

RECIPROCAL EASEMENT AGREEMENT AND DECLARATION OF RESTRICTIONS

**NO TRANSFER
REQUIRED**

**JANET ESPOSITO
AUDITOR**

MAR 23 2012

C.P.

BONNIE M. HOWE
PORTAGE CO. RECORDER

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**RECIPROCAL EASEMENT AGREEMENT AND DECLARATION OF
RESTRICTIONS**

This Reciprocal Easement Agreement [and Declaration of Restrictions] ("Agreement") is made as of the 20 day of March, 2012, by and between **TNP SRT AURORA COMMONS, LLC**, a Delaware limited liability company ("TNP") and **AURORA COMMONS PHASE TWO, LLC**, an Ohio limited liability company ("ACPT"), with reference to the following facts and is as follows:

RECITALS:

A. TNP is the owner of that certain partially developed real property located in Portage County, Ohio, commonly known as "Aurora Commons" and more particularly described on **Exhibit "A"** attached hereto and by this reference incorporated herein, which, together with (a) the Improvements (as such term is hereinafter defined) now or hereafter located thereon in accordance with the terms and conditions set forth herein; and (b) all easements, rights and appurtenances belonging thereto, including, without limitation, those created hereunder, is referred to herein as the "Shopping Center".

B. ACPT is the owner of presently vacant real property located in Portage County, Ohio and more particularly described on **Exhibit "B"** attached hereto and by this reference incorporated herein, which, together with (a) the Improvements (as such term is hereinafter defined) now or hereafter located thereon in accordance with the terms and conditions set forth herein; and (b) all easements, rights and appurtenances belonging thereto, including, without limitation, those created hereunder, is referred to herein as the "Vacant Land".

C. TNP and ACPT desire that the Shopping Center and the Vacant Land (herein collectively called the "Property") be used and developed in accordance with this Agreement for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and towards the end of creating a cooperative, viable and unified commerce center.

D. In addition, TNP and ACPT desire to create reciprocal access easements within the Property and to provide for the common use, operation, maintenance, repair and replacement of the Easement Areas (as such term is hereinafter defined) and to provide for the sharing of expenses with respect thereto, all as more particularly set forth herein: Capitalized terms shall have the meanings attributed to them herein, regardless of where such meanings occur in the document.

A G R E E M E N T:

NOW, THEREFORE, TNP and ACPT hereby agree that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, developed

and improved, subject to the following covenants, restrictions, easements and other provisions hereof. Except as otherwise set forth in this Declaration, all of the covenants, restrictions, easements and other provisions hereof shall be deemed covenants running with the land and shall constitute benefits and burdens, as applicable, to each of the TNP and ACPT and their respective successors and assigns, and to all parties having or acquiring any right, title or interest in or to any part of the Property, however such interest may be obtained.

ARTICLE I DEFINITIONS

1.1 “**ACPT Budget**” shall have the meaning attributed to such term in Section 4.3 below.

1.2 “**ACPT Easement Area Maintenance Costs**” shall have the meaning set forth in Section 4.3 hereof.

1.3 “**ACPT Lot**” means a Lot which forms part of the Vacant Land.

1.4 “**Agreement**” means this Reciprocal Easement Agreement [and Declaration of Restrictions] and any and all subsequent amendments hereto.

1.5 “**Annual Assessments**” shall have the meaning attributed to such term in Section 6.3 below.

1.6 “**Applicable Laws**” shall mean all applicable laws, rules, regulations, orders and ordinances of the city, county, state and federal government, or any department or agency thereof.

1.7 “**Assessments**” means, collectively, the Annual Assessments, any Special Assessments and any Violation Assessments against a particular Owner.

1.8 “**Building**” means a building constructed or to be constructed on the Property in accordance with the terms of this Agreement.

1.9 “**Defaulting Owner**” shall have the meaning ascribed to such term in Section 7.1.1 below.

1.10 “**Default Rate**” shall have the meaning attributed to such term in Section 6.7 below.

1.11 “**Easement Area**” means either the Shopping Center Easement Area or Vacant Land Easement Area, or both, as applicable.

1.12 "Easement Area Maintenance Obligations" shall have the meaning set forth in Section 4.1 hereof.

1.13 "Environmental Laws" means all present and future federal, state, or local statutes, ordinances, regulations, rules, guidelines, decisions or orders governing the generation, storage, release, discharge, transportation, removal, remediation, reduction or disposal of hazardous or toxic materials, including, without limitation, the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901, et seq., the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. §9601, et seq., as amended, the Toxic Substance Control Act (TSCA), 15 U.S.C. §2601, et seq., the Emergency Planning and Community Right to Know Act of 1986 (EPCRTKA), 42 U.S.C. §11001, et seq., the Clean Water Act, 33 U.S.C. §1251, et seq., the Clean Air Act, 42 U.S.C. §7401, et seq., the Pollution Prevention Act of 1990, 42 U.S.C. §13101, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq., and the applicable provisions of the Ohio Revised Code and local ordinances pertaining to solid waste management, and any state super lien or environmental clean up statutes or any similar federal, state or local laws regulating environmental pollutants or underground storage tanks, and any and all amendments, supplements, modifications and replacements thereof.

1.14 "First Mortgage Deed" means a Mortgage Deed having priority over all other Mortgage Deeds encumbering the same portion of the Property.

1.15 "Floor Area" means the actual number of square feet of space contained any floor of a Building located on the Property, as measured from the exterior faces of the exterior walls or store front and/or the center line of any common walls; provided, however, that the following areas shall not be included in such calculations: space attributable to any multi deck, platform or structural levels used for the storage of merchandise which is located vertically above the ground floor; any space used for Building utilities or mechanical equipment; truck ramps, loading and delivery areas and trash compactor facilities located outside a Building though attached to it. Within thirty (30) days after a written request, any Owner shall certify to any requesting Owner the amount of Floor Area applicable to each Building on its Lot. During any period of construction, the Floor Area of the applicable Building or Buildings shall be deemed to be the same as existed immediately prior to that period. Upon completion of such construction, however, an Owner upon whose Lot such construction took place shall cause a new determination of Floor Area for such Building to be made in the manner described above, and such determination shall be sent to the TNP and ACPT and any Owner requesting the same, and the same shall adjust the Assessments.

1.16 "Governmental Approvals" means the permits, determinations and other approvals made by any Governmental Authorities pertaining to the Property.

1.17 “Governmental Authorities” means, whether one or more, any applicable governmental or quasi-governmental authorities having jurisdiction over the Property.

1.18 “Hazardous Materials” means wastes, substances, mixtures, pollutants, contaminants or other materials which are defined or classified by any Environmental Law as hazardous, toxic or radioactive, including, whether or not so defined, petroleum and natural gas products, polychlorinated biphenyls, radioactive materials, urea formaldehyde foam insulation and asbestos containing materials.

1.19 “Improved Lot” shall mean one in which a certificate of occupancy has been issued for the Building “shell” within the Lot and for at least one finished space within the Building.

1.20 “Improvements” means all structures and improvements of every type and kind, including, but not limited to Buildings, outbuildings, garages, carports, trash enclosures, roads, driveways, parking areas, curbs, gutters, sidewalks, fences, screening walls, retaining walls, stairs, decks, patios, landscaping, sprinklers, hedges, windbreaks, planting, planted trees, shrubs, poles, signs, free standing lighting fixtures, exterior air conditioning, environmental apparatus and water softener fixtures or equipment.

1.21 “Lot” shall mean each legal parcel now comprising the Shopping Center, Vacant Land and any legal parcel subsequently created within the Shopping Center and Vacant Land in accordance with the terms of this Agreement. As of the date hereof, the Property is comprised of four (4) legal parcels, Portage County Permanent Parcel Numbers: 03-018-00-00-032-003 and 03-018-00-00-033-000), consisting of approximately 4.61 acres and 18.58 acres, respectively (the “Shopping Center”), and 03-018-00-00-032-002 and 03-018-00-00-032-007, consisting of approximately 3.99 acres and 10.397 acres, respectively (the “Vacant Land”).

1.22 “Maintenance Violation” shall have the meaning ascribed to such term in Section 4.7 below.

1.23 “Maintenance Violation Notice” shall have the meaning ascribed to such term in Section 4.7 below.

1.24 “Mortgage Deed” means a Mortgage Deed encumbering any portion or all of the Property.

1.25 “Mortgagee” means a mortgagee under a Mortgage Deed, or the assignee of such mortgagee.

1.26 “Notice of Default” shall have the meaning attributed to such term in Section 6.11.1(b) below.

1.27 **"Notice of Delinquency"** shall have the meaning attributed to such term in Section 6.11.1(a) below.

1.28 **"Notice of Sale"** shall have the meaning attributed to such term in Section 6.11.2 below.

1.29 **"Occupant"** means any Person from time to time entitled to the use and occupancy of any portion of a Building on the Lots under an ownership right or any lease, sublease, license, concession or other similar agreement.

