This Instrument Prepared By
And After Recording Return To:

Brian W. Byrd, Esq.
Smith Moore Leatherwood LLP
300 North Greene Street, Suite 1400
Greensboro, NC 27401

AMENDED AND RESTATED DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR MOUNT TABOR PLACE

THIS AMENDED AND RESTATED DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR MOUNT TABOR PLACE (this "Declaration") is made as of the _____ day of _____, 2013 by **MOUNT TABOR PLACE, LLC**, a North Carolina limited liability company (hereinafter referred to as the "Developer") and **MOUNT TABOR PLACE PHASE II, LLC**, a North Carolina limited liability company ("MTP II");

WITNESSETH THAT:

WHEREAS, Developer and MTP II are the owners of all of the Property (defined below) upon which Developer and MTP II are developing the Shopping Center commonly known as Mount Tabor Place; and

WHEREAS, Developer established and created certain covenants, conditions, easements, rights, obligations and restrictions to facilitate the mutual beneficial development of the Property by recording the Declaration of Easements, Covenants, Conditions and Restrictions for Mount Tabor Place which is recorded in Book 2279, at page 4431, Forsyth County Registry. Developer and MTP II entered into that certain First Amendment to Declaration of Easements, Covenants, Conditions and Restrictions for Mount Tabor Place, which is recorded in Book 2670, at page 3967, Forsyth County Registry (the original declaration and the amendment are collectively referred to as the "Original Declaration"); and

WHEREAS, Developer and MTP II have determined that it is in the best interests of the Property, and the development and enjoyment thereof by Developer, MTP II, and their respective successors and assigns, to amend, restate and replace the Original Declaration with this Declaration.

NOW THEREFORE, Developer and MTP II, for themselves, their successors and assigns, hereby (i) amend, restate, replace and supersede the Original Declaration with the terms and provisions of this Declaration, and (ii) declare that the Property shall be held, occupied, used, rented, enjoyed, transferred, conveyed, mortgaged or otherwise encumbered subject to the following covenants, conditions, easements, rights and restrictions:

ARTICLE I
DEFINITIONS

In addition to any terms whose definitions are fixed and defined elsewhere in this Declaration, each of the following terms, when used herein with an initial capital letter, shall have the following meaning:

1.1 Building/Buildings. "Building" shall mean each building constructed from time to time within the Property. The plural form of this term as used in this Declaration is "Buildings."

1.2 Common Area. "Common Area" shall mean all areas and improvements (including Utility Lines) within the boundaries of or otherwise serving the Property, which have been substantially completed from time to time, exclusive of Buildings and related canopies, footings, overhangs, supports, columns and outward extensions not for the benefit of all Occupants of the Shopping Center, truck docks and/or receiving or servicing areas, dumpster, compactor or transformer pads, any outside sales or storage areas, and any areas which are publicly dedicated and accepted by the appropriate governmental body, but specifically including, without limitation, the following areas within the exterior boundaries of or otherwise serving the Shopping Center which have been substantially completed from time to time: (i) all parking areas, (ii) all roadways and driveways (including the Main Entrance Drive, and all related lighting improvements), (iii) all sidewalks and walkways, (iv) all landscaped and planted areas, and (v) all signage, including the Shopping Center Sign and landscaping improvements and Utility Lines associated with or serving the Shopping Center Sign.

1.3 CVS. "CVS" shall mean Revco Discount Drug Centers, Inc. and its successors and assigns as Tenant under the CVS Lease.

1.4 CVS Lease. "CVS Lease" shall mean that certain Lease Agreement dated as of March 2, 2001 as amended on May 18, 2001 between Developer, as Landlord, and CVS, as Tenant, for the Lease of the CVS Premises by CVS from Developer as same may be assigned, amended, modified, extended or renewed from time to time.

1.5 CVS Premises. "CVS Premises" shall mean those certain premises within the Shopping Center that are leased by CVS, as Tenant, from Developer, as Landlord, pursuant to the CVS Lease.

1.6 Declaration. "Declaration" shall mean this Declaration of Easements, Covenants, Conditions and Restrictions for MOUNT TABOR PLACE as the same may be amended from time to time. This Declaration expressly supersedes and replaces the Original Declaration, and

from and after the recordation of this Declaration, the Original Declaration shall be of no further force or effect.

1.7 Default Rate. "Default Rate" means the rate equal to three hundred (300) basis points per annum in excess of the from time to time prime rate of interest published by The Wall Street Journal (or similar financial publication if such financial publication ceases to be publishes) from the due date until paid; provided, however, in no event shall such rate exceed the maximum non-usurious interest rate permitted under applicable law.

1.8 Designated Employee Parking Areas. "Designated Employee Parking Areas" shall mean and refer to the area identified as “Designated Employee Parking Areas” on the Site Plan.

1.9 Developer. "Developer" shall mean MOUNT TABOR PLACE, LLC a North Carolina limited liability company, and its successors and assigns specifically with respect to such capacity as Developer pursuant to Section 8.3 below.

1.10 Environmental Law. The term "Environmental Law" or "Laws" means any federal, state, local law, statute ordinance, regulation or order, and all amendments thereto, pertaining to health, industrial hygiene, environmental condition or hazardous substances.

1.11 Floor Area. "Floor Area" shall mean the total number of square feet of enclosed, covered and heated floor space in a Building, whether or not actually occupied. The Floor Area of any Building shall be calculated from the exterior of all exterior walls and the center line of party or common walls.

1.12 FM Parcel. "FM Parcel" means the Shopping Center Parcel identified as Lot 3A on the Site Plan.

1.13 FM’s Primary Parking Field. "FM’s Primary Parking Field" shall mean and refer to the area identified as “FM’s Primary Parking Field” on the Site Plan.

1.14 Food or Drink Establishment. "Food or Drink Establishment" means an operation other than The Fresh Market’s whose primary business is the sale of food and/or drink from a menu or other listing, or that sells food and/or drink from a menu or other listing on more than an Incidental Use basis including, without limitation, restaurants, bars, taverns, coffee shops, tea shops, bakeries, candy stores and ice cream stores.

1.15 Fresh Market. "Fresh Market" or "The Fresh Market" shall mean The Fresh Market Inc., a Delaware corporation and its successors and assigns as Tenant under the Fresh Market Lease.

1.16 Fresh Market Exclusives. "Fresh Market Exclusives" means any of the following uses: grocery store, supermarket, convenience food store, or sale of Grocery Items for off premises consumption.

1.17 Fresh Market Lease. "Fresh Market Lease" shall mean that certain Lease Agreement dated as of April 21, 2006 (the “Fresh Market Lease Date”), as amended, between Mount Tabor Place Phase II, LLC, as Landlord, and The Fresh Market, Inc., as Tenant, for the Lease of the Fresh Market Premises by The Fresh Market from Mount Tabor Place Phase II, LLC as same may be assigned, amended, modified, extended or renewed from time to time.

1.18 Fresh Market Premises. "The Fresh Market Premises" shall mean those certain premises within the Shopping Center that are leased by The Fresh Market, as Tenant, from Mount Tabor Place Phase II, LLC, as Landlord, pursuant to The Fresh Market Lease. The Fresh Market Premises is entirely located on the FM Parcel.

1.19 Further Restaurant Area. "Further Restaurant Area" shall mean the area identified on the Site Plan.

1.20 Grocery Items. "Grocery Items" shall mean foodstuffs and drinks including, without limitation, any or all of the following: (i) dairy products (including without limitation milk, yogurt, cheese and/or any other items commonly found in a grocery store and/or supermarket dairy section), (ii) produce (including without limitation vegetables, fruits and/or any other items commonly found in a grocery store and/or supermarket produce section), (iii) coffee (including without limitation whole bean, ground and by the cup), tea and candies (including without limitation packaged, bulk, and full service chocolates, confections, and other items commonly found in a grocery store and/or supermarket candy section), (iv) nuts, snack mixes, and other bulk food items, (v) bakery products (including without limitation fresh breads, desserts and/or any other items commonly found in a grocery store and/or supermarket bakery section), (vi) meat (including without limitation beef, pork and poultry), (vii) seafood (including without limitation fish, shellfish, and crustaceans), (viii) beer and wine, (ix) sandwich, deli and convenient meal solution items (including without limitation sushi, deli meats, and deli cheeses), and (x) vitamins, herbs and supplements. The term Grocery Items also includes Fresh Gifts. As used herein, the term Fresh Gifts means cut flowers, live plants, plant accessories, and pre-made or custom-made baskets containing any of the foregoing or any other fresh or packaged Grocery Items.

1.21 Hazardous Substance. The term "Hazardous Substance" shall mean any hazardous or toxic substances, materials or wastes or pollutants or contaminants as listed or regulated by any Environmental Law or by common law, including, without limitation, chlorinated solvents, petroleum products or by-products, asbestos and polychlorinated biphenyl.

1.22 Incidental Sales or Incidental Use. "Incidental Sales" or "Incidental Use" means the sale of Grocery Items for off-premises consumption, which sales (i) are incidental to a non-grocery store primary use otherwise permitted by this Lease, (ii) do not aggregately constitute more than ten percent (10%) of such user’s total annual gross sales from such location, and (iii) are not aggregately conducted from more than the lesser of (A) five percent (5%) of such user’s floor space or (B) five hundred (500) square feet of such user’s floor space.

1.23 Main Entrance Drive. "Main Entrance Drive" shall mean the main entrance driveway constructed by Developer within the Shopping Center in the location that is shown on the Site Plan.

1.24 Minimum Parking Ratio. "Minimum Parking Ratio" shall mean and refer to a minimum ratio of at least the greater of (i) that required by law, (ii) one (1) car for every two hundred twenty-five (225) square feet of floor area in the Shopping Center including additional floor levels in the Shopping Center.

1.25 No Change Area. "No Change Area" means the area identified as “No Change Area on the Site Plan.

1.26 Occupant. "Occupant" shall mean any Person, including any Owner, from time to time entitled to the use and occupancy of any portion of a Building on the Property by virtue of ownership thereof or under any lease, sublease, license, concession agreement, or other similar agreement.

1.27 Owner. "Owner" shall mean, as of any time, each fee owner of any Shopping Center Parcel, including, without limitation, Developer and MTP II.

1.28 Permitted Area. "Permitted Area" shall mean the respective building areas of the Shopping Center which are located outside of the No Change Area and which are more than two hundred (200) feet from the nearest wall of the Building located on The Fresh Market Premises as shown on the Site Plan; provided, however the Permitted Area shall include the Further Restaurant Area.

1.29 Permittee. "Permittee" shall mean any Occupant and any officer, director, employee, agent, contractor, customer, vendor, supplier, visitor, guest, invitee, licensee, tenant, subtenant, or concessionaire of any Occupant and any other person who has business with any Occupant on the Property.

1.30 Person. "Person" shall mean any individual, partnership, firm, association, corporation, trust, or any other form of business or governmental entity.

1.31 Phase 1. "Phase I" shall mean the area designated as Lot 2 on the Site Plan.

1.32 Phase 3. "Phase 3" shall mean the area designated as Lots 3A, 3B and 3C on the Site Plan.

1.33 Plans. "Plans" is defined in Section 3.3 below.

1.34 Plats. "Plats" shall mean, collectively, (i) Plat of Mount Tabor Place as recorded in Plat Book 45, at Page 35, Forsyth County Registry, and (ii) Final Plat for Mount Tabor Place Phase II, LLC, Being a Subdivision of Lot 3 of “Final Plat for Mount Tabor Place, LLC” as

recorded in Plat Book _____, at Page _____, Forsyth County Registry, which Plats are incorporated herein by reference.

1.35 Property. "Property" shall mean that certain approximately 8.836 acres of real property located in Forsyth County, North Carolina, which is currently owned by Developer and which is more particularly described on Exhibit B attached hereto and incorporated herein by reference, and which is depicted on the Site Plan.

1.36 RBC Centura Bank. "RBC Centura Bank" shall mean RBC Centura Bank, successor by merger with Centura Bank, and its successors and assigns as Tenant under the RBC Centura Bank Lease.

1.37 RBC Centura Bank Lease. "RBC Centura Bank Lease" shall mean that certain Lease Agreement dated as of March 2, 2001, as amended on October 30, 2001, and as further amended on June 13, 2011, between Developer, as Landlord, and Centura Bank, as Tenant, for the Lease of the RBC Centura Bank Premises by RBC Centura Bank from Developer as same may be assigned, amended, modified, extended or renewed from time to time.

1.38 RBC Centura Bank Premises. "RBC Centura Bank Premises" shall mean those certain premises within the Shopping Center that are leased by RBC Centura Bank, as Tenant, from Developer, as Landlord, pursuant to the RBC Centura Bank Lease.

1.39 Rear Lot. "Rear Lot" shall mean and refer to the area identified as "Rear Lot" on the Site Plan.

1.40 Restricted Uses. "Restricted Uses" means any of the following uses: movie theaters; churches; places of worship; schools (except the provision of classes or instruction related to products sold within the Fresh Market Premises shall be permitted); day care centers; Food or Drink Establishments; pet and/or pet supply stores within one hundred fifty feet (150') of the Fresh Market Premises; realtors in Phase 3; any Common Area sales or solicitations (except by tenants on the sidewalk in front of their stores which do not unreasonably interfere with pedestrian access or passage); peepshows; massage parlors; head shops; video game arcades; bingo parlors; bowling alleys; ice rinks; roller skating rinks; night clubs; health clubs; gyms; spas; call centers or other second or third shift office users; off-track betting parlor; mobile home park or trailer court; car wash; motor vehicle rentals and/or sales; a carnival, amusement park or circus; any public or private nuisance; any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness; any obnoxious odor; any noxious, toxic, caustic, or corrosive fuel or gas, any dust, dirt, or flyash or similar materials in any excessive quantity; any unusual fire, explosion, or other damaging or dangerous hazard; any warehouse, assembly, manufacture, distillation, refining, smelting, agriculture, or mining operation; any "second hand" store, "dollar" stores (in Phase 3) or similar low-cost, single price-point store, Army Navy, or government "surplus" store, labor camp, junkyard, stockyard, or animal raising, any dumping, disposal, incineration or reduction of garbage or refuse; or any fire or bankruptcy sales or auction house operations.

