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Robert J. Robinson
Brunswick County, NC Register of Deeds page 1 of 21

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DECLARATION OF EASEMENTS AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS AND RESTRICTIONS dated October 3, 2008, is executed by **OCEAN ISLE LANDING, LLC**, a Delaware limited liability company (“**Declarant**”).

RECITALS

A. Declarant is the owner of seven (7) contiguous parcels of land fronting on the west side of Ocean Isle Beach Road (N.C. Highway 1184), and on the north side of Beach Drive (N.C. Highway 179), near the Town of Ocean Isle Beach, in Brunswick County, North Carolina, containing an aggregate of approximately 17.7 acres (collectively, the “**Property**”). The Property is identified as “Lot 4” through “Lot 10,” inclusive, on that plat entitled “Final Plat of the Landing At Ocean Isle Beach Lots 1 to 10,” prepared by McKim & Creed, P.A., dated July 30, 2008 and recorded in Map Book 52 at Pages 79 through 81 in the Brunswick County Public Registry (the “**Plat**”).

B. A portion of the Property, shown as Lot 7 on the Plat, is referred to in this Declaration as the “**Shopping Center Parcel**,” and is being developed by Declarant as a retail shopping center anchored by a Lowe’s Foods supermarket.

C. The remaining portions of the Property, shown as Lots 4 through 6, and Lots 8 though 10, on the Plat, and any smaller parcels into which they may subsequently be subdivided, are collectively referred to in this Declaration as the “**Outparcels**.” The Outparcels are intended to be conveyed or ground leased by Declarant to third parties, for development consistent with the operation of a shopping center on the Shopping Center Parcel.

D. Each legally subdivided portion of the Property, including but not limited to the Shopping Center Parcel and each Outparcel, is referred to in this Declaration as a “**Parcel**.” Each owner of fee simple title to any Parcel is referred to in this Declaration as an “**Owner**.”

E. Declarant intends to develop the Shopping Center Parcel in substantial accordance with the site plan attached hereto as Exhibit A (the “**Site Plan**”). As shown on the Site Plan, the Parcels will share driveways providing direct access to the public streets adjoining the Property. Declarant desires to establish a permanent non-exclusive access easement over the portions of

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Drawn By and Return To:

Robinson, Bradshaw & Hinson, P.A.
Attention: Brent A. Torstrick
101 N. Tryon Street, Suite 1900
Charlotte, NC 28246

the Property that are hatched on the Site Plan (the “**Access Easement Area**”), and to establish cross-utility easements across the Parcels. Declarant also desires to establish uniform building restrictions, use restrictions, and maintenance requirements applicable to each Parcel, in order to ensure that the Parcels are developed in a uniform manner.

NOW, THEREFORE, in consideration of the covenants set forth in this Declaration and for the purposes set forth above, Declarant, for itself, and its successors and assigns, imposes and places the following restrictions and easements upon the Property, reserving unto itself and to future owners of Parcels within the Property certain rights and privileges, all as more particularly set forth in this Declaration:

1. **Prior Encumbrances.** The Property is encumbered by the easements and restrictions created by the following documents: (a) a Declaration of Easements and Restrictions between Crescent Resources, LLC (“**Crescent**”), John Sheffield and Wendy Sheffield, recorded in Book 2344 at Page 310 in the Brunswick County Public Registry (as amended from time to time, the “**Sheffield Declaration**”), and (b) a Declaration of Easements and Restrictions executed by Crescent, recorded in Book 2495 at Page 447 in the Brunswick County Public Registry (as amended from time to time, the “**Niblock Declaration**”). Each Owner shall comply independently, at its sole expense, with the covenants and restrictions in the Sheffield Declaration and the Niblock Declaration that are applicable to its Parcel.

In addition, a portion of the Property is encumbered by an overhead electric transmission line easement granted to Brunswick Electric Membership Corporation, recorded in Book 534 at Page 804 in the Brunswick County Public Registry (the “**Brunswick Electric Easement**”). Each Owner of a Parcel encumbered by the Brunswick Electric Easement shall be responsible, at its expense, for obtaining any necessary permits or approvals from Brunswick Electric Membership Corporation for any proposed improvements in the easement area on its Parcel.

2. **Use Restrictions.** No portion of the Property shall be used in violation of the following restrictions:

(a) No portion of the Property shall be used for industrial or manufacturing purposes.

(b) No portion of the Property shall be used for residential purposes, including without limitation, any nursing home, assisted living facility, hotel or motel, living quarters, sleeping apartments or lodging rooms; provided, however, that a hotel or motel shall be permitted on Outparcels 9 and 10.

(c) No portion of the Property shall be used as an auction house operation, a flea market, a tattoo parlor, an adult entertainment facility, an adult book store, a so-called “head shop,” or for the sale or display of pornographic materials or illicit drug paraphernalia.

(d) No portion of the Property shall be used as a junkyard or a trailer park, or for the sale of mobile homes, or for the outside overnight storage of motor vehicles, boats, or mobile homes.

(e) No portion of the Property shall be used for the operation of a carnival, billiard parlor, bingo parlor, off-track betting facility, discotheque or dance hall, or massage parlor.

(f) No portion of the Property shall be used for the operation of an amusement park or any other commercial amusement use including, but not limited to, skating rinks, bowling alleys, putt-putt golf, outdoor batting cages, go-cart tracks, archery or rifle ranges, playgrounds, or water slides; provided, however, that the foregoing restriction shall not be deemed to apply to amusement areas that are ancillary to a retail or restaurant use of a Parcel.

(g) No portion of the Property shall be used for the operation of a mortuary or a crematorium.

(h) No portion of the Property shall be used for any of the following uses: (1) a cocktail lounge, tavern or bar; provided, however, a bar in conjunction with a restaurant is allowed, (2) any dumping, disposing, incineration, or reduction of garbage (exclusive of dumpsters located in the rear or side designated locations of any building), (3) any automobile, truck, trailer, or R.V. sales, leasing, display, or repair; provided, however, an auto parts sales location is allowed, (4) any animal raising facilities, or (5) any church.

