

**CONSTRUCTION, OPERATION AND
RECIPROCAL EASEMENT AGREEMENT**

February 24, 1989

Part II

8.4 OPENING DATE OF BROADWAY. Subject to the following paragraph and the provisions of Article 28 (Force Majeure), Broadway shall open for business not later than the Proposed Opening Date. Notwithstanding the above, Broadway shall not be required to open for business unless and until (a) Developer has completed construction of (i) the Developer Common Improvement Work, (ii) the Common Area, and (iii) all of the shell of the Developer Mall Stores, (b) the Onsite Parking Structure and the Offsite Parking Structures have been completed and have been opened to use by Occupants and Permittees of the Center, (c) at least sixty percent (60%) of the Floor Area of the Developer Mall Stores is occupied by tenants who are open for business or who will simultaneously open for business with Broadway, and (d) Nordstrom has opened for business or will simultaneously open for business with Broadway.

Notwithstanding anything contained herein, in no event shall Broadway be required to initially open for business to the public between November 1 of any calendar year and January 31, inclusive, of the next succeeding calendar year, or during the period from March 1 through July 31, inclusive, of any calendar year.

8.5 AGENCY ENFORCEABILITY. The provisions of this Article 8 shall inure to the benefit of and be enforceable by Agency.

ARTICLE 9

CONSTRUCTION OF NORDSTROM STORE; NORDSTROM OPENING DATE

9.1 COMMENCEMENT OF CONSTRUCTION. Nordstrom shall, subject to the Construction Phasing Plan and Article 28 (Force Majeure), commence construction of the Nordstrom Improvements and its portion of the Onsite Parking Structure reasonably promptly after the Nordstrom Pad Delivery Date, but in any event, in time sufficient to complete construction and open the Nordstrom Store by the Proposed Opening Date. The Nordstrom Pad Delivery Date shall occur within the time set forth in the Schedule of Performance, subject to Article 28 (Force Majeure). The construction to be performed by Nordstrom shall include the structural elements and shell components of the Nordstrom Envelope Mall Stores. Nordstrom shall be deemed to have commenced construction upon the date that Nordstrom shall have let firm contracts for the construction of the Nordstrom Improvements and shall have commenced the construction of the foundation of its portion of the Onsite Parking Structure. Nordstrom shall secure all City and other governmental permits required to construct the Nordstrom Improvements prior to the commencement of construction.

9.2 MANNER OF CONSTRUCTION. All work of construction of the Nordstrom Improvements shall be diligently performed in accordance with the Schedule of Performance and Approved Plans

and Specifications for the Nordstrom Store and the Nordstrom Envelope Mall Stores. Construction of the Nordstrom Improvements shall be performed at Nordstrom's sole cost and expense in accordance with all requirements of this REA including Article 10, except that the cost of constructing the Nordstrom Envelope Mall Stores shall be allocated between Developer and Nordstrom in accordance with the terms of their Separate Agreement.

9.3 COMPLETION OF CONSTRUCTION. Nordstrom agrees to diligently construct and complete the Nordstrom Improvements by the Proposed Opening Date, subject to the provisions of Article 28 (Force Majeure).

9.4 NORDSTROM OPENING DATE. Subject to the following paragraph and the provisions of Article 28 (Force Majeure), Nordstrom shall open its Store for business not later than the Proposed Opening Date. Notwithstanding the above, Nordstrom shall not be required to open for business unless and until (a) Developer has completed construction of (i) the Developer Common Improvement Work, (ii) all of the shell of the Developer Mall Stores, and (iii) the Common Area, (b) the Onsite Parking Structure and the Offsite Parking Structures have been completed and are open to use for Occupants and Permittees of the Center, (c) at least sixty percent (60%) of the Floor Space of the Developer Mall Stores is occupied by tenants who are open for business or who will simultaneously open for business with Nordstrom, and (d) Broadway has opened for business or will simultaneously open for business with Nordstrom.

Notwithstanding anything contained herein, in no event shall Nordstrom be required to initially open for business to the public between November 1 of any calendar year and January 31, inclusive, of the next succeeding calendar year, or during the period from March 1 through July 31, inclusive, of any calendar year.

9.5 AGENCY ENFORCEABILITY. The provisions of this Article 9 shall inure to the benefit of and be enforceable by Agency.

ARTICLE 10 GENERAL CONSTRUCTION REQUIREMENTS

10.1 CONSTRUCTION PHASING PLAN. The Parties hereto and Agency have entered into a Construction Phasing Plan ("Construction Phasing Plan") as required by the Conditions of Approval. The Construction Phasing Plan provides for (i) coordination of the timing of construction of the Onsite Parking Structure, Developer Improvements, Broadway Improvements, Nordstrom Improvements, the Common Improvement Work, and both Offsite Parking Structures, (ii) the staging of each phase of construction of the foregoing Improvements, (iii) hours during

which exterior construction activity is permitted, (iv) provisions for location of material and equipment storage sites, construction shacks, temporary improvements used in construction, and parking for construction employees, (v) maintenance of the Project Site during construction, (vi) rules and regulations regarding time and routes of ingress and egress to and from the Project Site for trucks and construction equipment, (vii) street and lane closures and construction detours on streets surrounding the Project Site, (viii) a time schedule showing when each portion of the Project Site shall be used by each of the foregoing Parties and Agency for construction staging, and (ix) such other conditions and requirements imposed upon construction of the Center pursuant to Section E.2 of the Conditions of Approval. Each Party and Agency covenants to comply with the provisions of the Construction Phasing Plan and to cause its respective Improvements or construction work to be performed in accordance therewith.

10.2 COORDINATION OF CONSTRUCTION. Each Party and Agency severally agree to use reasonable efforts to perform its respective work so as not to (i) cause any increase in the cost of constructing the remainder of the Improvements contemplated on the Project Site or any part thereof which is not reasonably necessary, (ii) unreasonably interfere with any construction work being performed on the remainder of the Project Site, or any part thereof, or (iii) unreasonably interfere with the use, occupancy or enjoyment of the remainder of the Project Site or any part thereof by any other Party (or any adjacent property owned or leased by third parties or any Party or its tenants and Permittees), and any other Occupant or Permittee of the Project Site.

Each Party and Agency, as respects the construction it is to perform (including the construction work to be performed or caused to be performed by Agency with respect to the Agency Common Improvement Work and the Offsite Parking Structures) shall use all reasonable efforts to cause its architects and contractors to cooperate and coordinate their construction with the architects, contractors and construction work of the other Parties hereto and Agency to the extent reasonably practicable, to achieve the objectives set forth in this Section 10.2.