1.41 Shared Premiums. "Shared Premiums" shall mean insurance premiums paid by any Owner with respect to its Shopping Center Parcel which directly relate to the liability insurance policies described in Section 5.6(a) below, and the casualty insurance policies (but not flood insurance policies) described in Section 5.6(b) below. All such insurance policies shall be obtained on an arm's length basis in a commercially reasonable manner and with deductibles in amounts which are typical and customary for first-class shopping centers in the Winston-Salem, North Carolina area. Shared Premiums shall not include (i) any premiums for liability or casualty insurance policies, or endorsements to such policies, which are not typical and customary for first-class shopping centers in the Winston-Salem, North Carolina area, (ii) any premiums for casualty insurance relating to personal property or trade fixtures, or (iii) in the event any Owner's liability or casualty insurance premium(s) are more expensive than a typical liability or casualty (as applicable) insurance policy for first-class shopping centers in the Winston-Salem, North Carolina area due to a specialized or unusual use or a questionable operational history (or the like), the incremental additional cost over and above a typical insurance policy. Any insurance premiums, or portions thereof, paid by an Owner which are not expressly included within the definition of Shared Premiums shall be the sole and exclusive expense of such Owner.

1.42 Shop Tenant's Primary Parking Field. "Shop Tenant's Primary Parking Field" shall mean and refer to the area identified as "Shop Tenant's Primary Parking Field" on the Site Plan.

1.43 Shopping Center. "Shopping Center" shall mean that certain retail shopping center known as MOUNT TABOR PLACE, which is located within the Property.

1.44 Shopping Center Parcel/Shopping Center Parcels. "Shopping Center Parcel" shall mean the Shopping Center and each parcel of land currently or hereafter subdivided from the Shopping Center. The plural form of this term as used in this Declaration is "Shopping Center Parcels." Phase 1 is considered to be a Shopping Center Parcel and Phase 3 is considered to be a Shopping Center Parcel. When developed Lot 4 shall be deemed to be Phase 2 and be considered a Shopping Center Parcel.

1.45 Shopping Center Sign. "Shopping Center Sign" shall mean the sign advertising the shopping center that Developer has constructed on the Property and which is shown on the Site Plan. The definition of Shopping Center Sign may also include additional signage as permitted by the current zoning of the Property.

1.46 Signage Easement Areas. "Signage Easement Areas" shall mean the easement areas described on the Site Plan and/or Plats.

1.47 Site Plan. "Site Plan" shall mean that certain site plan for the Shopping Center, a complete copy of which is attached hereto as Exhibit A. The Site Plan depicts only the current contemplated development of the Property and may be subject to change.

1.48 Starbucks. "Starbucks" shall mean Starbucks Corporation and its successors and assigns as Tenant under the Starbucks Lease.

1.49 Starbucks Lease. "Starbucks Lease" shall mean that certain Lease Agreement dated as of September 5, 2001 between Developer, as Landlord, and Starbucks, as Tenant, for the Lease of the Starbucks Premises by Starbucks from Developer as same may be assigned, amended, modified, extended or renewed from time to time.

1.50 Starbucks Premises. "Starbucks Premises" shall mean those certain premises within the Shopping Center that are leased by Starbucks, as Tenant, from Developer, as Landlord, pursuant to the Starbucks Lease.

1.51 Utility Line/Utility Lines. "Utility Line" and "Utility Lines" are defined in Section 2.2 below.

ARTICLE II
EASEMENTS FOR SHOPPING CENTER PARCELS

II.1 Access and Parking Easements for Shopping Center Parcels. Developer and MTP II hereby establish and create for the benefit of, and as an appurtenance to, each Shopping Center Parcel and for the benefit of the Owner of each Shopping Center Parcel from time to time and their respective Permittees, perpetual non-exclusive rights, privileges and easements for (i) the passage of vehicles and for the passage and accommodation of pedestrians over, across and through the roadways, driveways, curbcuts, aisles, walkways, and sidewalks located within the Common Area, as the same may from time to time be constructed and maintained for such uses, and (ii) vehicular parking within any vehicular parking spaces located within the Shopping Center , as the same may from time to time be constructed and maintained. Such easement rights shall be subject to the following provisions as well as the other applicable provisions contained in this Declaration;

(a) Each Owner shall have the right to close off the portion of the Common Area located on such Owner's Shopping Center Parcel at such intervals and for such minimum period of time as may be legally necessary, in the reasonable opinion of such Owner's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, any such closing shall occur at a time or on a day when the Shopping Center is not open for business, if possible, and in any case shall be done so as to interfere as little as reasonably possible with the normal business of the Shopping Center, and so as to not cause a default under the CVS Lease, the RBC Centura Bank Lease, the Starbucks Lease and the Fresh Market Lease.

(b) Developer shall have the right, but not the obligation, to erect stop signs and to establish reasonable rules and regulations with respect to the Common Area, including, without limitation, speed limits.

II.2 Utilities Easements for Shopping Center Parcels. Developer and MTP II hereby establish and create for the benefit of, and as an appurtenance to, each Shopping Center Parcel, perpetual non-exclusive rights, privileges and easements in, to, over, under, along and across the Common Area for the purpose of (i) installing, operating, using, maintaining, repairing, replacing, relocating, and removing lines, equipment and facilities for the delivery of utility

services to each Shopping Center Parcel and the Buildings and other improvements from time to time located thereon, including, but not limited to, sanitary sewer, water (fire and domestic), gas, electrical, telephone and communications lines and other similar facilities (hereinafter collectively referred to as "Utility Lines"; each, a "Utility Line"), and (ii) connecting and tying into the common Utility Lines for such utilities which are installed from time to time within the Common Area for such purpose and using such common Utility Lines in connection with the delivery of such utility services to each Shopping Center Parcel and the Buildings and other improvements from time to time located thereon. Such easement rights shall be subject to the following provisions as well as the other applicable provisions contained in this Declaration:

(a) If any Utility Line is to be installed pursuant hereto, the location of such Utility Line shall be subject to the prior written approval of the Owner whose Shopping Center Parcel is to be burdened thereby, such approval not to be unreasonably withheld, conditioned or delayed; provided, however, an Owner's approval may be withheld for any reason with respect to a Utility Line proposed to be located within any area on such Owner's Shopping Center Parcel where a Building either is located or is expected to be located in the future. The easement area related thereto shall be no larger than whatever is necessary to reasonably satisfy the utility company, as to an easement to a public utility, or five (5) feet on each side of the centerline of the Utility Line, as actually installed, as to a private easement.

(b) Any Owner of a Shopping Center Parcel installing and/or connecting to a Utility Line on the Shopping Center Parcel of another party pursuant to this Section 2.2 (i) shall pay all costs and expenses with respect to such work, (ii) shall cause all work in connection therewith (including general clean-up and surface and/or subsurface restoration) to be completed using first-class materials and in a good and workmanlike manner as quickly as possible and in a manner so as to minimize interference with the use of the Common Area and the conduct or operation of the business of the Owner whose Shopping Center Parcel is affected or any Occupant of such Shopping Center Parcel, (iii) shall not increase the cost of the utility services to the other parties served by such Utility Line and shall not interrupt, diminish, or otherwise interfere with the utility services to the other parties served by such Utility Line (except during periods other than during the normal business operating hours of such other parties and during such periods as otherwise approved by such other parties), (iv) shall comply in all respects with all applicable governmental laws, regulations, and requirements and (v) shall promptly, at its sole cost and expense, clean the area (as needed) and restore the affected portion of the Common Area and facilities therein (including, without limitation, any disturbed landscaping improvements, curbs, pavement and irrigation facilities) to a condition equal to or better than the condition which existed prior to the commencement of such work,

(c) Each Owner of a Shopping Center Parcel shall have the right at any time, and at its sole cost and expense, to relocate elsewhere within its Shopping Center Parcel any Utility Line serving another Shopping Center Parcel, provided such relocation shall be performed only after at least thirty (30) days written notice of such intention to so relocate has been given to each party which is served by such Utility Line and provided such relocation:

(1) shall not increase the cost of the utility services to the parties served by such Utility Line and shall not interrupt, diminish, or otherwise interfere with the utility

services to the parties served by such Utility Line (except during periods other than during the normal business operating hours of such parties and during such periods as otherwise approved by such parties);

(2) shall not reduce or impair the usefulness or function of such Utility Line;

(3) shall be performed without cost or expense to the parties served by such Utility Line;

(4) shall be completed in a good and workmanlike manner using materials (if and to the extent available) and design standards which equal or exceed those originally used; and

(5) shall not unreasonably interfere with the use of the Common Area or the conduct or operation of the business of any other Owner or Occupant within the Shopping Center.

Documentation of the relocated Utility Line easement area shall be the expense of the Shopping Center Parcel Owner undertaking such relocation and shall be accomplished as soon as possible after such relocation.

(d) The Owner of each Shopping Center Parcel shall be responsible for all connection charges, meter fees and charges, user fees, tap-on fees, impact fees, acreage fees, and similar fees and charges imposed as a result of the connection of any Utility Line to the Buildings constructed upon its Shopping Center Parcel.

(e) Developer and/or the Owner of any Shopping Center Parcel on which such Utility Lines are located shall have the right to dedicate and convey to appropriate governmental entities and public utility companies any Utility Lines installed pursuant to this Section 2.2, provided any such dedication or conveyance shall not adversely affect the use and enjoyment of such Utility Lines by the Owners and Occupants of the Shopping Center Parcels, and to grant any other easements or licenses to such appropriate governmental entities and public utility companies as are reasonably necessary or desirable for obtaining adequate utility service for the benefit of the Shopping Center Parcels, provided such easements and licenses shall not interfere with the use and enjoyment by the Owners and Occupants of the encumbered Shopping Center Parcel(s) and are located outside of the areas on the Shopping Center Parcel(s) where a Building either is located or is expected to be located in the future. The Owners of the Shopping Center Parcels shall cooperate with and assist Developer and/or any such other Owner and shall join in and consent to such dedications and conveyances if requested by Developer or any such other Owner, at no cost, however, to such cooperating Owners.

II.3 Storm Water Drainage Easements for Shopping Center Parcels. Developer and MTP II hereby establish and create for the benefit of, and as an appurtenance to, each Shopping Center Parcel, with respect to, and as a burden upon, the Shopping Center, perpetual non-exclusive rights, privileges and easements to drain storm water run-off from each Shopping Center Parcel, as the same hereafter may be improved, onto and across the Shopping Center and

into and through the storm water drainage lines and facilities from time to time located thereon, including the right to use and impound storm water within the storm water detention facilities as shown on the Site Plan so long as such drainage shall not cause any damage to the Shopping Center Parcel(s) across which such storm water is being drained or any improvements thereon. Developer and MTP II hereby reserve the right to dedicate and convey to appropriate governmental entities the storm water drainage lines and facilities located from time to time within the Shopping Center provided any such dedication or conveyance shall not adversely affect the use and enjoyment of such storm water drainage lines and facilities by the Owners and Occupants of the Shopping Center Parcels. If Developer and/or MTP II desires to so dedicate all or any portion of any such drainage lines and facilities, the Owners of the Shopping Center Parcels shall cooperate and assist Developer and/or MTP II and shall join in and consent to such dedication, if requested, at no cost, however, to such cooperating parties.

II.4 Signage Easements for Developer and Shopping Center Parcels. Developer and MTP II hereby establish and create for the benefit of Developer (as Developer hereunder) a non-exclusive perpetual easement for the construction, maintenance, repair and replacement of the Shopping Center Sign, together with related underground electric lines and other appurtenances in the Signage Easement Areas. Furthermore, Developer and MTP II hereby establish and create for the benefit of the Occupants of the Shopping Center that are permitted by Developer hereunder from time to time to have a sign panel on the Shopping Center Sign non-exclusive perpetual easements for the construction, maintenance, repair and replacement of their respective individual sign panels located on such sign.

II.5 Restriction. The Owner of any Shopping Center Parcel may extend the benefits of the easements created by this Article II to each of its Permittees, subject to the limitations imposed by the terms of this Declaration. No Owner of a Shopping Center Parcel, including, without limitation, Developer and MTP II, shall have the right to grant or extend the benefit of any easement set forth in this Article II for the benefit of any real property not within the Shopping Center, except Developer reserves a right to grant access and utility easements to all adjoining property owners pursuant to zoning and subdivision requirements of the City of Winston-Salem, (subject, however, to Developer's right to hereafter amend the definition of Shopping Center to include additional real property as otherwise provided in Section 8.1 below in this Declaration).

ARTICLE III
IMPROVEMENTS

III.1 Buildings and Related Improvements - General Requirements and Limitations.

(a) The Owners of the Shopping Center Parcels shall not subdivide their respective Shopping Center Parcels (as the case may be) into separate parcels without the prior written consent of Developer; provided, however, nothing in this Section 3.1(a) shall be construed as prohibiting any Owner from dividing, separating or partitioning the space within any Building located upon its Shopping Center Parcel.

(b) The Owners of the Shopping Center Parcels shall not rezone their respective Shopping Center Parcels or obtain any zoning variance or waiver which would be inconsistent with the use of the Property as contemplated in this Declaration without the prior written consent of Developer.

(c) All Utility Lines and storm drainage lines and facilities installed on the Property shall be located and installed underground, except any power or telephone lines existing on the Property at the time of this Declaration. Provided, however, this provision shall not prohibit above-ground light standards, poles and fixtures.