(i) During the term of the Lease dated as of January 17, 2008, between Crescent and Lowe's Food Stores, Inc. (the "**Supermarket Lease**"), covering a store building to be constructed on the Shopping Center Parcel (the "**Supermarket Premises**"), no portion of the Property outside of the Supermarket Premises shall be used in violation of any restrictions and/or exclusives contained in Section 7.4 of the Supermarket Lease (a verbatim copy of which is set forth in Exhibit B attached hereto). The foregoing restrictions and/or exclusives shall terminate automatically twenty-four (24) months after the termination of the Supermarket Lease; provided, however, that if the Supermarket Premises are leased to another food store or supermarket during that twenty-four (24) month period, the restrictions shall remain in full force and effect until such lease expires, subject to the same right to reinstate the restriction set forth above.

3. **Easement over Access Easement Area.** Subject to the terms of this Declaration, each Owner shall have a perpetual non-exclusive easement to use all of the roadways, sidewalks, entrances, exits and curb cuts within the Access Easement Area, for the purpose of providing pedestrian and vehicular access between each Parcel and the public streets bounding the Property. All paved areas within the Access Easement Area shall be constructed and maintained at a uniform grade, in accordance with the Site Plan, and no barriers, fences or other obstructions shall be erected within the Access Easement Area so as to interfere with the free flow of pedestrian and vehicular traffic; provided, however, that the foregoing provisions shall not prohibit the reasonable designation and relocation of traffic and pedestrian lanes, or the reasonable construction of landscape buffers that do not interfere with reasonably direct paved access from any Parcel to the public streets bounding the Property. In addition, each Owner of portions of the Access Easement Area may block traffic for the time necessary to prevent the creation of prescriptive easement rights, or as may be reasonably required for the purpose of repairing or replacing the roadway improvements within the Access Easement Area. If possible,



however, such action shall be taken on a day or at a time when the buildings on the Property would not otherwise be open for business, and in any event only after prior written notice to all other Owners.

4. **Easement over Common Access Facilities.** Subject to the terms of this Declaration, each Owner shall have a perpetual non-exclusive easement to use all of the paved roadways, entrances and exits and sidewalks ("**Common Facilities**") located from time to time on the Property outside of the Access Easement Area, including but not limited to any other access drives that may be located from time to time within the Property, for the purpose for which such Common Facilities are designed, without payment of any fee or other charge being made therefor. Each Owner shall have the right to relocate or remove any Common Facilities located on its Parcel from time to time.

Nothing in Paragraph 3 or this Paragraph 4 shall be deemed to grant to the Owner of any Parcel any rights to use the parking areas located on the Property outside of its Parcel for the parking of motor vehicles, or to grant to the owner of any property outside of the Property any rights to use the parking areas located on the Property for the parking of motor vehicles, nor shall it be deemed to grant to any party the right to park motor vehicles on any portion of the Property not striped with parking spaces, such as roadways, entrances and exits, fire lanes and parking aisles.

In addition, Declarant intends that the easements created by Paragraph 3 and this Paragraph 4 shall be solely for the benefit of the Owners of the Property, and thus, except for any easements previously created in the Sheffield Declaration and the Niblock Declaration, no Owner shall grant an access or parking easement over its Parcel for the benefit of any property located outside of the Property, and no Owner of an Outparcel shall connect the paved areas on its Outparcel to the paved areas on any property located outside of the Property, in each case without the express prior written consent of the Owner of the Shopping Center Parcel.

5. **Utility Easements.** In connection with the initial development of the Property, Declarant has installed water, sanitary sewer and storm drainage lines and related improvements that are designed and sized to serve all Outparcels; each Owner of an Outparcel shall make arrangements for other utility services with the applicable local utility providers. Each Owner shall have: (a) a perpetual non-exclusive easement to tap onto and use all of the common private utility systems located from time to time within the Property that are designed to serve its Parcel; (b) a perpetual non-exclusive easement over and across the remainder of the Property for the purpose of installation, maintenance, repair and use of private utility systems serving only its Parcel; provided, however, that the location of such private utility systems shall be subject to the reasonable prior approval of the Owner of each burdened Parcel, taking into account the overall development plan of the Property and the applicable requirements of the utility service providers the Town of Ocean Isle Beach and/or Brunswick County; and (c) a perpetual non-exclusive access easement over the portions of the Property adjacent to the as-built locations of all private utility systems that serve its Parcel, as may be reasonably necessary for such Owner to exercise the easement rights granted in this Paragraph 5. Once the location of any private utility system on the Property has been approved and the installation has been completed, the affected Owners shall execute and record a document confirming the location of any such easement created under the terms of this Paragraph 5.



Each Owner installing utilities pursuant to this Paragraph 5 (an “Installing Owner”) shall be responsible for the cost and expense of such installation, including without limitation, tap fees payable for its Parcel to the appropriate municipality or municipal agency. In addition, each Installing Owner shall indemnify, defend and hold harmless the Owner of the Parcel on which its off-site utilities are located, from and against any and all claims, damages, losses and expenses of any kind (including without limitation court costs and reasonable attorney’s fees) which may arise directly out of the exercise of easement rights under this Paragraph 5 by the Installing Owner. The Installing Owner shall promptly discharge (within thirty (30) days after receipt of notice of filing) any and all liens filed against any other Parcel as a result of or relating to any construction or maintenance undertaken by or on behalf of the Installing Owner under this Paragraph 5.

If, pursuant to the terms of this Paragraph 5, any Owner installs a private utility system that serves only its Parcel over, under or across the Parcel of another Owner, the Installing Owner shall: (a) relocate any such utility system at its expense if such relocation is required as a result of construction by the Owner of the Parcel across which the utility is installed; (b) maintain or cause to be maintained any such private utility system at its sole expense; (c) repair at its expense any damage to improvements or landscaping caused by such installation and maintenance; and (d) perform such installation and maintenance in a manner so as to minimize any disruption of business on the Parcel on which the private utility system is located, including a requirement that, to the extent practical, such work be performed only during the hours that the businesses on any affected Parcel are not open for business.

The easements granted in this Paragraph 5 are subject to the following reserved rights and conditions:

(a) Each Owner expressly reserves the right to pave and landscape the surface of the utility easement areas on its Parcel, and to use those areas for purposes that do not interfere with the use and enjoyment of the easement rights created hereby. The Owners shall not erect any buildings or other structures in the utility easement areas.

(b) Each Owner reserves the right to convey or dedicate all or any portion of the utility easements located on its Parcel to the Town of Ocean Isle Beach, Brunswick County or another appropriate municipal agency or public utility. Upon any such conveyance or dedication, the utility easements in favor of the Owners in this Declaration shall terminate automatically with respect to the portion of the private utility systems so conveyed or dedicated, but such utility easements shall remain in effect for the benefit of such municipal agency or public utility.