10.3 CONSTRUCTION CONTRACTS AND BONDS. Each Party shall cause its construction to be performed in accordance with a construction contract with a contractor licensed by the State of California. Prior to commencement of construction, each Party shall procure or cause to be procured, a contractor's bond for the benefit of Agency covering labor, materials, and faithful performance for construction on such Party's respective Tract. Each such bond shall be in an amount equal to one hundred percent (100%) of the construction price set forth in the contract entered into by such Party and its general contractor. Such bonds shall be subject to the prior written

approval of Agency as to content and form, which approval shall not be unreasonably withheld. Each Party shall, prior to commencement of construction on their respective Tracts, deliver to Agency a certificate or certificates from the bonding companies issuing the bonds, naming Agency as an obligee thereunder. Notwithstanding the above, a Party shall not be required to obtain labor, material and faithful performance bonds applicable to their respective construction provided (i) such Party then satisfies the net worth standards for self-insurance and, upon the written request of Agency or any of the other Parties, delivers evidence of satisfaction of such standards in the manner set forth in Section 13.14.2 or (ii) Agency is reasonably satisfied with the financial responsibility of the contractor and such Party can reasonably demonstrate its source of funds for the construction through loan commitments, insurance proceeds or otherwise. Each Party shall have the right to post notices of nonresponsibility on the Tracts of the other Parties, and Agency shall have the right to post notices of nonresponsibility on any Party's Tract, prior to the commencement of the construction. In no event shall bonds be required for any construction, repair or alteration the cost of which is less than Five Hundred Thousand Dollars (\$500,000), which sum shall be increased annually by an amount equal to the percentage change in construction industry costs, from the date of completion of the initial Improvements on such Tract until the date of the construction, alteration or repair, as published by the Engineering News Record or similar construction industry index as the Parties and Agency shall agree in the event such information is not available in the Engineering News Record, or such publication is no longer published. Agency shall comply with the provisions of this Section 10.3 with respect to the Agency Common Improvement Work.

10.4 COMMON FOOTINGS. In each case where a Party's Improvements will have footings in common with the Improvements of another Party, the common footings shall be compatible with the design of the buildings to be erected by both Parties and both Parties shall approve the plans for the common footings. The common footings shall be constructed by the first Party prepared to construct its Improvements. The constructing Party shall be furnished by the other Party with all required column loading and anchor bolt information required by the constructing Party to cast the same in the common footings at the time of concrete placement. The cost of common footings shall be allocated between the Parties pursuant to a Separate Agreement.

10.5 CONSTRUCTION BARRICADES. From and after the Actual Opening Date of any of the Developer Mall Stores, Broadway Store or Nordstrom Store, any Party who has not completed construction of its Improvements to the extent that such Improvements are secure from unauthorized intrusion and do not create hazardous conditions shall erect and construct a solid

plywood construction barrier of appropriate height separating such unfinished work from the Common Area and the adjacent public streets. Any construction barricades shall be kept in place and in good condition and repair until the Improvements being constructed are secure from unauthorized intrusion and do not create hazardous conditions. All plywood barricades shall be painted in colors approved by the Operator. The same requirements shall apply during any work of remodeling, repair or restoration under Articles 14 and 15 if other Floor Area in the Center is being Operated during such time period.

10.6 INSPECTION RIGHTS. During construction, an authorized representative of both City and Agency shall have a reasonable right of access to the Tracts of each Party for inspection purposes. Agency's representative shall also monitor compliance with the Project Approvals in accordance with Section D.27 of the Conditions of Approval. Agency shall designate, and shall cause City to designate, the representatives of Agency and City in writing to each of the Parties prior to the commencement of construction. All inspections shall be scheduled with the Parties in advance and shall be limited to the purpose of ascertaining the percentage of completion of the work and compliance with the Approved Plans and Specifications and the Project Approvals.

10.7 WORKMANSHIP. Each Party agrees that all construction which it is to perform hereunder shall be done in a good and workmanlike manner, with first-class materials and in accordance with all applicable laws, rules, ordinances and regulations and the Project Approvals. Each Party shall pay all costs, expenses, liabilities and liens arising out of or in any way connected with such construction except as otherwise provided herein or in a Separate Agreement. Upon completion of construction, each Party shall, upon request, deliver to the requesting Party and Agency a copy of its architect's standard AIA Certificate of Completion stating that the Improvements on such Party's Tract have been completed in compliance with the Approved Plans and Specifications therefor.

10.8 MECHANIC'S LIENS. Each Party severally covenants not to permit any mechanic's, materialmen's, contractor's or subcontractor's lien or any other claims or demands of any nature arising from the construction of their respective Improvements to be enforced against its respective Tract or any other Party's Tract. If any Party desires to contest such lien, claim or demand, such Party shall deposit with Agency an adequate bond or other security reasonably satisfactory to Agency to prevent enforcement of the lien if the contest is unsuccessful. In the alternative, the Party for whom the work was performed or against whom such lien was filed may indemnify or furnish such security as may be required for the benefit of any title insurance company designated by Agency or such Party to permit a title report to be issued for the Tract

subject to the lien insuring against the effect of such lien. Each Party severally covenants and agrees to indemnify, defend and hold each other Party free and harmless of any and all mechanic's, materialmen's, contractor's or subcontractor's liens, claims and demands, together with any cost and expenses incurred by such other Party or levied against such other Party's Tract in connection with such liens, claims or demands arising out of the construction of the Improvements on the indemnifying Party's Tract.

Each Major severally covenants and agrees to indemnify, defend, and hold Developer and Agency free and harmless of any and all mechanic's, materialmen's, contractor's, or subcontractor's liens, claims, and demands together with any cost and expense incurred by Developer or levied against the Onsite Parking Tract in connection with such liens, claims, and demands arising out of the construction of such Major's portion of the Onsite Parking Structure, unless Developer has failed to reimburse such Major for the work or materials that are the subject of such lien, claim or demand. Developer covenants and agrees to indemnify, defend and hold Agency and each Major free and harmless of any and all mechanic's, materialmen's, contractors, or subcontractor's liens, claims and demands together with any costs and expense incurred by Agency or either Major or levied against the Onsite Parking Tract or such Major's Tract in connection with such liens, claims and demands arising out of the construction of Developer's portion of the Onsite Parking Structure. Developer covenants and agrees to indemnify, defend, and hold each Major and Agency free and harmless from any and all mechanic's, materialmen's, contractor's, and subcontractor's liens, demands, or claims, together with any costs and expenses incurred by such Major or levied against such Major's Tract, in connection with such liens, claims, or demands arising out of the performance of the Pad Preparation Work and any Developer Common Improvement Work with respect to such Major's Tract.

Agency covenants and agrees to indemnify, defend and hold each Party free and harmless from any and all mechanic's, materialmen's, contractor's and subcontractor's liens, demands or claims, together with any costs and expenses incurred by any Party or levied against any Party's Tract in connection with such liens, claims or demands arising out of the construction of any Agency Common Improvement Work on such Party's Tract. Agency shall not perform any work on the Project Site after the recordation of this REA.