III.2 Signage. Subject to any more stringent limitations and requirements that may be imposed by the City of Winston-Salem or Forsyth County or any other governmental authority having jurisdiction with respect to the Shopping Center, the following restrictions and requirements shall apply with regard to signage that may be installed and maintained on Shopping Center Parcels:

(a) All signage installed on Shopping Center Parcels must comply with all applicable zoning ordinances, signage ordinances and other governmental requirements. The Plans for Shopping Center Parcel signage are subject to Developer's review and approval as set forth in Section 3.3 below. The Shopping Center Sign shall be used to identify the Shopping Center name and, subject to the approval of all governmental authorities having jurisdiction, may, at Developer's option, include individual sign panels to identify certain Occupants of Buildings located on the Property, as selected by Developer. Each Occupant that is specifically allowed by Developer to have an individual sign panel on a Shopping Center Sign shall be responsible for the construction, installation, maintenance, repair and replacement of its identification panel; and an easement for this purpose has been granted and established in Section 2.4 above.

(b) Except as otherwise provided in Section 3.2(a) above, Developer shall be responsible for the maintenance, repair, replacement, and illumination of the Shopping Center Sign. Further, as set forth in Section 3.2(a) above, to the extent any individual Shopping Center Sign panel for an Occupant requires repair or replacement in order to remain in first-class condition and in accordance with all governmental requirements, the Occupant represented on such Shopping Center Sign panel shall, at its sole cost and expense, repair such panel. Notwithstanding any term or provision in this Declaration to the contrary, the costs and expenses incurred by Developer in connection with the maintenance, repair, replacement and illumination of the Shopping Center Sign (except as otherwise provided in Section 3.2(a) above and in this Section 3.2(b) with respect to individual Occupant identification panels) shall be included in Common Area Maintenance Costs as provided in Section 4.3 below.

III.3 Developer's Approval Rights.

(a) Architectural Compatibility/Content of Plans/Procedure. It is the intention of Developer that all Buildings and other improvements within the Property be constructed, installed, erected, operated and maintained so that the Property shall be aesthetically and architecturally harmonious. Accordingly, except as otherwise provided herein and as provided in the CVS Lease, the RBC Centura Bank Lease, the Starbucks Lease and the Fresh Market Lease,

all Buildings and related improvements within the Property, including the initial construction and any alterations, additions, exterior remodeling or reconstruction of any Buildings or other improvements following the initial construction thereof, shall be performed only in accordance with Plans (as hereinafter defined) approved by Developer for such work as provided herein. With respect to each Shopping Center Parcel, prior to the commencement of the construction and installation of any Building(s) and other improvements whatsoever on said Shopping Center Parcel, or any part thereof, by an Owner or Occupant thereof, such Owner or Occupant shall deliver to Developer, in triplicate, detailed plans and specifications for such proposed Building(s) and other improvements (collectively, the "Plans"), including and encompassing (at a minimum) the following:

(1) scaled elevations, exterior design concepts and specifications, material selections and specifications (including samples) and color (including samples) for the exterior surfaces of the proposed Building(s) and other improvements;

(2) a complete site plan and specifications (a) showing the location and size of the proposed Building(s) and all other improvements on the Shopping Center Parcel and (b) providing details as to the location, size and type of all pipes, lines, conduits, and appurtenant equipment and facilities for the provision of sanitary sewage, storm water, water, electricity, gas, telephone, steam and other utility services to serve such Shopping Center Parcel;

(3) a signage plan and specifications showing the scaled elevations, design concepts, lighting fixture type (if applicable), lighting method (if applicable), material selections (including samples), color (including samples), configuration, location, height and size for all signage to be located by the Owner on such Shopping Center Parcel; and

(4) a landscaping plan and specifications showing the proposed landscaping, including detailed information regarding the species, type, height and spacing of all trees, shrubs and other landscaping, reflecting the locations of all berms and including plans and specifications for any landscaping irrigation facilities to be installed.

Developer may disapprove Plans on any reasonable grounds, including purely aesthetic reasons. Developer shall either approve or disapprove Plans within thirty (30) days of the receipt thereof, although Developer's approval of Plans may in some cases be contingent upon the approval of such Plans by one or more third parties, including other Owners and tenants in the Property. If Developer disapproves the Plans, one (1) complete set of the Plans shall be marked "Disapproved" and signed by Developer and returned to the submitting party, accompanied by a reasonably detailed statement of items in the Plans found by Developer not to be acceptable. If Developer approves Plans for a Shopping Center Parcel, any modification or change in the approved Plans must be submitted to Developer for review and approval in accordance with the procedure specified above. If Developer disapproves Plans for a Shopping Center Parcel, upon the resubmission to Developer of the Plans (with revisions), Developer shall either approve or disapprove the resubmitted Plans within twenty (20) days of the receipt thereof. Upon the completion of the initial construction and installation of any such Building(s) and other improvements on a Shopping Center Parcel in accordance with approved Plans, the same shall

not thereafter be changed or altered without the prior written approval of Developer (although Developer's approval of such changes or alterations may in some cases be contingent upon the approval of such changes or alterations by one or more third parties, including other Owners and tenants of the Property) if such changes or alterations would materially modify the exterior appearance of such Building(s) and other improvements, which approval shall be sought pursuant to the terms and procedures set forth above for an initial submission of Plans and shall not be unreasonably withheld, conditioned or delayed by Developer (in accordance with the criteria set forth above). Nothing herein shall require that Developer's approval be obtained with respect to the interior designs or interior floor plans of the Buildings located on Shopping Center Parcels.

(b) No Liability for Design or Other Defects. The approval of any Plans under this Declaration by Developer shall not impose any liability or responsibility whatsoever upon Developer or its partners, managers, members, officers, directors, employees and/or agents (i) with respect to the compliance or non-compliance of any such Plans, or any Building(s) and other improvements erected or installed in accordance therewith, with applicable zoning ordinances, building codes, signage ordinances, or other applicable governmental laws, ordinances or regulations or (ii) with respect to defects in or relating to the Plans, including, without limitation, defects relating to engineering matters, structural design matters and the quality or suitability of materials.

III.4 General Requirements and Restrictions Regarding Construction.

(a) All construction activities within the Property shall be performed in a good and workmanlike manner, using first-class materials, and in compliance with all laws, rules, regulations, orders, and ordinances of the city, county, state, and federal governments, or any department or agency thereof, having jurisdiction over the Property.

(b) All construction activities within the Property shall be performed:

(1) so as not to unreasonably interfere with any construction work being performed on the remainder of the Property (or any part thereof); and

(2) so as not to unreasonably interfere with the use, occupancy or enjoyment of any other portion of the Property (or any part thereof) or the business conducted on any other portion of the Property or by any other Owner or the Permittees of any such other Owner.

(3) so as not to cause a default or breach under the CVS Lease, the RBC Centura Bank Lease, the Starbucks Lease, and the Fresh Market Lease.

(c) So long as the Fresh Market Lease remains in effect, any staging areas within Phase 3 shall be fenced off and such staging areas shall be used to store all work and construction materials, trucks, and trailers and other equipment used in any construction work within Phase 3.

(d) Construction activities on parking lot surfaces, roof work, or work which would otherwise affect the FM Parcel or the operations of the occupant of the FM Parcel shall be performed at times and with procedures acceptable to the Owner of the FM Parcel and only after

obtaining the consent of the Owner of the FM Parcel, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE IV
MAINTENANCE AND REPAIR

IV.1 Utilities.

(a) Each Owner shall maintain and repair at its sole cost and expense any Utility Lines and facilities located on such Owner's Shopping Center Parcel and exclusively serving such Owner's Shopping Center Parcel, unless the same is dedicated to and accepted for public maintenance purposes by a public utility company and/or governmental authority having jurisdiction. To the extent any Utility Lines and facilities exclusively serving any Shopping Center Parcel cross another Shopping Center Parcel, the Owner of the parcel that is exclusively served by such Utility Lines and facilities shall maintain and repair at its sole cost and expense such Utility Lines and facilities, unless the same are dedicated to and accepted for public maintenance purposes by a public utility company and/or a governmental authority having jurisdiction. Any maintenance and repair under this Section 4.1(a) of any such non-dedicated Utility Lines and facilities located on another Shopping Center Parcel shall be performed after normal business hours whenever possible and otherwise in such manner as to cause as little disturbance in the use of such other Shopping Center Parcel and the business or businesses operated thereon as is practicable under the circumstances. Any party performing or causing to be performed maintenance or repair work under this Section 4.1(a) agrees to promptly pay all costs and expenses associated therewith, to diligently complete such work as quickly as possible, to comply in all respects with all applicable governmental laws, regulations and requirements and to promptly clean the area (as needed) and restore the affected area to a condition equal to or better than the condition which existed prior to the commencement of such work.

(b) During the term of this Declaration, Developer shall maintain and repair all Utility Lines and facilities that are not required to be maintained and repaired by Owners of Shopping Center Parcels pursuant to Section 4.1(a) above and which are not dedicated to and accepted for public maintenance purposes by the appropriate public utility and/or governmental authority having jurisdiction. Any and all costs incurred by Developer in maintaining, repairing, replacing, complying with governmental requirements and operating such Utility Lines and facilities pursuant to this Section 4.1(b) shall be considered Common Area Maintenance Costs under Section 4.3 below, except for any such costs resulting from defects in design and construction (if and to the extent actually covered by and paid by a contractor's warranty or guarantee) and except for costs resulting from the negligent acts or omissions of any Owner or any Owner's Occupant, for which costs such Owner shall be solely responsible.

IV.2 Other Common Area. Except as otherwise provided in Section 4.1 above relative to Utility Lines and facilities, all portions of the Common Areas that are not dedicated to and accepted for public maintenance purposes by the appropriate utility and/or governmental authority having jurisdiction shall at all times be maintained by Developer in a lawful manner, in a safe, clean, sightly, good and functional condition, and in a good first class condition and repair

as found in City of Winston-Salem, North Carolina and in compliance with the provisions of this Declaration. The maintenance and repair obligations of Developer hereunder relative to the Common Area (except for Utility Lines and facilities, the maintenance of which are addressed in Section 4.1 above) shall include, but not be limited to, the following:

(a) General maintenance and repair of all paved surfaces, including all driveways, roadway, sidewalk and parking areas, and all curbing related thereto, in good order and repair and in a safe condition, patching, re-striping, repairing, and resurfacing such areas when appropriate;

(b) Removing papers, debris, filth, and refuse from the Common Area and sweeping and removing ice and snow from the paved portions of the Common Area, all to the extent necessary to keep the Common Area in a clean, neat and orderly condition;

(c) Maintaining and repairing the lighting system which shall illuminate the Common Area, including the maintenance and repair of all lighting facilities and standards and replacement of light bulbs;

(d) Mowing and otherwise maintaining and tending all landscaped areas, and promptly removing and replacing diseased or dead shrubs and other landscaping as necessary;

(e) Illuminating, maintaining, and repairing the Shopping Center Sign (but not including sign panels thereon, which are to be maintained as provided in Section 3.2(a) above); and

(f) such services as are reasonably required or as are required by law including, but without limitation, sidewalk cleaning and sweeping, machine cleaning and sweeping of parking lot, pedestrian safety, storm water drainage, providing signs and directional markers, general repair and maintenance (including providing and maintaining paved surfaces with material used in initial construction), repainting, watering permitted vegetation, and providing proper and adequate water drainage for the Common Area.

IV.3 Common Area Maintenance Costs.

(a) Each Owner of a Shopping Center Parcel shall reimburse Developer for its respective pro-rata share of Common Area Maintenance Costs (as defined below). The portion of the Common Area Maintenance Costs attributable to any Shopping Center Parcel shall be computed by multiplying the total Common Area Maintenance Costs by a fraction, the numerator of which is the gross Floor Area within the boundaries of the relevant Shopping Center Parcel and the denominator of which is the gross Floor Area within the boundaries of the Property (the "Proration Fraction"); provided, however, so long as the Fresh Market Lease remains in effect, the Proration Fraction applicable to the FM Parcel shall be a fraction, the numerator of which is 21,018 square feet and the denominator of which is the number of rentable square feet in the Property (excluding the rentable square feet utilized by Developer or Affiliate (or their respective agents or contractors) as office space, the mezzanine constructed for the building currently

operated as a CVS Pharmacy, and the additional sales support space in the building currently operated as a bank and Starbuck's Coffee); provided, however, in no event shall the Proration Fraction applicable to the FM Parcel exceed forty-one and eighty-eight hundredths percent (41.88%). In addition, so long as the Fresh Market Lease remains in effect, the assessed value of any office space utilized by Developer or its affiliates (or their respective agents or contractors) shall be excluded for purposes of determining the FM Parcel's reimbursement obligations.