(c) Any Owner going onto another Parcel to make repairs shall give prior written notice to the Owner of the other Parcel of its entry (provided, however, that no notice shall be required in the event of an emergency). The repairing party shall use reasonable good faith efforts to minimize any disturbance of the owners or occupants of the other Parcel, and any interference with utility service. The repairing party shall repair promptly, at its own expense, any damage to the improvements and landscaping on other Parcel resulting from its right of entry under the terms of this Declaration, and shall restore such property to its original condition.



As used in this Paragraph 5, the term “**private utility systems**” shall mean underground electric, telephone, cable television, water and sanitary sewer lines; related above-ground appurtenances such as transformers, junction boxes, and meters; and underground storm drainage lines. As used in this Paragraph 5, the term “**common private utility system**” shall mean any private utility system that is designed to serve more than one Parcel.

6. **Drainage Easement.** Pursuant to Paragraph 3 of the Niblock Declaration, each Owner shall have a permanent non-exclusive easement over the Shopping Center Drainage Easement Area located on the Residential Parcel (as those terms are defined in the Niblock Declaration), for the purpose of draining surface water from its Parcel through underground storm drainage lines into the detention pond located within the Shopping Center Drainage Easement Area.

7. **Maintenance of Roadway Improvements.** The Owner of the Shopping Center Parcel shall construct and install at its expense the paved roadways, curbs and gutters, and related improvements (the “**Roadway Improvements**”) located within the Access Easement Area. Thereafter, the Owner of the Shopping Center Parcel shall maintain at its expense the Roadway Improvements subject to its right to receive reimbursement from the Owners of Outparcels for certain expenses, as provided in Paragraph 8. The maintenance obligation of the Owner of the Shopping Center Parcel under this Paragraph 7 shall include, but is not limited to, the following: (a) maintaining the pavement in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or an equal substitute; (b) removing all papers, ice and snow, mud and sand, debris, filth and refuse, and thoroughly sweeping the Roadway Improvements to the extent necessary to keep the Access Easement Area in a clean and orderly condition; and (c) placing, keeping in repair and replacing as necessary all traffic control signs, pavement markings and lines.

If the Owner of the Shopping Center Parcel fails to maintain the Roadway Improvements in good condition and repair as required above, and if such failure continues for thirty (30) days after such Owner has been given written notice of the failure (provided, however, that no notice shall be required in the event of an emergency), then any other Owner shall have the right to go on the Shopping Center Parcel to perform any necessary repairs or maintenance at the expense of the Owner of the Shopping Center Parcel in accordance with the procedures set forth in Paragraph 9.

Notwithstanding the foregoing provisions of this Paragraph 7, each Owner shall be solely responsible, at its expense, for any maintenance or repairs to the Roadway Improvements primarily necessitated by the negligence or wrongful intentional acts of such Owner, its tenants, or their respective agents, contractors or employees, and the Owner of the Shopping Center Parcel shall have the self-help rights specified in Paragraph 9 if any Owner fails to make the repairs required of it under this sentence.

8. **Sharing of Maintenance Costs.** The Owner of each Outparcel shall pay Two Thousand and No/100 Dollars (\$2,000.00) per annum to the Owner of the Shopping Center Parcel as its share of the cost of maintaining the Roadway Improvements. The initial payment shall be due within thirty (30) days after the Owner or its tenant commences the construction of building improvements on its Outparcel, and shall be prorated for a partial year. Each



subsequent payment shall be due on or before January 1 of each subsequent calendar year. The obligation of an Outparcel Owner to pay the annual contribution in this Paragraph 8 shall not be affected by any subsequent closing of the business being operated on such Outparcel, or by the removal of the building improvements located on that Outparcel.

On January 1, 2014 and on the first day of every fifth (5th) calendar year thereafter, the per-annum amount set forth above shall be increased by ten percent (10%). If any Owner (a **"Defaulting Owner"**) fails to pay its annual contribution under this Paragraph 8 within thirty (30) days after written demand by the Owner of the Shopping Center Parcel (the **"Maintaining Owner"**), the Maintaining Owner shall be entitled to file a mechanic's lien against the Outparcel of the Defaulting Owner in the amount of such invoice, together with interest thereon at the lesser of twelve percent (12%) per annum or the highest rate of interest permitted by law, from the date such invoice is paid by the Maintaining Owner until the Maintaining Owner is repaid by the Defaulting Owner, and recover that amount plus interest in an action at law, all in accordance with the applicable laws of the State of North Carolina. In addition, the Maintaining Owner shall have any other remedy available to it at law or in equity for such default.

9. **Maintenance Standards.** Until such time as buildings or other improvements are constructed on its Parcel, each Owner, at its own expense, shall install appropriate erosion control measures on its Parcel, including the seeding of any unpaved areas, shall keep the grass mowed to a height of six (6) inches or less, shall promptly remove all trash and debris, and generally shall maintain its Parcel in a safe, neat and clean condition at all times. This maintenance obligation shall specifically include the obligation to keep any paved areas in good condition and repair, and to reseed its Parcel when necessary.

After the development of each Parcel, the Owner shall maintain or cause to be maintained its Parcel in a safe, clean and attractive condition, and shall maintain and repair at its expense all improvements on its Parcel which need repair in order to keep the same in good condition and repair, in compliance with then current zoning laws, building codes and other governmental regulations, and in a condition substantially similar to that existing upon the initial completion of those improvements. This maintenance obligation shall include, without limitation, the following:

- (a) To keep and maintain the exterior of all buildings, and all sidewalks, roadways, walkways and paved parking surfaces (excluding the roadways and entrances within the Access Easement Area, the maintenance of which is governed by Paragraph 6), in a good, safe, clean and sightly condition at all times, and to remove promptly, to the extent reasonably practicable, snow, ice, surface water and debris.
- (b) To keep all directional signs, pavement signs and parking lot striping distinct and legible.
- (c) To repair, replace and renew exterior lighting fixtures and bulbs, tubes and ballasts therefor as may be necessary.
- (d) To care for and replant all landscaped and planted areas so as not to allow dead or unsightly plants to remain within its Parcel.



(e) To repair any damage or breakage to utilities located beneath the pavement on its Parcel and serving only its Parcel.

