



Doc#: 1021049031 Fee: \$96.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 07/29/2010 01:49 PM Pg: 1 of 31

THIS INSTRUMENT PREPARED BY,  
AND AFTER RECORDING RETURN TO:

Greenberg Traurig, LLP  
77 W. Wacker Dr., Suite 3100  
Chicago, Illinois 60601  
Attn: Laurence B. Dobkin, Esq.

ABOVE SPACE RESERVED FOR COUNTY RECORDER

## SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT ("**Supplemental Agreement**") is made as of this 28<sup>th</sup> day of July, 2010 (the "**Effective Date**") by and between W2001 VHE REALTY, L.L.C., a Delaware limited liability company ("**Developer**"), and SLEVIN CAPITAL INVESTMENTS, INC., an Illinois corporation ("**Outparcel Owner**").

### RECITALS

A. Developer is the owner of those two certain parcels of land (the "**Developer Parcel**" and the "**Outparcel**") legally described on Exhibit A attached hereto, and shown on the site plan attached hereto as Exhibit B (the "**Site Plan**").

B. Target Corporation ("**Target**") and Developer previously executed that certain Operation and Easement Agreement dated February 23, 2005 and recorded February 25, 2005 as Document Number 0505645134 (the "**OEA**") in order to provide for the development and operation of their respective parcels in conjunction with each other as integral parts of a retail shopping complex (the "**Shopping Center**").

C. Outparcel Owner is currently under contract to purchase the Outparcel from Developer, which Outparcel contains approximately 34,533 square feet of land area.

D. The Outparcel is subject to that certain Ground Lease dated April 10, 2006 (as amended from time to time, the "**Lease**") between Developer and Citibank, N.A. a national banking association, as successor in interest by merger to Citibank, F.S.B. (the "**Tenant**").

E. The parties wish to ensure, among other things, that upon Outparcel Owner's acquisition of the Outparcel, the Outparcel, together with the Common Area of the Outparcel will be maintained by Outparcel Owner and Tenant in accordance with the OEA and the Lease and in compliance with Laws.

F. Pursuant to the OEA, Outparcel Owner is obligated to pay to Developer its proportionate share of the Common Area Maintenance Costs and Administration Fee and Developer is obligated to prorate the allocation of Common Area Maintenance Costs and Administration Fee under the OEA between the Developer Parcel and the Outparcel and record such proration.

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G. Developer and Outparcel Owner desire to memorialize such allocation and certain other respective obligations to each other that survive the acquisition of the Outparcel by Outparcel Owner from Developer for their mutual benefit and for the benefit of Tenant.

NOW, THEREFORE, Developer and Outparcel Owner covenant and agree that the Developer Parcel and the Outparcel shall be held, transferred, sold, conveyed and occupied subject to the restrictions, covenants, servitudes and impositions hereinafter set forth, all upon the following terms and conditions:

## AGREEMENT

1. Defined Terms. All terms not otherwise defined herein shall have the meaning ascribed to them in the OEA.

2. Common Area Costs and Insurance Costs.

(a) Payment. Outparcel Owner agrees to pay to Developer the Outparcel Owner's Proportionate Share (as hereinafter defined) of Common Area Costs (hereinafter defined) and the Outparcel Owner's Proportionate Share of Insurance Costs (hereinafter defined) for each calendar year or partial calendar year following the date hereof on a monthly basis in accordance with Section 4.2.4 of the OEA.

(b) Common Area. As used herein, the "Common Area" means the part of the Shopping Center designated by Developer from time to time for the common use of all tenants, including parking areas, sidewalks, lands parking, curbs, loading areas, private streets and alleys, lighting facilities, hallways, malls, and restrooms, all of which are subject to Developer's sole control. Developer may from time to time: change the dimensions and location of the Common Area, as well as the location, dimensions, identity and type of buildings; construct additional buildings or additional stories on existing buildings or other improvements in the Shopping Center; and eliminate buildings except: (1) there shall be (A) no change to the Outparcel, (B) no material change to any portion of those areas identified on the Site Plan as the "No Build" areas, and (C) no closure of any of the Shopping Center's entrances and exits, and (2) any change shall not adversely impair Outparcel Owner's or Tenant's use or enjoyment of the Outparcel, including, without limitation (A) Tenant's ability to conduct business in the Outparcel (including Tenant's use of the drive through ATM lanes), (B) Outparcel Owner's and Tenant's ability to gain access to and from the Outparcel, Shopping Center and the parking areas on the Outparcel and adjacent streets, (C) Tenant's use of the parking areas on the Outparcel, or (D) the visibility of the Outparcel and Tenant's signage. Outparcel Owner, Tenant and their respective employees, customers, subtenants, licensees and concessionaires shall have a non-exclusive license to use the Common Area in common with Developer, other tenants of the Shopping Center and other persons permitted by Developer to use the same. Developer shall not grant to any tenant in the Shopping Center the exclusive right to use any parking spaces in the Shopping Center. Developer may promulgate and modify from time to time reasonable rules and regulations for the safety, care or cleanliness of the Shopping Center which shall be complied with by Outparcel Owner, Tenant and their respective employees, agents, visitors and invitees, and which Developer shall use commercially reasonable efforts to enforce against other tenants and parties using the Common Areas, all on a non-discriminatory basis. The Common Area

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shall remain open to the public (e.g., Developer shall keep the same free of snow accumulations and shall keep the parking lot lights on when reasonably required) at least from 9:00 a.m. to 11:30 p.m. (Sunday-Thursday) and 9:00 a.m. to 1:00 a.m. (Friday-Saturday). Notwithstanding the foregoing, Tenant and Tenant's assignees, subtenants and any of their respective agents, contractors, employees, licensees, guests and invitees shall have a right of access to, and may use, the Outparcel and ATMs 24 hours per day, seven days per week, except that Developer may temporarily close any part of the Common Area for such short periods of time as may be necessary to prevent the public from obtaining prescriptive rights or to make repairs or alterations, provided Developer shall make such repairs or alterations at a time and in a manner so as to avoid materially disrupting Outparcel Owner's or Tenant's use of the Outparcel (except in emergencies). Developer may reasonably designate areas in which Tenant's employees shall be required to park, and Tenant shall use reasonable efforts to cause its employees to park in such areas; provided, notwithstanding the foregoing, in recognition that the Outparcel comprises an outlot, Tenant may permit its employees to park on the Outparcel and/or Common Areas adjacent to the Outparcel.

(c) Common Area Costs. Outparcel Owner shall pay its Proportionate Share of the costs incurred by Developer in owning, operating, administering, repairing, replacing, improving and maintaining the Common Area, plus an administration charge of fifteen percent (15%) of all such costs (collectively, "**Common Area Costs**"). Common Area Costs shall be limited to the items specified on Exhibit E attached hereto, and shall be subject to the "**CAM Limitations and Exclusions**" set forth therein.

(d) Outparcel Owner's Proportionate Share. Notwithstanding any contrary provision herein, in calculating Outparcel Owner's Proportionate Share of certain items (or components thereof), the following provisions shall apply: (1) in the case of Common Area Costs, the rentable area of the Shopping Center (as used in the calculation of Outparcel Owner's Proportionate Share) shall exclude (A) the rentable square feet of premises occupied by ground lessees or owners of outparcels within the Shopping Center who do not contribute on a Proportionate Share basis to the Shopping Center's Common Area Costs because they are obligated to maintain separately certain common areas appurtenant to their ground leased or owned premises, and (B) with regard to specific Common Area Cost items, the rentable square feet of all other tenants in the Shopping Center who do not include such items within the calculation of such other tenant's share of Common Area Costs because such other tenants are individually responsible for the item in question (e.g., if an anchor tenant provides for its own landscaping and the cost of landscaping is not part of such tenant's Common Area Costs obligation, that tenant's rentable square feet shall be excluded from the rentable area of the Shopping Center in determining Outparcel Owner's Proportionate Share of landscaping costs); and (2) in the case of Insurance Costs, Outparcel Owner's Proportionate Share of Developer's cost of insurance shall exclude from the rentable area of the Shopping Center (used in the calculation of Outparcel Owner's Proportionate Share) the rentable square feet of any building in the Shopping Center which is separately insured by the tenant of such building, and which tenant as a result does not contribute to Developer's cost of insurance. If buildings are added to or removed from the Shopping Center, or additional areas are leased to tenants whose rentable square footage is excluded from the rentable area of the Shopping Center under the foregoing calculations, Outparcel Owner's Proportionate Share shall be appropriately adjusted.

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(e) Reconciliation. As provided in Section 4.2.4 of the OEA, Developer shall provide Outparcel Owner with a Reconciliation with respect to such Common Area Costs on an annual basis and Outparcel Owner shall have the audit and dispute rights provided for in such Section 4.2.4.