1.30 **"Official Records"** shall have the meaning attributed to such term in Section 6.11.1(a) below.

1.31 **"Owner"** means every Person, including, without limitation, TNP and ACPT, holding a fee simple interest in a Lot. This definition expressly excludes tenants and those persons or entities having an interest in a Lot merely as security for the performance of an obligation or as purchasers under executory contracts of sale unless and until such persons or entities obtain title to the Lot as shown in the land records of Portage County, Ohio. Notwithstanding anything to the contrary contained in this Agreement, each Owner shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the Lot or Lots owned by it which accrue during the period of such ownership, and such liability shall continue with respect to any portion transferred until the notice of transfer set forth below is given, at which time the transferring Owner's liability for unaccrued obligations (only) shall terminate. Until the notice of transfer is given, the transferring Owner shall (for the purpose of this Agreement only) be the transferee's agent. If a Lot is owned by more than one Person, the Person or Persons holding at least fifty one percent (51%) of the ownership interest in the Lot shall designate one of their number to represent all owners of the Lot and such designated Person shall be deemed the Owner for such Lot for purposes of the actions, consents and approvals required by or made pursuant to this Agreement.

1.32 ny individual, partnership, firm, association, corporation, trust or any other form of business or government entity.

1.33 **"Permittee"** means all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended development, use and occupancy of the Lots. Persons engaging in the following activities on the Common Areas will not be considered to be Permittees: (i) exhibiting any placard, sign or notice; (ii) distributing any circular, handbill, placard, or booklet; (iii) soliciting memberships or contributions; and (iv) parading, picketing or demonstrating.

1.34 "Property" shall have the meaning ascribed to such term in Recital C hereof.

1.35 "Shopping Center" shall have the meaning ascribed to such term in Recital A hereof.

1.36 "Shopping Center Easement Area" means all driveways, drive aisles, and paved roads (excluding any publicly dedicated roads) now existing or hereafter constructed in the Shopping Center, excluding any driveways, drive aisles and paved roads that are for the exclusive use of any Occupant pursuant to a lease existing as of the date hereof.

1.37 "Special Assessments" shall have the meaning attributed to such term in Section 6.4 below.

1.38 "TNP" shall mean TNP SRT Aurora Commons, LLC, a Delaware limited liability company, and its successors and assigns.

1.39 "TNP Budget" shall have the meaning attributed to such term in Section 4.2 below. "TNP Easement Area Maintenance Costs" shall have the meaning set forth in Section 4.2 hereof.

1.41 "TNP Lot" means a Lot which forms part of the Shopping Center. "Vacant Land" shall have the same meaning as in Recital B of this Agreement.

1.43 "Vacant Land Easement Area" means all driveways, drive aisles, and paved roads (excluding any publicly dedicated roads) hereafter constructed on the Vacant Land.

1.44 "Violation Assessment" shall have the meaning attributed to such term in Section 6.5 below.

ARTICLE II EASEMENTS

2.1 Ingress and Egress Easements-Shopping Center. TNP hereby grants and conveys to ACPT, for ACPT's use and for the use of its Permittees, a non-exclusive easement for the passage of vehicles and pedestrians over and across the Shopping Center Easement Area. Such easement rights shall be subject to the reservations and limitations contained in the next sentence, as well as other provisions contained in this Agreement. Except as otherwise expressly provided herein, TNP reserves the right at any time and from time to time to exclude and restrain any Person who is not a Permittee from using the Shopping Center Easement Area. No fence or other barrier which would prevent, or unreasonably obstruct, the passage of pedestrian or vehicular travel shall be erected or

permitted within or across the Shopping Center Easement Area, other than limited curbing and other forms of traffic control permitted pursuant to Applicable Laws and Governmental Approvals. Until future curb cuts have been authorized and approved in accordance with Section 2.4, TNP hereby grants to ACPT and its Permittees a temporary access easement to cross unpaved areas situated between the edges of pavement of the driveways within the Shopping Center Easement Area and the property lines of the Vacant Land closest to the edges of such driveways for the limited purpose of performing lawn maintenance and trimming, surveys, studies and other examinations of the Vacant Land prior to construction. Such temporary access easement shall immediately terminate on the date upon which Governmental Approvals have been obtained to commence construction upon the Vacant Land that include a future curb cut as described in Section 2.4.

2.2 Ingress and Egress Easements-Vacant Land. ACPT hereby grants and conveys to TNP, for TNP's use and for the use of its Permittees, a non-exclusive easement for the passage of vehicles and pedestrians over and across the Vacant Land Easement Area. Such easement rights shall be subject to the reservations and limitations contained in the next sentence, as well as other provisions contained in this Agreement. Except as otherwise expressly provided herein, ACPT reserves the right at any time and from time to time to exclude and restrain any Person who is not a Permittee from using the Vacant Land Easement Area. No fence or other barrier which would prevent, or unreasonably obstruct, the passage of pedestrian or vehicular travel shall be erected or permitted within or across the Vacant Land Easement Area, other than limited curbing and other forms of traffic control permitted pursuant to Applicable Laws and Governmental Approvals.

2.3 Future Utility Easements. In the event that either TNP or ACPT requires utility easements over, across or under any portion of the Vacant Land or Shopping Center, respectively, the parties agree to reasonably cooperate with the granting of such easements. The requesting party shall provide plans or plats depicting the requested utility easement, together with a proposed form of easement agreement. The location and terms of such easements shall be mutually acceptable to the parties, and subject to all Applicable Laws, Governmental Approvals, and the rights of any tenants under leases existing as of the date hereof. All costs related to the granting of such easement and the installation of facilities therein shall be borne by the requesting party. The installation of facilities within such easement shall be performed in compliance with all existing documents validly recorded in the Official Records, the Governmental Approvals and Applicable Laws, and shall not unreasonably interfere with the use, occupancy or enjoyment of any part of the Shopping Center or Vacant Land, as applicable, by either TNP or ACPT, as applicable, or its Permittees.

2.4 Future Curb Cuts. In the event that either TNP or ACPT requires curb cuts to connect to any Vacant Land Easement Area or Shopping Center Easement Area, respectively, the parties agree to reasonably cooperate with the request for such curb cuts and the granting of any additional access easements required in connection with such curb cuts. The requesting party shall provide plans or plats depicting the requested curb cut, together with a proposed form of easement agreement if any easement is necessary in connection therewith. The location of such curb cuts and terms of such easements shall be mutually acceptable to the parties, and subject to all Applicable Laws, Governmental Approvals, and the rights of any tenants under leases existing as of the date hereof. All costs related to the request for a curb cut, the granting of any related easement and the installation and construction of the curb cut shall be borne by the requesting party. Any construction related to such curb cut shall be performed in compliance with all existing documents validly recorded in the Official Records, the Governmental Approvals and Applicable Laws, and shall not unreasonably interfere with the use, occupancy or enjoyment of any part of the Shopping Center or Vacant Land, as applicable, by either TNP or ACPT, as applicable, or its Permittees.

2.5 Restriction. Neither TNP nor ACPT shall grant any easement or license for any purpose set forth in this Article II which is (a) for the benefit of any real property located outside of the Property and/or (b) for the benefit of any Person in connection with any activity which is unrelated to the Property; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by either TNP on the Shopping Center or by ACPT on the Vacant Land to Governmental Authorities or to public or private utilities in accordance with the terms hereof.

2.6 Foreclosure. In the event of a foreclosure on the Vacant Land that has the effect of terminating the rights of TNP to access the Vacant Land as contemplated hereunder, the rights of ACPT to access the Shopping Center shall automatically terminate and be of no further force or effect. Notwithstanding the foregoing, the rights of ACPT shall be reinstated upon the recordation of an instrument acknowledging the rights of TNP to access the Vacant Land on the terms and conditions set forth in this Declaration.

ARTICLE III CONSTRUCTION AND DESIGN STANDARDS

3.1 Construction Obligations. Each of TNP and ACPT shall have the obligation to construct, in compliance with all existing documents validly recorded in the Official Records, the Governmental Approvals and Applicable Laws, all Improvements to the Easement Areas within the portion of the Property owned by such party, including, without limitation, internal driveways, curbs, gutters, sidewalks, landscaped areas, parking lots, underground utilities, sanitary sewer lines, storm drains, electrical and gas lines, telephone and television cables and lines, street lights, parking area lighting, signs

and related Improvements, and the costs of such Improvements to the Easement Areas shall be paid exclusively by the party that undertakes such improvements, and such costs shall not be assessed to other party. Upon substantial completion of such Improvements, such Improvements to the Easement Areas shall be maintained, repaired and replaced along with other Easement Areas, and the costs related thereto shall be shared among the parties as described in this Agreement.

