be perpetual. None of the easements provided for in this Section 12.7 shall be subject or subordinate to any lien upon the May Property. May and Western each covenants and agrees with Developer that it will execute, in recordable form, such instruments confirming the grant of the easements granted and confirmed pursuant to this Section 12.7 as Developer, its successors or assigns, shall reasonably request.

Section 12.8. Perpetual Common Area Easement for Benefit of the May Property

Section 12.8. Perpetual Common Area Easement for Benefit of the May Property: During the term of this Agreement, each Property, including the May Property, shall have the benefit of the easements, including the parking easements, created and/or referred to in Section 12.1 hereof. Effective immediately upon the termination of this Agreement (as provided in Section 9.1 hereof and/or otherwise), Developer hereby grants and confirms the grant to Western and May of a perpetual and irrevocable exclusive easement appurtenant to the May Property, over that area of land on which approximately 1,000 parking spaces are constructed (or of a size sufficient to accommodate approximately 1,000 parking spaces) in a location inside of the Ring Road and as close to the May Building as reasonably practical based on the configuration of improvements on the Entire Property then existing, for purposes of use and maintenance of the parking areas thereon. The right to use this area of land shall be possessed and enjoyed by Western and May and their successors and assigns, and by all sublessees, employees, customers, patrons and other invitees claiming under Western or May or their successors and assigns.
Developer covenants and agrees with Western and May that it will execute, in recordable form, such instrument confirming the grant of easement granted and confirmed pursuant to this Section 12.8 as Western or May, or their respective successors or assigns, shall reasonably request.

Section 12.9. Perpetual Truck Access and Loading Dock Easements for Benefit of the May Property

Section 12.9. Perpetual Truck Access and Loading Dock Easements for Benefit of the May Property: In addition to the other easements granted herein, Developer hereby grants and confirms the grant to Western and May of perpetual and irrevocable easements appurtenant to the May Property (i) over the area identified on the Site Plan as the "Truck Ingress/Egress Pathway" for purposes of delivery vehicular traffic to and from the May Building and (ii) over the area identified on the Site Plan as the "May Interior Loading Area" for purposes of maintaining May's existing loading docks and related facilities. The right to use the Truck Ingress/Egress Pathway and the May Interior Loading Area shall be possessed and enjoyed by Western and May and their successors and assigns, and by all sublessees, employees, and invitees claiming under Western or May or their successors and assigns. Developer covenants and agrees with Western and May that it will execute, in recordable form, such instrument confirming the grant of easements granted and confirmed pursuant to this Section 12.9 as Western or May, or their respective successors or assigns, shall reasonably request.

Section 12.10. Easements Attach to After-Acquired Property of Developer

Section 12.10. Easements Attach to After Acquired Property of Developer: The parties hereto acknowledge, as set forth in Exhibits D and Q, that Developer has not yet acquired all of the Additional Developer Property and Appurtenant Easements. Developer hereby agrees that all of the easements granted by it under this Article 12 shall extend to the Additional Developer Property and Appurtenant Easements it hereafter acquires immediately upon Developer's acquisition of same, as fully as if Developer had owned all of the Additional Developer Property and had already acquired its interests in the Appurtenant Easements as of the Effective Date.

Section 12.11. Common Area Use

Section 12.11. Common Area Use: Subject to the provisions of the last paragraph of this Section 12.11, each party will take such action as may be reasonable to confine the use of the Common Area on its Property to those persons to whom easements and rights of use are granted under the provisions of Section 12.1 and to those uses and purposes for which the Common Area is intended and in no event shall any party authorize the use of its Common Area by others. The parties agree that, unless otherwise specifically provided herein or required by law, no person shall be permitted to do any of the following in or about any part of the Common Area without the prior written consent of the parties hereto:

(a) Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever except in the Mall under the supervision and control of the Developer;
(b) Exhibit or distribute any sign, placard, banner, notice, circular, booklet, pamphlet, handbill or other written material, except in the Mall under the supervision and control of the Developer;

(c) Solicit membership in any organization, group or association or contribution for any purpose except in the Mall under the supervision and control of the Developer;

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

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

(f) Use any sound making device of any kind or create or produce in any manner noise or sound that is annoying or unpleasant or constitutes a nuisance;

(g) Deface, damage or demolish any sign, light standard or fixtures, landscaping material or other improvement or property within the Shopping Center;

provided, that no party shall be deemed to be in default hereunder so long as such party uses reasonable efforts to halt or prevent any such act or acts from taking place on its Property. To the extent permitted by law, any party shall have the right to remove or exclude from the Shopping Center any person engaged in the commission of any such act or acts or threatening to commit the same or to restrain any such person from coming upon the Shopping Center and, in connection therewith, may utilize any equitable or legal process including injunction and recovery of damages. In so acting, such party shall not be deemed to be the agent of any other party or any Tenant, unless expressly authorized or directed in writing to do so by such other party or Tenant.

No party shall at any time charge any sum for parking in any Parking Area. Each Department Store agrees if the Mall is open for business that at all times during which its store is open for business with the public, it will maintain at least one (1) open entrance on the Mall suitable for the handling of pedestrian traffic to and from the Mall.

Each of the Department Stores acknowledge that Developer has granted or may grant to certain adjoining property owners and their respective successors and assigns, their tenants, subtenants, concessionaires, licensees, and the respective officers, employees, agents, customers and invitees of each, non-exclusive easements and rights of use, in common with others
including such Department Stores, on and over portions of the Developer Property pursuant to
the following instruments:

(i) Reciprocal Easement Agreement between Louise L. Dick, Trustee under
Trust Agreement dated June 14, 1990 for the benefit of Hugh J.
Lattomus, as ground lessor, Whiteland Holding Limited Partnership, as
ground lessee, Kmart Corporation, as sublessee, and Developer (creating
shared parking on that portion of parking field to the south of the Kmart
building labeled "Easement Property" on the Site Plan and creating cross
easements over Access Roads and Ring Road);

(ii) Access Easement Agreement to be entered into between Developer and
Exxon Corporation (granting Exxon access to/from Route 30 at
southwest corner of Entire Property as shown on Exhibit M as the
"Exxon Access Easement Property");

(iii) Reciprocal Easement Agreement between Developer and Malvern
Federal Savings Bank dated September 25, 1998 (permitting Malvern
Federal to use Access Roads and Ring Road);

(iv) Reciprocal Easement Agreement to be entered into between Developer,
Exton Acquisition, Inc. (an affiliate of Developer) and The United States
Postal Service (permitting The United States Postal Service as owner of
future Parcel M to use Access Roads and Ring Road);

(v) Easement Agreement and Declaration of Restrictions between
Developer, Exton Commons Homeowners Association, Inc., and
Rouse/Chamberlin - 312-315 Exton Commons Limited Partnership dated
as of December 1, 1997 (permitting Exton Commons to use Access
Roads and Ring Road, as shown on the Survey); and

(vi) Deed, dated July 21, 1976, from Developer to County of Chester
recorded in the Recorder’s Office in Book S 48 at Page 159 establishing
easements in favor of Chester County Library for vehicular ingress and
egress over paved portions of the Developer Property and the right to
locate certain signs and utilities thereon, as shown on the Survey.