10.9 CONSTRUCTION INDEMNITY. During the period of construction, each Party severally covenants and agrees to indemnify and hold harmless each other Party and Agency, and the Tracts of each other Party and Agency from and against all liability, loss, damage, cost or expense, including reasonable attorneys' fees and court costs, arising from or as a result

of the death of, or any accident, injury, loss or damage whatsoever caused to any natural person, or to the property of any Person, which shall be directly or indirectly caused by any acts, errors or omissions of such Party or its respective agents, servants, employees or contractors in connection with such Party's construction, except for claims caused by the negligence or willful wrongdoing of Agency or the indemnified Party, or their respective agents, servants or employees. Agency or the indemnified Party shall give the indemnifying Party notice of any suit or proceeding entitling Agency or the indemnified Party to indemnification pursuant to this Section 10.9. During the period of any construction of the Agency Common Improvement Work on any Party's Tract, Agency covenants to indemnify and hold harmless each other Party and the Tracts of each other Party from and against any and all liability, loss, damage, cost or expense, including reasonable attorneys' fees and court costs, arising from or as a result of the death of, or any accident, injury, loss or damage whatsoever to any natural person, or to the property of any Person which shall occur on or adjacent to such Party's Tract, and which shall be directly or indirectly caused by any acts, errors or omissions of Agency or its agents, servants, employees or contractors, except for claims caused by the negligence or willful misconduct of the indemnified Party or its agents, servants or employees. Each Party shall give Agency notice of any suit or proceeding entitling such Party to indemnification pursuant to this Section 10.9.

10.10 INSURANCE DURING CONSTRUCTION. During the period from the date of commencement of construction until the date a Party has received a certificate of completion from Agency in accordance with Section 10.11 hereof, except as otherwise provided below, each Party shall maintain in full force and effect a policy of public liability insurance insuring against personal injury or property damage arising out of the construction on such Party's Tract or the portion of the Onsite Parking Structure to be constructed by such Party, with a combined single limit of not less than Five Million Dollars (\$5,000,000). Notwithstanding the above, Broadway and Nordstrom shall only be required to maintain the foregoing insurance with respect to the portion of the Onsite Parking Structure to be constructed by such Party until the date such Major has delivered such portion of the Onsite Parking Structure to Developer in accordance with the Parking Covenants. Each such policy shall provide that each of the Parties and Agency be named as additional insureds and that the policies cannot be amended nor the coverage reduced or canceled without thirty (30) days prior written notice to each Person named as additional insured. The insurance requirements of this Section 10.10 may be satisfied by each Party under the liability insurance policies required under Sections 13.3, 13.4 and 13.5 hereof.

10.11 CERTIFICATES OF COMPLETION. Each Party (as used in this Section 10.11, "Requesting Party") shall notify Agency in writing upon completion of construction of the Requesting Party's Improvements (including, with respect to Developer, the Common Area and the Developer Common Improvement Work) and deliver to Agency a copy of its architect's standard AIA Certificate of Completion required by Section 10.7 hereof with respect to its Improvements, and Agency shall thereafter inspect the Requesting Party's Improvements and furnish the Requesting Party with a certificate of completion within thirty (30) days after the later of (i) the date of the Requesting Party's notice of completion of construction and delivery of its certificate of completion, or (ii) the date the Requesting Party provides Agency with access to its Improvements for inspection. Agency's issuance of a certificate of completion shall constitute Agency's conclusive determination of the Requesting Party's satisfactory completion of construction and development of its Improvements in accordance with this REA. Upon completion by all of the Parties of the construction of the Onsite Parking Structure, Developer shall notify Agency in writing of such completion and deliver to Agency a copy of each Party's architect's standard AIA Certificate of Completion with respect to the Onsite Parking Structure. Agency shall thereafter inspect the Onsite Parking Structure and furnish each of the Parties with a certificate of completion within thirty (30) days after the later of the date of (i) Developer's notice of completion of construction and delivery of the certificates of completion, or (ii) the date that Developer provides Agency with access to the Onsite Parking Structure for inspection. Agency's issuance of a certificate of completion for the Onsite Parking Structure shall constitute Agency's conclusive determination of satisfactory completion by the Parties of construction and development of the Onsite Parking Structure in accordance with this REA. All certificates of completion shall be in a form to permit recordation in the Official Records of Santa Barbara County, California.

If Agency shall fail to furnish the certificate of completion within the time set forth in this Section 10.11, Agency shall furnish to the Requesting Party or the Parties, in the case of the Onsite Parking Structure, a written statement of its reasons for failure to furnish the certificate, along with an opinion of action that must be taken in order to complete the Requesting Party's Improvements or Onsite Parking Structure and cause the issuance of a certificate of completion. Notwithstanding the above, if a Requesting Party is unable to complete its Improvements, or the Parties are unable to complete the Onsite Parking Structure, due to the unavailability of minor materials or due to seasonal difficulties in obtaining materials or completing the Improvements or the Onsite Parking Structure, and the incomplete portions of the Improvements or Onsite Parking Structure do not affect the material use thereof, Agency shall nevertheless issue the

certificate of completion upon the posting of a bond or other security reasonably satisfactory to Agency by the Requesting Party, or in the case of the Onsite Parking Structure by the Party or Parties whose portion of the Onsite Parking Structure is not completed, guaranteeing completion of the Improvements or Onsite Parking Structure, as appropriate. Notwithstanding the foregoing, no bond or security shall be required to be posted by a Party that satisfies the standards for self-insurance and, upon Agency's written request therefor, delivers evidence of such satisfaction to Agency in the manner set forth in Section 13.14.2 hereof.

Upon completion of the Agency Common Improvement Work, Agency shall request, and Developer shall issue, a certificate of completion therefor in accordance with the terms of this Section 10.11. Developer's issuance of a certificate of completion for the Agency Common Improvement Work shall constitute Developer's conclusive determination of Agency's completion of construction of the Agency Common Improvement Work in accordance with and this REA.

Any certificate of completion issued by Agency shall not constitute a Notice of Completion as specified in California Civil Code § 3093 or a Certificate of Occupancy.

10.12 SEPARATE WORKS OF IMPROVEMENT. For all purposes applicable to the provisions of statutory law of the State of California, the construction of the Developer Improvements, Broadway Improvements, Nordstrom Improvements, the Developer Common Improvement Work, the Agency Common Improvement Work, the Onsite Parking Structure and both of the Offsite Parking Structures shall be deemed to be separate and distinct works of improvement.

10.13 ANTI-DISCRIMINATION DURING CONSTRUCTION. Each Party, for itself and its successors and assigns, agrees that during the construction of its Improvements, such Party shall not discriminate against any employee or applicant for employment because of sex, marital status, race, color, religion, creed, ancestry or national origin, and that such Party will comply with all applicable local, state and federal fair employment laws and regulations. Each construction contract entered into by a Party for construction of its Improvements shall contain a provision substantially similar to this Section 10.13 prohibiting discrimination in employment by such contractor during construction of the Improvements contemplated herein.

10.14 AGENCY'S RIGHTS AND OBLIGATIONS. Agency shall have the right to enforce the rights expressly granted, and shall be subject to the obligations expressly conferred upon, Agency by this Article 10.