3.2 Development Covenants. ACPT agrees that all Improvements located on the Vacant Land shall be designed and constructed in a manner consistent with the Shopping Center and other first class developments of comparable use and size in the metropolitan area in which the Property is located, in compliance with Applicable Laws and in compliance with the provisions of this Agreement. ACPT (or the Owner of such ACPT Lot if other than ACPT) shall promptly notify TNP in writing once an ACPT Lot becomes an Improved Lot.

3.3 Limitations on Modifications. Notwithstanding anything contained herein to the contrary, no change shall be made in the access points between the Easement Areas and the public streets without the prior written consent of the party benefitted by the Easement Area, in its sole and absolute discretion, and, if required, Governmental Authorities.

ARTICLE IV MAINTENANCE AND REPAIR

4.1 Easement Area Maintenance. TNP shall be responsible for maintaining the Shopping Center Easement Area and ACPT shall be responsible for maintaining the Vacant Land Easement Area in accordance with the following provisions (collectively, the "Easement Area Maintenance Obligations"):

(a) **Obstructions.** Keeping the Easement Areas free from any and all obstructions, unless such obstructions are caused by Improvements permitted under the provisions of this Agreement;

(b) **Debris and Refuse.** Frequent removal of all papers, debris, filth and refuse on the Easement Areas to the extent necessary to keep the same in a first class, clean and orderly condition.

(c) **Improvements.** Maintaining the common driveways, roadways, curbs and related Improvements in a smooth and evenly covered condition, including, without limitation, replacement of base, skin patch, striping, resealing and resurfacing.

(d) **Property Signage.** Maintaining, repairing, cleaning and replacing any signage within the Easement Areas.

(e) **Lighting.** Maintaining, cleaning and replacing any lighting in the Easement Areas, including light standards, wires, conduits, lamps, ballasts, clocks and circuit breakers and payment of electricity costs for such lighting, if separately metered.

(f) **Sidewalks and Landscaping.** Maintaining, regularly cleaning and sweeping, and replacing of all sidewalks within the Easement Areas, maintaining and replacing of all landscaping in the Easement Areas an attractive and thriving condition, trimmed and reasonably weed free and operating, maintaining and replacing, if necessary, all automatic sprinkler systems serving such landscaping, which maintenance shall be conducted at such times as shall not interfere with the conduct of business within the Property or use of the Easement Areas.

4.2 TNP Budget. Within thirty (30) days after the date that ACPT notifies TNP in writing of the commencement of construction of any Improvements on the Vacant Land, and thereafter, at least thirty (30) days prior to the beginning of each calendar year, TNP shall submit to each Owner of an ACPT Lot an estimated budget for the Easement Area Maintenance Obligations to be performed by TNP hereunder for the ensuing calendar year (as applicable, the "TNP Budget"). The TNP Budget shall identify separate cost estimates for the various components thereof, to the extent practicable (herein collectively "TNP Easement Area Maintenance Costs"). TNP may hire companies affiliated with it or third party companies to perform the maintenance and operation of the Shopping Center Easement Areas, but only if the rates charged by such companies are competitive with those of other companies furnishing similar services in the greater metropolitan area in which the Property is located. TNP shall expend only such funds as are reasonably necessary for the operation and maintenance of the Shopping Center Easement Areas as provided herein and shall promptly pay such costs when incurred. TNP Easement Area Maintenance costs shall not include: (i) any late charges or fees; (ii) any costs to clean up or repair the Shopping Center Easement Areas resulting from promotional activities or from construction, maintenance, or replacement of buildings located on the Shopping Center or the Shopping Center Easement Areas; (iii) real property taxes and assessments (which shall be paid by the Owners of the TNP); and (iv) entertainment, transportation, meals, and lodging of anyone.

TNP shall use reasonable efforts to operate and maintain the Shopping Center Easement Areas in accordance with the TNP Budget. Notwithstanding the foregoing, TNP shall have the right to make necessary, desirable and/or emergency repairs to the Shopping Center Easement Areas which are not contemplated by the TNP Budget. If the cost of the necessary, desirable and/or emergency action exceeds the amount allocated in the TNP Budget for emergencies and other contingencies, then TNP may submit a supplemental billing to each Owner of an ACPT Lot, together with evidence supporting such payment, and each such Owner shall pay its share thereof within thirty (30) days.

4.3 ACPT Budget. Within thirty (30) days after the date that ACPT notifies TNP in writing of the commencement of construction of any Improvements on the

Vacant Land, and thereafter, at least thirty (30) days prior to the beginning of each calendar year, ACPT shall submit to each Owner of a TNP Lot an estimated budget for the Easement Area Maintenance Obligations to be performed by ACPT hereunder for the ensuing calendar year (as applicable, the "ACPT Budget"). The ACPT Budget shall identify separate cost estimates for the various components thereof, to the extent practicable (herein collectively "ACPT Easement Area Maintenance Costs"). ACPT may hire companies affiliated with it or third party companies to perform the maintenance and operation of the Vacant Land Easement Areas, but only if the rates charged by such companies are competitive with those of other companies furnishing similar services in the greater metropolitan area in which the Property is located. ACPT shall expend only such funds as are reasonably necessary for the operation and maintenance of the Vacant Land Easement Areas as provided herein and shall promptly pay such costs when incurred. ACPT Easement Area Maintenance costs shall not include: (i) any late charges or fees; (ii) any costs to clean up or repair the Vacant Land Easement Areas resulting from promotional activities or from construction, maintenance, or replacement of buildings located on the Vacant Land or the Vacant Land Easement Area; (iii) real property taxes and assessments (which shall be paid by the Owners of ACPT Lots); and (iv) entertainment, transportation, meals, and lodging of anyone.

ACPT shall use reasonable efforts to operate and maintain the Vacant Land Easement Areas in accordance with the ACPT Budget. Notwithstanding the foregoing, ACPT shall have the right to make necessary, desirable and/or emergency repairs to the Vacant Land Easement Areas which are not contemplated by the ACPT Budget. If the cost of the necessary, desirable and/or emergency action exceeds the amount allocated in the ACPT Budget for emergencies and other contingencies, then ACPT may submit a supplemental billing to each Owner of TNP Lot, together with evidence supporting such payment, and each such Owner shall pay its share thereof within thirty (30) days.

4.4 Allocation of Easement Area Maintenance Costs. TNP Easement Area Maintenance Costs and ACPT Easement Area Maintenance Costs shall be allocated among the Owners of the Lots according to **Exhibit "C"**. The TNP Easement Area Maintenance Costs and ACPT Easement Area Maintenance Costs allocable to each Lot shall be assessed as the Annual Assessment, the payment of which shall be secured by a lien as set forth in Section 6.10 hereof; provided, however, the parties' obligations to pay their shares of the TNP Easement Area Maintenance Costs and the ACPT Easement Area Maintenance Costs, respectively, shall commence upon the commencement of construction of any Improvements on the Vacant Land or the ACPT Easement Areas.

Each Owner of a TNP Lot shall pay to ACPT, in equal monthly payments payable in advance, its share of the ACPT Easement Area Maintenance Costs based upon the amount set forth in the ACPT Budget. Within ninety (90) days after the end of each calendar year, ACPT shall provide each Owner of a TNP Lot with a statement certified by ACPT setting forth the actual ACPT Easement Area Maintenance Costs incurred by it and such Owner's share of the aggregate thereof. If the amount paid by an Owner for

such calendar year shall have exceeded its share, ACPT shall refund the excess to such Owner at the time such certified statement is delivered, or if the amount paid by an Owner for such year shall be less than its share, such Owner shall pay the balance of its share to ACPT within thirty (30) days after receipt of such certified statement.

Each Owner of an ACPT Lot shall pay to TNP, in equal monthly payments payable in advance, its share of the TNP Easement Area Maintenance Costs based upon the amount set forth in the TNP Budget. Within ninety (90) days after the end of each calendar year, TNP shall provide each Owner of an ACPT Lot with a statement certified by TNP setting forth the actual TNP Easement Area Maintenance Costs incurred by it and such Owner's share of the aggregate thereof. If the amount paid by an Owner for such calendar year shall have exceeded its share, TNP shall refund the excess to such Owner at the time such certified statement is delivered, or if the amount paid by an Owner for such year shall be less than its share, such Owner shall pay the balance of its share to TNP within thirty (30) days after receipt of such certified statement.

Within one (1) year after receipt of any such certified statement, each Owner shall have the right to audit ACPT's or TNP's books and records, as applicable, pertaining to the operation and maintenance of the applicable Easement Area for the calendar year covered by such certified statement; the Owner shall notify ACPT or TNP, as applicable, of its intent to audit at least fifteen (15) days prior to the designated audit date. In the event that such audit shall disclose any error in the determination of the applicable Easement Area Maintenance Costs or in the allocation thereof to a Lot, an adjustment shall be made forthwith. The cost of any audit shall be assumed by the Owner requesting the audit unless such Owner shall be entitled to a refund in excess of five percent (5%) of the amount calculated by TNP or ACPT, as applicable, as its share for the calendar year, in which case TNP or ACPT, as applicable, shall pay the cost of such audit.