Neither the grant of such rights and easements nor their exercise by the grantees thereof shall
constitute a breach by Developer of the foregoing provisions of this Section 12.11.
ARTICLE 13
INSURANCE

Section 13.1. Casualty Insurance
Each party (which the parties acknowledge and agree shall include Western in the event the S&C Lease is not in effect) shall, at all times, including periods of construction, have all Buildings and other improvements on its Property insured, at its expense, against loss or damage by fire, windstorm, lightning, hail, explosion, riot or civil commotion, damage from aircraft and vehicles, smoke damage, and such other risks as are from time to time included in the usual form of "all risk coverage" endorsement in Chester County, Pennsylvania, in an amount not less than the full cost of replacement of such Buildings and improvements (excluding foundation and excavation costs and cost of underground flues, pipes and drains and other uninsurable items), but, in any event, in an amount sufficient to prevent any party from being a co-insurer, and shall also maintain comprehensive boiler and machinery insurance. No party (including Western) shall be liable to any other party (including Western) or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any Building, structure or loss of income arising therefrom which was required to be covered by insurance hereunder even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees; provided, however, that if, by reason of the foregoing waiver, any party shall be unable to obtain the insurance required by this Section 13.1, such waiver will not be deemed to have been made by such party. Each party agrees that it will include in each lease of all or any part of its Property provisions substantially similar to those contained in the next preceding sentence which shall be binding upon the tenant under any such lease and which shall be for the benefit of the other parties hereto.

Section 13.2. Liability Insurance
At all times during the term of this Agreement, each party will, at its own cost and expense, provide and keep in force commercial general liability insurance policies, in standard form, (which policies shall include coverage against contractual or assumed liability including liability under Section 13.3 of this Agreement) protecting such party against liability in an amount of not less than $5,000,000 per occurrence combined single limit for bodily injury and property damage to others. The commercial general liability policy to be maintained by May shall name Western as an additional insured thereunder. Unless such party is entitled to self-insure pursuant to Section 13.4 hereof, such policies of insurance may include a deductible clause of not more than $5,000 per individual claim. The $5,000,000 and $5,000 amounts set forth above shall be subject to review on the fifth anniversary of the Second Grand Opening Date, and on each subsequent fifth anniversary during the term of this Agreement in order to determine the adequacy of such amounts in light of the then existing circumstances. If the parties are unable to agree as to the adequacy of such amounts, the dispute shall be determined by arbitration in Philadelphia, Pennsylvania in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The award of the arbitrator shall be final and binding on the parties and shall be enforceable by any court having jurisdiction.
Section 13.3. Indemnity

Except as set forth in Section 13.1, each party (which the parties acknowledge and agree shall include Western in the event the S&C Lease is not in effect) agrees to and does hereby indemnify, defend and save the other parties harmless from and against any and all claims, actions, damages, liability and expense (including reasonable attorney's fees) arising from injury to the person or property of third parties and occasioned wholly or in part, directly or indirectly, by any act or omission of it, its tenants, subtenants, agents, contractors or employees, unless actually attributed to the acts or omissions of the party claiming the benefit of such indemnity or of its tenants, subtenants, agents, contractors or employees.

Section 13.4. Policy Requirements

All insurance provided for in this Article 13 shall be effected under valid and enforceable policies issued by financially responsible insurers which are subject to the service of legal process in the Commonwealth of Pennsylvania and have a general policyholders rating of "A-" or better and a financial size category of VII or better, as classified and rated in the edition of "Best's Key Rating Guide of Property and Liability Insurers" most recently published by A. M. Best Company as of the date of issue of such policies or with equivalent policyholders rating if the present rating and classification system utilized by the said A. M. Best Company shall be changed or if such Guide shall no longer be published. Evidence of the initial policies or renewal policies, if any, as the case may be, required to be carried by each party, shall be delivered to each other party prior to initiation of construction on the first party's Property and thereafter within thirty (30) days after written request. Any party whose net worth shall be equal to at least $150,000,000 (excluding, in the case of Developer, its interest in the Developer Property) or whose restoration obligations hereunder are guaranteed or assumed by an affiliate having a net worth of at least $150,000,000 (such $150,000,000 net worth requirement subject to increase every five (5) years following the Second Grand Opening Date by a percentage equal to the percentage increases for the period in question in the Consumer Price Index for All Items and Major Group Figures for All Areas, All Items, All Urban Consumers (U.S. City Average) ("CPI"), may carry any insurance required to be maintained under Section 13.2 either in whole or in part under any plan of self-insurance which such party (or such affiliate) may have in effect. Any party may carry any insurance required to be maintained under this Article 13 under a "blanket policy" covering other properties of such party or its affiliates.

Section 13.5. Disposition of Insurance Proceeds

Any loss covered by insurance provided for in Section 13.1 shall be adjusted with the insured. Except in the case of a party that is self-insured pursuant to Section 13.4 hereof, if the loss shall be in excess of $250,000.00 and the damaged property shall be required to be repaired or restored under the terms of this Agreement, then in such event insurance proceeds shall be deposited with the Developer's Lender (as hereinafter defined), if any, should such loss occur on the Developer Property or if there shall be no Developer's Lender or if such loss shall not occur on the Developer Property, with a bank, trust company or other corporate fiduciary to be selected by the insured and approved by the other parties (which approval shall not be unreasonably withheld, delayed or conditioned). Such insurance proceeds
shall be held in trust by such depository and disbursed for application to the work or repair or restoration as such work progresses or otherwise as provided herein subject to such reasonable conditions for disbursements as such depository may require. If the loss shall not exceed $250,000.00 or if the damaged property shall not be required to be restored under the terms of this Agreement, the insurance proceeds shall be paid to the insured and first applied by it toward the repair and restoration of such damage or otherwise as required or permitted by the terms of this Agreement. The amount of $250,000 set forth above in this Section 13.5 shall be subject to increase every five (5) years following the Second Grand Opening Date by a percentage equal to the percentage increases in the CPI for the period in question. "Developer's Lender" means any Institutional Lender (as hereinafter defined) which is unrelated to Developer and which holds a senior (i.e. first in priority) Mortgage interest in Developer Property. "Institutional Lender" means a bank, trust company, mutual savings bank, savings and loan association, insurance company, mortgage or real estate investment trust, pension trust fund, college or university endowment fund or other entity commonly recognized as an "institutional lender" and having sufficient available funds and lending experience so as to be recognized in the business community as a lender in commercial transactions involving loan amounts similar in size to the loan to the party in question.