(f) Insurance Costs. Outparcel Owner shall pay its Proportionate Share of the cost of the insurance carried by Developer from time to time with respect to the Shopping Center as provided in Section 5.4.4 of the OEA and Section 8 of this Supplemental Agreement (collectively, "**Insurance Costs**"). During each month of the Term, Outparcel Owner shall make a monthly payment to Developer equal to 1/12th of its Proportionate Share of Insurance Costs that will be due and payable for that particular year. Each payment of Insurance Costs shall be due and payable at the same time as, and in the same manner as, the payment of Common Area Costs as provided herein. The initial monthly payment of Insurance Costs is based upon Developer's good faith estimate of Outparcel Owner's Proportionate Share of the estimated Insurance Costs for the remainder of the first calendar year. The monthly payment of Insurance Costs is subject to the increase or decrease as determined by Developer to reflect accurately Outparcel Owner's estimated Proportionate Share of Insurance Costs. If, following Developer's receipt of the bill for the insurance premiums for a calendar year, Developer determines that Outparcel Owner's total payments of Insurance Costs are less than Outparcel Owner's actual Proportionate Share of Insurance Costs, Outparcel Owner shall pay to Developer the difference upon demand; if Outparcel Owner's total payments of Insurance Costs are more than Outparcel Owner's actual Proportionate Share of Insurance Costs, Developer shall refund such excess to Outparcel Owner within thirty (30) days.

3. Maintenance of Common Areas. Without limiting its obligations under Article IV of the OEA, Developer will maintain the Common Areas of the Shopping Center, including without limitation, the parking areas, landscaped areas and exterior lighting located on the Outparcel and all utilities serving the Outparcel up to the point of entry to the Outparcel in good order and condition and in compliance with all applicable Law.

4. Changes to OEA. Outparcel Owner agrees that Developer shall have the right to make changes to the OEA without Outparcel Owner's consent provided such changes do not materially, negatively or monetarily impact Outparcel Owner's or Tenant's use, access to, visibility of, parking or occupancy of the Outparcel. Outparcel Owner agrees that upon acquisition of the Outparcel it will not become an Approving Party under the OEA.

5. Real Estate Taxes. Outparcel Owner agrees that if at any time the Outparcel is not separately assessed for real estate tax purposes, Outparcel Owner shall pay or shall cause the tenant or occupant of the Outparcel to pay to Developer, within thirty (30) days following written request and reasonable evidence supporting Outparcel Owner's pro rata share of real estate taxes, its pro rata share (based upon total land area) of the real estate tax bill which includes the Outparcel.

6. Use of Outparcel. Outparcel Owner shall not lease, rent, sell or occupy, or permit to be leased, rented, sold or occupied any portion of the Outparcel for any use that is not a first-class retail, restaurant, office or banking use. Outparcel Owner hereby agrees not to use the Outparcel in a manner which shall conflict with, be in violation of or cause a violation of the

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OEA (including the prohibited uses set forth therein) or any of the restrictions set forth on Exhibit C attached hereto or any of the then existing exclusives or other restrictions at the Shopping Center (the list of the current exclusives at the Shopping Center are delineated on Exhibit D attached hereto). Outparcel Owner further agrees that any future use of the Outparcel shall not conflict with any then existing prohibited uses, exclusives or restrictions (including, without limitation, any memorandum of lease encumbering the Outparcel) of the Shopping Center. Further, in the event Outparcel Owner should ever sell or lease all or any portion of the Outparcel, Outparcel Owner shall not violate or cause a violation of the PetSmart Restriction (defined below). In addition, Outparcel Owner warrants and covenants that it shall not do either of the following ("**PetSmart Restriction**"): (i) lease any space in the Outparcel to a direct competitor of PetSmart, Inc., a Delaware corporation ("**PetSmart**"), such as a Petco, Petland or any other similar operation, or (ii) consent to a change in use which requires Outparcel Owner's consent, if such change in use would allow such tenant or occupant to use a primary portion of its premises for an operation similar to the retail sale of (a) pets (including but not limited to fish, birds, reptiles, dogs, cats and other small mammals), (b) pet food, pet accessories and other products relating to pets and animals, including equestrian products and apparel related thereto, (c) services related to pets and animals, such as grooming, boarding, including overnight boarding in connection with the PetsHotel operations, animal training and obedience classes, pet day care, pet adoption, and veterinary services, (d) products relating to nature and the environment, and (e) educational products and services related to any of the foregoing, and office and storage uses incidental to the foregoing (items (a) through (e) being referred to as "**PetSmart's Primary Business**"). In the event of any violation by Outparcel Owner of the restriction set forth in the immediately preceding sentence, Developer and/or PetSmart and their respective successors and assigns shall have the right to enforce against Outparcel Owner, as a third party beneficiary hereof, any rights and/or remedies it may have under this Supplemental Agreement as well as under that certain Shopping Center Lease Agreement dated November 29, 2005 between Developer and PetSmart. Outparcel Owner hereby agrees that any consent obtained from PetSmart as contemplated by this Section may be recorded against the Outparcel.

## 7. Exclusive Use Restrictions.

(a) Subject to tenant use clauses in existence as of the execution date of the Lease whereby Developer has no consent rights over a use, sublease or assignment, Developer shall not during the term of the Lease, as it may be extended from time to time: (i) lease space in the Shopping Center to any other party, nor permit any party to use any space in the Shopping Center, for the operation of a Retail Bank (as defined below) or the operation of an ATM (as defined below), (ii) consent to any assignment, sublease or license that would permit space in the Shopping Center to be leased to or used as a Retail Bank or an ATM (provided Developer's obligation under this subclause (ii) shall only apply with respect to leases that already exist as of the execution date of the Lease to the extent that Developer has the right under the terms of the existing lease in question to prevent such parties from violating the foregoing restrictions), and (c) rename the Shopping Center with the name of any Retail Bank or place or permit any Retail Bank's name to be placed on any sign at the Shopping Center (the "**Exclusive Use Restrictions**"). However, the foregoing Exclusive Restrictions shall not be applicable to (i) the Fifth Third Branch or any successor banking operation located in the area shown

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on the Site Plan as "Future Development #1" or (ii) a tax service provider such as H&R Block or Jackson Hewitt. As used herein "ATM" shall mean an automated teller machine offering electronic fund transfer services whose function, among other things, is to permit customers to withdraw cash from accounts or credit lines, deposit funds, and repay loans made to such customers or transfer funds between such customers' accounts, or any other automated or electronic machine which provides any of the services provided by Tenant. As used herein, "Retail Bank" shall mean a retail banking institution, federal savings bank, consumer banking institution, saving and loan association, credit union, stock brokerage company or other financial planning company which, among other things, accepts deposits from customers, provides stock brokerage, mortgage brokerage and/or financial planning services.

(b) In the event that Outparcel Owner or Tenant files suit against any party to enforce the Exclusive Use Restrictions, Developer agrees to cooperate fully with Outparcel Owner and Tenant in the prosecution of any such suit.

8. Developer's Insurance Obligations. Developer shall maintain commercial general liability insurance on the Common Areas of the Shopping Center for personal injury and property damage in an amount of not less than \$3,000,000, naming Outparcel Owner and Tenant as additional insureds. The cost of all such insurance carried by Developer with respect to the Shopping Center shall be included in Insurance Costs.

9. Right to Repurchase. In the event Outparcel Owner receives a bona fide offer, in writing, from a third party purchaser for the sale of the Outparcel that Outparcel Owner is willing to accept (the "Offer"), it shall deliver a true, correct and complete copy of the Offer to Developer and Developer shall have ten (10) business days in which to notify Outparcel Owner in writing as to whether or not it will acquire the Outparcel on the same terms and conditions contained in the Offer. If Developer elects to purchase the Outparcel from Outparcel Owner on the terms and conditions contained in the Offer, then Outparcel Owner shall thereupon be bound to sell to Developer and Developer shall be bound to purchase the Outparcel in accordance with the terms and conditions contained in the Offer. Outparcel Owner and Developer will promptly enter into a contract for the sale by Outparcel Owner and purchase by Developer of the Outparcel on all of the terms and conditions contained in the Offer. Each party shall thereafter work in good faith to consummate the sale of the Outparcel in accordance with the terms and conditions of the Offer. In the event Developer elects not to purchase the Outparcel, Outparcel Owner may proceed to sell the Outparcel on no less favorable terms than set forth in the Offer and Outparcel Owner must consummate such transaction within one hundred eighty (180) days of the Offer. In the event the Outparcel is not sold within such one hundred eighty (180) day period upon price and terms no more favorable than the price and terms first offered to Developer, the right of first offer shall continue in Developer.

10. Lease. Outparcel Owner agrees to enforce the terms of the Lease against Tenant as necessary to ensure compliance with this Supplemental Agreement and the OEA. In addition, Outparcel Owner agrees to enforce the terms of any future lease or occupancy agreement relating to the Outparcel to ensure compliance with this Supplemental Agreement and the OEA.