If the maintenance described above is to be undertaken by a ground lessee of any Parcel, the Owner of that Parcel shall notify the Owners of the other Parcels of the name and address of the ground lessee. If any Owner or ground lessee of an Outparcel fails to maintain or cause to be maintained its Outparcel in good order and condition in accordance with the standards set forth above, and such failure continues for a period of thirty (30) days after that Owner or ground lessee (the **"Responsible Owner"**) has been given written notice specifying the nature of the default (provided, however, that no notice shall be required in an emergency), then the Owner of the Shopping Center Parcel (the **"Maintaining Owner"**) shall have the right to go on the Outparcel of the Responsible Owner and perform the necessary repairs or maintenance at the expense of the Responsible Owner. In that event, the Maintaining Owner shall be deemed to have contracted with the Responsible Owner to perform that work, and shall be entitled to file a mechanic's lien against the interest of the Responsible Owner in its Outparcel for the reasonable cost of that work, together with interest thereon at the lesser of twelve percent (12%) per annum or the highest rate of interest permitted by law, and to recover that cost in an action at law against the Responsible Owner, all in accordance with the applicable laws of the State of North Carolina.

10. **General Standards.** Each Owner shall have the following obligations:

(a) To keep its Parcel clean, orderly, sanitary and free from objectionable odors and from termites, insects, vermin and other pests.

(b) To store all trash and garbage (including cardboard box recycling and grease recycling) in adequate containers within its Parcel, maintained in a clean and neat condition, properly screened as required in Paragraph 12, and to arrange for regular removal thereof at Owner's expense.

(c) Not to burn any papers, trash or garbage of any kind in or about the Property.

(d) To use reasonable efforts to minimize any cooking odors emanating from any restaurant on the Property (including the obligation to clean the food processing exhaust system hoods and exhaust ducts on a regular basis), and to refrain from disposing of any grease into the sanitary sewer lines that cross any other Parcel.

(e) Not to install in or about its Parcel any exterior amplification, exterior loudspeakers or similar devices (including a customer call system) that are audible outside the boundaries of its Parcel.

11. **Construction Standards.** Each Owner, throughout the entire period of construction on its Parcel, shall:

(a) Not permit mud, dirt, construction materials, trash or debris to accumulate or remain outside of the building site on its Parcel, or within the Access Easement Area.

(b) Install and maintain effective erosion control measures that meet or exceed code requirements, in order to prevent the runoff of sediment, dirt and debris from its Parcel.

(c) Cause trucks, construction equipment or machinery to park only within the boundaries of its Parcel, and cause construction vehicles and traffic to follow the routes that may be designated by the Owner of the Shopping Center Parcel for construction traffic.

(d) Repair any damage to, and promptly remove any trash or construction debris from, the public rights-of-way adjoining the Property, the Access Easement Areas, or other portions of the Property outside of its Parcel, caused by the activities of such Owner's contractors, subcontractors or agents.

12. **Building Restrictions.** No building located on the Property shall have a metal exterior. No structure of a temporary nature shall be allowed on the Property at any time, except that each Owner may place a construction trailer on its Parcel during the period of building construction. No telecommunications towers shall be allowed on the Property at any time. Any building constructed upon the Property shall conform to the minimum standards specified by the applicable governmental building codes in effect at the time of such construction, to any architectural restrictions imposed by the approved zoning plan for the Property, and to all other rules, regulations, requirements, ordinances and laws of any local, state or federal governmental unit(s) or authorities having jurisdiction thereof.

No more than one (1) building shall be constructed on any Outparcel, and any such building may be occupied by only one (1) business operation, unless otherwise approved in writing by the Owner of the Shopping Center Parcel (which approval may be granted or withheld in the sole and absolute discretion of such Owner).

In addition, any building constructed on any Outparcel must meet the following criteria:

(a) the height of any structure, including any screening, parapet, mechanical equipment or similar appurtenance erected on Outparcels 4, 5, or 6 may not exceed twenty-six (26) feet, measured perpendicular to the finished floor elevation of the Supermarket Premises;

(b) the height of any structure located on Outparcels 8, 9 or 10 may not exceed twenty-six (26) feet, measured perpendicular to the finished floor elevation of the Supermarket Premises; provided, however, that any non-structural decorative protrusion or appurtenance on such a building, such as a cupola, parapet or false façade (an "**Architectural Feature**"), may extend up to thirty (30) feet in height, so long as the width of such Architectural Feature does not exceed thirty-five percent (35%) of the width of the building along the elevation (front, back or side) of the building that contains such Architectural Feature, and provided further that a hotel or motel of up to four (4) stories in height may be constructed on Outparcels 9 or 10, without reference to the foregoing height limitation; and



(c) the Gross Building Area of any building erected on any Outparcel shall not exceed the maximum square footage for such Outparcel set forth on the Site Plan. The term "**Gross Building Area**," as used in this Declaration, shall mean the total ground floor area of a building measured from the exterior faces of outside walls.

Also, it is the intent of Declarant that the improvements located on each Outparcel blend harmoniously and attractively with the improvements on the Shopping Center Parcel. In particular, it is the intent of Declarant that the buildings on each Outparcel use the same primary exterior building materials (i.e., brick, masonry and pre-cast concrete) and roofing materials, and be of the same general architectural design, as the buildings to be constructed on the Shopping Center Parcel. Accordingly, no improvements shall be constructed on any Outparcel until the following items have been approved in writing by the Owner of the Shopping Center Parcel, which approval shall not be unreasonably withheld or delayed:

(d) A site plan showing the location and dimensions of the building(s), landscaped areas, paved areas (roadway, sidewalks and parking), monument signs and other improvements to be constructed or installed on the Outparcel.

(e) A landscape plan identifying all species of trees and plants to be planted on the Outparcel, with sizes specified.

(f) An exterior lighting plan (including site photometrics).

(g) A sign drawing for any free-standing sign to be constructed or installed on the Outparcel.

(h) Plans showing the exterior elevations of all sides of the building(s) and building-mounted sign(s) to be constructed or installed on the Outparcel, and specifications describing the principal building and roofing materials and colors to be used on the exterior of the proposed building(s) (which exterior finishes shall be the same as those used on the Shopping Center Parcel).

The approval requirements of this Paragraph 12 also shall apply to any renovations, additions, alterations or replacements of the improvements located on any Outparcel that affect the landscaping, lighting, paved areas, sidewalks or free-standing signs (other than replacement of identification panels) on that Outparcel, or the exterior appearance of the building improvements (specifically including any building-mounted signs) on that Outparcel.