4.5 Damage or Destruction. In the event any of the Easement Area is damaged or destroyed by any cause whatsoever, whether insured or uninsured, during the term of this Agreement, other than damage caused by ordinary use or wear and tear, TNP with respect to the Shopping Center Easement Area, or ACPT with respect to the Vacant Land Easement Area, shall repair or restore such Easement Area in a timely manner, levying a Special Assessment if necessary. If a Special Assessment is necessary, the commencement of repair or restoration may be delayed until such time as each Owner of a TNP Lot or ACPT Lot, as applicable, has paid its share of such Special Assessment in accordance with Section 6.4 below. In the event such damage or destruction of the Easement Area is caused in whole or in part by another Owner or third person, TNP or ACPT, as applicable, reserves and retains the right to proceed against such other Owner or third person for indemnity, contribution or damages.

4.6 Maintenance of Building(s) and Other Improvements.

(a) **Generally.** With respect to any Improved Lot, each Owner, at its sole cost and expense, covenants and agrees to maintain and keep the exterior portion of the Building(s) and other Improvements located within its Lot in first class condition and state of repair in a manner consistent with other first class developments of comparable use and size in the metropolitan area in which the Property is located, in compliance with Applicable Laws and in compliance with the provisions of this Agreement. Each Owner further agrees to store all trash and garbage in adequate containers within the designated trash enclosures, and to arrange for regular removal of such trash and garbage.

(b) **Damage or Destruction.** In the event any of the Building(s) and/or other Improvements located within a Lot are damaged by fire or other casualty (whether insured or not), the Owner upon whose Lot such Building(s) and/or Improvements are located shall promptly remove the debris resulting from such event and provide a sight barrier. Within a reasonable time thereafter, such Owner shall either (i) repair or restore the Building(s) and/or Improvements so damaged to the extent insurance proceeds are made available therefor or otherwise in accordance with the requirements of such Owner's mortgagee(s); (ii) erect other Building(s) and/or Improvements in such location to the extent insurance proceeds are made available therefor or otherwise in accordance with the requirements of such Owner's mortgagee(s), such construction to be performed in accordance with all provisions of this Agreement; or (iii) demolish the damaged portion and/or the balance of such Building(s) and/or Improvements (except for landscaping and hardscape) and restore the cleared area to either a hard surface condition or a landscaped condition; or (iv) otherwise perform such actions as are required by the Owner's mortgagee(s). Such Owner shall have the option to choose which of the foregoing alternatives to perform, but such Owner shall be obligated to perform one of such alternatives. Regardless of which alternative is elected, Assessments against such Parcel shall continue as if the Building remained in place, although the Floor Area may be adjusted accordingly, if applicable.

4.7 Maintenance Violations and Manager's Right to Correct Maintenance Violation. For purposes of this Agreement, the term "Maintenance Violation" shall mean any condition on an Easement Area which, in the sole reasonable discretion of the party benefitted by the Easement Area, materially and adversely interferes with such party's use of the Easement Area in accordance with the provisions of this Agreement. If either TNP or ACPT allows, permits or causes any Maintenance Violation, then, except as otherwise provided herein, the party benefitted by the Easement Area shall give ACPT (with respect to the Vacant Land Easement Area) or TNP (with respect to the Shopping Center Easement Area), written notice specifying the nature of the Maintenance Violation and a reasonable time period, which shall be no less than thirty (30) days, to cure such Maintenance Violation (any such notice, "Maintenance Violation Notice"). If more than thirty (30) days is reasonably required to correct such Maintenance Violation, then the party receiving the Maintenance Violation Notice shall have such additional time as is reasonably necessary to cure the Maintenance Violation, as long as the curative work

shall be commenced within thirty (30) days after the Maintenance Violation Notice is given, and shall be diligently prosecuted thereafter. If the party receiving the Maintenance Violation Notice fails to correct a Maintenance Violation within the period specified above, then the party issuing the Maintenance Violation Notice shall have the right, in addition to any other remedies available under Applicable Law, to undertake and perform such work through its agents and employees as such may deem to be necessary or desirable to remedy the Maintenance Violation and is entitled to reimbursement of same. Neither the party exercising the foregoing remedy, nor any of such party's agents or employees, nor any person hired by such party to perform the corrective work, shall be liable for any damage which may result from any work performed to cure a Maintenance Violation. The party receiving the Maintenance Violation Notice shall be liable for the costs and expenses of the curative work, and a Violation Assessment may be levied against the defaulting party in an amount equal to the cost of the corrective work.

4.8 Indemnification.

(a) Each Owner of an ACPT Lot shall indemnify, protect, defend and save harmless TNP and its officers, partners, employees, agents, tenants, licensees and contractors from and against any and all liability, claims, demands, liens, expenses, fines, penalties, suits, proceedings, and causes of action of any and every kind and nature resulting from TNP's performance of its duties under this Article IV, except to the extent resulting from the gross negligence or willful misconduct of TNP or any of its officers, partners, employees, agents, tenants, licensees and contractors, or from TNP's breach of this Agreement. Each such Owner's obligation to indemnify shall include reasonable legal costs from the first notice that any claim or demand for indemnification is to be made or may be made.

(b) Each Owner of a TNP Lot shall indemnify, protect, defend and save harmless ACPT and its officers, partners, employees, agents, tenants, licensees and contractors from and against any and all liability, claims, demands, liens, expenses, fines, penalties, suits, proceedings, and causes of action of any and every kind and nature resulting from ACPT's performance of its duties under this Article IV, except to the extent resulting from the gross negligence or willful misconduct of ACPT or any of its officers, partners, employees, agents, tenants, licensees and contractors, or from ACPT's breach of this Agreement. Each such Owner's obligation to indemnify shall include reasonable legal costs from the first notice that any claim or demand for indemnification is to be made or may be made.

4.9 Insurance.

4.9.1 Liability Coverage. TNP, with respect to the Shopping Center Easement Area, and ACPT, with respect to the Vacant Land Easement Area, shall maintain or cause to be maintained in full force and effect Commercial General Liability Insurance with a combined single limit of liability of not less than Two Million Dollars

(\$2,000,000.00) for bodily or personal injury or death, and for property damage, arising out of any one occurrence. **Casualty Coverage.** TNP, with respect to the Improvements in the Shopping Center Easement Area, and ACPT, with respect to the Improvements in the Vacant Land Easement Area, shall carry, or cause to be carried, casualty insurance with "extended" or "all risk" coverage, in the amount of one hundred (100%) percent of full replacement cost thereof (excluding footings, foundations or excavations).

4.9.3 Requirements. All insurance required by this Section 4.9 shall be procured from companies licensed in the state where the Property is located and shall be rated by Best's Insurance Reports not less than A/VII. All insurance may be provided under (i) an individual policy covering this location; or (ii) a blanket policy or policies which include(s) other liabilities, properties and locations of TNP or ACPT, as applicable. The insurance required pursuant to this Section shall include the following provisions: shall provide that the policy may not be canceled or reduced in amount or coverage below the requirements of this Agreement, without at least thirty (30) days prior written notice by the insurer to each insured and to each additional insured;

(ii) shall provide for severability of interests;

(iii) shall provide that an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other named insureds; and

(iv) shall provide for contractual liability coverage with respect to the indemnity obligation set forth herein; provided, however, the coverage limits of such insurance shall in no event limit the indemnity obligations of any party hereunder.

4.9.4 Mortgagee Requirements. Notwithstanding anything set forth in this Section to the contrary, the obligations of the parties hereunder shall be subject in all material respects to the obligations of each of TNP's and ACPT's respective mortgagee(s), as applicable.

4.10 Assignment. The obligations of TNP and ACPT under this Article IV are personal to TNP and ACPT and shall not run with the land. TNP and ACPT may each assign its obligations under this Article IV; provided that (i) such assignment is in whole and not in part; (ii) the assignee is an Owner of a Lot, an owners' association created by the Owners of either TNP Lots or ACPT Lots, as applicable, or an entity designated by the Owners of either the TNP Lots or ACPT Lots to perform certain maintenance obligations with respect to either the Shopping Center or Vacant Land; (iii) the assignee assumes the obligations under this Article IV in writing, and such assignment is recorded; and (iv) prompt written notice of such assignment is given to the other party.

**ARTICLE V
OPERATION OF THE PROPERTY**

5.1 Use Permitted Use. The Property shall be devoted to office, retail, restaurant and service uses and uses incidental thereto, but in any event, all uses of the Property shall comply with Applicable Laws and Government Approvals.