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11. Sales Tax Reporting Requirements. Outparcel Owner acknowledges that the Village of Hoffman Estates, Illinois (the "Village") has entered into a certain Economic Incentive Agreement Relating to Sales Tax, dated as of September 27, 2004, pursuant to Resolution Numbered 1237, adopted by the Village Board on September 13, 2004 (the "Incentive Agreement") which imposes certain obligations therein upon Developer, its successor(s) in interest as an owner or owner(s) of the Shopping Center, and any tenant or other occupant of the Shopping Center, including the obligation to report to the Village the amount of Municipal Sales Taxes (as defined in the Incentive Agreement) paid by any tenant to the State of Illinois during each calendar quarter; and in implementation of such Incentive Agreement a Declaration Regarding Sales Tax Reporting (the "Declaration") has been recorded as a restriction on the Shopping Center and Outparcel Owner's rights under such declaration have been assigned to Cornerstone Bank & Trust Company, their successors and assigns, as trustee (the "Trustee"). Pursuant to the Incentive Agreement, Outparcel Owner shall ensure that any tenant or occupant of the Outparcel shall file a separate Sales Tax Report for each separate business operation within the Village in order to separately identify and declare all Municipal Sales Taxes originating within the Shopping Center. Outparcel Owner shall ensure that any tenant or occupant of the Outparcel will also file a consent with the Illinois Department of Revenue authorizing the release of information shown on such Sales Tax Reports to the Village for purposes of compliance with the provisions of the Incentive Agreement. The form of such Release of Sales Tax Information shall be substantially in the form of Exhibit I to the Lease or such other form as may be required, from time to time, for release of such information by the Illinois Department of Revenue. Notwithstanding the foregoing, Outparcel Owner agrees to promptly comply with all requirements set forth within the Incentive Agreement.

12. Plan Approval. Outparcel Owner, and its successors, assigns and tenants, including Tenant and any future ground lessee under a ground lease, shall be prohibited from constructing any additional improvements on the Outparcel without Developer's prior written approval of all plans (including, but not limited to, the site plan, parking plan and landscaping plan), architectural design (including, but not limited to, color and type of materials, elevations, building configuration and orientation) and signs, which approval shall not be unreasonably withheld, delayed or conditioned. Developer shall notify Outparcel Owner whether it approves of the submitted plans within ten (10) business days after Outparcel Owner's submission thereof. If Developer disapproves of such plans, then Developer shall notify Outparcel Owner thereof specifying in reasonable detail the reasons for such disapproval, in which case Outparcel Owner shall revise such plans in accordance with Developer's objections and submit the revised plans to Developer for its review and approval. Developer shall notify Outparcel Owner in writing whether it approves of the resubmitted plans within five (5) business days after the receipt thereof. This process shall be repeated until the plans have been finally approved by Developer. If Developer fails to notify Outparcel Owner that it disapproves of the plans within the times herein provided, then Developer shall be deemed to have approved the plans in question. In the event a governmental authority requires changes to Outparcel Owner's plans approved by Developer, Developer agrees to use commercially reasonable efforts to cooperate with Outparcel Owner in obtaining plan approval from such governmental authority.

13. Disclaimer. Developer's consent to or approval of any signs, drives or improvements (or the plans therefor) shall not constitute a representation or warranty by Developer that the same comply with sound architectural and/or engineering practices or with all

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applicable laws or restrictions affecting the Outparcel, but shall merely be Developer's consent thereto, and Outparcel Owner shall be solely responsible for ensuring all such compliance with all laws and restrictions.

14. Remedies. In the event Outparcel Owner fails to comply with the terms and conditions of, or perform any of its obligations under this Supplemental Agreement, Developer shall be entitled to pursue any and all remedies against Outparcel Owner that it may have at law or in equity. The exercise of any remedy by Developer shall not be deemed an election of remedies or preclude Developer from exercising any other remedies in the future. Additionally, Outparcel Owner shall defend, indemnify and hold harmless Developer and its representatives and agents from and against all claims, demands, liabilities, causes of action, suits, judgments, damages and expenses (including reasonable attorneys' fees) arising from Outparcel Owner's failure to comply with the terms and conditions of, or to perform its obligations under this Supplemental Agreement and the OEA.

15. Acceptance of Restrictions. Each owner, grantee, lessee and occupant of any portion of the Outparcel or the Developer Parcel shall be deemed, by the acceptance of the conveyance or lease of such parcel or delivery of possession thereof, to have accepted such parcel and the possession thereof subject to all covenants and conditions provided in this Supplemental Agreement and the OEA.

16. Covenant Runs with the Land. The easements, covenants, conditions, restrictions and agreements contained in this Supplemental Agreement shall constitute independent real covenants and shall run with the land and bind the Outparcel Owner and Developer and shall inure to the benefit of and be enforceable by the Outparcel Owner and the Developer, as the case may be. This Supplemental Agreement may not be modified, except by written amendment executed by the Developer (at the time the amendment is executed), and the Outparcel Owner (at the time the amendment is executed).

17. Notice. All notices and other communications given pursuant to this Supplemental Agreement shall be in writing and shall be (1) mailed by first class, United States Mail, postage prepaid, certified, with return receipt requested, and addressed to the parties hereto at the address set forth below, (2) hand delivered to the intended addressee, (3) sent by a nationally recognized overnight courier service, or (4) sent by facsimile transmission during normal business hours followed by a confirmatory letter sent in another manner permitted hereunder. All notices shall be effective upon delivery to the address of the addressee (even if such addressee refuses delivery thereof). The parties hereto may change their addresses by giving notice thereof to the other in conformity with this provision. In the event any person or entity (the "**Acquiring Party**") shall acquire a fee or mortgage interest in any portion of the Outparcel, the Outparcel Owner shall provide written notice to Developer of the name of the Acquiring Party, the address of the Acquiring Party to which all notices for the purposes of this Supplemental Agreement may be sent, the nature of the interest held by the Acquiring Party, and the date that such interest was acquired.



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If to Developer: W2001 VHE REALTY, L.L.C.  
 c/o Archon Group, L.P.  
 6011 Connection Drive  
 Irving, TX 75039  
 Attention: General Counsel – Poplar Creek Crossing  
 Telephone: 972-368-2200  
 Telecopy: 972-368-3199

With a copy to: Archon Group, L.P.  
 77 South Wacker Drive  
 Suite 2110  
 Chicago, IL 60606  
 Attention: Development Manager-Poplar Creek Crossing  
 Telephone: 312-629-7825  
 Telecopy: 312-629-7850

And a copy to: Greenburg Traurig LLP  
 77 West Wacker Drive, Suite 2400  
 Chicago, IL 60601  
 Attention: Laurence B. Dobkin, Esq.  
 Telephone: 312-476-5036  
 Telecopy: 312-456-8435

If to Outparcel Owner: Slevin Capital Investments, Inc.  
 24 Pentwater Drive  
 South Barrington, IL 60010  
 Attention: William A. Slevin, President  
 Telephone: 708-751-6100  
 Telecopy: 847-310-1045

And a copy to: Mullen & Winthers, P.C.  
 1N141 County Farm Road  
 Suite 230  
 Winfield, IL 60190  
 Attention: David J. Winthers, Esq.  
 Telephone: 630-668-6700  
 Telecopy: 630-668-6733

18. Severability. All of the restrictions, covenants, agreements, easements and conditions contained herein shall be construed together, but if it shall at any time be held by a court of competent jurisdiction that any one of such restrictions, covenants, agreements or conditions, or any portion thereof is invalid or for any reason becomes unenforceable, no other restriction, covenant, agreement, easement or condition contained therein shall be thereby affected or impaired.

19. Enforceability. The easements, restrictions and obligations created and imposed herein shall be effective upon the date hereof, shall run with the land, and shall inure to the

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benefit of and be binding upon the parties, their heirs, administrators and successors, as well as to Tenant and to any assigns, tenants and/or occupants of the Shopping Center which Developer or Outparcel Owner may from time to time designate in writing ("**Benefitting Party**"). Each and all of the provisions contained in this Supplemental Agreement shall be enforceable by injunction or by any other appropriate causes of action at law or in equity by a Benefitting Party. The failure to enforce any of the restrictions, covenants, agreements, easements or conditions shall in no event be deemed a waiver of the right to do so thereafter or thereafter to enforce any other restriction, covenant, agreement, condition or reservation contained herein..

20. Governing Law. This Supplemental Agreement shall be construed, interpreted and applied in accordance with the laws of the State of Illinois.

21. Estoppel Certificates. Each party shall upon not less than thirty (30) days from receipt of written notice from the other party execute and deliver to such other party a certificate in recordable form stating that (i) either this Supplemental Agreement is unmodified and in full force and effect or is modified (and stating the modification); and (ii) whether or not to the best of its knowledge the other party is in default in any respect under this Supplemental Agreement and if in default, specifying such default.

22. Headings. The descriptive headings of the paragraphs contained in this Supplemental Agreement and exhibits hereto are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

23. Counterparts. This Supplemental Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

*[Remainder of page intentionally blank.]*

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IN WITNESS WHEREOF, Developer and Outparcel Owner do hereby execute this Supplemental Agreement to be effective as of the date first above written.