(b) Except as otherwise specifically provided herein, the costs of maintaining, repairing, replacing, operating and managing the Common Area and common Utility Lines and facilities for which Developer shall be reimbursed by the Shopping Center Parcel Owners (collectively, the "Common Area Maintenance Costs") shall include all costs and expenses incurred by Developer in performing the services set forth in Section 4.1(b) and Section 4.2 above, including, without limitation, (i) repairs and maintenance of plumbing, pipes, tubes, conduits, utility lines, store drainage pipes and the retention pond, (ii) fees for permits, licenses and approvals required with respect to the Common Area (except any permits, licenses, or fees in connection with the initial construction of the Common Area by Developer), (iii) the cost of supplies and services relating exclusively to the Common Area, (iv) the cost of renting moveable equipment used in providing such services, with proper cost allocations to the extent any such equipment is used to provide services other than for the Common Area, (v) the verifiable salaries, wages, benefits and other compensation for personnel providing such services, with proper cost allocations and reductions to the extent any such personnel provide services other than for the Common Area, (vi) the verifiable compensation for a property manager, with proper cost allocations and reductions to the extent such property manager provides management services other than for the Property, (vii) payments to outside vendors and personnel in connection with providing such services, and (viii) subject to the limitation set forth below in this Section 4.3(b) relative to capital expenditures, the cost of complying with governmental laws, statutes, rules, regulations, and ordinances affecting the maintenance and operation of the Common Area, including, without limitation, environmental laws and any such laws, statutes, rules, regulations, and ordinances requiring any modification, reconstruction, reconfiguration or upgrading of all or any portion of the Common Area. Common Area Maintenance Costs shall also include utility charges related to the operation and maintenance of the Common Area. Developer shall use its good faith efforts to minimize the costs of all of such services and materials consistent with the terms of this Declaration and with the maintenance of the Shopping Center as a first-class community-oriented retail shopping center development. All applicable rebates and discounts received by Developer shall be deducted from Common Area Maintenance Costs. Common Area Maintenance Costs shall exclude (i) the cost of repairing or replacing any portion of the Common Area, where the need for such repair or replacement is due to defects of design and/or construction (if and to the extent such defects are actually covered by and paid by a contractor's warranty or guarantee), or any such costs as are subject to any guarantees, warranties, or extended warranties given to Developer by Developer's vendors or materialmen (if and to the extent such costs are actually covered by and paid by such guarantees, warranties, or extended warranties given to Developer by Developer's vendors or materialmen); (ii) any such costs which are the sole responsibility of any Owner or Occupant of the Property (or any portion thereof) pursuant to any other provision of this Declaration, (iii) merchant association or promotional fund fees, (iv) any cost which is the responsibility of any utility company, governmental agency,

or other third party (except as otherwise provided above in this Section 4.3(b)), (v) any items for which Developer is reimbursed by insurance proceeds or otherwise reimbursed or compensated other than pursuant to the terms of this Section 4.3, (vi) all interest or penalties incurred as a result of Developer's failure to pay bills as the same shall become due, (vii) overhead, management or administration costs which collectively exceed seven percent (7%) of all other Common Area Maintenance Costs for the billing period, and (viii) debt service, ground rents, leasing expenses (such as brokerage fees, costs for tenant improvements, etc.).

As long as the Fresh Market Lease remains in effect, solely for the purpose of calculating the share of Common Area Maintenance Costs allocable to the FM Parcel Common Area, Common Area Maintenance Costs shall mean all costs incurred pursuant to this Declaration in operating and maintaining the Common Area, which Common Area Maintenance Costs shall include but not be limited to the reasonable and actual cost of landscaping, gardening, parking lot striping, painting, seal coating, lighting, removal of snow, trash collection, payment for utilities, water, electricity and gas, operation of maintenance machines and equipment, equipment supplies, seasonal decorations, security and traffic control, but not including any of the following: (i) repairs to the parking lot regularly and customarily capitalized according to GAAP, or (ii) costs or depreciation of equipment or products or other items properly chargeable to capital account, or (iii) depreciation and any other items not expressly excluded herein which should be capitalized according to GAAP, or (iv) taxes or assessments (which shall be paid, if at all, pursuant to Section 5.7), or (v) insurance (which shall be paid pursuant to Section 5.6(e)), or (vi) overhead, management or administration costs which collectively exceed five percent (5%) of all other Common Area Maintenance Costs for the billing period, or (vii) costs incurred by Developer in connection with compliance with laws, (viii) improvements and additions, or (ix) costs separately reimbursed, or (x) costs incurred by Developer to repair or replace defective construction, or (xi) costs incurred by Developer in connection with casualty or condemnation repairs or restorations, or (xii) costs which would have been reimbursed by insurance had Developer maintained required insurance coverage, or (xiii) roof replacement or structural, or (xiv) tap-in fees or impact fees, or (xv) costs incurred by Developer in complying with its obligations under Section 5.8(d) of this Declaration. Notwithstanding the foregoing, however, to the extent amortized under GAAP, the following costs shall also be included within the definition of Common Area Maintenance Costs: the reasonable and actual cost of reasonable parking lot resurfacing once every ten (10) years (but, except with respect to the Main Entrance Drive, in no event prior to the tenth (10^{th}) Lease Year of the Fresh Market Lease), site lighting, sidewalk work, landscape work, and storm water drainage; provided, however, such costs shall be amortized over the greater of ten (10) years or the useful life thereof as determined by GAAP.

(c) An Owner's obligation for the payment of its share of Common Area Maintenance Costs shall commence on the earlier to occur of (i) the date such Owner opens its Building improvements to the public for business or (ii) the date that is ninety (90) days after such Owner acquires title to such Owner's Shopping Center Parcel. Thereafter, each Owner shall pay its respective share of such Common Area Maintenance Costs incurred from and after such date in quarterly installments in advance of the first (1st) day of each calendar quarter based upon the good faith estimates of such costs made by Developer. Such estimates shall be based upon an annual (calendar year) budget prepared by Developer in accordance with the requirements and

limitations of this Section 4.3. Such estimates shall be revised annually (on a calendar year basis) by Developer to reflect the preceding calendar year's expenditures and anticipated increases or decreases in such costs or changes in the nature of such Common Area services. Notwithstanding the foregoing, Developer shall not reserve for capital expenditures in advance of incurring such expenditures. Accordingly, after any such capital expenditure is incurred, each Owner's quarterly contribution with respect to Common Area Maintenance Costs shall be adjusted to reflect such expenditure. Within forty-five (45) days after the end of each calendar year, Developer shall furnish the Owners with a written statement executed by a manager or officer of Developer setting forth in reasonable detail the actual Common Area Maintenance Costs paid or incurred by Developer during the preceding calendar year and showing the calculation of such Owner's pro-rata share thereof, which statement shall include detailed documentation including copies of receipted bills. Such statement to each Owner shall be accompanied by any refund of any overpayments of such Owner's share of such costs as may be reflected in said statement. Any deficiency in the total monthly payments for the year in relation to an Owner's share of actual Common Area Maintenance Costs shall be paid by such Owner to Developer within thirty (30) days after such Owner's receipt of the annual statement. Developer shall establish and maintain, in accordance with sound accounting practices applied on a consistent basis, adequate books and records of the receipts and disbursements arising in connection with providing such Common Area services. Developer or its property manager shall maintain its books and records relating to the maintenance of the Common Area for any particular calendar year for a period of three (3) years from and after such calendar year. The Owners and their respective authorized tenants, agents and representatives shall have the right to inspect or audit such books and records at Developer's office at any reasonable time during normal business hours and to make copies thereof. The cost of any investigation and audit under this Section 4.3(c) shall be an expense of the Owner unless any such audit discloses a Common Area Maintenance Cost payment discrepancy for any calendar year to the extent of five percent (5%) or more in which case Developer shall promptly pay to such Owner the reasonable cost of the audit subject to a maximum reimbursement amount of one thousand five hundred and no/100 dollars ($1,500.00) per audit. In the event such auditing Owner discovers any underpayment or overpayment of Common Area Maintenance Costs, then, as the case may be, Owner shall either pay Developer any deficiency owed by such Owner within thirty (30) days or be reimbursed by Developer the amount of any such overpayment or underpayment within thirty (30) days. Owners of the Shopping Center Parcels shall cooperate with each other in sharing information that allows other Owners the ability to calculate taxes, Common Area Maintenance Costs and insurance premiums.

As long as the Fresh Market Lease remains in effect, in no event shall the amount of Common Area Maintenance Costs charged to the Owner of the FM Parcel for any calendar year, when measured on a "per square foot of Floor Area" basis, exceed the FM Parcel Cap. As used herein, the "FM Parcel Cap" shall be equal to $1.75 per square foot of Floor Area within the FM Parcel for the year 2013, and shall thereafter be subject to three percent (3%) annual increases, provided that annual increases in utility company charges for Common Area electricity and water services shall not be capped by such annual three percent (3%) limit. By way of example, for the year 2014, assuming the Fresh Market Lease is in effect, the FM Parcel Cap shall be equal to $1.80 per square foot of Floor Area within the FM Parcel, and for the year 2015, assuming the Fresh

Market Lease is in effect, the FM Parcel Cap shall be equal to $1.85 per square foot of Floor Area within the FM Parcel. In addition, as long as the Fresh Market Lease remains in effect, (x) if Developer shall fail to notify the Owner of the FM Parcel of any Common Area Maintenance Costs within seven hundred (700) days of the calendar year in which Developer incurred the same, the Owner of the FM Parcel shall not be obligated to make any reimbursement to Developer therefor, and (y) any Common Area Insurance Expenses allocable to the FM Parcel shall be billed to the Owner of the FM Parcel on an annual basis, within fifteen (15) days after the end of each calendar year.

IV.4 Maintenance by Owners.

(a) Prior to the construction of improvements on a Shopping Center Parcel, the Owner of such parcel shall maintain and keep, or cause to be maintained and kept, such parcel in a good, safe, clean and sightly first-class condition, in compliance with all laws, rules, regulations, orders, and ordinances of any governmental agency exercising jurisdiction thereover, and in compliance with the provisions of this Declaration. In particular, and without limiting the generality of the foregoing, the Owner of each such parcel shall be responsible for keeping such parcel mowed regularly and for promptly removing diseased or dead trees within the parcel as necessary.

(b) After the construction of Building improvements on a Shopping Center Parcel, the Owner of such parcel shall maintain, repair, replace and keep, or cause to be maintained, repaired, replaced and kept, all such Building improvements in a good, safe, clean and sightly first-class condition and state of repair, in compliance with all laws, rules, regulations, orders, and ordinances of any governmental agency exercising jurisdiction thereover, and in compliance with the provisions of this Declaration. The Owner of the parcel shall perform its obligations under this Section 4.4 in a good and workmanlike manner. Provided, however, no parcel Owner shall be required to rebuild the Building improvements located on such Owner's parcel in the event said Building improvements are damaged or destroyed by casualty or condemnation (subject to the terms of Section 4.4(c) below). All trash and garbage from the operation of business upon any parcel shall be stored in adequate containers. Each Owner shall cause compliance with the foregoing requirements by its respective Occupants. Each Owner shall arrange or cause its Occupants to arrange for regular removal of such trash or garbage from its parcel.

(c) In the event any of the improvements on any Shopping Center Parcel are damaged by fire or other casualty (whether insured or not), the Owner upon whose parcel such improvements are located shall promptly remove the debris resulting from such event, and within a reasonable time thereafter shall either (i) repair or restore the improvements so damaged, such repair or restoration to be performed in accordance with all provisions of this Declaration (including, without limitation, Developer's review and approval of Plans therefor), or (ii) erect other improvements in such location, provided all provisions of this Declaration are complied with (including, without limitation, Developer's review and approval of Plans therefor), or (iii) demolish the damaged portion of such improvements, restore any remaining improvements (if any) to an architectural whole (subject to Developer's review and approval of Plans therefor), remove all rubbish, and pave or grass and otherwise restore the area to a neat, orderly and

sanitary condition. Each Owner shall have the option to choose among the aforesaid alternatives, but each Owner shall be obligated to perform one of such alternatives.

Notwithstanding the foregoing, if the No Change Area or any other portion of the Common Area within the Shopping Center shall be damaged by fire or any other casualty insured or required to be insured pursuant to Section 5.5 of this Declaration, the Owner of such damaged property shall immediately commence to repair the same and shall complete such restoration as expeditiously as is reasonably possible to substantially the condition in which the No Change Area or other portion of the Common Area existed immediately prior to such damage, provided that so long as such Owner has complied with its insurance obligations under Section 5.5 of this Declaration, such Owner's restoration obligation shall be limited to the amount of all proceeds received by such Owner from all insurance policies maintained by such Owner.

(d) If Developer after thirty (30) days of receipt of written notice from any Owner to do so (or such shorter time as is appropriate in emergency situations or such longer time as is reasonably necessary if such matter cannot reasonably be cured within thirty (30) days and Developer has begun such cure within thirty (30) days after written notice from Owner and is diligently prosecuting the same to completion), shall in such Owner's reasonable judgment fail to comply with the provisions of this Article IV, in addition to its other available rights and remedies, such Owner shall have the right to make such repairs or cause such services or other matters to be performed on Developer's behalf, and all reasonable sums expended or obligations reasonably incurred by such Owner in connection therewith (plus interest at the Default Rate) shall be paid by Developer to such Owner upon demand.

(e) With respect to any maintenance, repair or replacement work to be performed by Developer or any Owner pursuant to this Article IV, all such maintenance, repair or replacement work shall be conducted in a manner to minimize the disruption and interference with the use, operation, occupancy or enjoyment of the Occupants of their respective premises at the Shopping Center.

ARTICLE V
OPERATIONS

V.1 Use Restrictions. During the term of this Declaration, no part of the Property shall be used for other than (i) retail sales or services (such as, but not limited to, cellular phone sales and service, clothing store, grocery store, jewelry store and package/mail store), (ii) office uses that are normally found in community-oriented retail shopping centers (such as, but not limited to, offices of dentists, accountants, attorneys, and doctors; insurance agency and real estate brokerage offices; and offices of travel agencies, banks and other financial institutions), (iii) restaurants (including fast food restaurants), deli-bakery, bagel shop, pizza restaurant (iv) video stores, and (v) health clubs, exercise clubs or studios, and health spas. In addition, the following shall not be permitted on any part of the Property during the term of this Declaration:

(a) Any use which is a public or private nuisance, or any use which creates vibrations or offensive odors, fumes, dust or vapors which are noticeable outside of any Building within the Property, or any noise or sound which can be heard outside of any Building within the Property

and which is offensive due to intermittency, beat, frequency, shrillness or loudness, provided any usual paging system shall be allowed;

(b) The storage of explosives or other unusually hazardous materials (other than materials sold or used in the normal course of an Occupant's business, provided the same are handled in accordance with all governmental rules, regulations and requirements applicable thereto);

(c) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);

(d) Any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to on-site service oriented to pickup and delivery by the ultimate consumer, including nominal supporting facilities;

(e) Any living quarters, sleeping apartments, or lodging rooms;

(f) Any funeral parlor or mortuary;

(g) Any massage parlor or so-called "head shop";

(h) Any flea market, amusement park, carnival, bingo parlor, shooting gallery, gun club, shooting range or off-track betting parlor or other gambling establishment; or

(i) A pinball, video game, or any form of entertainment arcade; a gambling or betting office, other than for the sale of lottery tickets; video store or bookstore selling, renting, or exhibiting primarily material of a pornographic or adult nature; an adult entertainment bar or club; a bowling alley, a roller skating or ice skating rink; a billiards parlor or pool hall; a firearms shooting range or any other use which creates or causes excessive noise; a warehouse or a gas station.