ARTICLE 11
FLOOR AREA, USE, OPERATION, SIZE AND HEIGHT

11.1 FLOOR AREA. The Initial Planned Floor Area of each of the Parties is as follows:

	<u>Initial Planned Floor Area</u>
Developer Mall Stores	104,000
Broadway Store	136,000
Nordstrom Store	169,000

The Minimum Floor Area for the Developer Mall Stores shall be ninety-two thousand (92,000) square feet. The Minimum Floor Area for the Broadway Store and the Nordstrom Store shall be the entire square footage of the Floor Area located on the ground floor (which, with respect to the Nordstrom Store, shall not be construed to be the basement) and second floor of the Broadway Store and Nordstrom Store, respectively, as such Stores are initially constructed. Each Party covenants with each of the other Parties and with Agency that upon completion of construction of such Party's Store, including the Developer Mall Stores with respect to Developer, such Store or Stores shall contain approximately the Initial Planned Floor Area set forth above. During the term of this REA, the maximum Floor Area of the Broadway and Nordstrom Stores shall not exceed their respective Initial Planned Floor Area.

11.2 REHABILITATION PARCEL.

11.2.1 Incorporation Into Center. If Developer acquires a fee or leasehold interest in the Rehabilitation Parcel prior to the effective date of this Agreement, Developer shall add not more than fifty-two thousand (52,000) square feet of Floor Area devoted to retail, office and/or service use to the Center by incorporating the Rehabilitation Parcel into the Center. The consent of Agency and the Major shall not be required for the incorporation of the Rehabilitation Parcel into the Center. If the Floor Area on the Rehabilitation Parcel exceeds fifty-two thousand (52,000) square feet, Developer shall provide additional parking for the Center in accordance with the formula set forth in Section 11.3.2 hereof. Developer shall incorporate the Rehabilitation Parcel into the Center by subjecting its fee or leasehold interest therein to the terms of this REA and, if Developer obtains only a leasehold interest in the Rehabilitation Parcel, by causing the owner of such Rehabilitation Parcel to subject its fee to the terms of an Easement,

Covenant and Restriction Agreement. Upon the incorporation of the Rehabilitation Parcel into the Center, the Parties and Agency shall amend the legal description of the property subject to this REA to include the Rehabilitation Parcel. If Developer or any Person or entity controlling Developer, or which directly or indirectly is controlled by or under common control with Developer, ceases to own a fee or leasehold interest in the Rehabilitation Parcel, Developer shall have the right, in its sole discretion, to delete the Floor Area of the Rehabilitation Parcel from the Center.

11.2.2 Use of Rehabilitation Parcel. For purposes of this REA, the improvements on the Rehabilitation Parcel shall not be deemed to be Developer Mall Stores, nor shall the Floor Area of the Rehabilitation Parcel be included within the determination of the Initial Planned Floor Area or Minimum Floor Area of the Developer Mall Stores. If the Rehabilitation Parcel is incorporated into the Center, Developer shall maintain and lease the improvements thereon in a manner complementary to the Shopping Center but shall only be required to rehabilitate any existing improvements on the Rehabilitation Parcel to the extent Developer determines such rehabilitation to be economically feasible. The use of the improvements located on the Rehabilitation Parcel incorporated into the Center shall be subject to the provisions of Sections 11.5, 11.6 and 11.7 of this REA. Notwithstanding the above, uses existing at the time of acquisition of the Rehabilitation Parcel by Developer shall be permitted, notwithstanding a violation of Section 11.7 hereof, so long as an existing occupant has an existing contractual right to maintain such use, but such use shall be discontinued as soon as Developer has the right to terminate such use.

11.3 CONTIGUOUS PARCELS.

11.3.1 Acquisition by Party or Agency. If Agency or any Party acquires a fee or leasehold interest in a Contiguous Parcel during the term of this REA, Agency or the acquiring Party shall subject the interest so acquired to an Easement, Covenant and Restriction Agreement by promptly executing and delivering such agreement. If only a leasehold interest is obtained in the Contiguous Parcel, Agency or the Party acquiring the interest shall use commercially reasonable efforts to cause the fee owner to subject its fee to the terms of an Easement, Covenant and Restriction Agreement. The use of the improvements located on a Contiguous Parcel acquired by Agency or any Party shall be subject to the provisions of Sections 11.5 and 11.7 of this REA so long as Agency or such Party, or any affiliate of such Party holds a fee or leasehold interest in the Contiguous Parcel. Notwithstanding the above, uses existing at the time of acquisition of the Contiguous Parcel shall be permitted, notwithstanding the violation of Section 11.7 hereof, so long as an existing occupant has an existing contractual right to maintain such use, but such use

shall be discontinued as soon as Agency or the Party acquiring a fee or leasehold interest in the Contiguous Parcel has the right to terminate such use.

11.3.2 Additional Parking for Contiguous Parcels. If Agency or any Party remodels the existing improvements or constructs new improvements on a Contiguous Parcel after acquiring a fee or leasehold interest therein such that the Floor Area contained within the remodeled or newly constructed improvements exceeds the Floor Area contained on such Contiguous Parcel prior to the remodeling or new construction by more than one percent (1%), such Party or Agency shall provide additional parking for the Center for the additional Floor Area at the rate of two (2) spaces per one thousand (1,000) square feet of Floor Area devoted to office use and four and one-tenth (4.1) spaces per one thousand (1,000) square feet of Floor Area devoted to retail use. Any such additional parking shall be in reasonable proximity to the Center and in such locations and configurations as may be approved by the other Parties.

11.4 HEIGHTS. The heights of the buildings in the Center shall not exceed those specified in Exhibit "I." Rooftop mechanical equipment shall be screened so as to be hidden from public view from adjacent streets and highways.

11.5 USE. Neither the Center nor any part thereof shall be used, and no building or other improvement shall be constructed, maintained or used except for retail, office and service establishments common to first-class, high quality open air, regional shopping centers located in Southern California, and for maintenance and operation of the Arts Complex. For purposes of this REA, the standard for first-class, high quality, open air, regional shopping centers located in Southern California shall be similar to the standard for first-class, high quality, two level regional shopping centers containing enclosed air conditioned malls located in Southern California.