**DEVELOPER:**

W2001 VHE REALTY, L.L.C.,  
a Delaware limited liability company

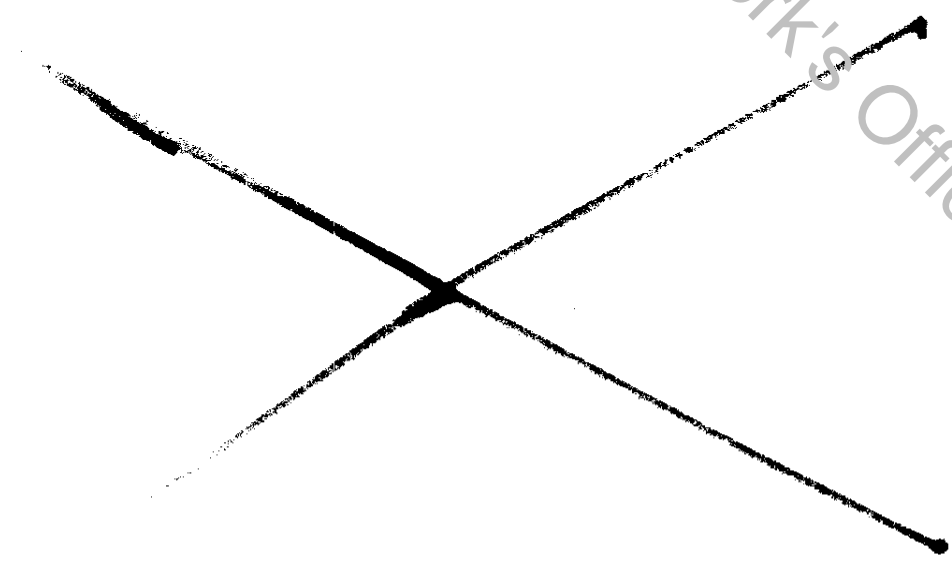
By: *Marilyn Franklin*  
Name: **MARILYN FRANKLIN**  
Its: **ASSISTANT VICE PRESIDENT**

**OUTPARCEL OWNER:**

SLEVIN CAPITAL INVESTMENTS, INC.,  
an Illinois corporation

By: \_\_\_\_\_  
Name: William A. Slevin  
Its: President

Property of Cook County Clerk's Office



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IN WITNESS WHEREOF, Developer and Outparcel Owner do hereby execute this Supplemental Agreement to be effective as of the date first above written.

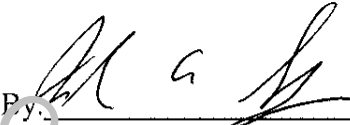
**DEVELOPER:**

W2001 VHE REALTY, L.L.C.,  
a Delaware limited liability company

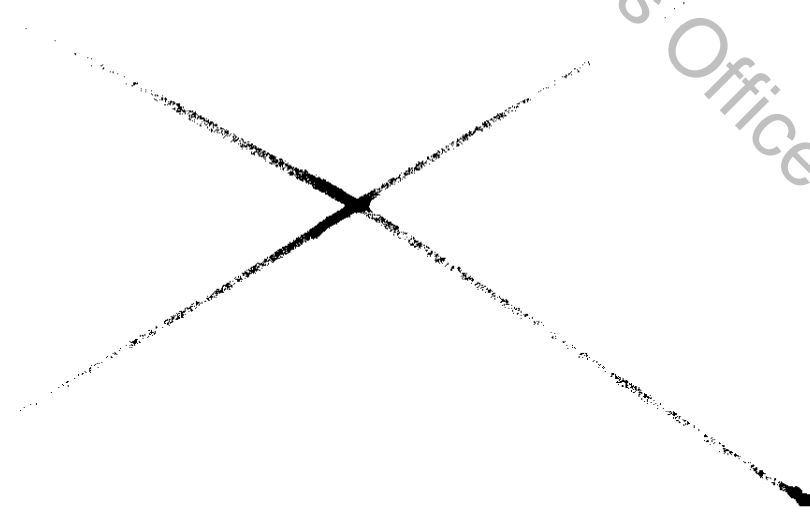
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**OUTPARCEL OWNER:**

SLEVIN CAPITAL INVESTMENTS, INC.,  
an Illinois corporation

By:  \_\_\_\_\_  
Name: William A. Slevin  
Its: President

Property of Cook County Clerk's Office



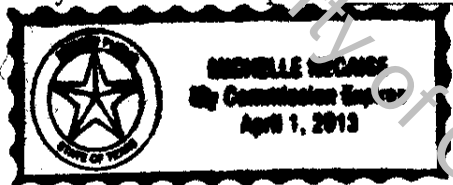
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STATE OF Texas )  
 ) ss:  
COUNTY OF Dallas )

On this 27<sup>th</sup> day of July, 2010, personally came before me, Michelle Necaise, a Notary Public of the County of Dallas, State of Texas, Marilyn Franklin, who, being by me duly sworn, says that he/she is Assistant Vice-President of W2001 VHE Realty, L.L.C., a Delaware limited liability company and that the foregoing instrument was duly executed by him/her for and on behalf of said limited liability company. And said Marilyn Franklin acknowledged said instrument to be the act and deed of said limited liability company.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_



Michelle Necaise

Notary Public

STATE OF ILLINOIS )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, personally came before me, \_\_\_\_\_, a Notary Public of the County of \_\_\_\_\_, State of Illinois, \_\_\_\_\_, who, being by me duly sworn, says that he/she is a \_\_\_\_\_ of Slevin Capital Investments, Inc., an Illinois corporation, and that the foregoing instrument was duly executed by him/her for and on behalf of said corporation. And said \_\_\_\_\_ acknowledged said instrument to be the act and deed of said corporation.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

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STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, personally came before me, \_\_\_\_\_, a Notary Public of the County of \_\_\_\_\_, State of \_\_\_\_\_, \_\_\_\_\_, who, being by me duly sworn, says that he/she is \_\_\_\_\_ of W2001 VHE Realty, L.L.C., a Delaware limited liability company and that the foregoing instrument was duly executed by him/her for and on behalf of said limited liability company. And said \_\_\_\_\_ acknowledged said instrument to be the act and deed of said limited liability company.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_

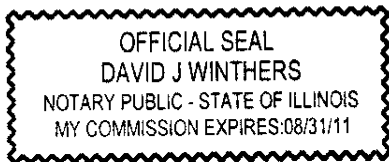
\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS )  
 ) ss:  
COUNTY OF Cook )

On this 27<sup>th</sup> day of July, 2010, personally came before me, David J. Winthers, a Notary Public of the County of Cook, State of Illinois, William R. Slevin, who, being by me duly sworn, says that he/she is ~~a~~ The President of Slevin Capital Investments, Inc., an Illinois corporation, and that the foregoing instrument was duly executed by him/her for and on behalf of said corporation. And said officer acknowledged said instrument to be the act and deed of said corporation.

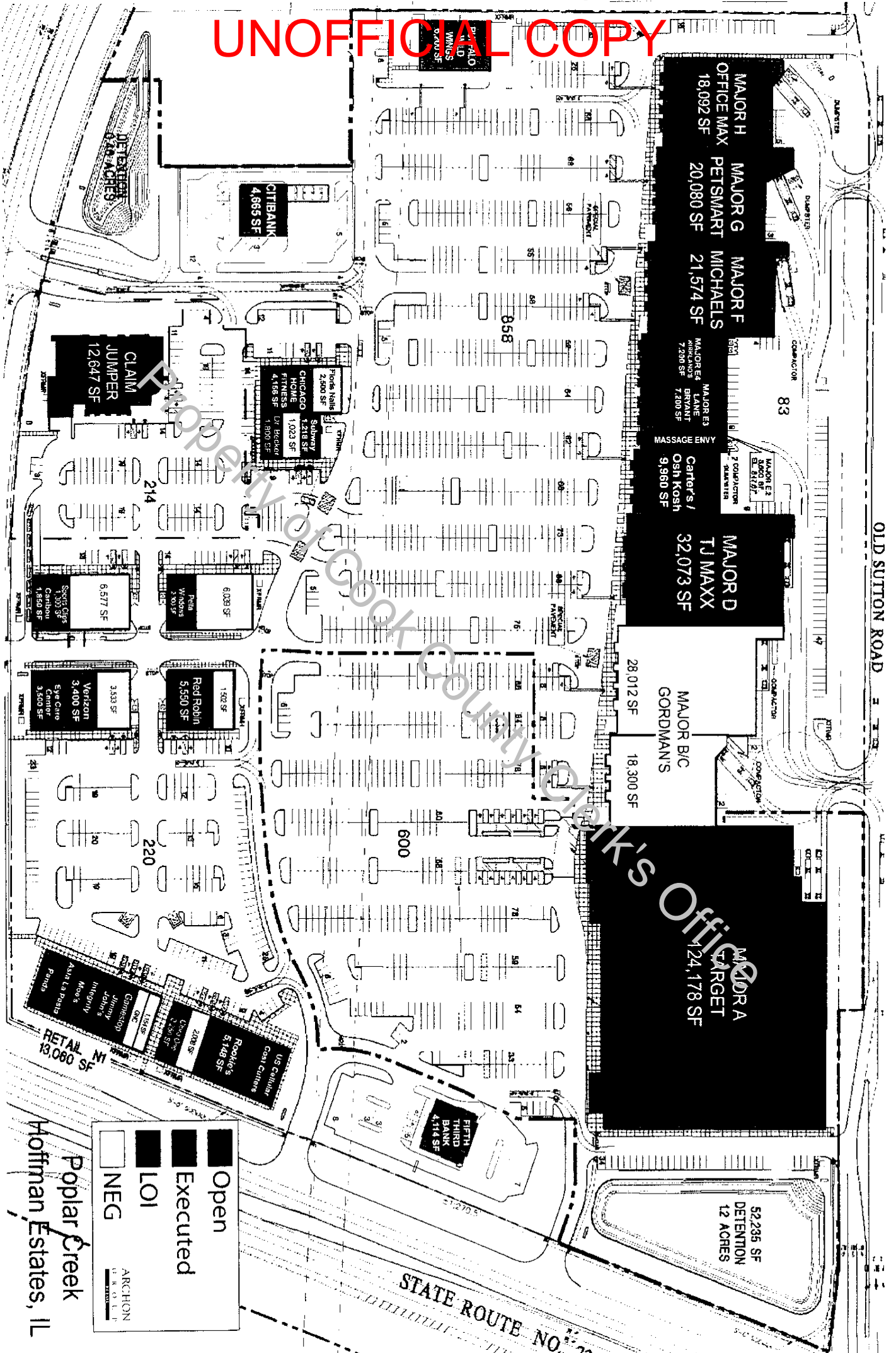
Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_



[Signature]  
Notary Public

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Poplar Creek  
Hoffman Estates, IL

ARCHON GROUP

Poplar Creek  
Hoffman Estates, IL

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## EXHIBIT C

### RESTRICTIONS

(1) No use shall be permitted on the Outparcel which is inconsistent with the operation of a first class retail shopping center. Without limiting the generality of the foregoing, the following uses shall not be permitted:

(A) Any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any building on the Outparcel.