ARTICLE 14
DAMAGE AND DESTRUCTION

Section 14.1. Of Developer Building During Developer Operating Covenant Period
In the event of the destruction of or damage to any extent of the Buildings and improvements on the Developer Property or any part thereof by reason of casualty required to be insured against under Section 13.1 and as often as any Building or improvements or any part thereof on the Developer Property shall be so destroyed or damaged by fire or other casualty during the Developer Operating Covenant Period, Developer shall rebuild and repair the same, pursuant to plans approved according to Article 2, to as good a condition, to the same general appearance, on the same level or levels and to not less than the same size as the Buildings and improvements located upon the Developer Property prior to the damage or destruction, except that if (i) any of the Department Stores' Buildings (other than the Sears Auto Center Building) shall have been substantially damaged or destroyed after the termination of its Operating Covenant Period and, in accordance with its rights under this Agreement, such Department Store shall have elected not to repair or rebuild its Building or shall have elected to repair or rebuild the same in such a manner that there shall not be at least as many square feet of Floor Area on the same level or levels as were required herein to be operated in such Building prior to such damage or destruction, or (ii) any one or more of the Department Stores shall not be operating or causing to be operated a Retail Department Store for any reason (other than by reason of such damage or destruction or as permitted under Section 9.7), then Developer shall be required to repair or rebuild the Developer Building only up to a size which shall be determined by multiplying (x) the number of square feet of Floor Area contained in the Developer Building immediately prior to its damage or

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destruction by (xx) a percentage (not to exceed 100%) computed by dividing (A) the number of square feet of Floor Area contained in all Department Store Buildings (not including the Sears Auto Center Building) to be operated as Retail Department Stores after the repair or rebuilding of same shall have been completed, by (B) the number of square feet of Floor Area in all such Department Store Buildings (not including the Sears Auto Center Building) prior to such damage or destruction; provided that the Mall shall be connected to each Department Store Building on each level and at each entrance thereto existing and maintained in use at the time of such damage or destruction. Developer agrees that all work of repair or reconstruction on any portion of the Developer Building that it is required to rebuild or repair pursuant to this Agreement shall be commenced promptly following any loss or destruction and shall be carried through diligently to conclusion (and in any event within eighteen (18) months after commencement thereof, subject to Unavoidable Delay) by it and that any change in the overall appearance, level, or size of the Developer Building or improvements being repaired or rebuilt shall be first approved by each of the Department Stores through the submission and approval of plans and specifications for such changes in the same manner as herein provided for the submission for approval of plans and specifications for the initial construction of the Developer Building Expansion.

Section 14.2. Of Developer Building After Developer Operating Covenant Period:

Section 14.2. Of Developer Building After Developer Operating Covenant Period: If the Developer Building shall be unsubstantially damaged or destroyed after the Developer Operating Covenant Period, Developer shall rebuild and repair the same in the same manner and to the same extent as required in Section 14.1 with respect to damage or destruction occurring during the Developer Operating Covenant Period, except that Developer may elect to close off any damaged Floor Area, without repairing or rebuilding the same, but only if it clears away all debris and leaves same in a clean, orderly, sightly and safe condition and only if closing off the same shall not adversely affect the architectural, structural and functional integrity of the Developer Building. Any such damage shall be deemed to be unsubstantial if the cost to repair the same shall be less than fifteen percent (15%) of the full insurable value of the Developer Building at the time such damage occurs. If the Developer Building shall be substantially damaged or destroyed after the termination of the Developer Operating Covenant Period, Developer may elect not to repair or rebuild the Developer Building, and if Developer shall elect not to repair or rebuild the Developer Building, Developer shall clear away the ruins and leave the Developer Property in a clean, orderly, sightly and safe condition. If, however, any such damage or destruction shall involve the Mall or any portion of the Developer Building then occupied by Tenants, then, unless Developer shall proceed promptly to complete the reconstruction of the Mall or, as the case may be, the reconstruction of the Developer Building within an eighteen (18) month period (subject to Unavoidable Delay) so that upon the completion of such reconstruction the Mall shall be restored and the Developer Building shall have an aggregate Floor Area at least equal to seventy-five percent (75%) of the aggregate Floor Area of the Developer Building occupied by Tenants prior to such damage or destruction, any Department Store may elect to terminate this Agreement, as to it, by giving notice thereof to the other parties and, if such election is made, such Department Store shall no longer be bound by or have the benefit of the provisions of this Agreement, except that (i) notwithstanding such
termination, any operations by a party on its Property shall not violate the provisions of clauses (a) through (l) of Section 9.8 until (a) each of the other three Department Stores (whether or not then a party to this Agreement) shall cease to operate the type of retail operation which each was required to operate during its Operating Covenant Period, or (b) the expiration of this Agreement in accordance with the provisions of Section 9.1, whichever first occurs, and (ii) no such termination shall extinguish, reduce or otherwise affect (x) the easements granted in Sections 12.2, 12.3, 12.4, 12.6, 12.8 and 12.9, (xx) the perpetual easements granted in Section 12.7, (xxx) the easements granted in Section 12.5 with respect to the use of the Ring Road and Access Roads, subject, however, to the right of the party on whose Property any part of the Ring Road or Access Road may be located to relocate the same consistent with such party's use of its Property upon sixty (60) days prior notice to the other parties, provided however, that such relocation shall be made at the sole cost and expense of the party undertaking such relocation and that such relocation does not interfere with, restrict or obstruct any other party's use of its Property or of such relocated Ring Road or Access Road, and the easements granted under Section 12.5 automatically shall extend and apply to any such relocated roads and upon request the parties hereto shall so confirm by instrument reasonably satisfactory to the party or parties requesting same, (xxxx) indemnities given by each of the parties to the others pursuant to this Agreement with respect to any liability or obligation arising or to be performed under this Agreement prior to the date of termination, and (xxxxx) any remedy at law, or in equity, or under this Agreement, of any party against any other party with respect to any liability or obligation arising or to be performed under this Agreement prior to the date of termination. If this Agreement is terminated pursuant to this Article 14, the parties agree that, upon request of any party hereto, they will execute and deliver such documents, including those in recordable form, as may be necessary or desirable to preserve, define and describe the Common Area easements and other provisions which are to survive termination of this Agreement pursuant to the provisions of this Section 14.2.

Section 14.3. Of Department Store Buildings

Section 14.3. Of Department Store Buildings: In the event of damage or destruction to any one or more of the Boscov Building, the May Building, the Penney Building or the Sears Main Building to any extent by reason of fire or other casualty, and as often as any such Building shall be destroyed or damaged by fire or other casualty at any time (other than the last eighteen [18] months of the applicable Operating Covenant Period) during the Boscov Operating Covenant Period (as to the Boscov Building), the May Operating Covenant Period (as to the May Building), the Penney Operating Covenant Period (as to the Penney Building) or the Sears Operating Covenant Period (as to the Sears Main Building), Boscov, May, Penney or Sears, or their respective successors, as the case may be, shall repair or rebuild its Building to as good a condition, to the same general appearance and to not less than the minimum size then required to be operated nor more than the maximum size permitted under this Agreement, on the same level or levels as required prior to the damage or destruction. Each Department Store agrees that any such required repair or reconstruction of its Building shall be commenced promptly following any loss or destruction and shall be carried through diligently to conclusion (and in any event within eighteen (18) months of commencement thereof, subject to Unavoidable Delay) by it and that any change in the overall
appearance, level, or size of its Building shall be first approved by Developer through the submission and approval of plans and specifications for such changes in the same manner as provided in Section 2.2. Developer's approval of any change in overall appearance shall be limited to confirming that such reconstructed Building will be architecturally harmonious with the rest of the Mall. If the Boscov Building, the May Building, the Penney Building or the Sears Main Building shall be damaged or destroyed during the last eighteen (18) months, or after the expiration or sooner termination, of the Boscov Operating Covenant Period (as to the Boscov Building), the May Operating Covenant Period (as to the May Building), the Penney Operating Covenant Period (as to the Penney Building) or of the Sears Operating Covenant Period (as to the Sears Main Building), Boscov, May, Penney or Sears, or their respective successors as the case may be, shall either (a) rebuild and repair the same in the same manner and to the same extent as required in this Section 14.3 with respect to damage or destruction occurring during the Boscov Operating Covenant Period (as to the Boscov Building), the May Operating Covenant Period (as to the May Building), the Penney Operating Covenant Period (as to the Penney Building) or the Sears Operating Covenant Period (as to the Sears Main Building), except that Boscov, May, Penney or Sears, or their respective successors, as the case may be, may elect to close off any damaged Floor Area, without repairing or rebuilding the same, or reduce the size of its Building, but only if closing off the same or reducing the size shall not adversely affect the architectural, structural and functional integrity of such Building, or (b) elect not to repair or rebuild its Building and clear away the ruins and leave its Property in a clean, orderly and sightly condition. If the May Building shall be damaged or destroyed after the expiration or sooner termination of the S&C Lease, Western shall either (a) rebuild and repair the same in the same manner and to the same extent as is required in this Section 14.3 with respect to damage or destruction occurring during the May Operating Covenant Period, except that Western may elect to close off any damaged Floor Area, without repairing or rebuilding the same, or reduce the size of the May Building, but only if closing off the same or reducing the size shall not adversely affect the architectural, structural and functional integrity of the May Building, or (b) elect not to repair or rebuild the May Building and clear away the ruins and leave the May Property in a clean, orderly and sightly condition. If the Sears Auto Center Building shall be damaged or destroyed at any time during the term of this Agreement, Sears shall either (x) promptly rebuild and repair the same to as good a condition and to the same size and general appearance as prior to the damage or destruction, or to some different size (not exceeding the maximum size set forth in Section 5.3) or appearance pursuant to plans and specifications therefore submitted to and approved by the other parties hereto in accordance with the procedure set forth in Section 2.2, or (xx) elect not to repair or rebuild the same and clear away the ruins and leave the Sears Auto Center Property in a clean, orderly and sightly condition.