5.1.2 Prohibited Use. The following uses are strictly prohibited in any portion of the Property: any use causing loud noises, offensive odors or that is visually obtrusive; manufacturing; the sale, lease or rental of automobiles, trucks, motorcycles, recreational vehicles, boats or other vehicles; automobile repair shop (provided that oil change or quick lube services shall be permitted), service station (provided that car washes shall be permitted) or any facility storing or selling gasoline, diesel or alternative fuel in or from tanks; or adult book shop or adult movie house; mortuary or funeral parlor.

5.1.3 Exclusive Use. The Property is subject to certain exclusive uses in favor of various Lots, all as set forth in more detail on **Exhibit "D"** attached hereto and by this reference incorporated herein. For the avoidance of doubt, no Owner shall conduct any use on its Lot which is reserved for another Lot in accordance with the foregoing.

5.2 Taxes and Assessments. Each Owner shall pay, or cause to be paid prior to delinquency, all taxes and assessments with respect to its Lot, the Building(s) and Improvements located thereon and any personal property owned or leased by such Owner located in the Property; provided, however, that if the taxes or assessments or any part thereof may be paid in installments, the Owner may pay each such installment as and when the same becomes due and payable. Nothing contained in this Section shall prevent any Owner from contesting, at its cost and expense, any such taxes and assessments with respect to its Lot in any manner such Owner elects, so long as such contest is maintained with reasonable diligence and in good faith. At the time as such contest is concluded (allowing for appeal to the highest appellate court), the contesting Owner shall promptly pay all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon. **Liens.** In the event any mechanic's lien is filed against the Lot of one Owner as a result of services performed or materials furnished for the use of another Owner, the Owner permitting or causing such lien to be so filed agrees to cause such lien to be released and discharged of record from such Lot within thirty (30) days of receiving notice of said lien and further agrees to indemnify, defend and hold harmless the other Owner and its Lot against liabilities, losses, damages, costs or expenses (including, without limitation, reasonable attorneys' fees and cost of suit) on account of such claim of lien. Upon request of the Owner whose Lot is subject to such lien, the Owner permitting or causing such lien to be filed agrees to promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such

release and discharge. Nothing herein shall prevent an Owner permitting or causing such lien from contesting the validity thereof in any manner such Owner chooses, so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such Owner shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release and discharge of record such lien from the affected Lot.**Indemnification.**

(a) In addition to, and not in limitation of, any indemnification obligations set forth in Section 4.8 above, ACPT shall indemnify, protect, defend and save harmless TNP and its officers, partners, employees, agents, tenants, licensees and contractors from and against any and all liability, claims, demands, liens, expenses, fines, penalties, suits, proceedings, and causes of action of any and every kind and nature resulting from the use of the Shopping Center Easement Areas by ACPT, its Occupants, and Permittees except to the extent resulting from the gross negligence or willful misconduct of TNP or any of its officers, partners, employees, agents, tenants, licensees and contractors. ACPT's obligation to indemnify shall include reasonable legal costs from the first notice that any claim or demand for indemnification is to be made or may be made.

(b) In addition to, and not in limitation of, any indemnification obligations set forth in Section 4.8 above, TNP shall indemnify, protect, defend and save harmless ACPT and its officers, partners, employees, agents, tenants, licensees and contractors from and against any and all liability, claims, demands, liens, expenses, fines, penalties, suits, proceedings, and causes of action of any and every kind and nature resulting from the use of the Vacant Land Easement Areas by TNP, its Occupants, and Permittees except to the extent resulting from the gross negligence or willful misconduct of ACPT or any of its officers, partners, employees, agents, tenants, licensees and contractors. TNP's obligation to indemnify shall include reasonable legal costs from the first notice that any claim or demand for indemnification is to be made or may be made.

ARTICLE VI ASSESSMENTS

6.1 Agreement to Pay. Each Owner, for each Improved Lot owned by such Owner, hereby covenants and agrees to pay to the Annual Assessments, any and all Special Assessments and any and all Violation Assessments levied against such Owner as are established, made and collected as provided in this Agreement. The Assessments levied hereunder shall be the amount estimated to be required, and shall be used exclusively for the repair, replacement, maintenance and upkeep of the Easement Areas.**Intentionally Deleted Annual Assessments.** As used herein, "Annual Assessment" shall mean the amount of either the TNP Budget or ACPT Budget, as applicable, for each calendar year as established by the TNP or ACPT, as applicable, pursuant to the provisions of this Agreement. Neither TNP nor ACPT may establish an

Annual Assessment for any calendar year which is more than one hundred twenty five percent (125%) of the Annual Assessment of the prior calendar year (except the first such calendar year if it should be less than twelve (12) months and except any calendar year in which the assessment does not represent a full build-out of the Property), without the majority approval by vote of the affected Owners. **Special Assessments.** If either TNP or ACPT determines that the estimated total amount of funds necessary to defray the applicable Easement Area Maintenance Obligation costs for a given calendar year is or will become inadequate to meet expenses for any reason, then TNP or ACPT, as applicable, shall determine the approximate amount necessary to defray such expenses, and if the amount is approved, it shall become a special assessment ("Special Assessment") against the Lots. TNP or ACPT, as applicable, may, at its discretion, prorate a Special Assessment over the remaining months of the calendar year or levy the Special Assessment immediately against each Owner of a Lot. **Violation Assessments.** TNP or ACPT, as applicable, may levy a violation assessment (each such assessment, a "Violation Assessment") to pay for the cost of curing any Maintenance Violation and any costs or expenses incident thereto, including, but not limited to, reasonable attorney fees and court costs, and costs of foreclosure (including, but not limited to, trustee fees and the cost of a trustee sale guaranty). **Assessment Period.** Except for the first (1st) partial year following the date that ACPT notifies TNP in writing of the commencement of construction of any Improvements on the Vacant Land, the Annual Assessment period shall commence on January 1 of each year and shall terminate on December 31 of such year. Annual Assessments shall be payable in advance, in equal monthly installments. However, the initial Annual Assessment period shall commence on the date that ACPT notifies TNP in writing of the first Lot which is part of the Vacant Land becoming an Improved Lot. **Notices of Assessments; Delinquencies.** All Assessment notices shall be in writing and shall be given in the manner specified in Section 7.3 hereof. ACPT or TNP, as applicable, shall give written notice of the Annual Assessments and any Special Assessments to the Owners of the Lots, which notice shall specify the amount of the Assessment and the date or dates payment of the same is due. Notice of a Violation Assessment is required to be given only to the Owners of the Lot against whom the Violation Assessment is made. Nothing contained herein shall be construed so as to require either TNP or ACPT to give periodic notices of the same Assessment. One (1) notice of an Assessment shall be sufficient to meet the requirements of this paragraph, even though the Assessment may be payable in installments. Failure of either TNP or ACPT to give notice of any Assessment shall not affect the liability of the Owner of the Lot for such Assessment; provided, however, that the date when payment of the first (1st) installment of such Assessment shall become due in such a case shall be deferred to a date ten (10) days after such notice shall have been given, and the first installment of such Assessment shall not be deemed delinquent until ten (10) days after such deferred due date. Any Assessment installment hereunder which is not paid within ten (10) days following the date it is due as specified in the notice of such Assessment shall be deemed delinquent. All delinquent Assessments shall bear interest at the lesser of the rate of eighteen percent (18%) per annum, or the maximum interest rate permitted by Applicable

Laws ("Default Rate") from the date the Assessment becomes delinquent hereunder until paid. **Statement of Account.** Upon written request of any Owner or any Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot, either ACPT or TNP, as applicable, shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Lot, the amount of the current periodic assessment, and the date that such assessment becomes or became due, and if there is any credit for advance payments. Such statement shall be conclusive upon the Lots in favor of persons who rely thereon in good faith. **Collection of Owner's Obligations.** The right to collect and enforce Assessments with respect to the TNP Easement Area Maintenance Costs is vested in TNP, and the right to collect and enforce Assessments with respect to the ACPT Easement Area Maintenance Costs is vested in ACPT. Notwithstanding the foregoing, any Owner or its authorized representative can enforce the obligations of the Owners to pay the obligations provided for in this Agreement by commencement and maintenance of a suit at law or in equity; and any Owner may enforce by judicial proceedings or, to the extent permitted by applicable law, through the exercise of the power of sale pursuant to applicable statutes and laws, and Section 6.11 to enforce the lien rights created. Suit to recover a money judgment against an Owner for unpaid obligations, together with all other amounts due hereunder, shall be maintainable without first foreclosing against the Lot which is subject to the lien for such Assessment or waiving the lien rights granted hereby. **Lien for Assessments; Priority.** All sums assessed to any Lot pursuant to this Agreement, including, but not limited to the Assessments, and all fines imposed hereunder against the Owners of a Lot, together with interest thereon as provided herein, shall be secured by a lien on such Lot from the date the same becomes due. If the secured obligation is payable in installments, the full amount of the obligation is a lien from the time the first installment thereof becomes due. Such lien shall be prior to all other liens and encumbrances on such Lot except for: (a) valid tax and special assessment liens in favor of any Governmental Authority; (b) liens and encumbrances recorded before the recordation of this Agreement; and (c) a First Mortgage Deed recorded before the date on which the Assessment or fine sought to be enforced became delinquent. **Other Remedies.** Notwithstanding the lien granted hereunder, TNP or ACPT, as applicable, may exercise any other remedy available in law or inequity against a delinquent Owner and shall be entitled to recover all fees and costs associated therewith from such Owner.