13. **Screening and Related Requirements.** All storage tanks, trash containers and maintenance facilities located on any Parcel shall either be housed in closed buildings or otherwise screened from public view in a manner architecturally compatible with the buildings located on that Parcel. All loading docks and associated areas shall have adequate space on each Parcel so that loading and unloading of trucks and service vehicles will not be carried out within the Access Easement Areas. Any trash container or recycling bin on an Outparcel shall be located within a brick enclosure at least seven feet (7') in height, with a screened fence gate that shall be kept closed except when its contents are being placed in, or removed from, the container or bin. The design of the trash enclosure shall be subject to the approval of the Owner of the Shopping Center Parcel, as provided in Paragraph 12, but must, at a minimum, utilize the same

brick used in the buildings on the Shopping Center Parcel, and incorporate black plastic strips in the screened fence gate.

14. **Site Improvement Restrictions.** Site improvements (as distinguished from building improvements) constructed on any Parcel shall comply with the following requirements and restrictions:

(a) All curbs and gutters shall be poured in place or standard-sized concrete type curbs; no bumper blocks, pre-cast, extruded or asphaltic curbs shall be utilized.

(b) There shall be constructed on the Shopping Center Parcel, prior to opening for business or commencing any other use thereon, and maintained thereon at all times, the greater of: (1) the number of parking spaces required by Section 5.1 of the Supermarket Lease, as it may be amended from time to time; or (2) the number of parking spaces required for the actual use of the Shopping Center Parcel under applicable zoning ordinances.

(c) There shall be constructed on each Outparcel, prior to opening for business or commencing any other use thereon, and maintained thereon at all times, the greater of: (1) four and one-half (4.5) full size parking spaces for each 1,000 square feet of the Gross Building Area of the buildings on that Outparcel devoted to retail purposes; (2) ten (10) full size parking spaces for each 1,000 square feet of the Gross Building Area of the buildings on that Outparcel devoted to restaurant purposes; or (3) the number of parking spaces required for the actual use of that Outparcel under applicable zoning ordinances. The parking spaces shall have a minimum width of nine feet (9').

(d) All utility lines and equipment shall be entirely underground, except as indicated on the Site Plan.

(e) No on-site septic system or sanitary sewer treatment facility will be permitted on any Parcel.

(f) Pavement markings, directional signs, and other traffic indicators upon each Parcel shall be in accordance with the *Manual on Uniform Traffic Control Devices*, and shall provide for a reasonable traffic flow scheme consistent with that shown on the Site Plan.

(g) All buffer strips and other undeveloped land areas shall be landscaped with trees, shrubs, or suitable ground cover (which includes grass) in a uniform manner.

15. **Sign Restrictions.** No signs shall be erected or installed on the Property which violate the following prohibitions:

(a) No sign shall be painted on the exterior surface of any building.

(b) No rooftop signs of any type shall be permitted. In addition, no building-mounted sign or any portion thereof may project above the parapet wall or top of the exterior wall or building facade upon which it is mounted.

(c) All sign cabinets, conductors, transformers, ballasts, attachment devices, wiring and other equipment shall be concealed.

(d) No sign shall be permitted which violates the sign control ordinances or other statutes of the Town of Ocean Isle Beach and/or Brunswick County.

(e) No free-standing sign may be erected on any Outparcel, except that, as permitted by the sign control ordinances or other statutes of the Town of Ocean Isle Beach and/or Brunswick County, and subject to the plan approval requirements of Paragraph 12, the Owner of each Outparcel may install and maintain one (1) permanently affixed free-standing monument sign structure on its Outparcel, so long as such sign does not obstruct the visibility of the free-standing signs located on the Shopping Center Parcel identifying the shopping center or tenants thereof. No such free-standing monument sign on an Outparcel shall exceed six feet (6') in height without the prior written approval of the Owner of the Shopping Center Parcel (which approval may be granted or withheld in the sole and absolute discretion of such Owner).

16. **Casualty Loss.** If any building or other improvement located on any Parcel is damaged or destroyed by fire or other casualty, then the Owner of that Parcel shall have the option to rebuild or not to rebuild. If that Owner elects not to repair or restore the damage, it shall, within ninety (90) days after the date of the damage or destruction, demolish the destroyed or damaged building or improvement, clean up any and all rubbish and debris, level the area, landscape and grade or pave the area, and thereafter maintain its Parcel in a good, clean, safe and presentable condition.

17. **Liability Insurance.** Each Owner at all times shall maintain a policy of commercial general liability insurance (current ISO Form or its equivalent) with a combined single limit of at least \$3,000,000.00 per occurrence and a general aggregate limit of at least \$3,000,000.00, covering its Parcel. The Owner of the Shopping Center Parcel shall have the right, by delivery of written notice to the other Owners, to increase these minimum liability insurance limits from time to time to levels maintained by prudent owners of similar commercial properties in the area of the Property. All liability insurance policies required under this Paragraph 17 shall name each other Owner of any Parcel as an additional insured, and shall be carried with a reputable insurance company licensed to do business in the State of North Carolina on an admitted basis. Any Owner may satisfy its liability insurance coverage with a so-called blanket policy of insurance covering other locations, as long as the coverage limits set forth in this Paragraph 18 are satisfied as to its Parcel. Each Owner shall deliver to each other Owner, within thirty (30) days after written request therefor, a certificate of insurance evidencing that the policies of insurance required to be maintained by it under this Paragraph 17 are in full force and effect.

Any Owner may elect to self-insure all or any portion of the risks required to be insured under this Paragraph 17 so long as: (a) such Owner has a tangible net worth, determined in accordance with generally accepted accounting principles, consistently applied, in excess of Two Hundred Fifty Million and No/100 Dollars (\$250,000,000.00), as determinable from such Owner's public disclosures and/or regularly maintained corporate balance sheets which are generally available to shareholders (no right of audit or conduct independent investigations being

implied by this provision), or if such Owner is not a public company, as determinable from a current audited financial statement evidencing its compliance with the net worth requirement; and (b) such Owner delivers to each other Owner, within thirty (30) days after written request therefor, a written notice of self-insurance, specifying the risks it has elected to self-insure, accompanied, if such Owner is not a public company, by a current audited financial statement evidencing its compliance with the net worth requirement set forth above.