ARTICLE 15
CONDEMNATION

Section 15.1. "Condemnation", Defined

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The term "Condemnation" means any taking or takings of any interest in property by any right of eminent domain or the granting or conveying of such interest pursuant to the threat thereof at any time or cumulatively from time to time. A Condemnation shall be effective as of the date on which possession is required to be surrendered or is surrendered to the condemning authority.
Section 15.2. Obligations of Parties in Event of Condemnation

Section 15.2. Obligations of Parties in Event of Condemnation:

15.2.1. Insubstantial Condemnation

Insubstantial Condemnation: If any Condemnation of any party's Property, other than a Substantial Condemnation (as hereinafter defined), occurs, then this Agreement shall continue in full force and effect and, to the extent of proceeds recovered on account of such Condemnation, such party shall promptly repair and/or replace the facilities so taken to the same general appearance as prior to such Condemnation, and, if any Parking Area shall be so taken, Developer shall repair and reconstruct and/or add to the remaining Parking Area by deck or multi-level parking or otherwise to the extent necessary to provide the number and kind of parking spaces required by Sections 10.1 and 10.2.

15.2.2. Substantial Condemnation

A Substantial Condemnation shall be deemed to have occurred with respect to any party if a Condemnation is one which results in (i) the taking of ten percent (10%) or more of Parking Area within 300 feet from that party's Building (which, in the case of Sears, shall mean only the Sears Main Building) or (ii) the taking of twenty percent (20%) or more of total Parking Area on the Entire Property, or (iii) the taking of any Floor Area of that party's Building (which, in the case of Sears, shall mean only the Sears Main Building). If a Substantial Condemnation occurs as to any party hereto, such party may terminate this Agreement as to it, subject to the provisions of Section 15.3.

15.2.3. Termination

Termination: If Developer shall terminate this Agreement as to it pursuant to this Section 15.2, any Department Store may also terminate this Agreement as to it, subject, however, to the provisions of Section 15.3.

15.2.4. Notice of Termination

Notice of Termination: All rights of termination of this Agreement provided for in this Section 15.2 shall be exercised only by notice given by the party exercising such right within ninety (90) days after the effective date of the Condemnation in question, which notice shall not become effective until thirty (30) days after its date.
Section 15.3. Survival of Certain Covenants and Easements:

Should this Agreement be terminated as to any party or as to all parties pursuant to this Article 15, such party or parties as to whom this Agreement shall have been terminated shall no longer be bound by or have the benefit of the terms and conditions of this Agreement except that (i) notwithstanding such termination any operations by any party on its Property shall not violate the provisions of clauses (a) through (l) of Section 9.8, until (a) each of the other three Department Stores (whether or not then a party to this Agreement) shall cease to operate the type of retail operation which each was required to operate during its Operating Covenant Period, or (b) the expiration of this Agreement in accordance with the provisions of Section 9.1, whichever first occurs and (ii) no such termination shall extinguish, reduce or otherwise affect (x) the easements granted in Sections 12.2, 12.3, 12.4 and 12.6, (xx) the perpetual easements granted in Sections 12.7 and 12.8, which shall remain in effect as therein stated with like effect as though this Agreement had not been terminated, (xxx) the easements granted in Section 12.5 with respect to the use of the Ring Road or Access Roads, subject, however, to the right of the party on whose Property any part of the Ring Road or Access Roads may be located to relocate the same consistent with such party's use of its Property upon sixty (60) days prior notice to the other parties, provided, however, that such relocation shall be made at the sole cost and expense of the party undertaking such relocation and that such relocation does not interfere with, restrict or obstruct any other party's use of its Property or of such relocated Ring Road or Access Road and easements granted under Section 12.5 automatically shall extend and apply to any such relocated roads and upon request the parties hereto shall so confirm by instrument reasonably satisfactory to the parties, (xxxx) indemnities given by each of the parties to the others pursuant to this Agreement with respect to any liability or obligation arising or to be performed under this Agreement prior to the date of termination, and (xxxxx) any remedy at law, or in equity, or under this Agreement, of any party against any other party with respect to any liability or obligation arising or to be performed under this Agreement prior to the date of termination. If this Agreement is terminated pursuant to this Article 15 the parties agree that, upon request of any party hereto, they will execute and deliver such documents, including those in recordable form, as may be necessary or desirable to preserve, define and describe the Common Area easements and other provisions which are to survive termination of this Agreement pursuant to the provisions of this Section 15.3.

ARTICLE 16
ASSIGNMENT, TRANSFER AND MORTGAGE

Section 16.1. Release of Party in Certain Circumstances:

16.1.1. No Release Upon Sale or Assignment:

Except as otherwise provided in Subsection 16.1.2 and Section 16.4, neither any conveyance by any party of all or any part of its Property, nor the assignment or termination of the S&C Lease, Boscov Lease, the Penney Lease or the Sears Lease, nor any assignment of this Agreement shall be deemed to release any party from its obligations hereunder.
16.1.2. Circumstances under Which Party May be Released:

Notwithstanding the provisions of Subsection 16.1.1, a party may be released from liability under this Agreement under the following circumstances:

(i) If any party shall convey all of its rights, title and interests in its entire Property, or if Boscov shall assign the Boscov Lease, or if May shall assign the S&C Lease, or if Penney shall assign the Penney Lease, or if Sears shall assign the Sears Lease, and if such conveyance or assignment is not prohibited under this Agreement, such grantor or assignor shall be released from all liability under this Agreement arising after (but not as to any liability theretofore accrued) the last to occur of (a) the date of such conveyance or assignment, (b) the expiration or sooner termination of the transferor's Operating Covenant Period, or (c) the date such transferor shall vacate possession of its Property as owner or lessee in possession; provided a copy of such conveyance or assignment together with an assumption agreement in favor of the other parties hereto (to the extent such other parties are entitled to the benefit of the conveying party's obligations hereunder) whereby the transferee assumes solely for the benefit of a party so entitled the full and prompt performance of the transferor's obligations accruing thereafter (which agreement shall be in form and substance reasonably satisfactory to the other parties hereto) shall be delivered to the other parties hereto.