11.6 SERVICE AND OFFICE USE. Notwithstanding anything contained herein, office use shall be permitted only on the second floor of any Rehabilitation Parcel to the extent of the aggregate amount of Floor Area therein which is used for office purposes or offered for lease for office purposes as of the date of execution of this REA and in those areas of the Stores devoted to office space for the operation of such Stores. Permissible service uses include financial institutions, brokerage offices, restaurants, travel and other agencies and similar service establishments. Service use shall be permitted only in the Developer Mall Stores fronting on Chapala Street or in the improvements located on the Rehabilitation Parcel to the extent of the aggregate amount of Floor Area of such Rehabilitation Parcel which is used for service purposes or offered for lease for service purposes as

of the date of execution of this REA. No Floor Area shall be devoted to service use, other than restaurant use or other food operations, in the remaining Developer Mall Stores, without the prior written consent of Broadway and Nordstrom, which consent shall not be unreasonably withheld if Developer provides evidence satisfactory to Broadway and Nordstrom that despite due diligence and good faith efforts it has been unable to lease such Developer Mall Stores for retail use. Service use incidental to and in support of a primary retail use shall be permitted throughout the Developer Mall Stores. Notwithstanding the above, restaurant use shall be permitted throughout the Developer Mall Stores and in any improvements on the Rehabilitation Parcel; provided, however, that no fast food restaurant shall be located within one hundred fifty (150) feet of the entrance to a Major's Store without the prior written consent of such Major.

11.7 PROHIBITIONS. No use or operation shall be made, conducted or permitted on or with respect to all or any part of the Center, which use or operation is obnoxious to or out of harmony with the development or operation of a first class, high quality, open air regional shopping center located in Southern California. Prohibited uses or activities shall include but not be limited to:

- (a) Any public or private nuisance;
- (b) Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness;
- (c) Creation of any obnoxious odor;
- (d) Storage, production or use of any noxious, toxic, caustic, hazardous or corrosive fuel, gas, waste or material;
- (e) Creation of any dust, dirt or fly ash in excessive quantities;
- (f) Maintenance of any unusual fire, explosive or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks;
- (g) Any warehouse (but any area for the storage of goods intended to be sold in the immediate future at any retail establishment in the Center shall not be deemed to be a warehouse), assembly, manufacturing, distillation, refining, smelting, agricultural or mining operations;
- (h) Any mobile home or trailer court, labor camp, junk yard, stock yard or animal raising. Notwithstanding the foregoing, a pet shop shall be a permitted use for the Developer Mall Stores provided that such shop shall be conducted so there is no violation of the other prohibitions of

this Section 11.7, and no pet shop shall be located within one hundred fifty (150) feet of the entrance of either Major's Store, without such Major's prior written consent.

(i) Except during construction or reconstruction, any drilling for and/or removal of subsurface substances;

(j) Any dumping of garbage or refuse, except in designated trash areas;

(k) Any commercial laundry or dry cleaning plant (except for any outlet of a commercial laundry or dry cleaning business used solely for customer delivery and pick-up of laundry and dry cleaning), laundromat, veterinary hospital, car washing establishment, bowling alley, mortuary or similar service establishment;

(l) any adult book store, theater or cinema, or other establishment selling or exhibiting pornographic material;

(m) Any business selling drug paraphernalia;

(n) Any automobile body and fender repair work;

(o) Any pushcarts except as authorized pursuant to Section 11.8.1;

(p) Any second-hand merchandising retail facility;
and

(q) Any bankruptcy or auction sales.

11.8 NONINTERFERENCE WITH COMMON AREA.

11.8.1 Prohibition on Retail Activity. Each Party covenants and agrees with each other Party that no selling or retail activity shall be conducted in the Common Area, except as provided below, in order to maintain efficient pedestrian traffic flow in the Common Area. Notwithstanding the above, selling or retail activity may be permitted in the Common Area in connection with special events or promotions of the Shopping Center authorized by Developer provided that such selling and retail activity is confined to the Arts Complex (if related to the activities of the Arts Complex) and De La Guerra Place. Other than in the foregoing areas, and except as provided below, no selling or retail activity shall be permitted in the Common Area between De La Guerra Place and the entrance of a Major's Store unless first approved by such Major. Notwithstanding the above, Nordstrom may operate or cause to be operated in the Common Area not more than two (2) moveable pushcarts, together with portable tables and chairs, used solely for the sale of food or beverage, which pushcarts, tables and chairs shall be used only within the designated

area adjacent to the entrance to the Nordstrom Store as more particularly shown on the Common Area Site Plan attached hereto as Exhibit "C" or in other portions of the Common Area outside of such designated areas with the prior written approval of Developer and Broadway. Developer may maintain pushcarts only within the areas of the Common Area designated on the Common Area Site Plan and in any other areas of the Common Area with the prior written approval of each Major. Developer and Nordstrom shall obtain all necessary and appropriate governmental approvals and permits for the operation of their respective pushcarts. The operation of the pushcarts shall comply with the provisions of Section 11.8.2 below. Developer shall operate and maintain its pushcarts, and Nordstrom shall maintain its pushcarts, tables and chairs in the Common Area in accordance with the Pushcart Operation and Maintenance Standards attached hereto as Exhibit "J."

11.8.2 Special Events and Promotions. Developer shall have the right from time to time to stage special events and promotions in the amphitheater portion of the Common Area, De La Guerra Place and the Arts Complex without the consent of the Majors. Developer may stage special events in other portions of the Common Area only with the prior written approval of each Major, which approval shall not be unreasonably withheld. All special events and promotions conducted in the Common Area shall be conducted (i) in good taste, (ii) in a manner that does not materially interfere with the use of, access to, or unreasonably obstruct the sight lines to or visibility of the entrances to the Majors' Stores or the signs of each Major, (iii) in a manner that does not materially impede or interfere with the circulation of pedestrians within the Common Area or the use by Permittees of the Common Area, and (iv) in a manner that does not create any undue noise or litter. No retail activity shall be permitted in connection with such special events and promotions except as specifically provided in Section 11.8.1 hereof.

11.9 FENCES OR OTHER OBSTRUCTIONS. No fence, barrier, structure or other obstruction of any kind shall be placed, kept, permitted or maintained upon the Common Area without the prior written consent of the Parties, except for (i) barriers and other obstructions designed to restrict vehicular and pedestrian access to the Common Area during such hours that the Common Area is closed, (ii) barriers and other obstructions designed to restrict vehicular access to the Common Area or to service areas of the Common Area during hours when service and deliveries are prohibited in accordance with the Retail and Service Access Plan, (iii) construction barriers extending a minimal distance into the Common Area erected by the Majors or Developer during the alteration or Restoration of either of the Major's Stores or the Developer Mall Stores, and (iv) safety barriers designed to protect pedestrians placed in the Common Area by Operator during the prosecution of any work in the Common Area. Nothing herein shall limit

the right of Developer to install decorative items or customer conveniences as shown on the Approved Plans and Specifications for the Common Area or as approved pursuant to Section 5.3 of this REA.

11.10 RIGHTS OF ENFORCEMENT. Agency shall have the right to enforce the rights expressly granted to Agency pursuant to Sections 11.1, 11.4, 11.5 and 11.7 (except the provisions of subsection (h) thereof relating to pet shops and subsection (o)). Each of the Parties hereto shall have the right to enforce the provisions of this Article 11; provided, however, each Major shall have the right to enforce the provisions Sections 11.3.2, 11.6, 11.7(h) (as it relates to pet shops), and 11.8 only so long as such Major is operating Floor Area in its Store of not less than forty thousand (40,000) square feet under a single name.