18. **Indemnity.** Each Owner shall indemnify, defend and hold harmless each other Owner against all loss, liability, expense and damage, including reasonable attorneys' fees and other litigation costs, arising from death, bodily injury or property damage that occurs on the Parcel of the indemnifying Owner; provided, however, that this indemnification shall not extend to any claims caused in whole or in part by any act or omission of the Owner being indemnified or its employees, agents, representatives, tenants, occupants, contractors, customers and invitees.

19. **Successor to Declarant.** If approval of Declarant is required under the terms of this Declaration and Declarant no longer owns any interest in the Shopping Center Parcel, the right of approval shall be exercised by the owner of fee simple title to the largest portion of the Shopping Center Parcel. Notwithstanding the foregoing, Declarant expressly retains the right to assign any retained rights under the terms of this Declaration by recording in a written instrument in the Office of the Register of Deeds of Brunswick County.

20. **Amendment to Declaration.** This Declaration may be amended only by a written agreement executed by: (a) Declarant, so long as it owns fee simple title to any portion of the Property, (b) all Owners of fee simple title to the Shopping Center Parcel; and (c) Lowe's Food Stores, Inc., or its successor or assign, so long as it leases any portion of the Shopping Center Parcel. Any such amendment shall be effective when properly recorded in the Office of the Register of Deeds of Brunswick County. Notwithstanding the foregoing, no such amendment shall impose any materially greater obligation or restriction on an Outparcel, or materially impair any right or easement appurtenant to an Outparcel, without the prior written consent of the Owner of that Outparcel.

21. **Joinder by Lender.** The Property is currently encumbered by the lien of a deed of trust (the "**Declarant Deed of Trust**") dated July 16, 2008, executed and delivered by Declarant to Southland Associates, Inc., as Trustee for SunTrust Bank, a Georgia banking corporation ("**Declarant Lender**"), and recorded in Book 2818 at Page 1040 in the Brunswick County Public Registry. Declarant Lender joins in the execution of this Agreement for the sole purpose of subordinating the lien and operation of the Declarant Deed of Trust to the easements created by this Agreement.

22. **Binding Effect.** The conditions, restrictions and easements contained in this Declaration are covenants running with the land; they are made by Declarant for the benefit of itself, its successors and assigns in title to all or part of the Property, each tenant now or hereafter leasing any part of the Property, and each lender making a loan secured by a mortgage on all or any part of the Property. This Declaration and the rights granted and created hereby, including, but not limited to, the easements created hereunder, shall be superior to all leases, conveyances, transfers, assignments, contracts, mortgages, deeds of trust and other encumbrances and documents affecting all or any part of the Property that is recorded in the Brunswick County



Public Registry after the recording of this Declaration. Any person or entity foreclosing any such mortgage, deed of trust, lien or encumbrance and any persons or entities acquiring title to, or an interest in, any part of the Property as a result thereof shall acquire and hold title expressly subject to the provisions of this Declaration.

23. **Remedies for Breach.** The terms and conditions of this Declaration shall be enforceable by any Owner, by actions for specific performance or injunction, or for the enforcement of any liens provided for in this Declaration, in addition to any other remedies available at law. No breach of the provisions of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but the foregoing limitations shall not effect any other rights or remedies which such Owner may have under this Declaration for such breach.

24. **Waivers.** No delay or omission by any Owner in exercising any right or power accruing upon any default, non-compliance or failure of performance of any of the provisions of this Declaration by any other Owner shall be construed to be a waiver thereof. A waiver by any Owner of any obligation of any other Owner shall not be construed to be a waiver of any subsequent breach of such obligation, or a waiver of any breach of any other terms, covenants or conditions of this Declaration.

25. **Attorneys' Fees.** If any action, suit, arbitration or other proceeding is instituted to remedy, prevent or obtain relief from any default in the performance by any Owner (or ground lessee) of its obligations under this Declaration, the prevailing party shall be reimbursed by the other party for all of its costs and expenses, including without limitation reasonable attorneys' fees, incurred in each such action, suit, arbitration or other proceeding. As used in this Declaration, the term "reasonable attorneys' fees" shall be deemed to mean the actual costs of any legal services actually performed in connection with the matters involved, calculated on the basis of the usual fee charged by such attorneys, as opposed to any statutory presumption that may then be in effect in the State of North Carolina.

26. **Private Agreement.** This Declaration shall not be construed to grant any rights to the public in general.

27. **No Partnership.** The provisions of this Declaration are not intended to create, and shall not be interpreted to create, a joint venture, a partnership or any similar relationship between the Owners.

28. **Exculpation.** Notwithstanding any provision to the contrary contained in this Declaration, it is specifically understood and agreed that there shall be absolutely no personal liability on the part of any Owner, its shareholders, officers, directors, members, managers, or partners, with respect to the performance or non-performance of any of its obligations under this Declaration. Each Owner shall look solely to the Parcel owned by any defaulting Owner, the Improvements located thereon and any insurance or condemnation proceeds related thereto, for the satisfaction of any remedy of the non-defaulting Owner resulting from the breach of any of the obligations or covenants of this Declaration by the defaulting Owner; provided, however, that this provision shall be not deemed to affect the right of any Owner to seek injunctive relief or to bring suit for specific performance. If any Owner conveys its fee simple interest in its Parcel,

that Owner shall be relieved from all obligations under this Declaration accruing after the date of the conveyance

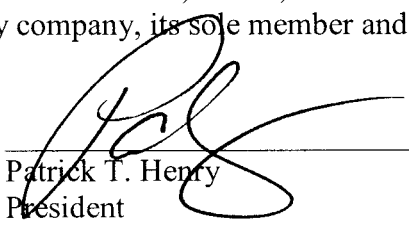
29. **Severability**. Invalidation of any covenant or restriction contained in this Declaration by judgment or court order shall not affect any other provisions of this Declaration all of which shall remain in full force and effect.

30. **Governing Law**. This Declaration has been entered into under, and shall be construed in accordance with, the laws of the State of North Carolina.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

OCEAN ISLE LANDING, LLC, a Delaware limited liability company

By: Crescent Resources, LLC, a Georgia limited liability company, its sole member and manager

By: 
Name: Patrick T. Henry
Title: President

[NOTARIZATION ON FOLLOWING PAGE]



STATE OF Georgia

COUNTY OF Dekalb

I, Kathleen Quinn, a Notary Public of Dekalb County, Georgia, do hereby certify that Patrick T. Henry ("Signatory"), personally came before me this day and acknowledged that he/she is a President of CRESCENT RESOURCES, LLC, a Georgia limited liability company, acting in its capacity as the sole member and manager of OCEAN ISLE LANDING, LLC, a Delaware limited liability company, and that he/she, as a President, being authorized to do so, executed the foregoing instrument on behalf of the limited liability company, acting in its capacity as sole member and manager of the limited liability company.