5.2 CVS Lease Use Restrictions. Notwithstanding any contrary term or provision in Section 5.1 above or in any other provision in this Declaration, the following terms and provisions shall be applicable as long as the CVS Lease is in force and in such case shall be enforceable only by Developer, the Landlord under the CVS Lease, any first mortgagee and CVS:

(a) Except for the CVS Premises neither the Property nor any portion thereof shall be used for the following purposes: (i) a health and beauty aids store, a drug store and/or a pharmacy prescription department; (ii) a primary purpose candy store or primary photo processing store; (iii) a primary purpose greeting card and gift store; (iv) and within Phase 1, a cinema theater, health club or exercise salon or any type of educational or vocational institution or a facility which performs on-site auto repairs.

(b) There will be no change in the Shopping Center Site Plan (layout) which would adversely affect the accessibility to the CVS Premises from the parking areas or from the public

streets and roadways bordering the Shopping Center, or the visibility of the CVS signs or storefront(s). Except as shown on the Site Plan for Phase 1 of the Shopping Center, no Developer, Owner, Occupant or Permittee shall place any kiosks, planters, trees, shrubs, stairs or other obstructions in any place in front of the CVS building without the prior written consent of CVS.

(c) If, at any time during the term of the CVS Lease, Hazardous Substance shall be found in or on the Shopping Center, then: with regard to the presence or release of any Hazardous Substance that CVS shall not have caused, Developer and the Owner of the parcel where the Hazardous Substance is present or has been released shall remove or remediate same to the extent required by Laws, and in compliance with Laws, and at Developer's and the Owner of the parcel where the Hazardous Substance is present or has been released sole cost; and Developer agrees to defend, indemnify, and hold each of CVS and its parent corporation harmless from and against any and all costs, damages, expenses, and/or liabilities (including reasonable attorneys' fees) which each of CVS or its parent corporation may suffer as a result of any claim, suit, or action regarding any such Hazardous Substance (whether alleged or real), and/or regarding the removal and remediation of same.

5.3 Starbucks Lease Use Restrictions. Notwithstanding any contrary term or provision in Section 5.1 above or in any other provision in this Declaration, the following terms and provisions shall be applicable as long as the Starbucks Lease is in force and in such case shall be enforceable only by Developer, the Landlord under the Starbucks Lease, any first mortgagee and Starbucks:

(a) Except for the Starbucks Premises neither the Property nor any portion thereof shall be used for the following purposes: (i) sale of freshly ground or whole coffee beans; (ii) expresso, expresso based coffee drinks or coffee based drinks; (iii) tea or tea based drinks; or (iv) gourmet or brand identified brewed coffee, except that, (a) other tenants within the Shopping Center may sell brewed coffee that is not gourmet or brand identified; and (b) a full-service sit-down restaurant serving a complete dinner menu may sell brewed coffee or hot expresso based drinks for on premises consumption only.

(b) Developer shall give prompt notice to Starbucks of: (a) any proceeding (to which Developer is a party) or inquiry (actually received by Developer) by any governmental authority with respect to the presence of any Hazardous Substance on the Starbucks Premises or the Building/Shopping Center (or off-site of the Property that might affect the Property) or related to any loss or injury that might result from any Hazardous Substance; (b) all claims made or threatened by any third party against Developer or the Starbucks Premises, the Building/Shopping Center or the Property relating to any loss or injury resulting from any Hazardous Substance; and (c) Developer's discovery of any occurrence or condition on the Premises, the Building/Shopping Center or the Property (or off-site of the Starbucks Premises that might affect the Starbucks Premises) that could cause the Starbucks Premises or any part thereof, to be subject to any restriction on occupancy or use of the Starbucks Premises under any Environmental Law.

(c) If any Hazardous Substance is deposited, released, stored, disposed, discovered or present in or on the Starbucks Premises, the Building/Shopping Center or the Property, which is lawfully required to be removed, Developer and the Owner of the parcel where the Hazardous Substance is present or has been released, at Developer's and such Owner's expense, shall (subject to Starbucks obligations set forth in the Starbucks Lease) in a manner that complies with all applicable laws, rules, regulations and policies of any governmental body with jurisdiction over the same, remove, transport and dispose of such substances and perform all remediation and cleanup necessary or advisable to remediate any damage to persons, property or the environment as a result of the presence of such Hazardous Substances. Developer and such Owner shall use its best efforts to minimize direct and indirect impact on Starbucks during all activities related to remediation.

(d) Developer and the Owner of the parcel where the Hazardous Substance is present or has been released shall protect, defend, indemnify and hold harmless Starbucks and its agents, officers, directors, contractors, employees, parents, subsidiaries, successors and assigns from and against any claims directly or indirectly related to: (a) a violation of or responsibility under Environmental Law except that if such claims are directly related to Starbucks, or Starbucks agents, contractors or employees use, manufacture, storage, release or disposal of a Hazardous Substance on the Premises or the Building/Shopping Center; or (b) a breach of any representation, warranty, covenant or agreement contained in the Starbucks Lease.

5.4 RBC Centura Bank Lease Use Restrictions. Notwithstanding any contrary term or provision in Section 5.1 above or in any other provision in this Declaration, the following terms and provisions shall be applicable as long as the RBC Centura Bank Lease is in force and in such case shall be enforceable only by Developer, the Landlord under the RBC Centura Bank Lease, any first mortgagee and RBC Centura Bank:

(a) Except for the RBC Centura Bank Premises neither the Property nor any portion thereof shall be used for the following purposes: (i) a commercial bank; and (b) no other tenant in the Shopping Center shall be allowed to operate an automatic teller machine.

(b) Developer and any Owner, Occupant or Permittee covenants that it will not discharge or permit the discharge of any Hazardous Substance in or upon the Shopping Center. Developer and the Owner of the parcel where the discharge of Hazardous Substance has occurred shall indemnify, defend, and hold harmless RBC Centura Bank from and against any and all losses, liabilities, damages, injuries, costs, expenses, and claims of any and every kind whatsoever (including without limitation, court costs, and reasonable attorneys' fees) which at any time or from time to time may be paid, incurred or suffered by, or asserted against RBC Centura Bank with respect to any Hazardous Substance which may be discharged, placed, or leaked upon the Shopping Center unless caused by RBC Centura Bank.

5.5 Fresh Market Lease Use Restrictions. Notwithstanding any contrary term or provision in Section 5.1 above or in any other provision in this Declaration, the following terms and provisions shall be applicable as long as the Fresh Market Lease is in force and in such case

shall be enforceable only by Developer, the Landlord under the Fresh Market Lease, any first mortgagee of the FM Parcel, and/or The Fresh Market:

(a) Except for the Fresh Market Premises, and excepting the rights of Starbucks, which has the exclusive rights defined in Section 5.3 of the Declaration, neither the Property nor any portion thereof shall be used for any Fresh Market Exclusives or for any Restricted Use or any other use which would be inconsistent with a first-class shopping center in which The Fresh Market is currently operating in North Carolina.

(b) Notwithstanding anything contained in subsection (a) above, the following operations shall not be subject to Tenant's Exclusives:

(i) One (1) **"Curves" or "Kids" fitness/workout** center as the same is typically operated as of April 21, 2006 (or such other fitness/workout center substantially similar thereto), which (A) if located within Phase 3, occupies no more than one thousand six hundred (1,600) square feet of total floor area, (B) is located within the Permitted Area, and (C) does not violate any Fresh Market Exclusives (excepting Incidental Sales) or otherwise engage in any other Restricted Use.

(ii) One (1) **ice cream store** located within the Permitted Area which (A) primarily sells ice cream and yogurt by the cup or cone, (B) if located within Phase 3, occupies no more than two thousand (2,000) square feet of total floor area, and (C) does not otherwise violate any Fresh Market Exclusives (excepting Incidental Sales) or otherwise engage in any Restricted Use. By way of example, such an ice cream store would include a Cold Stone Creamery or Marble Slab Creamery meeting the foregoing conditions and otherwise operated as a Cold Stone Creamery or Marble Slab Creamery as are typically operated as of April 21, 2006.

(iii) One (1) primarily **sit-down restaurant** located within the Permitted Area (A) whose gross sales of beer, wine, and liquor do not collectively exceed twenty-five percent (25%) of its total gross sales during any period, (B) which devotes no more than five hundred (500) square feet of its floor space to the sale of baked bread, cake, and pastries, (C) which devotes no more than twenty-five percent (25%) of its service areas (excluding kitchen areas) to purposes other than sit-down food service, (D) which does not sell meats and/or cheeses by the pound or by other weight for off-premises consumption, (E) which, if located within Phase 3, occupies no more than three thousand (3,000) square feet of total floor area and does not begin operations until after October 31, 2017, and (F) which does not otherwise violate any Fresh Market Exclusives (excepting Incidental Sales) or otherwise engage in any Restricted Use; provided, however no such sit-down restaurant shall be permitted within the Further Restaurant Area at any time when a fast casual food establishment (as permitted under subpart (v) below) is also operating within the Further Restaurant Area.

(iv) One (1) **sandwich shop** located within the Permitted Area which (A) primarily sells sandwiches for on-premises or off-premises consumption, (ii) does not sell meats and/or cheeses by the pound or by other weight, (B) if located within Phase 3, occupies no more than two thousand (2,000) square feet of total floor area, and (C) does not otherwise violate any Fresh Market Exclusives (excepting Incidental Sales) or otherwise engage in any Restricted Use. By way of example, such a sandwich shop would include a Subway sandwich shop meeting the foregoing conditions and otherwise operated as Subway sandwich shops are typically operated as of April 21, 2006.

(v) One (1) **fast casual food establishment** (A) which is located within the Further Restaurant Area, (B) which primarily serves prepared food and/or drink from a menu listing, (C) which takes customer orders primarily at a main counter and does not utilize wait staff (excepting table "runners"), (D) whose sale (excepting Incidental Sales) of Grocery Items for off-premises consumption is limited to carry-out/delivery food and/or drink prepared for immediate consumption, (E) which occupies no more than two thousand eight hundred and sixty-five (2865) square feet of total floor area, and (F) which does not otherwise violate any Fresh Market Exclusives (excepting Incidental Sales) or otherwise engage in any Restricted Use. Notwithstanding anything herein contained, such a fast casual food establishment shall include, but not be limited to, a Five Guys Famous Burgers and Fries meeting conditions (A) and (E) above and operated as Five Guys Famous Burgers and Fries are typically operated as of August 1, 2007.

(vi) One (1) **take-out food establishment** (A) which is located within the Further Restaurant Area, (B) which primarily serves prepared food and/or drink from a menu listing for off-premises consumption, (C) which offers no more than eight (8) seats for use by customers, (D) whose sale (excepting Incidental Sales) of Grocery Items for off-premises consumption is limited to carry-out/delivery food and/or drink prepared for immediate consumption, (E) which occupies no more than one thousand eight hundred and sixty (1860) square feet of total floor area, and (F) which does not otherwise violate any Fresh Market Exclusives (excepting Incidental Sales) or otherwise engage in any Restricted Use. By way of example only, such a take-out food establishment would include a Smoothie King, a Mr. Liu's, a Dewey's, or a Krispy Kreme meeting the foregoing conditions.

Notwithstanding the foregoing, the operations listed in subsections (ii) through (vi) shall not occupy, in the aggregate, more than six thousand (6000) square feet of total floor area within the Further Restaurant Area and shall be limited to a total combination of three (3) tenants.

(c) There will be no change in the Shopping Center Site Plan (layout) which would adversely affect the accessibility to the Fresh Market Premises from the parking areas or from the public streets and roadways bordering the Shopping Center, or the visibility of the Fresh

Market's signs or storefront(s). Except as shown on the Site Plan for Phase 3 of the Shopping Center, no Owner, Occupant or Permittee shall place any kiosks, planters, trees, shrubs, stairs or other obstructions in any place in front of the Fresh Market Premises without the prior written consent of The Fresh Market.

(d) The Designated Employee Parking Areas in the Shopping Center shall be available to employees of all tenants within the Shopping Center on a non-exclusive, first-come, first-served basis and an easement is hereby granted and conveyed to each other Owner to use the Designated Employee Parking Area for such purpose.

(e) With respect to future tenant leases or occupancy agreements made or entered into by an Owner of a Shopping Center Parcel (other than the FM Parcel), such Owner agrees that it will make an express provision in such leases or agreements providing that the employees of such future tenants shall not park in the FM's Primary Parking Field at any time and each Owner agrees to use commercially reasonable efforts to enforce such prohibition, including, without limitation, the use of fines or providing for rights of towing in such leases. Each Owner shall, upon the request of the FM Parcel Owner, provide a true and correct copy of any such future lease or occupancy agreement to confirm such Owner's compliance with this Section 5.5(e).

(f) The Owner of the FM Parcel shall use commercially reasonable efforts to prevent its employees and the employees of any tenant of the FM Parcel from parking in the Shop Tenant's Primary Parking Field and/or in any other part of the Shopping Center, except for the Designated Employee Parking Areas and/or the FM's Primary Parking Field. If none of the non-exclusive parking spaces are available in the Designated Employee Parking Areas, the Owner of the FM Parcel shall exercise commercially reasonable efforts to cause its employees and the employees of any tenant of the FM Parcel to park solely in the FM's Primary Parking Field.

(g) With respect to tenants occupying the Shopping Center pursuant to leases entered into prior to May 31, 2006 (other than the Fresh Market Lease), each Owner agrees to use commercially reasonable efforts to prevent its employees and the employees of tenants of such Owner's Shopping Center Parcel from parking within the FM's Primary Parking Field, including, without limitation, the enactment of supplemental rules and regulations applicable to the entire Shopping Center.