MISCELLANEOUS

7.1 **Default.**

7.1.1 Definition. The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by the nonperforming Owner (in such capacity, the "Defaulting Owner"):

(i) The failure to make any payment required to be made hereunder within ten (10) days of the due date; or

(ii) The failure to observe or perform any of the covenants, conditions or obligations of this Agreement, other than as described in subsection (i) above, within thirty (30) days after the issuance of a written notice by either TNP or ACPT, as applicable, specifying the nature of the default claimed.

7.1.2 Waiver. No waiver of any default under this Agreement shall be effective or binding unless made in writing by TNP or ACPT, as applicable, and no such waiver shall be implied from any omission by TNP or ACPT, as applicable, to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One (1) or more written waivers or any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance or the same provision or any other term or provision contained in this Agreement.

7.1.3 Interest. Any time an Owner shall not pay any sum payable hereunder to another within ten (10) days of the due date, such delinquent Owner shall pay interest on such amount from the due date to and including the date such payment is received by the Person entitled thereto, at the Default Rate.

7.2 Estoppel Certificate. Each of TNP and ACPT agrees that, upon reasonable written request of any Owner, it will issue to such Owner, or its prospective Mortgagee or successor, an estoppel certificate stating, to the best of TNP's or ACPT's knowledge, as applicable, that as of such date: whether any default by such Owner exists and, if so, specifying the nature thereof;

(ii) whether this Agreement has been assigned, modified or amended in any way by it and if so, then stating the nature thereof; and

(iii) whether this Agreement is in full force and effect.

Such statement shall act as a waiver of any claim by all Owners to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement.

7.3 Notices. All notices under this Agreement shall be in writing and delivered either: (i) in person, (ii) by reputable overnight delivery service, so long as delivery is made by obtaining a signed receipt; (iii) by certified mail; or (iv) by facsimile transmissions so long as the original notice is also forwarded by the method described in (i), (ii) or (iii). The notice addresses for the parties on the date of recordation of this Agreement are as follows:

TNP: TNP SRT Aurora Commons, LLC
c/o Thompson National Properties, LLC
1900 Main Street, Suite 700
Irvine, California 92614
Facsimile: (949) 252-0212
Attn: Tom Clarke

ACPT: Aurora Commons Phase Two, LLC
20800 Center Ridge Rd., Suite 416
Rocky River, Ohio 44116
Facsimile: (440) 331-0789

Each assignee of TNP or ACPT under Article IV above shall notify all Owners of their respective notice addresses in the manner provided in this Agreement.

All notices to other Owners shall be delivered to the address specified by such Owner in writing and delivered to TNP and ACPT. Unless otherwise expressly provided herein, any notice given pursuant to this Agreement shall be deemed effective the day it is personally delivered or transmitted by facsimile, the day after it is delivered to the overnight delivery service, or three business days after the date it is deposited in the United States mail system. Upon at least ten (10) days prior written notice, each Person shall have the right to change its address to any other address within the United States of America.

7.4 Condemnation. In the event any portion of the Property shall be condemned or conveyed in lieu of condemnation, any resulting award shall be paid to the Owner of the real property so taken or conveyed, except that (i) if the taking or conveyance includes Improvements belonging to more than one Owner, the portion of the award allocable thereto shall be used to relocate, replace or restore such jointly owned Improvements to a useful condition; and (ii) if the taking includes easement rights which are intended to extend beyond the term of this Agreement, the portion of the award allocable to each such easement right shall be paid to the respective grantee thereof. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this Agreement which does not reduce or diminish the amount paid to the Owner owning the land or the Improvement taken, then the Owner

of such other property interest shall have the right to seek an award for the taking thereof. **Binding Effect.** Except as set forth in Section 4.10 above, the terms of this Agreement and all easements granted hereunder shall constitute covenants running with the land and shall bind the real estate described herein and inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns who become Owners hereunder. **Construction and Interpretation.**

(a) This Agreement and the Exhibits hereto contain the entire agreement between the Owners with respect to the subject matter hereof. Any prior negotiations, correspondence, memoranda or agreements are superseded in total by this Agreement and Exhibits hereto. The provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Owner.

(b) Whenever required by the context of this Agreement, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, terms or matter.

(c) The captions preceding the text of each article and Section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement. 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 Agreement.

(d) Invalidation of any of the provisions contained in this Agreement, 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.

(e) Notwithstanding anything to the contrary contained in this Agreement, this Agreement may be amended by, and only by, a written agreement approved by Owners owning at least seventy-five percent (75%) of the Lots and signed by TNP and ACPT or their assignees pursuant to Section 4.10, and shall be effective only when recorded in the Official Records; provided, however, that TNP shall be permitted in its sole discretion (i) to file an amendment to **Exhibit "C"** related to Improvements on a Lot that increase or decrease Floor Space (ii) to grant additional easements in connection with a sale of property to Ultimate Car Wash.

(f) This Agreement may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Agreement may be executed and notarized on separate pages, and when attached to this Agreement shall constitute one complete document.

7.7 Negation of Partnership. None of the terms or provisions of this Agreement 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.**Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property, of any Lot or any portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Owner hereto shall inure to the benefit of any third party Person, nor shall any third party Person be deemed to be a Mortgagee of any of the provisions contained herein.**Excusable Delays.** Whenever performance is required of any Person hereunder, such Person shall use reasonable diligence to perform and take all necessary, desirable and/or required measures in good faith. Notwithstanding the foregoing, if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such Person, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused and provided further that economic crisis shall not excuse performance. For the avoidance of doubt, the provisions of this Section shall not operate to excuse any Person from the prompt payment of any monies required by this Agreement.**Mitigation of Damages.** In all situations arising out of this Agreement, all Owners shall use reasonable efforts to attempt to avoid and mitigate the damages resulting from the conduct of any other Owner. Each Owner hereto shall take all reasonable measures to effectuate the provisions of this Agreement.**Agreement Shall Continue Notwithstanding Breach.** It is expressly agreed that no breach of this Agreement shall (i) entitle any Owner to cancel, rescind, or otherwise terminate this Agreement; or (ii) defeat or render invalid the lien of any Mortgage Deed made in good faith and for value as to any part of the Property. However, such limitation shall not affect in any manner any other rights or remedies which an Owner may have hereunder by reason of any such breach.**Time.** Time is of the essence of this Agreement.**No Waiver.** The failure of any Owner 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 Owner may have hereunder, at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. **Limitation of Liability.** Except as specifically provided below, there shall be absolutely no corporate or personal liability of persons,

firms, corporations or entities who constitute an Owner hereto, including, but not limited to, officers, directors, employees or agents of a Owner hereto with respect to any of the terms, covenants, conditions and provisions of this Agreement. In the event of default by an Owner hereunder any non-defaulting Owner who seeks recovery from a defaulting Owner hereto shall look solely to the interest of such defaulting Owner, its successors and assigns, for the satisfaction of each and every remedy of the non-defaulting Owner; provided, however, the foregoing shall not in any way impair, limit or prejudice the right of any Owner to pursue equitable relief in connection with any term, covenants or condition of this Agreement, including a proceeding for temporary restraining order, preliminary injunction, permanent injunction or specific performance. **Transfer of Interest**. An Owner transferring all or any portion of its direct ownership interest in its Lot(s) shall give notice to ACPT and TNP of such transfer promptly thereafter and shall include therein at least the following information: the name and address of the new Owner;

(ii) the identify of the Lot so transferred; and

(iii) if the transferee is more than one Person, the Person designated pursuant to the terms of Section 1.24 hereof to represent the transferee.

[Remainder of page intentionally left blank; signatures to follow on next pages.]

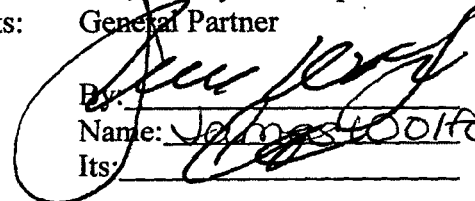
IN WITNESS WHEREOF, the TNP has caused this Agreement to be executed effective as of the day and year first above written.