ARTICLE 12 OPERATION AND MAINTENANCE OF COMMON AREA

12.1 COMMON AREA - STANDARDS. From and after the Actual Opening Date, Operator shall Operate and maintain, or cause to be Operated and maintained, the Common Area in good order, condition and repair in accordance with the standard of maintenance for first class, high quality, open air regional shopping centers located in Southern California, without expense to any Major, except as set forth in the Separate Agreements between Developer and each Major.

Without limiting the generality of the foregoing, Operator shall maintain the Common Area in accordance with the following standards:

(a) Maintain the Paseos of the Common Area in a smooth and evenly covered condition with the type of surfacing material originally installed thereon, or such substitute as the Operator shall deem appropriate;

(b) Remove all papers, debris, filth and refuse and wash or thoroughly sweep the surface of the Common Area and the perimeter sidewalks surrounding the Common Area as often as reasonably necessary;

(c) Maintain lighting in the Common Area in accordance with the lighting specifications set forth in the Approved Plans and Specifications for the Common Area during such hours that the Major Stores or the Developer Mall Stores are open, and security lighting during such hours as the Major Stores and the Developer Mall Stores are closed;

(d) Clean lighting fixtures and relamp as needed;

(e) Maintain (i) landscaping as necessary to keep in a first-class thriving condition, and (ii) slopes and grades within the landscaped areas in an attractive condition, and replace plants and shrubs as necessary.

(f) Maintain all signs (excluding those of the Occupants) in good and clean condition, including relamping and repairing as may be required;

(g) Employ adequate security personnel to patrol the Common Area during the hours the Stores in the Center are open, and such other hours as may be reasonably necessary and appropriate; provided, however, that any security personnel employed by Operator shall be for the sole benefit of Agency and the Majors and not for the benefit of any third party, and Operator does not assume any duty to third persons that would not otherwise exist by law for liability for personal injuries or property damage occurring in or about the Common Area and caused by third parties by reason of the obligation to employ security personnel pursuant to this Section 12.1; provided, further, that nothing contained herein shall negate the Operator's indemnity obligations to the Majors under Section 13.1 hereof;

(h) Maintain and keep in a sanitary condition any public rest rooms and other common use facilities in the Common Area, including the showers in the Arts Complex;

(i) Clean, repair and maintain all utility systems that serve the Common Area;

(j) Clean, repair and maintain all decorative items, and all benches, seats, drinking fountains and other improvements and conveniences installed for the benefit of pedestrians in the Common Area;

(k) Maintain such appropriate entrance, exit and directional signs, markers and directories in the Common Area as shall be reasonably required;

(l) Enforce the Sign Criteria for the Center; and

(m) Enforce the Rules and Regulations of the Center.

In addition to the foregoing, Operator shall perform each of the obligations set forth in paragraphs (a), (b), (c), (d), (e), (i), (j) and (k) of this Section 12.1 with respect to the portion of De La Guerra Street subject to the De La Guerra Easement. All other maintenance obligations not expressly set forth herein with respect to the portion of De La Guerra Street subject to the De La Guerra Easement shall be performed by City. Operator shall use reasonable efforts to cause City to furnish normal City services, including police services, to the portion of De La Guerra Street subject to the De La Guerra

Easement, to the extent such services are not otherwise required to be performed by Operator hereunder. Operator shall perform such work on the Onsite Parking Structure as may be necessary to maintain the surfaces thereof in a watertight condition to prevent leakage onto the lower floors of adjoining improvements. Operator's obligations hereunder shall be limited to good faith reasonable efforts to maintain the surfaces of the Onsite Parking Structure in a watertight condition.

12.2 DESIGNATION OF OPERATOR.

12.2.1 Developer as Operator. The Parties hereby appoint Developer to be the Operator of the Common Area, and Developer hereby accepts appointment as Operator. At any time during the term of this REA, Developer may delegate the Operator's functions and responsibilities to another person ("Designated Operator"); provided, however, that notwithstanding such delegation, Developer shall remain responsible for the Operation and maintenance of the Common Area. Any person appointed by Developer as a Designated Operator shall (i) have at least five (5) years experience in the operation of a first-class, high quality regional shopping mall in the western United States, and (ii) be subject to the approval of Broadway and Nordstrom, which approval shall not be unreasonably withheld. Developer may revoke the appointment of any Designated Operator at any time in Developer's sole and absolute discretion, but in any event, such appointment shall terminate on the date that Developer shall cease to have an interest in the Developer Tract. The rights and obligations of the Operator shall constitute a burden upon the Developer Tract and shall run with the land and bind each and every owner of the Developer Tract, except to the extent such owner is relieved of the rights and obligations of Operator pursuant to this Section 12.2. Developer shall be relieved of any and all liability for the Operation and maintenance of the Common Area from and after the date of any voluntary or involuntary transfer of Developer's interest in the Developer Tract to another Person; provided, however, that such transfer shall not relieve Developer from any such liability arising out of actions or omissions occurring prior to such transfer.

12.2.2 Developer's Transferee as Operator. If Developer transfers its entire interest in the Developer Tract at any time during the term of this REA, Developer's transferee shall become the Operator. Notwithstanding the above, if the transferee does not have at least five (5) years experience in the operation of a first-class, high quality regional shopping mall in the western United States, such transferee shall delegate the functions and responsibilities of the Operator to a Designated Operator with such qualifications immediately upon acquiring its interest in the Developer Tract. The transferee's appointment of a Designated Operator shall be subject to the approval of Broadway and Nordstrom, which

approval shall not be unreasonably withheld. The appointment of a Designated Operator by Developer's transferee shall not relieve such transferee of its responsibility for the Operation and maintenance of the Common Area. Notwithstanding the above, if Developer's transferee is required to appoint a Designated Operator pursuant to this Section 12.2.2 and either fails or is unable to do so within two (2) months after acquiring its interest in the Developer Tract, Broadway and Nordstrom shall thereafter jointly have the right to appoint a Designated Operator meeting the qualifications specified above to perform the functions and responsibilities of the Operator. Notwithstanding such appointment, Developer's transferee shall remain responsible for Operation and maintenance of the Common Area. If the Majors appoint a Designated Operator pursuant to this Section 12.2.2, Developer's transferee shall have the right to resume performance of the functions and responsibilities of the Operator by complying with the provisions of Section 12.3.2 hereof.