(h) Notwithstanding the foregoing, no Owner shall be required to take any action to enforce any parking violations within the FM's Primary Parking Field, unless such Owner has received written notice of the purported parking violations, together with sufficient information as to which other tenant's employee(s) are parking within the FM's Primary Parking Field.

(i) The foregoing provisions of this Section 5.5 are not intended to modify the Fresh Market Lease, and as between the "Landlord" and "Tenant" under the Fresh Market Lease, the terms of the Fresh Market Lease shall govern and control in the event of any inconsistency with this Section 5.5.

5.6 Insurance and Indemnity.

(a) Each Owner shall maintain or cause to be maintained in full force and effect commercial general liability insurance with a financially responsible insurance company or companies licensed or authorized to do business in the State of North Carolina insuring against claims on account of loss of life, bodily injury, or property damage that may arise from, or be occasioned by, the condition, use or occupancy of such Owner's Shopping Center Parcel or the improvements located thereon ("Parcel Claims"); and such insurance shall provide for a limit of not less than Five Million Dollars ($5,000,000.00) for personal or bodily injury or death to any one person, a limit of not less than Five Million Dollars ($5,000,000.00) for personal or bodily injury or death to any number of persons arising out of any one occurrence, and a limit of not less than Five Million Dollars ($5,000,000.00) in respect of any instance of property damage (which limits may be supplied by any combination of primary, excess, umbrella or blanket policies). Each such policy shall name each of the other Owners and Fresh Market as an additional insured with respect to liability asserted against such party as a result of Parcel Claims of or attributable to the insuring Owner's Shopping Center Parcel, and shall provide for or be endorsed to be primary and non-contributory, rather than excess, to the coverage of such additional insured for such claims, and if such policy does not contain a standard Insurance Services Office separation of insureds provision, then it shall be endorsed to provided cross-liability coverage. Such policy shall contain no cross-suit exclusions, or any similar exclusion that excludes coverage for the claims brought by an additional insured under the policy against another insured under the policy. Copies of such required insurance policies or certificates thereof, shall be supplied to the other Owners by each Owner upon the reasonable written request of such other Owners, confirming that the required insurance has been obtained and is in full force and effect. Such insurance shall extend to the contractual obligation of the insured party arising out of the indemnification obligations set forth in this Declaration.

(b) Effective upon the commencement of construction of Building improvements on a Shopping Center Parcel or other Improvements upon Common Area within the Shopping Center, the Owner of such Shopping Center Parcel shall carry, or cause to be carried, with a financially responsible insurance company or companies licensed or authorized to do business in the State of North Carolina fire insurance (with an extended coverage endorsement) in an amount at least equal to one hundred percent (100%) of the replacement cost (exclusive of the cost of excavation, foundations, and footings) of the Buildings and improvements constructed on its Shopping Center Parcel, insuring against causes or events which from time to time are included as covered risks under standard insurance industry practices within the classification of fire insurance with an extended coverage or "all risk" endorsement, and specifically against at least the following perils: loss or damage by fire, windstorm, tornado, hail, explosion, earthquakes, malicious mischief, vandalism, aircraft, vehicle, and smoke damage. Each Owner shall also carry flood insurance on Shopping Center Parcels that have Buildings located in Flood Zone A or V.

(c) Prior to commencing any construction activities within the Property, the Owner performing or causing to be performed such construction activities shall maintain, or cause to be maintained, so long as such construction activity is occurring, at least the minimum insurance coverages set forth below:

(1) Workers' Compensation - statutory limits

(2) Employer's Liability - $500,000

(3) Commercial General Liability on an occurrence basis with personal injury coverage and broad form property damage (said policy shall be endorsed to remove the XCU exclusion relating to explosion, collapse, and underground property damage) in amounts not less than as set forth in (a), above.

(d) The insurance described in this Section 5.6 may be carried under (i) an individual policy covering only the location of the Owner within the Shopping Center, (ii) a blanket or umbrella policy or policies which cover(s) other liabilities, properties and locations of an Owner, so long as no occurrence with respect to other property covered by such blanket policy will impair the coverage required hereunder, or (iii) a combination of any of the foregoing insurance programs. All property insurance shall include a waiver of subrogation by the insurer against the other Owners so long as the same is obtainable without significant extra cost. Each Owner hereby waives any rights of recovery against any other Owner, its directors, officers, members, managers, employees, agents, tenants and Occupants for any damage or consequential loss which is covered by or would be covered by the policies of property insurance required to be carried by such Owner hereunder, to the extent of the proceeds payable under such policies.

(e) The Owners recognize and acknowledge that each Shopping Center Parcel benefits from, and each Occupant makes use of, the Common Areas located within the Shopping Center, and the Owners further recognize and acknowledge that certain of the Shopping Center Parcels contain substantially more Common Areas than certain other Shopping Center Parcels. In order to equitably allocate the cost of maintaining the Common Area liability and casualty insurance policies among all of the Owners, the Owners agree that adjusting payments will be made to one another as provided in this Section 5.6(e), so that upon the payment of such adjusting payments each Owner shall bear a portion of the cost of the Shared Premiums payable by all Owners with respect to the entire Shopping Center, which portion shall be equal to the product of (1) the aggregate Shared Premiums paid by the Owners with respect to all Shopping Center Parcels, and (2) the Proration Fraction applicable to the applicable Owner's Shopping Center Parcel(s). Prior to December 1st of each calendar year, each Owner shall provide to Developer receipted evidence of the payment of the Shared Premiums for such Owner's then-current policy period (collectively, the "Parcel Premiums") in order to allow the Developer to determine the aggregate amount of Shared Premiums for the entire Shopping Center for such calendar year. Prior to January 10th of each calendar year, Developer shall (i) calculate the aggregate amount of Shared Premiums for the entire Shopping Center (the "Aggregate Premiums") based on the Shared Premium amounts provided by each Owner as provided in the foregoing sentence, (ii) calculate each Owner's share of the Aggregate Premiums, which shall be the product of such Owner's Proration Fraction and the Aggregate Premiums, (iii) credit against such Owner's share of the Aggregate Premiums the amount of such Owner's Parcel Premiums, (iv) submit to each Owner an accounting of the amount of the Aggregate Premiums and the determination of each Owner's respective share of such Aggregate Premiums together with copies of the receipted evidence of payment of the Shared Premiums and other information substantiating Developer's determination of each Owner's share of Aggregate Premiums, (v)

submit invoices (the "Insurance Invoices) to each Owner whose share of Aggregate Premiums owed pursuant to this Section 5.6(e) exceeds such Owner's Parcel Premiums, and (vi) upon collection of the amounts set forth in the foregoing subsection (iv), remit to each of the remaining Owners the difference obtained by subtracting such Owner's share of Aggregate Premiums from such Owner's Parcel Premiums as determined pursuant to this Section 5.6(e). Within forty-five (45) days after receipt by an Owner of the Insurance Invoice and the accounting and documentation set forth in the foregoing subsection (iv), such Owner shall pay Developer the amount of the Insurance Invoice. Each Owner acknowledges and agrees that the foregoing shall not diminish, reduce or otherwise affect each Owner's obligation to maintain the insurance coverages required by Sections 5.6(a), (b) and (c) above, or each Owner's responsibility to ensure the direct payment to the applicable insurer of any premiums relating thereto.

Developer and each Owner hereby acknowledge and agree that as long as the Fresh Market Lease remains in effect, the calculation of the Proration Fraction for the FM Parcel shall be determined as follows: the Proration Fraction applicable to the FM Parcel shall be a fraction, the numerator of which is the number of rentable square feet within the building located on the FM Parcel (including mezzanine and exterior vestibule areas, if any) and the denominator of which is the number of rentable square feet in the Shopping Center (including the rentable square feet utilized by Developer or Affiliate (or their respective agents or contractors) as office space, the mezzanine constructed for the building currently operated as a CVS Pharmacy, and the additional sales support space in the building currently operated as a bank and Starbuck's Coffee); provided, however, in no event shall the Proration Fraction applicable to the FM Parcel with respect to determination of the FM Parcel Owner's respective share of the Aggregate Premiums exceed forty and eighty-six hundredths percent (40.86%). In addition, as long as the Fresh Market Lease remains in effect, if Developer shall fail to notify the Owner of the FM Parcel of any amounts owed pursuant to this Section 5.6(e) within seven hundred (700) days of the calendar year in which the underlying Shared Premiums were incurred, the Owner of the FM Parcel shall not be obligated to make any payment with respect to same.

(f) Each Owner (the "Indemnifying Owner") hereby indemnifies and holds the other Owners and their respective tenants and occupants harmless for, from, and against any and all liability, damages, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from the Indemnifying Owner's Shopping Center Parcel, except if caused by the negligent acts, omissions, or willful misconduct of the other Owner(s). Each Indemnifying Owner further hereby indemnifies and holds the other Owners and their respective tenants and occupants harmless for, from, and against all claims, liabilities, suits, costs, damages, and mechanics' liens arising out of or in any way related to the exercise of the Indemnifying Owner's easement rights granted hereunder, exclusive of any claims arising out of or in any way related to the negligent acts or omissions or willful misconduct of the other Owner, or that of its tenants or occupants.

5.7 Liens. In the event any mechanic's lien, materialmen's lien, or other lien is filed against the Shopping Center Parcel of one Owner as a result of services performed or materials furnished by a third party to another Owner, the Owner permitting or causing such lien to be so filed shall cause such lien to be released and discharged of record within thirty (30) days after

notification from the Owner whose Shopping Center Parcel is subject to such claim of lien, either by paying the indebtedness which gave rise to such lien or by posting a bond or other security as required by law to obtain such release and discharge, and the Owner permitting or causing such lien to be so filed shall indemnify, defend, and hold harmless the other Owner and its Shopping Center Parcel against liability, loss, damage, costs and expenses (including reasonable attorneys' fees and costs of suit) on account of such claim of lien.

5.8 Ad Valorem Taxes.

(a) Each Owner of a Shopping Center Parcel shall timely pay to all applicable taxing authorities all real estate taxes and assessments which may be levied against its particular Shopping Center Parcel (collectively "Taxes") prior to the aforesaid Taxes becoming delinquent. Notwithstanding the foregoing, each Owner of a Shopping Center Parcel may contest at its sole expense, including seeking abatement or reduction of any Taxes agreed to be paid hereunder provided that such Owner shall first satisfy any requirements of the applicable taxing jurisdiction including the requirement that Taxes be paid in full before being contested.

(b) The Owners recognize and acknowledge that each Shopping Center Parcel benefits from, and each Occupant makes use of, the Common Areas located within the Shopping Center, and the Owners further recognize and acknowledge that certain of the Shopping Center Parcels contain substantially more Common Areas than certain other Shopping Center Parcels. In order to equitably allocate the payment of Taxes relating to the Common Areas among all of the Owners, the Owners agree that adjusting payments will be made to one another as provided in this Section 5.8(b), so that upon the payment of such adjusting payments each Owner shall bear the cost of a portion of the Taxes levied against the entire Shopping Center, which portion shall be equal to the product of (1) the aggregate Taxes levied against all Shopping Center Parcels, and (2) the Proration Fraction applicable to such Owner's Shopping Center Parcel. Within thirty (30) days after the date on which an Owner receives its bill for Taxes from the applicable taxing authority (the "Tax Bill"), such Owner shall submit the Tax Bill to Developer, and within thirty (30) days after receipt of all Owners' respective Tax Bills, Developer shall (i) calculate each Owner's share of Taxes in accordance with this Section 5.8(b), (ii) credit against such Owner's share of the Taxes the amount of Taxes levied against such Owner's Shopping Center Parcel, (iii) submit to each Owner an accounting of the amount of Taxes payable with respect to the Property, the determination of each Owner's respective share and copies of the Tax Bills and other information substantiating Developer's determination of each Owner's share of Taxes, (iv) submit invoices to each Owner whose share of Taxes owed pursuant to this Section 5.8(b) exceeds the Taxes levied against such Owner's Shopping Center Parcel, and (v) upon collection of the amounts set forth in the foregoing subsection (iv), remit to each of the remaining Owners the difference obtained by subtracting such Owner's share of Taxes as determined pursuant to this Section 5.8(b) from the amount of Taxes levied against such Owner's Shopping Center Parcel (provided such Owner shall have paid all Taxes due and payable with respect such Owner's Shopping Center Parcel). Each Owner acknowledges and agrees that the foregoing shall not diminish, reduce or otherwise affect each Owner's obligation to timely and directly pay all Taxes with respect to such Owner's Shopping Center Parcel(s) as set forth in Section 5.8(a) above.

Developer and each Owner hereby acknowledge and agree that as long as the Fresh Market Lease remains in effect, the calculation of the Proration Fraction for the FM Parcel shall be determined as follows: the Proration Fraction applicable to the FM Parcel shall be a fraction, the numerator of which is 21,018 square feet and the denominator of which is the number of rentable square feet in the Property (excluding the rentable square feet utilized by Developer or Affiliate (or their respective agents or contractors) as office space, the mezzanine constructed for the building currently operated as a CVS Pharmacy, and the additional sales support space in the building currently operated as a bank and Starbuck's Coffee); provided, however, in no event shall the Proration Fraction applicable to the FM Parcel exceed forty-one and eighty-eight hundredths percent (41.88%). In addition, as long as the Fresh Market Lease remains in effect, if Developer shall fail to notify the Owner of the FM Parcel of any Taxes owed pursuant to the foregoing subsection (iv) within seven hundred (700) days of the calendar year in which such Taxes were billed, the Owner of the FM Parcel shall not be obligated to make any payment with respect to same.

5.9 Condemnation. In the event that any portion of the Common Areas shall be taken by condemnation or by private purchase or deed in lieu thereof, the Owner(s) the Shopping Center Parcels affected by such condemnation shall immediately commence and diligently prosecute to completion at such Owner's sole cost and expense the repair and restoration of the Common Areas so affected by the condemnation to a condition comparable to their condition at the time of taking.