(B) An operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation.

(C) Any "second hand" store, "surplus" store, or pawn shop.

(D) Any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.

(E) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any building on the Outparcel.

(F) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.

(G) Any central laundry, dry cleaning plant or laundromat.

(H) Any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation.

(I) Any bowling alley or skating rink.

(J) Any movie theater or live performance theater.

(K) Any hotel, motel, short or long term residential use, including but not limited to: single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments or lodging rooms.

(L) Any veterinary hospital or animal raising or boarding facilities.

(M) Any mortuary or funeral home.

(N) Any establishment selling or exhibiting "obscene" material.

(O) Any establishment selling or exhibiting drug-related paraphernalia for use with illicit drugs or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff.



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(P) Any bar, tavern, restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on premises consumption exceeds forty percent (40%) of the gross revenues of such business.

(Q) Any health spa, fitness center or workout facility.

(R) Any massage parlors or similar establishments.

(S) Any flea market, amusement or video arcade, pool or billiard hall, car wash or dance hall.

(T) Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers.

(U) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not be applicable to government sponsored gambling activities or charitable gambling activities, so long as such activities are incidental to the business operation being conducted by the Occupant.

(V) Any outdoor circus, carnival or amusement park or other entertainment facility.

(W) Any outdoor meetings.

(X) A shooting gallery.

(Y) An auditorium, meeting hall, ballroom or other place of assembly.

(Z) An unemployment agency, service or commission.

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## EXHIBIT D

### CURRENT EXCLUSIVES

**T.J. Maxx** - Landlord agrees that, from the date hereof until expiration of the term of this Lease, no other premises in the Shopping Center shall at any time contain more than (i) fifteen thousand (15,000) square feet of floor area therein used or occupied for, or devoted to, the sale or display of apparel and related accessories (the foregoing hereinafter referred to as a "Competing Use" and the merchandise referred to therein as the "Protected Merchandise"). The computation of such floor area shall include one half (1/2) of all floor area in any aisles, corridors or similar spaces adjacent to or abutting any racks, gondolas, shelves, cabinets, counters or other fixtures or equipment containing or used for the sale or display of the Protected Merchandise. The provisions of this Paragraph (B) shall not apply to Target, Linens N Things, Old Navy, Michaels, Cost Plus, and Pier One or to their affiliates, subtenants and assignees, but shall apply to any tenant or occupant who executes a new lease for the premises occupied by such tenants.

**PETsMART** - As used in the Lease, the term "Tenant's Primary Business" shall mean the retail sale of (i) pets (including but not limited to fish, birds, reptiles, dogs, cats and other small mammals), (ii) pet food, pet accessories and other products relating to pets and animals, including equestrian products and apparel related thereto, (iii) services related to pets and animals, such as grooming, boarding, animal training and obedience classes, pet adoption and veterinary services, (iv) products relating to nature and the environment, and (v) educational products and services related to any of the foregoing, and office and storage uses incidental to the foregoing. From and after the date of this Lease and for a period of one (1) year thereafter (unless (a) Tenant has no stores operating within the metropolitan area in which the Shopping Center is located, or (b) this Lease has been terminated as a result of Tenant's default hereunder), Tenant shall have the exclusive right in the Shopping Center to conduct any portion of Tenant's Primary Business described in clauses (i), (ii) and (iii) of this Section 2. Landlord shall not enter into any Lease or occupancy agreement of any kind in the Shopping Center with one of Tenant's direct competitors. All other tenants or other occupants of any portion of the Shopping Center shall be prohibited from engaging in any portion of such Primary Business described in clauses (i), (ii) and (iii) of this Section 2, except on a basis that is incidental to an otherwise permitted use. For purposes of this Section 2, the term "incidental" shall mean that the use occupies the lesser of (a) 250 square feet of Gross Floor area, or (b) five percent (5%) of the sales area in the subject premises. Notwithstanding the foregoing, however, Tenant's exclusive right as set forth in this Section shall not apply to Target (or its successors or assigns operating in Target's entire premises) or to a "mainstream" grocery tenant operating in excess of 40,000 square feet of Gross Floor Area in the Shopping Center.

**Fifth Third Bank** - Landlord covenants and agrees that, during the Term, no portion of the Shopping Center except the Demised Premises will be used for, and Landlord shall not enter into any lease in the Shopping Center or sell any portion of the Shopping Center under terms that would allow for, any one or combination of the following uses: (i) the operation of a free-standing bank; drive-thru lanes for a bank; a savings and loan business; a mortgage loan or mortgage brokerage business; a credit union; a finance company; or (ii) the location of automatic teller machines ("ATMs") (the uses described in clauses (i) and (ii) are herein collectively referred to as the "Exclusive Use Restrictions"); or (iii) any Prohibited Use attached hereto as

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Exhibit G. Notwithstanding anything to the contrary contained herein, the provisions of this Section will not apply to any possible banking operation for the parcel identified as "Future Development #2" of the Shopping Center or the Target Parcel.

**Michaels** - Neither Landlord nor any entity controlled by Landlord will use, lease (or permit the use, leasing or subleasing of) or sell any space in or portion of the Shopping Center or any property contiguous to the Shopping Center (including, without limitation, any property that would be contiguous or adjacent to the Shopping Center but for any intervening road, street, alley or highway) owned or controlled now or at any time hereafter by Landlord or any affiliate of Landlord to any "craft store", store selling arts and crafts, art supplies, craft supplies, picture frames or picture framing services, framed art, artificial flowers and/or plants, artificial floral and/or plant arrangements, wedding or party goods (except apparel), scrapbooking/memory book store, or a store selling scrapbooking/memory book supplies, accessories, and/or decorations or other papercrafting (e.g. making greeting cards, gift bags, tags, and other related or similar items) supplies, accessories and/or decorations associated with the foregoing, or providing classes on any of the foregoing or any combination of the foregoing categories, or any store similar to Tenant in operation or merchandising ("Tenant's Exclusive"). This Section 16.4.1 shall not apply (A) to any lessee whose lease was fully executed on the Effective Date hereof and is identified on Exhibit I as an "Existing Lease Not Subject to Tenant's Exclusive;" provided, however, that this exception shall not apply if (i) Landlord permits or agrees to an expansion of the premises for any such permitted use which violates Tenant's exclusive, or (ii) Landlord permits or agrees to the change of a permitted use by any such lessee or its successors or assigns, or (iii) Landlord permits or agrees to an assignment or sublease of such existing lease if Landlord may avoid the granting of such permission, or (iv) Landlord has the right, by virtue of the provisions of the existing lease, to cause said lessee to honor the exclusive granted to Tenant by giving said existing lessee notice of this exclusive or otherwise, or (B) to any future lessee for which the sale of a product or service covered by Tenant's Exclusive is merely incidental to such lessee's primary use, with the term "incidental" being defined as the devotion of not more than the lesser of (x) two thousand hundred (2,000) Leasable Square Feet (inclusive of allocable aisle space and linear shelf space) to the display of the products and services covered by Tenant's Exclusive or (y) ten percent (10%) of said lessee's Leaseable Square Feet; provided, in no event shall this exception for incidental use apply to custom framing services, it being the intention that no other future lessee or occupant of the Shopping Center shall be permitted to offer custom framing services, or (C) to the area depicted on Exhibit B as "Target Parcel"; provided, however, if Landlord should gain control of any portion of the Target Parcel, then Landlord shall not permit any occupant of the Target Parcel controlled by Landlord to operate in violation of Tenant's Exclusive. Tenant's Exclusive shall not prohibit the operation of a Cost Plus store in the Shopping Center, so long as such Cost Plus store operates in a manner that is typical of the operation of Cost Plus stores as of the Effective Date. Tenant shall be subject to the existing use restrictions listed in Exhibit I (includes exclusives for Linens N' Things, T.J. Maxx, PETsMART, Lane Bryant, Fifth Third Bank and OfficeMax) for so long as such exclusive use restrictions remain effective to restrict the use of the Premises.