(ii) If the Boscov Lease shall terminate for any reason other than Boscov's default thereunder or surrender thereof, the lessee thereunder and Boscov shall be released from all liability under this Agreement arising after (but not as to any liability theretofore accrued) the last to occur of (a) the date of such termination, or (b) the date such lessee shall vacate possession of its Property.

(iii) If the Penney Lease shall terminate for any reason other than Penney's default thereunder or surrender thereof, the lessee thereunder shall be released from all liability under this Agreement arising after (but not as to any liability theretofore accrued) the last to occur of (a) the date of such termination, or (b) the date such lessee shall vacate possession of its Property.

(iv) If the Sears Lease shall terminate for any reason other than Sears' default thereunder or surrender thereof, the lessee thereunder shall be released from all liability under this Agreement arising after (but not as to any liability theretofore accrued) the last to occur of (a) the date of such
termination, or (b) the date such lessee shall vacate possession of its Property.

(v) If the S&C Lease shall terminate for any reason other than May's default thereunder or surrender thereof, or failure to extend the term thereof to the extent required of May under the May Supplemental Agreement, the lessee thereunder shall be released from all liability under this Agreement arising after (but not as to any liability theretofore accrued) the last to occur of (a) the date of such termination, or (b) the date such lessee shall vacate possession of its Property.

(vi) If any Department Store shall convey all of its rights, title and interests in its Property (which shall include assignment of such Department Store’s leasehold estate therein) to any one person or entity as part of a simultaneous transfer or conveyance of a majority of such Department Store's Retail Department Stores (which, in the case of Boscov, shall include both the Boscov I and Boscov II stores) having a Floor Area of more than 100,000 square feet in its Trade Name Area, such grantor or assignor shall be released from all liability under this Agreement arising after (but not as to any liability theretofore accrued) the date of such transfer, conveyance or assignment, provided:

(a) the transferor shall not then be in default in the performance of any covenant or obligation hereunder to be performed by it;

(b) the transferee assumes, and agrees to be bound by, all of the terms, covenants and conditions imposed upon such transferor under this Agreement, including, without limitation, transferor's Operating Covenant if, as and to the extent then still in effect;

(c) such transferee has a then current net worth of not less than the greater of (x) $100,000,000, or (xx) an amount determined by multiplying $100,000,000 by a fraction, the numerator of which shall be the CPI (or its equivalent) last reported as of the date of such determination and the denominator of which shall be the CPI last reported as of December 31, 1999, as shown on its then current annual financial statement (that is dated contemporaneously with the assignment) certified by a nationally recognized firm of certified public accountants, which statement shall be
delivered to the other parties contemporaneously with such conveyance or assignment; and

(d) a copy of such conveyance or assignment together with an assumption agreement in favor of the other parties hereto (to the extent such other parties are entitled to the benefit of the conveying party's obligations hereunder) whereby the transferee assumes solely for the benefit of a party so entitled the full and prompt performance of the transferor's obligations accruing thereafter (which agreement shall be in form and substance reasonably satisfactory to the other parties hereto) shall be delivered to the other parties hereto.

16.1.3. Restrictions on Conveyance of Developer Property: Developer agrees that it will not convey its reversionary interests in the Boscov Property, Penney Property, Sears Property or Sears Auto Center Property separately from the Developer Property and that, prior to the completion and opening for business of the Developer Building Expansion as herein required, it will not convey the Developer Property, except by way of Mortgage to an Institutional Lender for the purpose of obtaining such financing pursuant to Section 16.2 as it shall require in order to carry out its obligations hereunder.

Section 16.2. Provisions Applicable to Lender: Notwithstanding anything to the contrary herein contained, any party shall have the right, from time to time, to enter into and/or grant any Mortgage or grant security interests with respect to its Property and to assign its interest in this Agreement in connection with any such transaction, provided, however, that any such Mortgage, or other conveyance shall be made expressly subject to this Agreement. If, in order to secure any such financing or refinancing, any party shall (i) convey its Property in connection with a sale of an undivided interest therein and such party shall retain a substantial undivided interest therein and managerial control therein, or (ii) convey its Property in connection with a sale of its entire Property to a partnership consisting of such party and an Institutional Lender in which partnership such party shall own a substantial interest, and such party shall retain managerial control in its Property, or (iii) convey its Property by way of a Mortgage, and retain its possessory interest in its Property, including under any such sale and leaseback or lease and subleaseback, then in none of such events shall the Mortgagee or the successors and assigns of any such Mortgagee be deemed to have assumed or be bound by any of such party's obligations hereunder for so long as such conveying party shall retain such possessory interest or managerial control, and such obligations shall continue to remain solely those of such conveying party so long as such conveying party retains such possessory interest or managerial control, and performance by such conveying party of any act required to be performed under this Agreement by it or fulfillment of any condition of this Agreement by such conveying party shall be deemed to be the performance of such act or the fulfillment of such condition by such Mortgagee, and shall be acceptable to the parties hereto with the same force.
and effect as if performed or fulfilled by such Mortgagee. At such time as such conveying party no longer retains such possessory or managerial interest, such Mortgagee shall be bound by such party's obligations hereunder, except for such party's obligation to operate under a specific trade name; provided, however, that each party hereto acknowledges and agrees that the liability of any Mortgagee under this Agreement shall be limited to its interest in the Shopping Center and any judgments rendered against any such Mortgagee shall be satisfied solely out of the proceeds of sale of its interest in the Shopping Center. No personal judgment shall lie against any such Mortgagee upon extinguishment of its rights in the Shopping Center and any judgment so rendered shall not give rise to any right of execution or levy against such Mortgagee's assets. The provisions hereof shall inure to the successors and assigns of any Mortgagee. The foregoing provisions are not intended to relieve any Mortgagee from the performance of any obligation which such Mortgagee may be required to perform under this Agreement, but only to limit the personal liability of such Mortgagee in case of recovery of a judgment against it; nor shall the foregoing be deemed to limit any party's rights to obtain injunctive relief or specific performance or to avail itself of any other right or remedy which may be awarded to which it is entitled by law or under this Agreement.

In addition to the foregoing, and notwithstanding anything contained in this Agreement or in the Supplemental Agreements to the contrary, no Mortgagee of any party, and no party succeeding to the interest of Developer or any of the Department Stores (including Western as to the May Property), as a result of a foreclosure (or, in the case of Western, in the event of the expiration or other termination of the S&C Lease) under a Mortgage or deed of trust, or as a result of a deed or assignment in lieu of foreclosure (Successor in Interest), and no successor or assignee of any such Mortgagee or Successor in Interest shall be responsible for any obligation of Developer or any of the Department Stores (as the case may be) arising prior to the date such party takes possession of the Property subject to such Mortgage, except for such obligations, if any, as shall arise under the provisions of Section 18.24 hereof. Any such Mortgagee, Successor in Interest, or successor or assign of any Mortgagee or Successor in Interest after foreclosure or accepting title to Property in lieu of foreclosure, may enforce the provisions of this Agreement according to their interests.