TNP:
TNP SRT AURORA COMMONS, LLC, a ✓
Delaware limited liability company

By: TNP SRT Secured Holdings, LLC, a ✓
Delaware limited liability company
Its: Sole Member

By: TNP Strategic Retail Operating ✓
Partnership, L.P., a Delaware limited
partnership
Its: Sole Member

By: TNP Strategic Retail Trust, ✓
Inc., a Maryland corporation
Its: General Partner

By: 
Name: James D. O'Neil
Its: _____

STATE OF CALIFORNIA
COUNTY OF _____

On March _____, 2012, before me, the undersigned notary public, personally appeared _____ the _____ of TNP Strategic Realty Trust, Inc., a Maryland corporation and the General Partner of TNP Strategic Retail Operating Partnership, LP, a Delaware limited partnership and Sole Member of TNP SRT Secured Holdings, LLC, a Delaware limited liability company and Sole Member of TNP SRT Aurora Commons, LLC, a Delaware limited liability company, proved to me through satisfactory evidence of identification, being (check whichever applies): driver's license or other state or federal governmental document bearing a photographic image, oath or affirmation of a credible witness known to me who knows the above signatory, or my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him/her voluntarily in said capacity and the free act and deed of said entities, for its stated purpose.

See attached

Notary Public
Print Name _____
My Commission Expires _____
[SEAL]

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

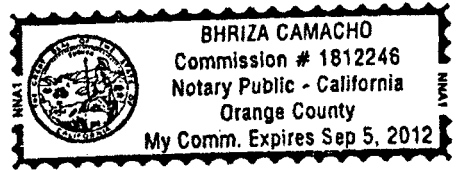
On March 16, 2012 before me, Bhriza Camacho, the undersigned, a Notary Public in and for said State, personally appeared James Wolford who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 

Name: Bhriza Camacho
(typed or printed)



(Seal)

ACPT:

AURORA COMMONS PHASE TWO, LLC.
an Ohio limited liability company ✓

By: *Mark Weiss*
Printed Name: Mark Weiss
Title: Managing Member ✓

STATE OF OHIO)
) ss.
COUNTY OF CUYAHOGA)

This instrument was acknowledged before me on March 14, 2012, by MARK WEISS, as the managing member of AURORA COMMONS PHASE TWO, LLC, an Ohio limited liability company.

Edward F. Cleary
Notary Public ✓

My Commission Expires:
EDWARD CLEARY, Attorney
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date.
Section 147.04 R.C.

Exhibit "A"
Legal Description of Shopping Center

(see attached)

Exhibit "A"

Legal Description

Real property in the City of Aurora, County of Portage, State of Ohio, described as follows:

Parcel No. 1

Situated in the City of Aurora, County of Portage, State of Ohio and known as part of Original Aurora Township Lot No. 18 and further bounded and described as follows:

Beginning at the point of intersection of the centerline of Garfield West Road (aka State Route 82) 60.00 feet wide, and the Westerly line of lands conveyed to Heinen's Inc., by deed dated December 11, 1967 and recorded in Volume 815, Page 582 of Portage County Deed Records, said point of beginning also being South 89 deg. 41' 30" East 1829.80 feet from the intersection of the centerline of Bissell Road and State Route 82 (Garfield West Road);

Course I: thence South 00 deg. 18' 30" West along said Westerly line of Heinen's land, 270.00 feet to a point;

Course II: thence North 89 deg. 41' 30" West, 265.00 feet to a point;

Course III: thence South 00 deg. 18' 30" West, 75.00 feet to a point;

Course IV: thence South 67 deg. 18' 30" West, 223.67 feet to a point;

Course V: thence South 08 deg. 09' 00" East, 418.40 feet to a point in the westerly line of a 13.46 acre parcel of land conveyed to the City of Aurora, by deed dated April 13, 1961;

Course VI: thence South 56 deg. 26' 46" West, 437.69 feet to a point;

Course VII: thence North 61 deg. 09' 00" West, 180.00 feet to a point;

Course VIII: thence North 73 deg. 09' 00" West, 271.00 feet to a point;

Course IX: thence North 3 deg. 00' 00" West, 323.00 feet to a point;

Course X: thence North 17 deg. 36' 26" East, 633.09 feet to a point;

Course XI: thence South 89 deg. 41' 30" East along said centerline of Garfield West Road, 1020.92 feet to the place of beginning, and containing 19.231 acres of land. According to a survey prepared in August 1981 by Frank J. Federico, Registered Surveyor No. 5297 of the State of Ohio.

EXCEPTING THEREFROM that part of the above described property conveyed to the United States Postal Service by deed recorded in Volume 1087, Page 664 of Portage County Records, being more fully described as follows:

Situated in the City of Aurora, County of Portage, State of Ohio, and being part of Original Aurora Township Lot No. 18, and being more particularly described as follows:

Commencing at the point of intersection of the centerlines of Garfield West Road (State Route 82 - 60 feet wide) and Bissell Road (50 feet wide); thence with the centerline of Garfield West Road South 89 deg. 41' 30" East for 1829.80 feet to the Northwest corner of a tract of land conveyed to the Midwest Bank and Trust Co., et al, by deed recorded in Book 990, Page 830 of Portage County Recorder's Office; thence with the said west line, South 0 deg. 18' 30" West for 270.00 feet; thence leaving said West line along the Southerly and Easterly line of a tract of land conveyed to The T.W. Grogan Company by deed recorded in Deed Book 990, Page 195 of the Portage Recorder's Office the following 5 courses: 1) North 89 deg. 41' 30" West for 265.00 feet; 2) South 0 deg. 18' 30" West for 75.00 feet; 3) South 67 deg. 18' 30" West for 223.67 feet; 4) South 8 deg. 09' 00" East for 418.46 feet; 5) South 56 deg. 26' 46" West for 99.84 feet to the true place of beginning for the land herein described; thence leaving said Southerly and Easterly line North 61 deg. 16' 00" West for 180.73 feet to a point; thence South 28 deg. 44' 00" West for 240.00 feet to a point; thence South 61 deg. 16' 00" East for 54.66 feet to a point; thence North 56 deg. 26' 46" East for 271.10 feet to the point of beginning and containing 0.6485 acres (28,247.6 square feet), as surveyed by Paul W. Feie, Ohio Registered Surveyor No. 6723 of Woolpert Consultants in February 1986.

Parcel No. 2

Situated in the City of Aurora, County of Portage, State of Ohio, and known as being part of Original Aurora Township Lot No. 18, and further bounded and described as follows:

Beginning on the centerline of West Pioneer Trail (60 feet wide) and the most Southwesterly corner of a 17.64 acre parcel of land as deeded to the Village of Aurora and recorded in Volume 722, Page 445 of the said County Records, this corner also being North 82 deg. 00' 42" East, 1754.94 feet along the centerline of West Pioneer Trail from its intersection with the centerline of Bissell Road (50.00 feet wide) and the true place of beginning:

Course I: thence North 07 deg. 59' 20" West along the westerly line of said Village of Aurora 17.64 acre parcel a distance of 249.67 feet to a point on the southerly line of 13.46 acre parcel as deeded to the Village of Aurora and recorded in Volume 723, Page 250 of said County records;

Course II: thence South 82 deg. 15' 00" West along said Southerly line of the 13.46 acre parcel to the southwesterly corner of said 13.46 acre parcel a distance of 73.32 feet to a point;

Course III: thence North 08 deg. 09' 00" West, along the westerly line of said 13.46 acre parcel 690.88 feet to a point thereon and the southeasterly corner of a 19.23 acre parcel deed to the T.W. Grogan Company as recorded in Volume 990, Page 195 of said County records;

Course IV: thence South 56 deg. 26' 46" West, 437.69 feet along the southerly line of said 19.23 acre parcel to a point thereon;

Course V: thence North 61 deg. 09' 00" West, 180.00 feet along the southerly line of said 19.23 acre, to a point thereon;

Course VI: thence North 73 deg. 09' 00" West, 271.00 feet along the Southerly line of said 19.23 acre parcel to the southwesterly corner of said parcel and a point thereon;

Course VII: thence South 3 deg. 00' 00" East, 357.00 feet to a point;

Course VIII: thence North 82 deg. 54' 48" East, 756.73 feet to a point;

Course IX: thence South 8 deg. 09' 00" East East 356.03 feet to a point;

Course X: thence South 26 deg. 24' 10" East, 232.11 feet to the northerly right of way line of West Pioneer Trail (60 feet wide) and a point thereon;

Course XI: thence South 07 deg. 59' 20" East, 30.00 feet to the centerline of West Pioneer Trail (60 feet wide) and a point thereon;

Course XII: thence North 82 deg. 00' 42" East, along the center of West Pioneer Trail, 60 feet to a point and the true place of beginning, containing 5.6458 acres of land.