I certify that the Signatory personally appeared before me this day, and

(check one of the following)

X (I have personal knowledge of the identity of the Signatory); or

_____ (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:

(check one of the following)

_____ a driver's license or

_____ in the form of _____); or

_____ (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he voluntarily signed the foregoing instrument for the purpose stated in the capacity indicated.

Witness my hand and official stamp or seal this 1 day of October, 2008.

Notary Public

Kathleen Quinn

Notary's printed or typed name

My Commission Expires: Sept 7, 2012

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)





JOINDER AND SUBORDINATION OF LENDER

SunTrust Bank, a Georgia banking corporation ("**Lender**"), the current holder of that certain Deed of Trust dated as of July 16, 2008, granted by Ocean Isle Landing, LLC, a Delaware limited liability company ("**Borrower**") to the trustee named therein for the benefit of Lender, recorded in the Brunswick County Public Registry (the "**Registry**") in Book 2818, at Page 1040, (the "**Deed of Trust**"), does hereby join in and consent to the execution by Borrower of that certain Declaration of Easements and Restrictions dated as of October 3, 2008 (the "**Declaration**"), to which this Joinder and Subordination of Lender is attached, and does hereby agree that the foreclosure of a Deed of Trust or the acquisition of title by deed in lieu of foreclosure or trustee's sale shall be subject and subordinate to the terms and provisions of the Declaration and shall not affect or eliminate the Declaration.

The relationship between Lender and Borrower is that of lender and borrower only, and none of the parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party. The consent and subordination granted herein is expressly limited to the matters described herein and shall not be deemed a consent to or a waiver of any other provisions of the Deed of Trust.

This 3RD day of October, 2008.

SUNTRUST BANK, a Georgia banking corporation

By:

Zeta M. Pittman
Name: Zeta M. Pittman
Title: Vice President

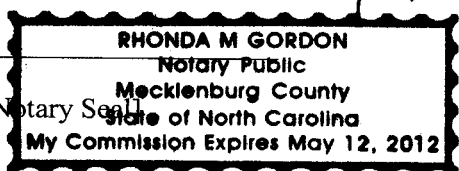
STATE OF North Carolina

COUNTY OF Mecklenburg

I, Rhonda M. Gordon, a Notary Public of the County and State aforesaid, certify that Zeta M. Pittman personally came before me this day and acknowledged that he is Vice President of SUNTRUST BANK, a Georgia banking corporation, and that he, as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation. And the said Vice President acknowledged the said writing to be the act and deed of said corporation.

Witness my hand and official stamp or seal, this the 30th day of September, 2008.

My Commission Expires: May 12, 2012



Rhonda M. Gordon
Notary Public

Rhonda M. Gordon
Notary's printed or typed name

EXHIBIT A

SITE PLAN

[to be attached]

DATE: 10/03/08	SCALE: 1" = 40'	PREPARED BY: RJB	DESIGNED BY: RJB	CHECKED BY: RJB	DATE: 10/03/08
Preliminary Design					
The Landing at Ocean Isle Beach Brunswick County, North Carolina					
EXHIBIT A					
MCKIM & CREED 243 North Front Street Wilmington, North Carolina 28401 (910) 341-4041, Fax (910) 341-4042 www.mckimandcreed.com					

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.