Section 16.3. Notices to LendersSection 16.3. Notices to Lenders: Each party serving a notice of default under this Agreement shall send by registered or certified United States mail, postage prepaid, a copy of such notice to any holder of a Mortgage on the Property of the party so served, provided such holder is an Institutional Lender and the party serving the notice of default shall have received notification of the existence and term of such Mortgage and the address to which copies of such notices of default are to be sent, and such holder shall be permitted to cure any such default not later than thirty (30) days after a copy of the notice of default shall have been sent to such holder, or, in the case of a default which cannot with diligence be remedied within such period of thirty (30) days, to commence the curing of same within such thirty (30) day period and thereafter to proceed to remedy the same with diligence and continuity.
Section 16.4. Release of Developer: In the event that at any time after the completion of the Developer Building Expansion and its opening for business with the public as herein required, Developer shall sell, assign, transfer or convey its interest in the Developer Property, and its rights, title and interests in the other Properties, Developer shall be relieved of all further liability accruing hereunder from and after the transfer date, provided (i) Developer shall not then be in default in the performance of any covenant or obligation to be performed on the part of Developer, and (ii) the transferee shall expressly assume and covenant with the Department Stores to perform and be bound by all the terms, covenants and conditions in this Agreement contained and to be performed on the part of the Developer, and (iii) if any such sale, assignment, transfer or conveyance shall occur prior to the tenth anniversary of the date of completion and opening for business of the Developer Building Expansion, such transferee shall be some person or other entity who shall be experienced in the operation and management of first-class, regional, enclosed mall shopping centers.

ARTICLE 17
DEFAULT

Section 17.1. Remedies: If any party shall not keep and perform any of the terms, covenants or conditions required of it under this Agreement, and such default shall continue for a period of thirty (30) days after notice by any other benefitted party in the case of either a monetary or a non-monetary default, or in the case of a default which cannot with due diligence be cured within a period of thirty (30) days, if such defaulting party fails to proceed promptly after the service of such notice and with all due diligence to cure the same (it being intended that in connection with a default not susceptible of being cured with due diligence within thirty (30) days, the time of the defaulting party to cure the same shall be extended for such period as may be necessary to complete the same with due diligence), the benefitted party giving notice of such default may, provided such party availing itself of such remedy is not itself then in violation of the particular covenant which it is seeking to enforce against the defaulting party: (i) exercise such rights and pursue such remedies as are available at law or in equity, including actions for damages, injunction and/or specific performance, subject, however, to the provisions of Sections 16.2 and 17.2, or (ii) cure or prosecute the curing of such default and all reasonable expense incurred in connection therewith, including reasonable legal fees, together with interest thereon at the Default Rate, shall promptly be paid by the defaulting party to the party effecting such cure. The term Default Rate used herein means an annual rate of interest which is four (4) percentage points above the "prime rate" or base rate on corporate loans posted by at least 75% of the nation's thirty largest banks, as reported from time to time by The Wall Street Journal, but not more than the highest legal rate of interest then chargeable to commercial borrowers under the laws of the Commonwealth of Pennsylvania.

Section 17.2. No Termination of Agreement: No breach of this Agreement or default by any party shall entitle any other party to terminate or cancel this Agreement.
ARTICLE 18  MISCELLANEOUS

Section 18.1. Manager:  Developer agrees to continuously provide and maintain an office and a full time manager on the Developer Property. Such manager will diligently enforce the standards of operation prescribed in this Agreement and will superintend the performance of Developer's repair and maintenance obligations hereunder. Developer may contract for the management and maintenance respecting the Developer Property and performance of its obligations hereunder provided that Developer may not relieve itself of liability for failure to perform such obligations.

Section 18.2. Taxes:  Except as otherwise provided herein or as provided in any Supplemental Agreement, no party shall have any responsibility for the payment of any taxes or assessments or service charges on any other party's Property or the Building(s) or other improvements thereon or the operations conducted within any other party's Buildings, and each party shall be responsible for payment of such taxes, assessments or service charges to the extent necessary to prevent the forfeiture of its estate in its Property by reason of the foreclosure of any lien or encumbrance being placed on its Property by virtue of the levying of any such taxes, assessments or service charges.

Section 18.3. Amendments:  This Agreement cannot be changed or terminated orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought (including Western in the event of any waiver, change, modification or discharge which could adversely affect the May Property). No amendment to this Agreement shall be binding upon any Mortgagee unless such Mortgagee consents thereto in writing.

Section 18.4. No Joint Venture:  Nothing contained in this Agreement shall be construed to make the parties hereto partners or joint venturers or to render any party liable for the debts or obligations of any other, except as this Agreement may expressly provide.

Section 18.5. No Waiver:  No delay or omission by any of the parties hereto to exercise any right or power accruing upon any noncompliance or failure of performance by any other party under the provisions of this Agreement, shall impair any such right or power or be construed to be a waiver thereof, unless expressly so provided by such provisions. A waiver by any party hereto of any of the covenants, conditions or agreements hereof to be performed by any other shall not be construed to be a waiver of any succeeding breach thereof or of any other covenants, conditions or agreements herein contained.

Section 18.6. Notices:  Any document required to be submitted for approval by any party under Articles 2, 3, 4 and 6 shall be accompanied by a letter stating that such document is submitted for approval and the time within which such approval is
required to be given hereunder and containing the following legend "FAILURE TO DISAPPROVE THIS SUBMISSION WITHIN THE TIME INDICATED BELOW SHALL RESULT IN AUTOMATIC APPROVAL"; and unless accompanied by such a letter, such document shall not be deemed to have been submitted for approval. Any such document shall be deemed to have been submitted on the date of receipt. Any other notice, request, demand, approval or consent given or required to be given under this Agreement shall, except as otherwise expressly provided herein, be in writing and shall be given by (a) personal delivery, or (b) overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, sent to the intended addressee at the address set forth below, or to such other address in the continental United States as the addressee shall have designated by written notice sent in accordance herewith, or (d) telefacsimile transmission sent to the intended addressee at the telefacsimile number set forth below, or to such other number in the continental United States as the addressee shall have designated by Notice to the other party hereto, with the original machine generated transmit confirmation report as evidence of transmission (provided that such telefacsimile is confirmed by overnight delivery service) and shall be deemed to have been given either at the time of personal delivery, or, in the case of overnight delivery service, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of mail, upon deposit with or delivery to the United States Postal Service or in the case of telefacsimile, upon receipt. Unless changed in accordance with the preceding sentence the addresses for notices given pursuant to this Agreement shall be as follows:

If to Developer: Exton Square, Inc.
10275 Little Patuxent Parkway
Columbia, Maryland 21044
Attention: General Counsel

Telefacsimile Number: (410) 992-6392

If to Boscov: Boscov's Department Store, Inc.
4500 Perkiomen Avenue
Reading, Pennsylvania 19606
Attention: Senior Vice President, Real Estate & Development

Telefacsimile Number: (610) 370-3770

With copy to: Stephan L. Cutler, Esq.
Klehr, Harrison, Harvey, Branzburg and Ellers, LLP
1401 Walnut Street
Philadelphia, PA 19102-3163

Telefacsimile Number: (215) 568-6603
If to May: The May Department Stores Company
611 Olive Street
St. Louis, Missouri 63101
Attention: Executive Vice President - Real Estate

Telefacsimile Number: (314) 342-4374

With copy to: The May Department Stores Company
611 Olive Street
St. Louis, Missouri 63101
Attention: General Counsel