EXCEPTING THEREFROM that part of the above described property conveyed to the United States Postal by deed recorded in Volume 1087, Page 664 of Portage County Records, being more fully described as follows:

Situate in the City of Aurora, County of Portage, State of Ohio, and being part of Original Aurora Township Lot No. 18, and being more particularly described as follows:

Commencing at the point of intersection of the centerline of Garfield West Road (State Route 82 - 60 feet wide) and Bissell Road (50 feet wide); thence with the centerline of Garfield West Road South 89 deg. 41' 30" East for 1829.80 feet to the Northwest corner of a track of land conveyed to the Midwest Bank and Trust Co., et al, by deed recorded in Deed Book 990, Page 830 of the Portage County Recorder's Office; thence with the said west line, South 0 deg. 18' 30" West for 270.00 feet; thence leaving said West line along the Southerly and Easterly line of a tract of land conveyed to The T. W. Grogan Company by deed recorded in Deed Book 990, Page 195 of the Portage Recorder's Office the following 5 courses: 1) North 89 deg. 41' 30" West for 265.00 feet; 2) South 0 deg. 18' 30" West for 75.00 feet; 3) South 67 deg. 18' 30" West for 223.67 feet; 4) South 8 deg. 09' 00" East for 418.46 feet; 5) South 56 deg. 26' 46" West for 99.84 feet to the true place of beginning for the land herein described; thence leaving said Southerly and Easterly line South 61 deg. 16' 00" East for 37.74 feet to a set iron pin found; thence South 8 deg. 09' 00" East for 269.03 feet to a point; thence S 82 deg. 54' 48" W, 42.21 feet to a point; thence North 61 deg. 16' 00" West for 290.91 feet to a point; thence North 56 deg. 26' 46" East for 271.10 feet to the point of beginning, and containing 1.0357 acres (45,114.7 square feet).

Parcel No. 3:

A perpetual easement and right-of-way, pursuant to the terms and conditions of those certain instruments, as follows:

a. Easement for Driveway Purposes, dated August 23, 1994 from Aurora Commons to The T. W. Grogan Company, filed for record August 31, 1994 and recorded in Volume 1164, page 912 of Portage County Records, affecting the land as described therein. See said Document for the specifics.

b. Easement from Aurora Commons Phase Two, LLC to H & S Company, LTD, dated April 27, 2004, file for record May 10, 2004 and recorded as Portgage County Recorder's Document No. 200413075, to locate, construct, operate, maintain, repair, patrol and remove storm sewer lines and manholes over and upon the land described therein. See Document for the specifics.

c. Reciprocal Easement Agreement by Joan E. Shaw and The T. W. Grogan Company, dated November 21, 1989 filed for record November 22, 1989 and recorded in Volume 1087, page 166 of Portage County Records, for vehicular and pedestrian ingress and egress over and upon the land described therein. See Document for the specifics.

APN: 03-018-00-00-032-003 and 03-018-00-00-033-000

Exhibit "B"
Legal Description of Vacant Land

(See attached)

Parcel No. 1

Situated in the City of Aurora, County of Portage, State of Ohio and being part of a parcel of land now or formerly conveyed to the Aurora Village Commons as shown in Volume 843, Page 105 of the Portage County Records of Deeds;

Beginning at an iron pin at the centerline intersection of West Pioneer Trail (60 feet wide) and Bissell Road (50 feet wide) said point of beginning also being the Southwesterly corner of aforesaid Original Lot 18;

Thence along the centerline of said Bissell Road North 03 degrees 18' 30" East, 1312.24 feet to an iron pin and the principal place of beginning;

Course I: Thence continuing along said centerline North 03 degrees 18' 30" East, 710.23 feet to the centerline intersection of Garfield Road (60 feet wide);

Course II: Thence along the centerline of Garfield Road South 89 degrees 41' 30" East, 808.88 feet to the Northwesterly corner of land now or formerly conveyed to T.W. Grogan Co. as shown in Volume 990, Page 195 of said Records of Deeds;

Course III: Thence along the Westerly line of said Grogan land South 17 degrees 36' 26" West, 633.09 feet to an iron pin;

Course IV: Thence South 03 degrees 00' 00" East, 100.00 feet to an iron pin at the Northeasterly corner of land now or formerly conveyed to the Portage County Alzheimers, August 25, 1988;

Course V: Thence along the Northerly line of said Alzheimers land South 89 degrees 52' 45" West 663.59 feet to an iron pin and the principal place of beginning, as surveyed by Anthony M. Picone, P.S., Registered Surveyor March, 1989.

Containing 11.683 acres of land

Parcel No.2

Situated in the City of Aurora, County of Portage, State of Ohio and bounded and described as follows: and being part of Original Aurora Township Lot No.18 and being of an Original Parcel as conveyed to Aurora Village Commons as shown in Volume 843, Page 105 of the Portage County Record of Deeds; and being more particularly described as follows:

Beginning at a 1" iron pin in a monument box at an angle in the centerline of Aurora Road, State Route 43 (66 feet wide) said monument being South 37 degrees 57' 00" East, 670.87 feet from an iron pin in a monument box at the centerline intersection of Aurora Road and the Twinsburg-Warren Road, State Route 82 (60 feet wide); thence along the centerline of said Aurora Road North 37 degrees 57' 00" West 183.63 feet to a point; thence South 52o 03' 00" West 33.00 feet to a point on the southerly right of way of said Aurora Road and the easterly boundary of lands now or formerly conveyed to Aurora Chrysler, Plymouth, Dodge, Inc. as shown in Volume 1046, Page 119 of said record of deeds; thence along said southerly right of way of Aurora Road South 37 degrees 57' 00" East 8.54 feet; thence along the southerly line of said Aurora Chrysler land 31.42 feet along the arc of a curve which bears to the right and has a radius of 20.00 feet and a chord of 28.28 feet which bears South 07 degrees 03' 00" West to a steel bar set; thence South 52 degrees 03' 00" West 54.00 feet to a steel bar set; thence 107.72 feet along the arc of a curve which bears right and has a radius of 145.00 feet and a chord of 105.26 feet which bears South 73 degrees 20' 00" West to a steel bar set; thence North 85 degrees 20' 20" West 146.55 feet to a steel bar set; thence North 82 degrees 22' 15" West 519.04 feet; thence North 89 degrees 41' 30" West, 499.35 feet to a steel bar set and the principal place of beginning; thence South 00 degrees 22' 43" West 275.50 feet to a steel bar set at the northerly line of lands now or formerly conveyed to the Village of Aurora as shown in Volume 723, Page 250 in said record of deeds; thence along said Village of Aurora land North 89 degrees 59' 07" West 430.02 feet to a steel bar set on the easterly line of lands now or formerly conveyed to T.W. Grogan Co., as shown in Volume 990, Page 195 in said record of deeds; thence along the T.W. Grogan land North 08 degrees 09' 00" West, 274.27 feet to a steel bar set; thence North 67 degrees 18' 30" East 223.67 feet to a steel bar set; thence North 00 degrees 18' 30" East, 75.00 feet to a steel bar set; thence South 89 degrees 41' 30" East, 265.00 feet to a steel bar set on the westerly line of lands now or formerly conveyed to Yallstrom/Taylor Partnership and L.J. Haka as shown in Volume 1060, Page 567 in said record of deeds; thence along said Kallstrom etal, land South 0 degrees 22' 43" West, 155.99 feet to a steel bar found and the principal place of beginning and containing 3.988 acres of land, as surveyed by Anthony M. Picone, Registered Surveyor, August, 1988.

05-018-00-00-032-007
~~03-018-00-00-032-007~~
 2-18-2002
 TAXMAP DEPT. *AM*

LEGAL DESCRIPTION	
<input checked="" type="checkbox"/> SUFFICIENT	<input type="checkbox"/> DEFICIENT
<input checked="" type="checkbox"/> NO DIVISION OF LAND	

Exhibit "C"
Allocation of Easement Area Maintenance Costs

Easement Area Maintenance Costs shall be allocated among the Owners based upon a fraction, the numerator of which shall be the Floor Area contained in Buildings situated on each Lot, and the denominator of which shall be the total Floor Area contained in all Buildings on all Lots.

As of the date of this Agreement, the Floor Area contained in Buildings on each Lot is as follows:

<u>Lot</u>	<u>Total Floor Area</u>	<u>Percentage</u>
Shopping Center Lots:		
03-018-00-00-032-003	5,804	6.959%
03-018-00-00-033-000	<u>77,603</u>	<u>93.041%</u>
Subtotal Shopping Center Lots	83,407	100.000%
Vacant Land Lots:		
03-018-00-00-032-002	0	0%
03-018-00-00-033-007	<u>0</u>	<u>0%</u>
Subtotal Vacant Land Lots	0	0%
 Total Floor Area of all Lots	 <u><u>83,407</u></u>	 <u><u>100.000%</u></u>

Exhibit "D"
Exclusive Uses

For so long as a Marcs is open and operating as a "Marcs" under the terms and conditions of that certain Shopping Center Lease dated April 6, 1995, as amended (the "Marcs Lease"), no space in the Shopping Center or the Vacant Land shall be operated as, and TNP and ACPT shall not permit the occupancy of, a licensed pharmacy by any other tenant or occupant, other than a tenant leasing space larger than the Marcs' premises.