**Office Max** - Tenant acknowledges that notwithstanding anything in this Lease to the contrary, Landlord shall have the right to lease space in the Shopping Center to Pier 1 Imports or a similar tenant, whose premises is under thirteen thousand (13,000) square feet, that shall have the right to sell office furniture in an area not to exceed twenty percent (20%) of its retail floor area

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provided that such items are ancillary to such tenant's primary use. Additionally, Landlord shall have the right to lease space to no more than one (1) single service cellular telephone provider.

During the initial term of this lease or during any renewal period hereunder, no portion of the Shopping Center (excluding the Demised Premises and Target Parcel) shall be used:

(a) For the purposes of, or which is permitted to be, the sale of office, home office, school or business products, computers and computer products, office, home office, school or business supplies or equipment; office furniture; mobile or portable telephones or pagers; or electronics (including by way of example those businesses operated by Office Depot, Staples, Office Shop Warehouse, Mardel Christian Office and Education Supply Store, Mail Boxes etc., and Workplace); or for use as a business support center, copy center or "Kinko" type of operation (all of which are hereinafter referred to as the "Prohibited Uses"), except to the extent permitted by subparagraphs (b) – (c) immediately below;

(b) For any purpose which would permit more than (i) one thousand (1,000) square feet of space to be used for any Prohibited Uses, or (ii) five percent (5%) of such user's floor area to be used for purposes of any Prohibited Uses, whichever is less;

(c) The restriction on Prohibited Uses shall not be applicable to any leases executed by Landlord prior to or after the date of execution hereof with a tenant whose primary use is the sale of (i) Residential Consumer Electronics as defined below, store, including by way of example those businesses operated by Circuit City, Best Buy and Radio Shack, (ii) a toy store such as a prototypical store operated by Toys R Us (which prototypical store is being operated primarily as a toy store, (iii) an educational toy store such as a prototypical store operated by Learning Express or Zany Brainy (which prototypical store is being operated primarily as an educational toy store), (iv) a full-line home furniture store whose incidental sale of office furniture is less than ten percent (10%) of such store's gross products for that location, or (v) a national or regional bookstore chain, such as those businesses operated by Barnes & Noble and Borders, Inc.. For purposes of this section (d) "Residential Consumer Electronics" shall mean the sale of televisions, VCRs, radios, answering machines, camcorders, computers, stereos, electronic games, telephones, kitchen and laundry appliances and other similar products, however a store selling primarily computers and computer related products shall not be a store whose primary use is the sale of Residential Consumer Electronics.

(d) The restriction on Prohibited Uses shall not be applicable to any leases executed by Landlord, by any tenant occupying fifty thousand (50,000) square feet or more whose primary use is the sale of general merchandise, including by way of example those stores operated by Target and Wal-Mart.

(e) The restriction on the sale of electronics contained in subsection (a) shall not be applicable to the sale of kitchen and personal hygiene electronic appliances by a tenant whose primary use is the sale of bedding, accessories, bath items and kitchen items, such as stores operated by Linen 'N' Things and Bed, Bath and Beyond.

In addition, during the initial term of this lease and during any renewal period hereunder:

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(a) No portion of the Shopping Center located within two hundred fifty linear feet (250') of the demising walls of the Demised Premises shall be used as a restaurant, or for office purposes (such as medical or office uses, not ancillary to retail use), or for any use that requires parking in excess of five (5) spaces for each one thousand (1,000) square feet of leasable floor area, or for any use prohibited under subparagraph (b) immediately below; or

(b) No portion of the Shopping Center shall be occupied or used in violation of the REA or any prohibitions or restrictions on use contained in any document or instrument listed on EXHIBIT "D".

The restricted uses set forth in (a) and (b) above are hereinafter referred to collectively as the "Restricted Uses". The Restricted Uses and Prohibited Uses shall not apply to the current tenants of the Shopping Center identified on EXHIBIT "J" and their successors and assigns so long as their current leases (and extensions) are in effect; provided, however, that to the extent Landlord has the right to approve or consent to any assignment or subletting under such lease, and to limit or restrict the use in conjunction with such consent, Landlord shall again enforce Tenant's rights set forth above unless (A) such assignment or subletting is for a purpose permitted by such lease and (B)(1) Landlord is not permitted, pursuant to the terms of such lease, to enforce Tenant's rights hereunder in connection with such assignment or sublease, or (B)(2) the enforcement of such rights would be unreasonable under the terms of any such lease for which Landlord's consent is required to be reasonable with respect to any assignment or sublease.

Notwithstanding anything to the contrary contained in this Lease, Tenant acknowledges the Target Parcel can be operated for any lawful use.

**Claim Jumper** - Landlord shall not allow the operation in the Shopping Center of another sit-down restaurant that primarily sells steaks or ribs. Without limiting the foregoing, Landlord shall not allow another restaurant to operate in the Shopping Center under the following trade names: Tony Roma's, Outback Steakhouse and Flemings.

**Jimmy John's** - Provided Tenant is not in default of the terms of this Lease, Landlord shall not lease additional space in Buildings N1 or N2, as shown on Exhibit B hereto, to another tenant whose primary business is the preparation and sale of submarine sandwiches (for example, Subway, Quizno's, Potbelly's, etc.). Primary business is defined herein as a use producing Gross Sales in excess of 25% of such tenant's total Gross Sales. The foregoing limitation shall not apply to any Existing Leases as same may be renewed, extended, modified or amended (except that no such renewal, extension, modification or amendment shall grant tenant the right to engage in the primary business of the sale of submarine sandwiches where such tenant did not previously have that right). Tenant shall not violate any restrictions or exclusives applicable to the Shopping Center including, without limitation, those contained in other documents filed of record, and as provided in other leases for the Shopping Center entered into by Landlord. A list of all existing Shopping Center exclusives is attached hereto as Exhibit L. For purposes of this Lease, "Existing Leases" shall mean all leases entered into by Landlord prior to the date of this Lease.

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**Caribou Coffee** - Subject to the Existing Leases, including those whereby Landlord has no control over the use, sublease or assignment rights of an existing tenant, Landlord agrees not to lease, consent to the sublease or consent to the assignment of any lease, for any space in or on the Shopping Center to a tenant whose primary business is sale of gourmet coffee (whole bean and/or ground), espresso drinks and gourmet coffee products (grinders, filters, etc.).

For purposes hereof, "Existing Leases" include Barnes & Noble, Cost Plus World Market, Bed Beth & Beyond, Pier 1, Michaels, TJ Maxx, Old Navy, Dress Barn, Lane Bryant, Famous Footwear, Great Clips, Gamestop, Moe's, Longhorn Steakhouse, Olga's, On The Border and Quizno's, under which leases Landlord has no consent rights to the use, sublease or assignment rights of such tenants.

**Lane Bryant** - Tenant shall have the exclusive right to operate a retail store selling large size (14 and up) women's clothing and/or apparel ("Plus Clothing") in the Shopping Center (excluding the Target Parcel). This Section shall not apply to (a) any store operating under the trade name "Old Navy", (b) any store operating under the trade name "Catherines", (c) any store operating under the trade name "Dress Barn", (d) any store in the Shopping Center containing in excess of 25,000 sq. ft. of contiguous space operating under a single trade name, and (e) the Existing Leases, including those whereby Landlord has no control over the use, sublease or assignment rights of an existing tenant; provided, however, in the event Landlord's consent is required for the sale of Plus Clothing, Landlord shall withhold its consent thereto. For purposes of this Lease, "Existing Leases" shall mean those leases with Target, Office Max, PetSmart, TJ Maxx, Linens N' Things, Cost Plus World Market, Claim Jumper, Fifth Third Bank and Michaels.

**Integrity Physical Therapy** - Subject to the Existing Leases, including those whereby Landlord has no control over the use, sublease or assignment rights of an existing tenant, Landlord agrees not to lease, consent to the sublease or consent to the assignment of any lease, for any space in or on the Shopping Center to a tenant whose primary business is providing physical therapy and rehabilitation services. The foregoing limitation shall not apply to any Existing Leases as same may be renewed, extended, modified or amended (except that no such renewal, extension, modification or amendment shall grant tenant the right to engage in the primary business of the sale of gourmet coffee where such tenant did not previously have that right). For purposes of this Lease, "Existing Leases" shall mean all leases entered into by Landlord prior to the date of this Lease.

**US Cellular** - Subject to the Existing Leases, including those whereby Landlord has no control over the use, sublease or assignment rights of an existing tenant, Landlord agrees not to lease, consent to the sublease or consent to the assignment of any lease, for any space in or on Building N1 or Building N2 in the Shopping Center to an occupant for the use of the sale, rental, service or supply of mobile or wireless communication products, paging equipment or wireless communication services. "Existing Leases" include Cost Plus World Market, TJ Maxx, Linens N Things, PetsMart, Fifth Third Bank, Michaels, Buffalo Wild Wings, JPMorgan Chase Bank, Kirkland's, Claim Jumper and Office Max, under which leases Landlord has no consent rights to the use, sublease or assignment rights of such tenants. Notwithstanding anything herein to the contrary, Landlord shall have the right to lease space in Building N1 to one occupant whose primary business is the sale, rental, service and/or supply of mobile or wireless communication products, paging equipment and/or wireless communication services.