Telefacsimile Number: (314) 342-3066

If to Penney by certified or registered mail: J.C. Penney Properties, Inc.
Real Estate Department
P.O. Box 10001
Dallas, Texas 75301-2105
Attention: Real Estate Counsel

Telefacsimile Number: (972) 431-1626

If to Penney by overnight delivery service or personal delivery: J.C. Penney Properties, Inc.
6501 Legacy Drive
Plano, Texas 75024-3698
Attention: Real Estate Counsel

If to Sears: Sears, Roebuck and Co.
3333 Beverly Road
Hoffman Estates, Illinois 60179
Attention: Vice President, Real Estate

Telefacsimile Number: (847) 286-3803

With copy to: Sears, Roebuck and Co.
3333 Beverly Road
Hoffman Estates, Illinois 60179
Attn: Assistant General Counsel, Real Estate

Telefacsimile Number: (847) 286-2282
Section 18.7. Headings: The Article and Section headings herein are for convenience and reference only and in no way define or limit the scope and content of this Agreement or in any way affect its provisions.

Section 18.8. Applicable Law: This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania.

Section 18.9. Counterpart Execution: This instrument may be signed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument. The signature of a signatory to any counterpart may be removed and attached to any other counterpart. Any counterpart to which is attached the signatures of all signatories shall constitute an original of this instrument.

Section 18.10. Successors and Assigns: All of the terms of this Agreement shall be binding upon and inure to the benefit of and be enforceable by and against the respective successors and assigns of the parties hereto, except as otherwise expressly provided herein.

Section 18.11. Agreement for Benefit of Parties Only: Except as otherwise expressly provided in Sections 16.2, 16.3, 18.10, 18.17 and 18.18, this Agreement shall in no way constitute or create rights in persons, firms or entities not parties hereto or create obligations or responsibilities to such third persons on behalf of parties hereto.

Section 18.12. Conflicts: Where any irreconcilable conflict appears between the terms and conditions of this Agreement and the provisions or illustrations on any exhibit forming a part of this Agreement, the terms of this Agreement shall control.

Section 18.13. Expense of Obligations: Where this Agreement imposes obligations or responsibilities upon any party hereto, such obligations or responsibilities shall be performed at the expense of such party responsible thereof except where otherwise specifically provided herein or in any Supplemental Agreement.

Section 18.14. Unavoidable Delay: Each party hereto shall be excused from performing any of its obligations or undertakings provided in this Agreement or its Supplemental Agreement (except any of its obligations to pay any sums of money under the applicable provisions hereof) for so long as the performance of such obligation is prevented or delayed by any cause which is beyond the reasonable control of such party, including but not limited to such of the following as may be beyond the reasonable control of such party: Act of God; fire; earthquake; flood; explosion; action of the elements; war; invasion; insurrection; riot; mob violence; sabotage; malicious mischief; general inability to procure or general shortage or rationing or regulation of labor, equipment, facilities, sources of energy (including electricity, gas, gasoline or steam), materials or supplies in the open market; failure of
transportation; strikes; lockouts; action of labor unions; condemnation; requisition; order of government or civil or military or naval authorities; litigation involving a party or others relating to zoning, subdivision, or other governmental action or inaction pertaining to the Shopping Center or any portion thereof or arbitration required or permitted by the terms of this Agreement; inability to obtain government permits or approvals; or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such party; provided, however, that no party shall be entitled to relief under this Section 18.14 by reason of any event unless such party shall have given the other parties notice of such event and the nature of such event within a reasonable time after the occurrence of such event. Any delay or cause excusing performance pursuant to the terms of this Section 18.14 is referred to herein as an "Unavoidable Delay."

Section 18.15. Signs

Section 18.15. Signs: All signs erected or permitted to be erected by any party on its Property shall conform to the Sign Criteria.

Section 18.16. Ordinances

Section 18.16. Ordinances: Each party shall at all times, both during and after the completion of construction of its Building(s) and improvements, comply with all applicable state, county and municipal laws, ordinances, rules and regulations and with all regulations of the fire insurance rating organizations having jurisdiction or any other organization or board exercising similar functions, respecting the construction, maintenance and operation of its Building(s) and improvements.

Section 18.17. Estoppel Certificates

Section 18.17. Estoppel Certificates: Any party shall, from time to time upon not less than thirty (30) days notice from any other party, and no more often than two (2) times per year, execute and deliver to such other party a certificate addressed to such party or its Mortgagee stating that this Agreement and the Supplemental Agreement to which it is a party is unmodified and in full force, or, if modified, that this Agreement or such Supplemental Agreement is in full force and effect, as modified, and stating the modifications and stating whether or not, to the best of its knowledge, any other party is in default in any respect under this Agreement or such Supplemental Agreement, and if in default, specifying such default. If an estoppel certificate is delivered to any person or entity, the party delivering such certificate shall not have any liability for consequential damages to such person or entity, or its successors and assigns, arising out of any negligent or unintentional inaccuracy or omission of information in or from such certificate, but such party shall be estopped from taking a position against the party or Mortgagee requesting such certificate and against the addressee of the certificate (if other than such party) which is inconsistent with the statements made in such certificate except to the extent that the person or entity against whom the claim would otherwise be asserted or enforced had actual knowledge of the facts to the contrary.

Section 18.18. Covenants Running with the Land

Section 18.18. Covenants Running with the Land: All the covenants, agreements, conditions and restrictions set forth in this Agreement and in the Supplemental Agreements (as between the parties thereto and their respective successors and assigns) are intended to be and shall be construed as covenants running
with the land, binding upon, inuring to the benefit of and enforceable by the parties hereto and all subsequent owners of their respective interests or estates in their respective Properties or any parts thereof, but shall not be enforceable by any tenant, subtenant, licensee or concessionaire of any such party or subsequent owner. All the covenants, agreements, conditions and restrictions set forth in the Supplemental Agreements (as between the parties thereto) shall be binding on their respective successors and assigns. The parties acknowledge and agree that, in respect of a bankruptcy of any party hereto, this Agreement is an agreement in which property rights are inextricably woven with contractual obligations, with the effect that this Agreement is not an executory contract and may not be rejected in bankruptcy.

Section 18.19. Remedies Cumulative
Section 18.19. Remedies Cumulative: All rights, privileges and remedies afforded the parties by this Agreement shall be deemed cumulative and the exercise of any one of such remedies shall not be deemed to be a waiver of any other right, remedy or privilege provided for herein.

Section 18.20. Partial Invalidity
Section 18.20. Partial Invalidity: If any provision of this Agreement or the application thereof to any party or circumstances shall, to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 18.21. Subordination of Developer's Reversionary Estates
Section 18.21. Subordination of Developer's Reversionary Estates: Developer, as owner of the reversionary estates in the Boscov Property, Penney Property and Sears Property, on behalf of itself, its successors and assigns and all future owners of any interest in such reversionary estates (including Mortgagees and other lienors), declares and covenants that its interest in such Properties, as owner of the reversionary estates therein, is and shall always be subject and subordinate to the operation and effect of this Agreement and that if the Boscov Lease, the Penney Lease or the Sears Lease shall be terminated for any reason, the Property demised thereby shall remain subject to all of the terms and provisions of this Agreement.