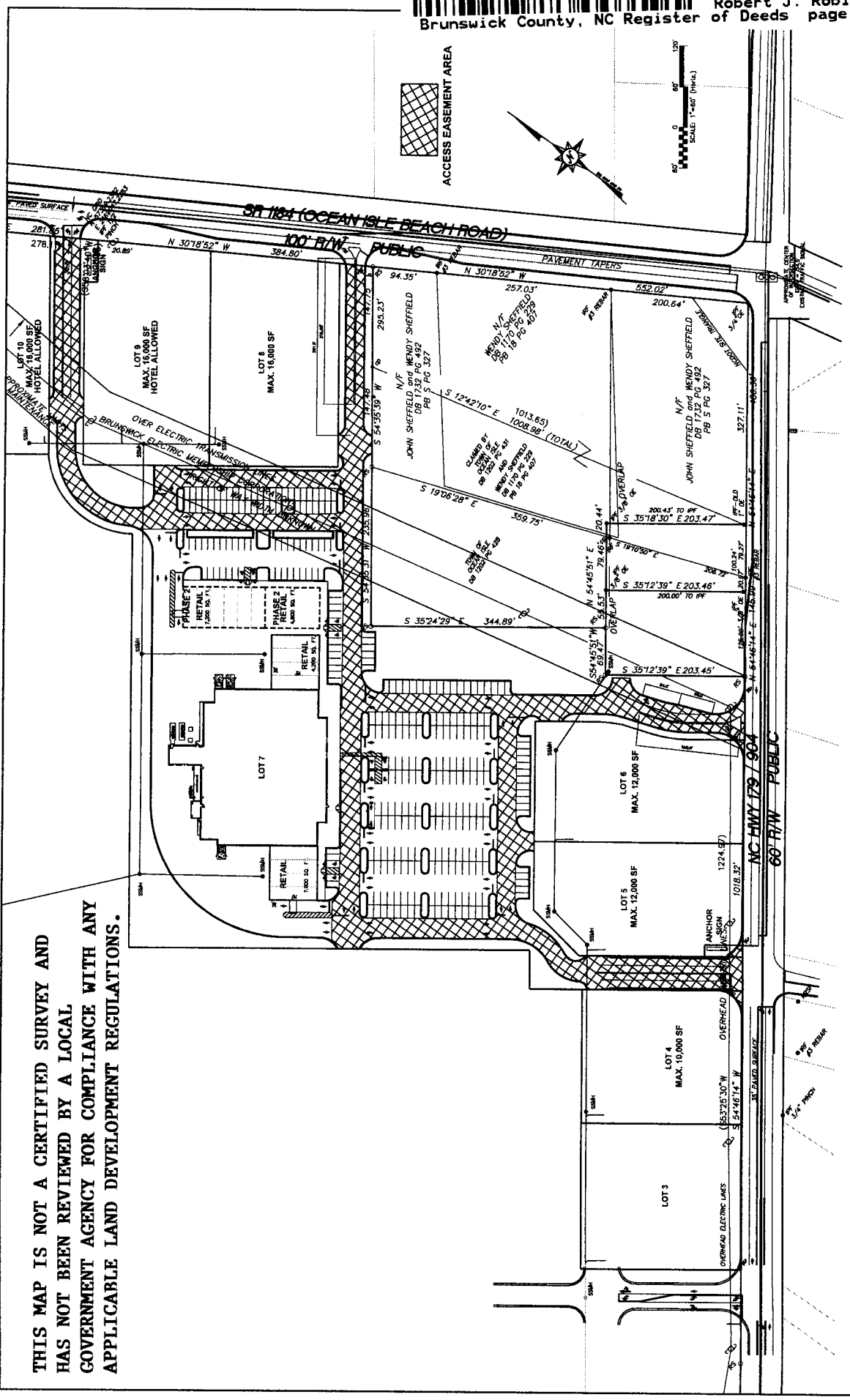




EXHIBIT B

RESTRICTIVE COVENANTS IN SUPERMARKET LEASE

The following restrictive covenants are set forth in Section 7.4 of the Lease Agreement dated as of January 17, 2008 between Crescent Resources, LLC ("**Landlord**") and Lowe's Food Stores, Inc. ("**Tenant**"). References below to the "Center" shall be deemed references to the Shopping Center Parcel, references below to the "Outparcels" shall be deemed references to the Outparcels, references below to the "Additional Land" shall be deemed references to the other properties encumbered by the Sheffield Declaration and the Niblock Declaration, and references below to the "Real Property" shall be deemed references to the Property, as all of the foregoing terms are defined in the Declaration to which this exhibit is attached.

7.4 Use Restrictions on the Center. The Real Property shall be used for the sole purpose of promoting and operating a shopping center, and there shall be no buildings erected on the Real Property except those shown on Exhibit "A" attached hereto).

7.4.1 Use Prohibition. Landlord, as to the Center and the Outparcels, and Tenant, as to the Demised Premises, shall not lease or use space in the Center, the Outparcels or the Demised Premises, as the case may be, for the following uses: (a) professional offices comprising more than ten percent (10%) of the Center, as the case may be; provided, however, that professional office spaces shall be allowed on the Outparcels, (b) a movie theater, (c) a cocktail lounge, tavern or bar; provided, however, a bar in conjunction with a restaurant is allowed, (d) a health club or spa with leased space of more than five thousand (5,000) square feet, (e) a night club or discotheque, (f) 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), (g) any dumping, disposing, incineration or reduction of garbage (exclusive of dumpsters located in the rear or side designated locations of any building), (h) an auction house operation or flea market, (i) any automobile, truck, trailer, or R.V. sales, leasing, display or repair; provided, however, an auto parts sales location is allowed, (j) any skating rink, bowling alley, bingo parlor or other place whose primary business is recreation or amusement, (k) any living quarters, sleeping apartments, hotels, motels or lodging rooms (except that a hotel or motel shall be permitted on Outparcels 9 or 10 as provided in Paragraph 3.10), (l) any animal-raising facilities or pet shop (except that this prohibition shall not prohibit pet shops which are not adjacent to the Demised Premises), (m) a mortuary or funeral parlor, (n) any establishment renting, selling or exhibiting pornographic materials, (o) school or training facilities; provided, however, children's play centers and day care centers are allowed, (p) a manufacturing or warehouse facility, (q) a nursing home, or (r) any church. However, if Tenant or a subtenant or assignee of Tenant fails to conduct business in the Demised Premises for the sale of groceries, produce, dairy products, meats, bakery products or any of them for off-premises consumption, Landlord may operate a movie theater in the Center, except when such failure is caused by renovations, strikes, labor disputes, casualty or conditions beyond the control of Tenant or its subtenant or assignee. Landlord



and Tenant agree that the restrictions in this Paragraph 7.4.1 shall not be applicable to the Additional Land.

7.4.2 Tenant Exclusive. Landlord covenants and agrees not to lease, rent, occupy, or suffer or permit to be occupied, any part of the Center (other than the Demised Premises), the Outparcels or the Additional Land for the purpose of conducting therein or for use as a food store or a food department, or for the sale for off-premises consumption of groceries, produce, dairy products, meats, wine or bakery products, or any of the foregoing ("Grocery Items"); provided, however, that nothing contained herein shall prevent any tenant in the Center, or any tenant or occupant of any portion of the Outparcels or the Additional Land, from selling Grocery Items as an incidental part of its principal business so long as (a) the total number of square feet devoted by such tenant or occupant to the display for sale of Grocery Items does not exceed five percent (5%) of the total number of square feet of building area leased or occupied by such party or 500 square feet (including, in either such case, one-half (1/2) of the aisle space adjacent to any display area), whichever is smaller; provided, however, that (i) the operator of a convenience store on any portion of the Outparcels or the Additional Land shall be permitted to have up to 2,100 square feet devoted to Grocery Items, without regard to the five percent (5%) limit; and (ii) the operator of a drug store on any portion of the Outparcels or the Additional Land (so long as such drug store is operated as the same and its primary business is selling prescription drugs) shall be permitted to have up to 4,500 square feet devoted to Grocery Items, without regard to the five percent (5%) limit; or (b) the tenant or occupant is primarily a restaurant selling freshly-prepared food for contemporaneous consumption on or off the tenant's/occupant's premises, including, but not limited to, such stores as a pizza store, ice cream store, "Subway" type sandwich store, and a "Dunkin Donuts" type donut store. Notwithstanding the foregoing, fresh meat and produce shall not be considered Grocery Items for purposes of subparagraph (a) or (b), and their sale by any tenant in the Center (other than Tenant or any subtenant or assignee of Tenant), or any tenant or occupant of any portion of the Outparcels or the Additional Land, shall be strictly prohibited. This covenant shall cease to be in force and effect if Tenant, or a subtenant or assignee of Tenant, fails to conduct a business in the Demised Premises for the sale of groceries, produce, dairy products, meats, bakery products, or any of them, for off-premises consumption for a period of one hundred eighty (180) days or longer, except when such failure is caused by renovations, strikes, labor disputes, casualty, or conditions beyond the control of Tenant or its subtenant or assignee. Landlord agrees not to engage in destructive competition.