12.2.3 Developer's Mortgagee as Operator. Subject to the provisions of Section 21.9 hereof, if any Mortgagee of Developer or any other Person acquires Developer's interest in the Developer Tract as the result of a nonjudicial foreclosure sale, judicial foreclosure or a deed in lieu of foreclosure, or termination of a Sale and Leaseback, such Mortgagee or other Person shall become the Operator. Promptly after acquiring the Developer Tract, such Mortgagee shall appoint a Designated Operator having the qualifications set forth in Section 12.2.1. The appointment of a Designated Operator by the Mortgagee shall be subject to the approval of Broadway and Nordstrom, which approval shall not be unreasonably withheld; provided, however, that such appointment shall not relieve the Mortgagee of responsibility for the Operation and maintenance of the Common Area. If the Mortgagee fails or is unable to appoint a Designated Operator within sixty (60) days after acquiring Developer's interest in the Developer Tract, Broadway and Nordstrom shall have the right to appoint a Designated Operator meeting the qualifications specified in Section 12.2.1 to perform the functions and responsibilities of the Operator; provided, however, that the Mortgagee or other Person acquiring Developer's interest in the Developer Tract shall remain responsible for Operation and maintenance of the Common Area. Notwithstanding the above, a Mortgagee or other Person acquiring the Developer Tract shall only be liable to perform the functions and responsibilities of the Operator during the period of time that such Mortgagee or Person is the Party as to the Developer Tract and shall be released from any further liability therefor upon a transfer of the Developer Tract in accordance with Section 20.8 of this REA. If the Majors appoint a Designated Operator pursuant to this Section 12.2.3, Developer's Mortgagee shall have the right to resume performance of the functions and responsibilities of the Operator by complying with the provisions of Section 12.3.2 hereof.

12.2.4 Designation of Operator Upon Termination of Developer Lease. If the Developer Lease shall terminate at any time during the term of the REA, and Agency does not enter into a new lease with Developer's Mortgagee in accordance with the Developer Lease, any Person, including Agency, thereafter acquiring the Developer Tract shall become the Operator, subject to the same terms and conditions as if such Person were a transferee of Developer under Section 12.2.2 hereof, including the right of the Majors to appoint a Designated Operator in accordance with Section 12.2.2.

12.2.5 Right to Common Area Maintenance Payments. If a Designated Operator is appointed by the Majors pursuant to Sections 12.2.2, 12.2.3 or 12.2.4 hereof, all Common Area maintenance payments paid by tenants under Developer Mall Store leases and by Contiguous Owners under Easement Covenant and Restriction Agreements, and by either Major pursuant to a Separate Agreement (collectively "CAM Payments") shall be paid by the Party as to the Developer Tract to such Designated Operator for use in defraying the expense of operation and maintenance of the Common Area. The CAM Payments received by the Party as to the Developer Tract shall be paid to the Designated Operator on a monthly basis on the last day of the month in which such CAM Payments were received. Any CAM Payments in excess of the cost of Operation and maintenance of the Common Area, including the Designated Operator's supervision fee and overhead, shall be retained by the Designated Operator, unless any excess CAM Payment is required to be returned to tenants or Contiguous Owners under the Developer Mall Store leases or Easement Covenant and Restrictions Agreements. The Majors, acting jointly, shall have the right to enforce the obligation of the Party as to the Developer Tract to pay the CAM Payments to the Designated Operator. In the alternative, the Majors may execute and record a power of attorney in the Office of the County Recorder of Santa Barbara County, authorizing the Designated Operator to act as the Majors' attorney-in-fact to enforce the obligations of the Party as to the Developer Tract under this Section 12.2.5. If such Party fails to pay the CAM Payments to the Designated Operator within thirty (30) days after the date of written notice from the Designated Operator that such payment is due or delinquent, the Majors, acting jointly on behalf of the Designated Operator, or the Designated Operator, as the attorney-in-fact for the Majors, may execute, acknowledge and record a claim of lien ("Claim of Lien") against the Developer Tract in the Office of the County Recorder of Santa Barbara County stating that a lien is claimed against the Developer Tract in the amount of the CAM Payments owed by the Party as to the Developer Tract to the Designated Operator, plus costs and expenses, including attorneys' fees incurred in connection with the filing or enforcement of such lien. Such lien shall be subject to the lien of any Mortgage placed upon the Developer Tract. Any such lien may be foreclosed by appropriate action in a court or in the manner now or hereafter

provided in California Civil Code Sections 2924 et seq., as amended or recodified from time to time, for the foreclosure of a deed of trust with power of sale or in any other manner permitted by law. Upon payment of the amount for which the Claim of Lien has been filed prior to the expiration of the statutory reinstatement period, the Majors, or the Designated Operator, as attorney-in-fact for the Majors, shall promptly record an appropriate release of such Claim of Lien in the Office of the County Recorder of Santa Barbara County, California. Upon the appointment of a Designated Operator by the Majors in accordance with Sections 12.2.2, 12.2.3 or 12.2.4, the Party as to the Developer Tract shall promptly furnish the Designated Operator with a complete list of all Developer Mall Store tenants and Contiguous Owners, setting forth in such statement the amount of Common Area Maintenance contributions required to be paid by each such tenant or Contiguous Owner or by any Major pursuant to a Separate Agreement.

12.3 TAKE-OVER OF MAINTENANCE.

12.3.1 Appointment of Designated Operator. If both Broadway and Nordstrom shall determine at any time while each such Major is Operating in the Center that Operator is in breach of any of the Common Area operating standards set forth in Section 12.1 hereof such that Operator is not Operating or causing to be Operated, the Common Area in accordance with the standard of a first-class, high quality, open air regional shopping mall in Southern California or Operator is not performing its obligations with respect to the portion of De La Guerra Street subject to the De La Guerra Easement, Broadway and Nordstrom shall give Operator and Developer (if Developer is not acting as Operator) written notice of such determination, specifying the particular Common Area operating standard or maintenance obligation that has been breached. If Operator is still in breach of the particular Common Area operating standard or maintenance obligation thirty (30) days after receipt of the notice, Broadway and Nordstrom shall give Operator and Developer a second written notice specifying the particular Common Area operating standard or maintenance obligation that has been breached. If at the end of fifteen (15) days from the date of such second notice, Operator continues to be in breach of the Common Area operating standard or maintenance obligation, Broadway and Nordstrom shall have the right to jointly appoint a Designated Operator meeting the qualifications set forth in Section 12.2.1 above to perform the functions and responsibilities of the Operator set forth in Section 12.1 hereof. Notwithstanding such appointment, Developer shall remain responsible for the Operation and maintenance of the Common Area, but shall have no obligation with respect to the indemnity obligations set forth in Sections 12.7 and 13.1 hereof. The appointment of the Designated Operator shall be effective on the first day of the next succeeding calendar quarter. The Designated Operator shall assume all Operation and maintenance obligations of the

Operator set forth in Section 12.1 above and the indemnity obligations of the Operator set forth in Sections 12.7 and 13.1 and shall have the right to receive CAM Payments in accordance with Section 12.2.5.

Notwithstanding the above, at any time during the forty-five (45) day period from the date of the first notice given by Broadway and Nordstrom, Developer may deliver to each of Broadway and Nordstrom a notice of dispute that Operator is in breach of the Common Area operating standard or maintenance obligation set forth in the notice delivered by Broadway and Nordstrom and of Developer's intent to arbitrate the dispute in accordance with Article 23 hereof. Within fifteen (15) days after the date of the notice of dispute, Broadway, Nordstrom and Developer shall each appoint arbitrators in the manner set forth in Article 23 hereof. The issue shall be resolved by arbitration within one hundred twenty (120) days after submission of the matter. Until such time as the issue is finally arbitrated, Broadway and Nordstrom shall be prohibited from appointing a Designated Operator in accordance with this Section 12.3.