5.10 Additional Restrictions, Requirements and Obligations. The following additional restrictions, requirements and obligations shall be applicable to the Shopping Center, or portions thereof, as set forth below:

(a) Phase 3 shall include at least one hundred and forty-seven (147) parking spaces, provided that for purposes of calculating the total number of Phase 3 parking spaces, the Owner(s) of Phase 3 shall be entitled to include up to five (5) Rear Lot parking spaces in any such total. All parking spaces within Phase 3 shall be at least nine feet (9') wide and eighteen feet (18') deep. All drive lanes within Phase 3 shall be at least twenty-four feet (24') wide. The Shopping Center's parking ratio shall meet or exceed the Minimum Parking Ratio.

(b) Except for Legally-Required Changes, no Owner may at any time without prior written consent of the Owner of the FM Parcel (which consent such Owner may grant or withhold in such Owner's sole discretion), modify, amend, stage in, or otherwise obstruct the Fresh Market Premises or No Change Area, or the Phase 3 fascia, facade or store fronts, or all or any portion of the ingress and egress to the FM Parcel and/or Phase 3 of the Shopping Center and/or Common Areas specifically relating to Phase 3 or permit the foregoing to occur. As used herein, Legally-Required Changes means final, non-appealable and non-reversible actions required by federal, state, county, city or other governmental authorities. Each Owner covenants and agrees that it will not take any action or commit any omission which will result in any Legally-Required Changes to the No Change Area. In the event of any obstruction of pedestrian passage to any Occupant's premises or vehicular passage to the Common Areas, which obstruction has not been previously approved by the Owner of the FM Parcel and which exists

for more than twenty-four (24) consecutive hours, the Owner or Occupant of the FM Parcel shall have the immediate right to remove same and charge the cost of performing such work to the Owner causing such obstruction.

(c) If any Shopping Center pylon, monument and/or other sign or signs are taken for any public or quasi-public use, under any statute or by right of eminent domain, or private purchase or deed in lieu thereof, Developer shall at Developer's sole cost and expense restore such signage to a location and form in the Shopping Center reasonably satisfactory to the Owner of the FM Parcel (to the extent legally permitted by the City). Each Owner hereby grants and conveys to the Developer an easement over each Shopping Center Parcel for the purpose of installing, maintaining, repairing and replacing Shopping Center pylon, monument and/or other sign or signs equivalent in size to the sign(s) so taken by condemnation.

(d) Affiliate hereby grants and conveys to the Owner of the FM Parcel an easement for the purpose of (i) maintaining, repairing and replacing its sign panel(s) currently located on the Shopping Center Sign, and (ii) subject to applicable law, maintaining, repairing and replacing a monument sign in the location shown on the Site Plan. The Owner of the FM Parcel shall have the exclusive right to utilize the sign panel locations (both sides) on the Shopping Center Sign as depicted on the attached Exhibit C.

(e) If any Hazardous Substance shall be found in or on the Shopping Center, then: (i) the Owner(s) of the Shopping Center Parcel(s) where the Hazardous Substance is present or has been released shall immediately remove or remediate same to the extent required by Laws, and in compliance with Laws, and at the sole cost of the Owner(s) of the Shopping Center Parcel(s) where the Hazardous Substance is present or has been released (except to the extent the presence or release of such Hazardous Substance was caused by another Owner, in which event such other Owner shall be responsible for such removal and remediation, at its sole cost), (ii) each such Owner shall use its best efforts to minimize direct and indirect impact on the other Owners during all activities related to remediation, and (iii) each such Owner agrees to defend, indemnify and hold the other Owners and The Fresh Market harmless from and against any and all costs, damages, expenses and/or liabilities (including reasonable attorneys' fees) which the other Owners may suffer as a result of any claim, suit, or action regarding any such Hazardous Substance (whether alleged or real), and/or regarding the removal or remediation of same.

ARTICLE VI
DEFAULT

VI.1 Default.

(a) If Developer, MTP II or any other Owner of any Shopping Center Parcel fails to comply or fails to cause any Occupant of its Shopping Center Parcel to comply with any provision herein (a "Defaulting Owner"), including, without limitation, the payment of any sum of money or the performance of any other obligation pursuant to the terms of this Declaration, then Developer, MTP II or any other Owner (an "Affected Party'") at its option and with thirty (30) days prior written notice to the Defaulting Owner, in addition to any other remedies such Affected Party may have in law or equity (subject to the limitations in Section 6.1(e) below and

in Section 6.2 below), may proceed to perform such defaulted obligation on behalf of such Defaulting Owner (and shall have a license to do so) by the payment of money or other action for the account of the Defaulting Owner. The foregoing right to cure shall not be exercised if within the thirty (30) day notice period (i) the Defaulting Owner cures the default, or (ii) if curable, the default cannot be reasonably cured within that time period but the Defaulting Owner begins to cure such default within such time period and thereafter diligently and continuously pursues such action to completion. The thirty (30) day notice period shall not be required if an emergency exists or if such default causes interference with the construction, operation or use of the Affected Party's Shopping Center Parcel which requires immediate attention; and in such event, the Affected Party shall give such notice (if any) to the Defaulting Owner as is reasonable under the circumstances.

(b) Within ten (10) days of written demand therefor (including providing copies of invoices reflecting costs) the Defaulting Owner shall reimburse the Affected Party for any sum reasonably expended by the Affected Party due to the default or in correcting the same, together with interest thereon and, if such reimbursement is not paid within said ten (10) days and collection is required, the Affected Party's reasonable costs of collection, including, without limitation, reasonable attorneys' fees.

(c) Any claim of an Affected Party for reimbursement, together with interest accrued thereon and collection costs as set forth in Section 6.1(b) above, shall constitute a personal obligation and liability of the Defaulting Owner and shall be secured by an equitable charge and lien on the Shopping Center Parcel of the Defaulting Owner and all improvements located thereon. Such lien shall attach and be effective from the date of recording of the Lien Notice hereinafter described. Upon such recording, such lien shall be superior and prior to all other liens encumbering the Shopping Center Parcel involved, except that such lien shall not be prior and superior to (i) any mortgages or deeds of trust of record prior to the recording of such Lien Notice or any renewal, extension or modification (including increases) of previously recorded mortgages or deeds of trust, or (ii) the interest of any party which has, prior to the recording of such Lien Notice, purchased the Shopping Center Parcel and leased it back to the preceding owner, or the preceding owner's subsidiary or affiliate, on a net lease basis with the lessee assuming all obligations thereunder in what is commonly referred to as a "sale-leaseback" transaction; and any purchaser at any foreclosure sale (as well as any grantee by deed in lieu of foreclosure) under any such mortgage or deed of trust shall take title subject only to liens for obligations accruing pursuant to this Section 6.1(c) after the date of such foreclosure sale or conveyance in lieu of foreclosure. Furthermore, the right of possession and leasehold interest or tenancy of any tenant or subtenant of any Shopping Center Parcel encumbered by any lien accruing pursuant to this Section 6.1 shall not be terminated, affected or disturbed by such lien or any foreclosure thereof. To evidence a lien accruing pursuant to this Section 6.1(c), the Affected Party curing the default of a Defaulting Owner or the Affected Party performing such maintenance, as the case may be, shall prepare a written notice (a "Lien Notice") setting forth (i) the amount owing and a brief statement of the nature thereof; (ii) the Shopping Center Parcel to which the payment(s) relate; (iii) the name of the Owner or reputed Owner owning the Shopping Center Parcel involved; and (iv) reference to this Declaration as the source and authority for such lien. The Lien Notice shall be signed and acknowledged by the Affected Party desiring to file the same and shall be recorded in either (a) the public real estate records in Forsyth County, North

Carolina or (b) the Office of the Clerk of Superior Court of Forsyth County, North Carolina. A copy of such Lien Notice shall be mailed to the Defaulting Owner within thirty (30) days after such recording. Any such lien may be enforced by judicial foreclosure upon the Shopping Center Parcel to which the lien attached in like manner as a mortgage or deed of trust on real property is judicially foreclosed under the laws of North Carolina. In any foreclosure, the Owner whose Shopping Center Parcel is being foreclosed shall be required to pay the reasonable costs, expenses and attorneys' fees in connection with the preparation and filing of the Lien Notice, as provided herein, and all reasonable costs, expenses and attorneys' fees in connection with the foreclosure. The Affected Party filing such Lien Notice shall notify any mortgagee of the Shopping Center Parcel being foreclosed if such Affected Party has been notified (in the manner herein provided) of such mortgagee's interest and of its name and address.

(d) In the event any Affected Party shall institute any action or proceeding against another Owner relating to the provisions of this Declaration or any default hereunder or to collect any amounts owing hereunder or in the event an arbitration proceeding is commenced hereunder by agreement of the parties to any dispute, then and in such event the unsuccessful litigant in such action or proceeding shall reimburse the successful litigant therein for such reasonable costs and expenses incurred in connection with any such action or proceeding and any appeals therefrom, including attorneys' fees and court costs, to the extent permitted by the terms of any final order**,** decree, or judgment.

(e) Notwithstanding the foregoing terms and provisions in this Section 6.1 to the contrary, with respect to restrictions and provisions in this Declaration which expressly contemplate that only Developer shall have enforcement rights, no other parties (including other Owners) shall be entitled to exercise enforcement rights hereunder relative to such restrictions and provisions (subject, however, to any assignment of Developer's enforcement rights pursuant to Section 8.3 below).

(f) Except as provided in Section 6.2 below, any remedies provided for in this Section 6.1 are cumulative and shall be deemed additional to any and all other remedies to which any party may be entitled in law or in equity and shall include the right to restrain by injunction any violation or threatened violation by any party of any of the terms, covenants, or conditions of this Declaration and by decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for any breach of any such term, covenant, or condition is not adequate.

VI.2 Limitation of Liability. Notwithstanding anything contained in this Declaration to the contrary, in any action brought to enforce the obligations of the Owner of any Shopping Center Parcel, any money judgment or decree entered in any such action shall, to the extent provided by law, be a lien upon and shall be enforced against and satisfied only out of (i) the proceeds of sale produced upon execution of such judgment and levy thereon against such Owner's interest in its Shopping Center Parcel and the improvements thereon, (ii) the rents, issues or other income receivable from such Owner's Shopping Center Parcel, and (iii) insurance and condemnation proceeds with respect to such Owner's Shopping Center Parcel, and no Owner shall have personal or corporate financial liability for any deficiency; provided, however, and notwithstanding the foregoing to the contrary, the limitations in this Section 6.2 shall not apply to

claims based upon intentional torts (including, without limitation, fraud or misrepresentation) committed by any party; and provided, further, all Owners of Shopping Center Parcels shall be entitled to obtain equitable relief and personal judgment necessary to implement the relief (as used here, "equitable relief" does not include a claim for damages even if based on equitable grounds). Notwithstanding the foregoing, the rights reserved to any lender pursuant to a mortgage or deed of trust of any Shopping Center Parcel in regard to the payment of insurance and condemnation proceeds shall be superior and prior to any rights herein.

ARTICLE VII
TERM

This Declaration shall be effective as of the date first above written and shall continue in full force and effect for the lesser of (i) ninety-nine (99) years and (ii) the maximum period as may be permitted under the laws of the State of North Carolina. Provided, however, with respect to the easements which are created and described herein as being perpetual or as continuing beyond the term of this Declaration, such easements shall survive the termination of this Declaration as provided herein. Upon the termination of this Declaration, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Declaration, except as contained in or otherwise relating to the easement provisions mentioned above, shall terminate and have no further force or effect; provided, however, the termination of this Declaration shall not limit or affect any remedy at law or in equity of any party against any other party with respect to any), liability or obligation arising or to be performed under this Declaration prior to the date of such termination. In no event shall a breach or default under the provisions of this Declaration result in the termination hereof.

ARTICLE VIII
MISCELLANEOUS

VIII.1 Annexation of Other Property. Developer shall be entitled to hereafter add other property to the Shopping Center by executing and recording a supplement to this Declaration (for such limited purpose) in the Office of the Register of Deeds of Forsyth County, North Carolina; and, notwithstanding any term or provision herein to the contrary, Developer shall be entitled, without the joinder of any party (including other Owners) other than the Owner of the FM Parcel, to execute and record one or more supplements to this Declaration for the limited purpose of adding other property to the Shopping Center.

VIII.2 Interest. Wherever in this Declaration it is provided that any party is to pay to any other party a sum of money with interest, the amount of interest to be paid shall be calculated upon the sum advanced or due from the time advanced or due until the time paid at the lesser of:

(a) The highest rate permitted by law to be paid on such type of obligation by the party obligated to make such payment or the party to whom such payment is due, whichever is less; or

(b) Two percent (2%) per annum in excess of the prime rate from time to time publicly announced by RBC Centura Bank, or any successor thereto.

VIII.3 Notices. All notices, demands, statements, and requests required or permitted to be given under this Declaration must be in writing and given, delivered, or served, either by personal delivery, by recognized overnight courier service with receipt, or by certified or registered U.S. mail, return receipt requested. Notices shall be effective upon receipt; provided, however, inability to make delivery due to a changed address of which no notice was given or refusal to accept delivery shall constitute receipt for purposes hereof.

VIII.4 Developer's Rights Assignable.