Section 18.22. Subordination of Western's Reversionary Estate
Section 18.22. Subordination of Western's Reversionary Estate: Western, as owner of the reversionary estate in the May Property, on behalf of itself, its successors and assigns and all future owners of any interest in such reversionary estate (including Mortgagees and other lienors), declares and covenants that its interest in the May Property, as owner of the reversionary estate therein, is and shall always be subject and subordinate to the operation and effect of this Agreement to the same extent and with like effect as though this Agreement had been executed and delivered by the parties hereto and recorded in the Recorder's Office prior to the conveyance of the May Property to Western; if the S&C Lease shall terminate or be terminated for any reason, each of the parties hereto and Western agree that the May Property shall remain subject to and benefitted by all of the terms and provisions of this Agreement, including the easements granted and/or created pursuant to and/or referred to in Article 12 hereof, except as otherwise expressly set forth in this Agreement. Western's joinder in the execution of this Agreement is for the limited purposes of
(i) making the declarations and covenants set forth in this Section 18.22 and (ii) consenting hereto and to May's execution and delivery hereof; such joinder shall not be deemed to otherwise extend benefits to or impose obligations on Western or to constitute Western as a party to this Agreement, except that all rights and easements granted and/or created pursuant to and/or referred to in Article 12 hereof shall also benefit the fee and fee owner from time to time of the May Property.

Section 18.23. Certain Consents, Joinders and Subordinations

Section 18.23. Certain Consents, Joinders and Subordinations: The First National Bank of Maryland and John Hancock Mutual Life Insurance Company, the holders and owners of certain mortgages affecting portions of the Entire Property, have consented to and joined in the execution of this Agreement for the purpose of subjecting and subordinating such mortgages to this Agreement to the extent set forth in the Consent and Subordination agreements attached hereto.

Section 18.24. Regarding Boscov I and Boscov II

Section 18.24. Regarding Boscov I and Boscov II: Boscov I and Boscov II shall be jointly and severally liable for all of the representations, warranties, covenants, agreements, obligations, indemnities and other terms and provisions undertaken or incurred by Boscov under this Agreement. All acts, omissions, waivers, consents and approvals of, and any amendment or modification of this Agreement executed by, Boscov I shall bind and be conclusive on Boscov II and its successors in interest, successors and assigns. All acts, omissions, waivers, consents and approvals of, and any amendment or modification of this Agreement executed by, Boscov II shall bind and be conclusive on Boscov I and its successors in interest, successors and assigns.

Section 18.25. Liens

Section 18.25. Liens: Each of the parties hereto covenants and agrees to keep or cause to be kept its Property and the improvements thereon, free and clear of and from any and all mechanics', materialmen's and other similar liens and to pay and discharge when due any and all lawful claims upon which any such lien may or could be based, and to save and hold the other parties hereto free and harmless of and from any and all such liens and any and all claims of liens and suits or other proceedings pertaining thereto; provided, however, that if any such lien is filed and the party against whom it is filed desires to contest the same, such party may do so by first giving notice to the other parties hereto of its intention to do so promptly after such contesting party has actual knowledge of the filing of such lien and such contesting party shall bond such lien or insure that such lien will not affect the title to the property which it covers. In the event of a final determination of the validity of any contested lien, such party shall pay and discharge the same, to the extent held valid, at least 10 days prior to the date execution could be had upon the judgment rendered thereon. In the event of any such contest, such party shall protect and indemnify the other parties hereto against all loss, cost, expense and damage resulting therefrom.

Section 18.26. No Presumption

Section 18.26. No Presumption: The parties acknowledge that this Agreement is the result of negotiations among the parties, each of which have been represented by counsel in such negotiations, and in construing any ambiguity hereunder no presumption shall be made in favor of any party hereto. No inference shall be
made from any item which has been stricken from this Agreement other than the deletion of such item.

Section 18.27. Time of the Essence: Subject to the provisions of Section 18.14, time is of the essence with respect to each and every provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on their behalf by their duly authorized officers, and their corporate seals to be affixed hereto, as of the day and year first above written.

[SIGNATURES, ACKNOWLEDGEMENTS AND EXHIBITS HAVE BEEN OMITTED]
CONSENT AND SUBORDINATION
OF
THE FIRST NATIONAL BANK OF MARYLAND

THE FIRST NATIONAL BANK OF MARYLAND, a national banking association ("FNB") individually as lender and as agent for itself and Dresdner Bank AG, New York and Grand Cayman Branch, co-lender, the holder of the following security instruments (collectively, the "FNB Mortgage") encumbering the Developer Property and/or the Easement Property:

(i) Open-End Mortgage, Security Agreement and Fixture Filing for $102,000,000, dated October ___, 1998, from Developer to FNB recorded in the Recorder's Office in Record Book ______ at Page ______; and

(ii) Open-End Mortgage, Security Agreement and Fixture Filing for $102,000,000, dated October ___, 1998, from Whiteland Holding Limited Partnership to FNB recorded in the Recorder's Office in Record Book ______ at Page ______; and

(iii) Open-End Mortgage, Security Agreement and Fixture Filing for $102,000,000, dated October ___, 1998, from Exton Acquisition, Inc. to FNB recorded in the Recorder's Office in Record Book ______ at Page ______;

on behalf of itself and as agent for itself and Dresdner Bank AG, New York and Grand Cayman Branch, co-lender, and their respective successors and assigns, joins in the execution of the foregoing Amended and Restated Construction, Operation and Reciprocal Easement Agreement (the "Agreement") in order to evidence their consent thereto and to evidence that their interest in the Developer Property and the Easement Property, as the holder of the FNB Mortgage is and shall be subject and subordinate to the operation and effect of the Agreement (but not as to any judgement or lien against Developer, Whiteland Holding Limited Partnership, Exton Acquisition, Inc., the Easement Property or the Developer Property) with the same effect as though the Agreement had been executed and recorded in the Recorder's Office prior to the execution and recording of the FNB Mortgage.

IN WITNESS WHEREOF, FNB intending to be legally bound hereby, has executed this Consent and Subordination as of the __ day of ______________, 1998.

Attest:        THE FIRST NATIONAL BANK OF MARYLAND (a national banking association)
CONSENT AND SUBORDINATION
OF
JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, a
______________________ ("John Hancock"), the holder of a certain Mortgage for $6,600,000
(the "Mortgage"), dated October 20, 1972, from S&C Exton to The Western Savings Fund
Society of Philadelphia recorded in the Recorder's Office in Mortgage Book M-37 at Page 541,
encumbering the May Property, which Mortgage was assigned to John Hancock by unrecorded
assignment, on behalf of itself, its successors and assigns, joins in the execution of the foregoing
Amended and Restated Construction, Operation and Reciprocal Easement Agreement (the
"Agreement") in order to evidence its consent thereto and to evidence that its interest in the May
Property, as the holder of the Mortgage is and shall be subject and subordinate to the operation
and effect of the Agreement (but not as to any judgement or lien against any party obligated
under the Mortgage or the May Property) with the same effect as though the Agreement had been
executed and recorded in the Recorder's Office prior to the execution and recording of the
Mortgage.

IN WITNESS WHEREOF, John Hancock, intending to be legally bound hereby, has
executed this Consent and Subordination as of the __ day of ______________, 1998.

Attest:       JOHN HANCOCK MUTUAL LIFE
INSURANCE COMPANY

JOHN HANCOCK MUTUAL LIFE
INSURANCE COMPANY