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**Cost Cutters** - Subject to the Existing Leases, including those whereby Landlord has no control over the use, sublease or assignment rights of an existing tenant, Landlord agrees not to lease, consent to the sublease or consent to the assignment of any lease, for any space in buildings N1 and N2 of the Shopping Center to a tenant whose primary business is a value priced/discount hair salon. The foregoing limitation shall not apply to any Existing Leases as same may be renewed, extended, modified or amended (except that no such renewal, extension, modification or amendment shall grant tenant the right to engage in the primary business of a discount hair salon). For purposes of this Lease, "Existing Leases" shall mean all leases entered into by Landlord prior to the date of this Lease.

Notwithstanding the foregoing, Landlord shall have the right to lease, consent to the sublease or consent to the assignment of any lease to a tenant whose primary business is a full service, full price hair salon or day spa which provides similar services as Tenant at a minimum of 175% (net of discounts) of Tenant's current prices for such services. Additionally, Landlord shall have the right to lease, consent to the sublease or consent to the assignment of any lease to a tenant whose primary business is a beauty supply store providing incidental salon services and having no more than two stations, a nail salon or a tanning salon.

**Subway** - Provided no Event of Default exists and Tenant is operating in accordance with the Permitted Use, Landlord shall not lease additional space in Buildings J, K, L1 or L2, as depicted on Exhibit B hereto, to any tenant or occupant whose primary business is the preparation and sale of submarine style sandwiches. The foregoing limitation shall not apply to any Existing Leases as same may be renewed, extended, modified or amended (except that no such renewal, extension, modification or amendment shall grant the tenant thereunder the right to engage in the primary business of the sale of submarine or deli-style sandwiches where such tenant did not previously have that right). Tenant shall not violate any restrictions or exclusives applicable to the Shopping Center including, without limitation, those contained in other documents filed of record, and as provided in other leases for the Shopping Center entered into by Landlord. For purposes of this Lease, "Existing Leases" shall mean all leases entered into by Landlord prior to the date of this Lease.

**Visionary Properties** - Subject to the existing tenants in the Shopping Center (i.e. those who have executed a lease in the Shopping Center prior to the execution of this Lease) and tenants occupying 20,000 square feet or more in the Shopping Center, Landlord agrees not to lease, consent to the sublease or consent to the assignment of any lease, for any space in or on the Shopping Center, or in or on any land owned or to be owned by Landlord immediately adjacent to the Shopping Center, to a tenant whose primary purpose is the sale of prescription eyewear and the rendering of optometrical or ophthalmologic services. For the purposes of this paragraph "primary purpose" shall be defined as selling the aforementioned items or providing the aforementioned services within an area which occupies in excess of twenty percent (20%) of such tenant's floor area.

**Massage Envy** - Provided that an Event of Default (as such term is defined in the Lease) is not occurring and subject to the existing leases described on Exhibit K, including those whereby Landlord has no control over the use, sublease or assignment rights of an existing tenant, Landlord agrees not to lease, consent to the sublease or consent to the assignment of any lease, for any space in or on the Shopping Center to a tenant whose primary business (greater than 20%

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of gross revenues) is a massage therapist, massage therapy and/or muscle therapy. Existing tenants in the Shopping Center, full service salon/day spa and/or medical spa uses shall be exempt from said exclusive.

Notwithstanding anything to the contrary contained herein, should a tenant violate the foregoing exclusive by operating in violation of its lease, then Landlord shall not be deemed to have guaranteed to Tenant that Landlord ultimately would be successful in enforcing the exclusive granted to Tenant hereunder should the need for such enforcement arise during the Term. Consequently, provided that Landlord shall have used its diligent and good faith efforts in seeking to cause any other tenant who shall violate Tenant's exclusive based upon such tenant operating in violation of its lease to terminate its use (or the use by its subtenant, as the case may be) of all or any portion of its premises then, and in such event, Tenant's sole remedy in the event that Landlord shall be unsuccessful in enforcing the exclusive granted to Tenant hereunder within six (6) months after the violation has occurred, will be to pay an amount equal to 50% of the monthly Minimum Rent in lieu of Minimum Rent, during the subsequent twelve (12) month period after the expiration of the six (6) month cure period for so long as such violation continues. After the expiration of the foregoing twelve-month period, Tenant shall have the right to terminate the Lease. Provided Tenant has not previously exercised its right to terminate the Lease, Tenant shall resume paying full Rent effective the first day after such violation is cured or the expiration of said twelve (12) month period, whichever is the first to occur, and the termination right shall expire.

Furthermore, Landlord shall not lease, rent, occupy or permit to be occupied or used any spaces in the Shopping Center adjacent to the Premises to tenants whose use shall create any type of noise, odor or vibration which would materially and adversely affect Tenant's ability to operate the Premises for its Permitted Use.

**Verizon Wireless** - Subject to the existing tenants in the Shopping Center (i.e. those who have executed a lease in the Shopping Center prior to the execution of this Lease) and tenants occupying 10,000 square feet or more in the Shopping Center, Landlord agrees not to lease, consent to the sublease or consent to the assignment of any lease, for any space in or on the Shopping Center or in or on any other building or parcel of land controlled by Landlord in Poplar Creek Crossing to more than one tenant whose primary purpose is the sale of wireless/cellular products and services (i.e. Cingular, AT&T Wireless, T-Mobile, US Cellular, Sprint/Nextel, Radio Shack, etc.). For the purposes of this paragraph "primary purpose" shall be defined as selling the aforementioned items or providing the aforementioned services and generating fifteen percent (15%) or more of gross sales from such items or services.

**Chicago Home Fitness** - Subject to the existing leases described on Exhibit J, including those whereby Landlord has no control over the use, sublease or assignment rights of an existing tenant, Landlord agrees not to lease, consent to the sublease or consent to the assignment of any lease, for any space in or on the Shopping Center to a tenant whose primary business is the selling of fitness/exercise equipment. The foregoing limitation shall not apply to any existing leases as same may be renewed, extended, modified or amended (except that no such renewal, extension, modification or amendment shall grant tenant the right to engage in the primary business of the sale of fitness/exercise equipment.



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**Panda Express** - On and after the Lease Date and for so long as Tenant is open and operating a Chinese restaurant on the Premises and is not in default under the Lease beyond any applicable notice and cure period, Landlord shall not enter into any lease covering, or permit the use by any tenant, occupant or user of, any portion of any real property within the Shopping Center to be used for the sale of Asian Food (excluding "incidental sales"). This exclusive shall run with the real property in the Shopping Center. For purposes of this Section 6.1.B, the term "incidental sales" shall be defined as the sale of items by another tenant or occupant that would otherwise be in violation of Tenant's Exclusive Use; however, such sales of items comprise no more than ten percent (10%) of such tenant's or occupant's gross sales or menu items. For purposes of this Section 6.1.B, the term "Asian Food" shall include Chinese, Japanese (not including sushi), Vietnamese, Thai, Hawaiian, Mongolian, Indian and Korean foods, food cooked in a wok, food generally recognized as Chinese food, soy sauce based food and food in a buffet format. Subject to any existing lease at the Shopping Center where Landlord has no control over the use, sublease or assignment rights of an existing tenant, Landlord hereby represents and warrants that as of the Lease Date, there are no tenants or any other parties in the Shopping Center who have leases or agreements which (i) permit the use as a restaurant which sells Asian Food, uses a wok, or sells food in a self-serve buffet format, or (ii) prohibit, restrict or interfere in any manner whatsoever with Tenant's Permitted Use of the Premises, except as set forth in the Restrictions. Notwithstanding the forgoing, existing tenants, Full Service Restaurants, and anchor tenants in excess of fifteen thousand (15,000) square feet shall be exempt from this Section 6.1.B. For purposes of this Section 6.1.B, the term "Full Service Restaurant" shall be defined as a sit down restaurant having table service and full alcohol service with a floor area in excess of three thousand five hundred (3,500) square feet.

**Buffalo Wild Wings** - Tenant has the exclusive right in the Shopping Center to operate a restaurant and sports bar serving lunch and dinner with chicken wings featured as its principal menu item.

**Giuseppe's Prairie Stone Pizza** - Tenant shall have the exclusive right to operate an Italian restaurant specializing in pizza (50% of sales or more) in the Shopping Center, provided, however, such exclusive shall not prohibit Landlord from leasing to a full-service sit-down Italian restaurant.

**Pella Windows and Doors** - Subject to existing leases (including leases where Landlord has no control over the use, sublease or assignment right), Landlord shall not lease, sell, sublease or permit to operate any tenant of the Shopping Center whose primary use (defined as 10% or more of gross annual revenue) is a door and/or window retailer during the Term of this Lease.

**GameStop** - Provided Tenant is not in default hereunder beyond the applicable cure period, Landlord represents and warrants that it shall not enter into an agreement (excluding tenants currently existing as of the Lease Date and their successors and/or assigns), with any other occupant whose Primary Use is the sale of new or used video games and video game systems. For purposes of this Lease, "Primary Use shall be defined as utilizing more than seventy-five (75) square feet of space as surface display area for the retail advertising or sale of video games and/or video game systems.