(a) Except as specifically set forth herein, all rights, powers, privileges, and reservations, and all responsibilities and obligations, of Developer herein contained (collectively, the "Developer Rights") may be assigned to and assumed by any Person provided: (i) the assignment must be a complete assignment of all Developer Rights, (ii) such Person must be an Owner of one or more Shopping Center Parcels upon which one or more Buildings are or may be developed, and (iii) such Person expressly assumes, in writing, the Developer Rights, and such writing shall be recorded in the public real estate records in Forsyth County, North Carolina, and a copy of such recorded assumption shall be promptly provided to each of the other Owners. In the event Developer (or any assignee thereof) intends to assign the Developer Rights to any Person (other than the Owner of the FM Parcel or MTP II) as contemplated above in this Section 8.4(a), Developer shall, prior to any such assignment, notify the Owner of the FM Parcel in writing (the "Assignment Notice") of such intent to assign and the intended assignee, and shall include within such notice an offer to assign all Developer Rights to the Owner of the FM Parcel. Upon receipt of an Assignment Notice from Developer, the Owner of the FM Parcel shall have thirty (30) days thereafter within which to accept the offer to take an assignment of the Developer Rights. If the Owner of the FM Parcel fails to accept such offer within said thirty (30) day period, Developer shall be free to assign the Developer Rights to the Person identified in the Assignment Notice. If the Owner of the FM Parcel accepts such offer, then the Developer Rights shall be assigned to the Owner of the FM Parcel upon the closing of the sale of the Parcel pursuant to which the Developer Rights were offered for sale, if any, and otherwise as required by this Section 8.4(a). If Developer fails to consummate the assignment that was the subject of the Assignment Notice within ninety (90) days after the rejection or deemed rejection by the Owner of the FM Parcel, but nonetheless thereafter desires to assign the Developer Rights to any Person (other than the Owner of the FM Parcel or MTP II), Developer shall be required to deliver a new Assignment Notice to the Owner of the FM Parcel and the Owner of the FM Parcel shall have the right to accept such Assignment Notice as contemplated above.

(b) Except as expressly set forth below in this Section 8.4(b), the mere sale, ground lease or other conveyance of Shopping Center Parcels by Developer shall not constitute an assignment to the purchaser(s), lessee(s) or transferees thereof of the Developer Rights unless (i) expressly stated otherwise in any such instrument of sale, ground lease or conveyance, and (ii) the conditions and requirements of this Section 8.4 shall have been satisfied. Notwithstanding the foregoing, if any such sale or other conveyance occurs, the consummation of which results in Developer no longer owning a Shopping Center Parcel upon which one or more Buildings are or may be developed, and if as part of such conveyance, Developer has not expressly assigned the Developer Rights and otherwise complied with the requirements of this Section 8.4, then the transferee in such conveyance shall be deemed to have been assigned, and to have assumed, the

Developer Rights (with respect to responsibilities and obligations arising after such deemed assignment and assumption), provided that (x) the assigning Developer shall remain jointly and severally liable for the performance of each and every Developer responsibility and obligation hereunder, and (y) the Owner of the FM Parcel shall have the right, exercisable within thirty (30) days after receipt of actual notice of any such conveyance and automatic assignment of the Developer Rights, to elect to replace the new Developer and to assume the Developer Rights arising after such assumption. The assigning Developer shall be released from the joint and several liability for performance of Developer responsibility and obligations contemplated in (x) above upon satisfaction of the conditions and requirements of this Section 8.4

(c) Upon full compliance with the foregoing conditions and requirements, the assignee shall have the same rights, powers, privileges and reservations and be subject to the same obligations and duties as are given to and apply to Developer pursuant to this Declaration, and the assigning Developer shall be relieved of all liabilities and obligations arising out of the Developer Rights accruing or arising from and after the date of such assignment. With respect to the Developer Rights which are hereafter exclusively assigned to (and assumed by) any Person by Developer hereunder pursuant to the terms of this Section 8.4, such assignee shall thereafter be deemed to be the Developer under this Declaration; and the Owners shall then look solely to such assignee in connection with the performance of any responsibilities and obligations of Developer. Any exercise of a Developer Right, whether by Developer or its assignee, shall be exercised based upon a standard of reasonableness and shall be made equitably and with due regard for the interests of all Owners.

VIII.5 Waiver of Minor Violations. Developer shall have the right to waive minor violations of the terms of this Declaration and to allow minor variances relative to the terms of this Declaration. If any such waiver or variance is granted in writing, then thereafter such matters "cured" by such waiver or variance shall no longer be deemed a violation of this Declaration. No waiver or variance granted pursuant to the authority herein contained shall constitute a waiver or variance relative to any provisions of this Declaration as applied to any other situation, Person, Owner or Shopping Center Parcel. No such waiver shall be effective if such shall be deemed a default under the CVS Lease, the RBC Centura Bank Lease, the Starbucks Lease, or the Fresh Market Lease.

VIII.6 Consents. Whenever Developer's or an Owner's consent or approval is required under or pursuant to this Declaration, such consent or approval must be in writing and, unless otherwise provided in this Declaration, the decision as to whether or not to grant such consent or approval shall be made based on a standard of reasonableness.

VIII.7 Covenants Run with the Land. The terms of this Declaration and all easements established by this Declaration shall constitute covenants running with, and shall be appurtenant to, the land affected. All terms of this Declaration and all easements established by this Declaration shall inure to the benefit of and be binding upon the parties which have an interest in the benefitted or burdened land and their respective successors and assigns in title. This Declaration is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby.

VIII.8 Singular and Plural. Whenever required by the context of this Declaration, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa.

VIII.9 Negation of Partnership. None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Owners in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Owner shall be considered a separate owner, and no Owner shall have the right to act as an agent for another Owner, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.

VIII.10 Not a Public Dedication. Nothing herein contained (including, without limitation, the attachment of the Site Plan and portions of the Site Plan as exhibits hereto) shall be deemed to be a gift or dedication of any portion of the Property or of any Shopping Center Parcel (or portion thereof) to the general public or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of the Owner of any Shopping Center Parcel shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

VIII.11 Excusable Delays. Whenever performance is required of the Owner of any Shopping Center Parcel hereunder, that Owner shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, if completion of performance shall be delayed at any time by reason of weather of unusual severity and/or duration; acts of God; war (declared or undeclared); civil commotion; riots, strikes, lockouts, picketing or other labor disputes; mob violence; sabotage; malicious mischief; failure of transportation; unavailability or shortage of labor, equipment or materials; fire or other casualty; condemnation or public requisition; governmental delays, restrictions or controls; or other causes beyond the reasonable control of the party responsible for such performance, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. Notwithstanding the foregoing, unless the party entitled to such extension shall give notice to the other interested party(s) of its claim to such extension within thirty (30) days after the event giving rise to such claim shall have occurred, there shall be excluded in computing the number of days by which the time for performance of the act in question shall be extended, the number of days which shall have elapsed between the occurrence of such event and the actual giving of such notice. Lack of adequate funds or financial inability to perform shall not be deemed a cause beyond a party's reasonable control for purposes of this Section 8.11.

VIII.12 Severability. Invalidation of any of the provisions contained in this Declaration or of the application thereof to any Person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other Person, and the same shall remain in full force and effect.

VIII.13 Amendments. This Declaration may be amended by, and only by, a written agreement which shall be deemed effective only when recorded in the public real estate records in Forsyth County, North Carolina, and executed by the Owner or Owners owning at that time, in the aggregate, fee simple title to at least sixty percent (60%) of the total acreage within the

boundaries of the Property, provided that the Owner of the FM Parcel must join in any amendment to this Declaration as a condition to such amendment's effectiveness and enforceability; upon execution of an amendment by the Owner of the FM Parcel, the acreage of the FM Parcel shall be included in the calculation of total acreage within the boundaries of the Property referenced above for purposes of determining whether the sixty percent (60%) ownership threshold has been reached. Nothing herein shall prohibit or restrict the Owners of any Shopping Center Parcels from entering into separate agreements which, as between such parties only, modify their respective rights and obligations under this Declaration. All amendments shall require consent of any first mortgagee of any Shopping Center Parcel.

VIII.14 Captions and Capitalized Terms. The captions preceding the text of each article and section herein are included for convenience of reference only. Captions shall be disregarded in the construction and interpretation of this Declaration. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Declaration.

VIII.15 Declaration Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this Declaration shall entitle any party to cancel, rescind, or otherwise terminate this Declaration. However, such limitation shall not affect in any manner any other rights or remedies which a party may have hereunder by reason of any such breach.

VIII.16 Time. Time is of the essence respecting this Declaration.

VIII.17 Non-Waiver. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

VIII.18 Governing Law. This Declaration shall be construed in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, the Developer and MTP II have caused this instrument to be executed as of the day and year first above written.

MOUNT TABOR PLACE, LLC,
a North Carolina limited liability company

By: _____(SEAL)
Rebecca L. Howard, Manager

By: _____(SEAL)
Kenneth A. Neal, Manager

By: _____(SEAL)
Eugenia L. Ivy, Manager

By: _____(SEAL)
Dennis W. McNames, Manager

MOUNT TABOR PLACE PHASE II, LLC,
a North Carolina limited liability company

By: _____(SEAL)
Rebecca L. Howard, Manager

By: _____(SEAL)
Kenneth A. Neal, Manager

By: _____(SEAL)
Eugenia L. Ivy, Manager

By: _____(SEAL)
Dennis W. McNames, Manager

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

I, _____, a Notary Public of the County of _____, State of North Carolina, do hereby certify that REBECCA L. HOWARD, Manager of MOUNT TABOR PLACE, LLC, a North Carolina limited liability company, and of MOUNT TABOR PLACE PHASE II, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for and on behalf of said limited liability companies.

WITNESS my hand and official stamp or seal, this _____ day of _____, 2013.

_____
Notary Public

My Commission Expires:
_____
[Notarial Stamp/Seal]

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STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

I, _____, a Notary Public of the County of _____, State of North Carolina, do hereby certify that KENNETH A. NEAL, Manager of MOUNT TABOR PLACE, LLC, a North Carolina limited liability company, and of MOUNT TABOR PLACE PHASE II, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for and on behalf of said limited liability companies.

WITNESS my hand and official stamp or seal, this _____ day of _____, 2013.

_____
Notary Public

My Commission Expires:
_____

[Notarial Stamp/Seal]

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

I, _____, a Notary Public of the County of _____, State of North Carolina, do hereby certify that EUGENIA L. IVY, Manager of MOUNT TABOR PLACE, LLC, a North Carolina limited liability company, and of MOUNT TABOR PLACE PHASE II, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for and on behalf of said limited liability companies.

WITNESS my hand and official stamp or seal, this _____ day of _____, 2013.

_____
Notary Public

My Commission Expires:
_____

[Notarial Stamp/Seal]

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STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

I, _____, a Notary Public of the County of _____, State of North Carolina, do hereby certify that DENNIS W. McNAMES, Manager of MOUNT TABOR PLACE, LLC, a North Carolina limited liability company, and of MOUNT TABOR PLACE PHASE II, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for and on behalf of said limited liability companies.

WITNESS my hand and official stamp or seal, this _____ day of _____, 2013.

_____
Notary Public

My Commission Expires:
_____

[Notarial Stamp/Seal]

CONSENT TO DECLARATION

U.S. BANK NATIONAL ASSOCIATION AS SUCCESSOR TRUSTEE TO BANK OF AMERICA, NATIONAL ASSOCIATION (SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION), AS TRUSTEE FOR THE HOLDERS OF MORGAN STANLEY CAPITAL I INC. (F/K/A MORGAN STANLEY DEAN WITTER CAPITAL I INC.), COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2003-TOP9 ("Lender"), owner and holder of indebtedness secured by:

1. that certain Deed of Trust, Security Agreement and Assignment of Rents (the "Deed of Trust") dated September 20, 2002 as recorded in Book 2286, page 4542, Forsyth County Registry; and

2. that certain Assignment of Lease and Rents (the "Assignment of Rents") dated September 20, 2002 as recorded in Book 2286, page 4580, Forsyth County Registry (the Deed of Trust and the Assignment of Rents, and any other document related thereto, collectively the "Loan Documents");

hereby consents to the foregoing Amended and Restated Declaration of Easements, Covenants, Conditions and Restrictions for Mount Tabor Place (the "Declaration") and agree that any subsequent foreclosure under the Loan Documents shall not extinguish the Declaration and that the Loan Documents and the liens created thereby, and Lender's and Trustee's interest in the property described therein by virtue of the Loan Documents are, and shall be, subject and subordinate to the Declaration, except and provided that the lien of assessments provided for the Declaration shall be subordinate to the liens of the Loan Documents as provided in the Declaration.

IN WITNESS WHEREOF, the undersigned have duly executed these presents under seal as of the _____ day of _____, 2013.

(Signature on next page)

LENDER:

U.S. BANK NATIONAL ASSOCIATION AS SUCCESSOR TRUSTEE TO BANK OF AMERICA, NATIONAL ASSOCIATION (SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION), AS TRUSTEE FOR THE HOLDERS OF MORGAN STANLEY CAPITAL I INC. (F/K/A MORGAN STANLEY DEAN WITTER CAPITAL I INC.), COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2003-TOP9

By: PRINCIPAL GLOBAL INVESTORS, LLC, a Delaware limited liability company, in its capacity as Primary Servicer, its authorized signatory

By _____
Name:
Title:

By _____
Name:
Title:

U.S. Bank National association as successor trustee to Bank of America, National Association (successor by merger to LaSalle Bank National Association), as Trustee for the Holders of Morgan Stanley Capital I Inc. (f.k.a. Morgan Stanley Dean Witter Capital I Inc.), Commercial Mortgage Pass-Through Certificates, Series 2003-TOP9

_____ County,_____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: _____
name(s) of principal(s)

Date: _____ _____
(official signature of Notary)
_____, Notary Public
(Notary's printed or typed name)

(Official Seal) My commission expires: _____

EXHIBIT A

SITE PLAN

(see attached pages)

EXHIBIT B

LEGAL DESCRIPTION OF PROPERTY

Being all of Lot 2, Lot 3 and Lot 4 shown on the plat entitled "Final Plat for Mount Tabor Place, LLC" which plat is recorded in Plat Book 45, Page 35 in the Office of the Register of Deeds of Forsyth County, North Carolina.

EXHIBIT C

ELEVATION OF SHOPPING CENTER PYLON SIGN

(see attached page)