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**Red Robin** - Landlord covenants and agrees that, provided Tenant is not in default of the Lease beyond any applicable notice and cure period, during the Lease Term (as such term is defined in the Lease), no portion of the Shopping Center shall be sold, leased, managed, used or occupied by any of the following entities: Chili's, TGI Friday's, Max & Erma's, O'Charley's, Fuddrucker's, Ruby Tuesday's, Applebee's, Mimi's Café, Steak 'n Shake or Cheeseburger in Paradise. Tenant acknowledges and agrees that the foregoing exclusive use shall (i) only apply during such times as Tenant operates the Premises as a Red Robin restaurant, and (ii) not be applicable to any leases executed prior to the date of the Lease. Said restriction shall be deemed a burden on the Landlord's Parcel (as such term is defined in the Lease) and for the benefit of the Premises and shall run with the land for the Lease Term. This restriction shall be binding upon Landlord, its heirs, administrators, successors, tenants and assigns. Any failure of Tenant to enforce the provisions hereof in the event of a breach of said restriction shall not be deemed a waiver of this restriction with respect to such breach or any subsequent or different breach.

**Carters/OshKosh** - Provided Tenant primarily sells childrenswear from the Demised Premises, Landlord shall not permit at any time (i) more than three percent (3%) of the leaseable area in the Shopping Center (as it shall exist from time to time following any expansion or contraction), in the aggregate, to be occupied by other persons or entities that primarily sell childrenswear from their respective premises and (ii) any other tenant or occupant in the Shopping Center to sell any merchandise bearing the "OshKosh" or "Carter's" label or other trademark owned or licensed to Tenant. Notwithstanding the foregoing (a) Landlord shall not be deemed to be in violation of this paragraph by virtue of a tenant that is already operating in the Shopping Center as of the date hereof changing its use to that of primarily selling childrenswear if it currently has the right to do so without Landlord's approval, provided that the leaseable area of such already-operating tenant shall then be included as a store primarily selling childrenswear for purposes of determining whether any subsequent lease or change of use causes a violation of such three percent (3%) limitation; and (b) for a period of six (6) months, Landlord shall not be in violation of this paragraph by virtue of a tenant primarily selling childrenswear that does not have the right to do so, provided that Landlord is using diligent efforts to cause such tenant to cease from doing so. For purposes of this paragraph, a tenant shall be "primarily selling childrenswear" if twenty percent (20%) of its sales or display area is derived from or used for the sale of clothing for infants, toddlers and/or children (it being understood that "display area" shall include the area in which merchandise is displayed and the area of the aisles adjacent thereto).

**Moe's Southwest Grill** - Subject to existing exclusives and leases where Landlord has no control over assignment and sublease rights of the tenant or in leases in which tenants have an open use clause, Landlord shall not permit, during the Term, the operation of Qdoba, Baja Fresh, Chipotle, Salarita's, Taco Fresco, Taco Del Mar or La Salsa in the Shopping Center. In no event shall Tenant's exclusive apply to the operation of any full-service sit-down restaurant.

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## EXHIBIT E

### Common Area Costs

1. All expenses related to the ownership, operation, Common Area liability insurance premium, maintenance, management (excluding management fees because there is a 15% administrative charge), equipping, repair or security of the Shopping Center, including salaries, taxes, insurance, and employee benefits of on-site employees or those maintenance personnel who perform direct Common Area maintenance duties (reasonably allocated between the Shopping Center and any other properties for which such personnel provide services);
2. All supplies and materials used in the operation, maintenance or repair of the Shopping Center including any exterior landscaping and holiday decorations;
3. Costs of utilities for the Common Area of the Shopping Center, including the cost of water and power for heating, lighting, air conditioning and ventilating, and operating fountains;
4. All expenses related to the repair, service, or maintenance of the Shopping Center and the equipment therein, including roof repairs and replacement, window cleaning, plumbing and electrical repair, HVAC and sprinkler system maintenance and repair, signage maintenance and repair, pest control, plate glass repair and replacement, elevator maintenance and janitorial service; and
5. Costs of cleaning, landscaping, snow and ice removal, painting, policing, providing security (if Developer elects to provide security), fire protection, drainage, striping, repair and replacement of parking surfaces, and of complying with Laws enacted or effective after the date hereof (or interpretations hereafter rendered with respect to any existing Law).

### CAM LIMITATIONS AND EXCLUSIONS

All assessments and premiums which can be paid by Developer in installments shall be paid by Developer in the maximum number of installments permitted by law and shall not be included as Common Area Costs except in the year in which the assessment or premium installment is actually paid. Common Area Costs shall exclude any item which is not customarily considered to be a normal expense of maintenance, operation or repair, including, without limitation, the following:

- (a) Capital costs or expenditures which are considered capital costs under regulations issued by the Internal Revenue Service of the United States government ("IRS") in effect at the time Developer incurs the cost (including any landscaping expense which is capital in nature under generally accepted accounting principles, but specifically excluding any repair or replacement of the parking areas); except that Developer may include in Common Area Costs capital expenditures (i) which achieve a reduction in Common Area Costs (but only to the extent of such reduction), or (ii) which are required by new laws enacted after the date of the Lease; provided, any such permitted capital expenditures shall be amortized on a straight-line basis over the useful life of the item in accordance with GAAP;

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- (b) Administrative or managerial fees (except as herein provided);
- (c) Wages, salaries, benefits or other compensation paid to any employees or officers of Developer above the first level of Property Manager;
- (d) Above market or non-competitive payments to vendors;
- (e) Above market fees and payments made by Developer to direct or indirect affiliates or partners of Developer for goods or services;
- (f) Costs resulting from defects in design, construction, or workmanship with respect to the Shopping Center or any other portion of the Shopping Center, and the materials used in same;
- (g) Costs due to Developer's default under this Supplemental Agreement or the OEA, and/or costs due to the negligence or willful misconduct of Developer, its employees, agents, contractors and assigns;
- (h) Costs and expenses incurred in compliance with Laws (except as herein provided);
- (i) Any costs, fines or penalties incurred due to violations by Developer of any Law and the defense of same;
- (j) Fees paid to architects, engineers, attorneys, auditors, or other professionals;
- (k) Costs of any repairs which are structural or which are depreciated and any other depreciation or amortization expense;
- (l) Principal or interest payments on loans secured by mortgages on the Shopping Center, or any part thereof;
- (m) Points, fees and other lender costs and closing costs on debts or amortization on any mortgage or mortgages or any other debt instrument encumbering the Shopping Center or any part thereof or on any unsecured debt;
- (n) Rental or other payments under any ground lease;
- (o) Cost of artwork;
- (p) Cost of containing, removing or otherwise remediating any Hazardous Substances, or any contamination or other environmental liability;
- (q) Any cost of work which is to be performed at the expense of Developer under any other provisions of the Supplemental Agreement or the OEA;

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- (r) Leasing costs of any type, including attorneys' fees, brokers' fees and commissions, whether for procuring tenants or releasing as well as retaining existing tenants and costs of enforcement of Developer's rights under leases in the Shopping Center;
- (s) Expenses for vacant or vacated space, including utility costs, security, removal of property and renovation;
- (t) Costs for which Developer is reimbursed by individual tenants of the Shopping Center so that no duplication of payments shall occur;
- (u) Costs of services, utilities, or other benefits which are not offered to Outparcel Owner or Tenant or for which Outparcel Owner or Tenant is charged for directly but which are provided to another tenant or occupant of the Shopping Center;
- (v) Expenses incurred on behalf of any other tenant;
- (w) Costs incurred due to Developer's violation of any of the terms and conditions of any leases in the Shopping Center;
- (x) Any costs related to the addition of other buildings in, and/or expansion of the Shopping Center;
- (y) Advertising and promotional expenditures;
- (z) Repairs and other work occasioned by fire, or other casualty that the Developer is or should be reimbursed by insurance proceeds or condemnation award and the cost of deductibles paid by Developer for insurance policies;
- (aa) any costs for which Developer has been reimbursed or receives a credit, refund or discount, provided if Developer receives the same in connection with any costs or expenditures previously included in the Common Area Costs for a year, Developer shall immediately reimburse Outparcel Owner for any overpayment for such previous year;
- (bb) Contributions to local or civic organizations; and
- (cc) Costs of traffic, marketing and similar studies.

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## EXHIBIT A

### Legal Description of Developer Parcel and Outparcel

#### DEVELOPER PARCEL

LOT 1 IN POPLAR CREEK CROSSING RESUBDIVISION #1, BEING A RESUBDIVISION OF LOT 2 IN POPLAR CREEK CROSSING SUBDIVISION, BEING A SUBDIVISION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND PART OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, ALL IN SECTION 33, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF RESUBDIVISION THEREOF RECORDED MAY 12, 2010 AS DOCUMENT NUMBER 1013244050, IN COOK COUNTY, ILLINOIS.

#### OUTPARCEL

LOT 3 IN POPLAR CREEK CROSSING RESUBDIVISION #1, BEING A RESUBDIVISION OF LOT 2 IN POPLAR CREEK CROSSING SUBDIVISION, BEING A SUBDIVISION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND PART OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, ALL IN SECTION 33, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF RESUBDIVISION THEREOF RECORDED MAY 12, 2010 AS DOCUMENT NUMBER 1013244050, IN COOK COUNTY, ILLINOIS.

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EXHIBIT B

SITE PLAN

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