12.3.2 Resumption of Operator's Duties. If the Majors appoint a Designated Operator pursuant to this Section 12.3, Developer shall have the right to resume performance of the functions and responsibilities of the Operator at any time after one (1) year from the date that the Designated Operator appointed by the Majors assumed the Operator's duties, if Developer demonstrates to the reasonable satisfaction of the Majors that it meets the qualifications set forth in Section 12.2.1(i) and (ii) hereof or has entered into a contract with a Designated Operator meeting the qualifications set forth in Section 12.2.1(i) and (ii) for the Operation and maintenance of the Common Area. Notwithstanding the above, if the Majors appoint a Designated Operator to perform the functions and responsibilities of the Operator during any period that a Mortgagee of the Developer Tract is diligently prosecuting a proceeding to acquire the Developer's interest therein, such Mortgagee may replace the Designated Operator appointed by the Majors upon its acquisition of the Developer's interest in the Developer Tract and thereafter Operate or, cause to be Operated, the Common Area in accordance with Section 12.2.3 hereof.

12.4 MAINTENANCE OF ARTS COMPLEX. During any period that the Arts Complex is operated, it shall be maintained in first-class condition and repair consistent with the standard of a first-class, high quality, open air regional shopping mall in Southern California. During any period that the Arts Complex is not operating, Developer shall maintain the Arts Complex in such condition and repair as is required to prevent the appearance of the Arts Complex from detracting from the appearance of the Center. At any time during the term of this REA, Developer may, subject to the approval of Agency in

accordance with the Developer Lease, convert the use of the Arts Complex to a retail use consistent with a first-class, high quality, open air regional shopping mall in Southern California. Developer may not convert the Arts Complex to a nonretail use without (i) the approval of Agency in accordance with the Developer Lease, and (ii) the prior written consent of the other Parties. The consent of the other Parties shall not be unreasonably withheld or delayed, if the proposed use would be consistent with a first-class, high quality, open air regional shopping center located in Southern California. No additional parking shall be required for the Shopping Center due to a conversion of the use of the Arts Complex.

12.5 RIGHT TO DESIGNATE EMPLOYEE PARKING AREAS. Each Party shall comply with the Parking Covenants and the Transportation Systems Management Plan for the Downtown Retail Revitalization Project: Paseo Nuevo, June 12, 1987, and take such measures as are reasonably necessary to cause its employees and the employees of any of its Occupants to park in the employee parking areas designated pursuant to the Parking Covenants.

12.6 HOURS OF OPERATION. Operator shall cause the Common Area to be open to pedestrian access at least forty-five (45) minutes before any of the Major Stores or the Developer Mall Stores are open for business and at least forty-five (45) minutes after all of the Major Stores and the Developer Mall Stores close for business.

12.7 INDEMNITY. Operator agrees to indemnify, defend, and hold harmless each of the Parties hereto, and their respective Tracts, from and against any mechanic's, materialmen's and/or laborers' liens, and all costs, expenses and liabilities in connection therewith, including attorneys' fees, arising out of the Operation and maintenance required to be performed by Operator in the Common Area pursuant to the provisions of this Article 12. If the Tract of any Party shall become subject to any such lien, Operator shall at the request of such Party promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien, or posting a bond or other security as shall be required by law to obtain such release and discharge. Each Party shall give Operator notice of any suit or proceeding entitling such Party to indemnification pursuant to this Section 12.7.

12.8 RIGHTS OF ENFORCEMENT. The provisions of this Article 12 shall not be enforceable by Agency. Each of the Majors shall have the right to enforce the provisions of Section 12.3 only so long as such Major is operating Floor Area in its Store of not less than forty thousand (40,000) square feet under a single name. If only one Major is entitled to enforce the provisions of Section 12.3, such Major may enforce the provisions of Section 12.3 in its own right

and the approval or action of the other Major shall not be required.

ARTICLE 13
INDEMNIFICATION AND INSURANCE

13.1 COMMON AREA INDEMNITY. Developer, as Operator, and each successor Operator, covenants to defend, indemnify and hold harmless each Party and its employees, agents and contractors from and against all costs, expenses and liability (including reasonable attorneys' fees) incurred in connection with all claims, including any action or proceedings brought thereon, arising or resulting from death or personal injury, caused to any Person, or damage to the property of any Person, occurring within the Common Area, except to the extent occurring within the portion of the Common Area designated for operation of the Nordstrom pushcarts, tables and chairs, as long as such pushcarts, tables and chairs are operating, and, except to the extent caused by the negligence or wrongdoing of the indemnified Parties or their respective employees, agents and contractors.

13.2 INDEMNITY - DEVELOPER, BROADWAY AND NORDSTROM TRACTS. Broadway and Nordstrom severally covenant and agree to defend, indemnify and hold harmless each of the other Parties, and their respective employees, agents or contractors, from and against all claims and all costs, expenses and liability (including reasonable attorneys' fees) incurred in connection with all claims, including any action or proceedings brought thereon, arising or resulting from death or personal injury caused to any Person, or damage to the property of any Person, as shall occur within its respective Stores (including, with respect to Nordstrom, as shall occur within the portion of the Common Area designated for operation of the Nordstrom pushcarts, tables and chairs, as long as such pushcarts, tables and chairs are operating) except to the extent caused by the negligence or willful wrongdoing of the indemnified Parties or their respective employees, agents or contractors. Developer covenants and agrees to defend, indemnify and hold harmless each of the other Parties and their respective employees, agents and contractors from and against all claims and all costs, expenses and liability (including reasonable attorneys' fees) incurred in connection with all claims, including any action or proceedings brought thereon, arising or resulting from death or personal injury caused to any Person, or damage to the property of any Person, as shall occur within the Developer Mall Stores, except to the extent caused by the negligence or willful wrongdoing of the indemnified Parties or their respective employees, agents or contractors.

13.3 LIABILITY INSURANCE - BROADWAY AND NORDSTROM STORES. During the term of this Agreement, each of Broadway and Nordstrom shall maintain or cause to be maintained a policy or policies of comprehensive public liability and property damage

insurance insuring against any loss, liability, cost, damage, and expense (including expense of legal defense) incurred or arising out of any death, personal injury or property damage suffered or alleged to be suffered by any Person or Persons within such Major's Store. Such policy or policies shall include contractual liability insurance for the respective indemnification obligations of Broadway and Nordstrom under Section 13.2 above and shall insure the other Parties against any cost incurred in the legal defense of any such claim.

13.4 DEVELOPER MALL STORES - LIABILITY INSURANCE. During the term of this Agreement, Developer shall maintain or cause to be maintained a policy or policies of comprehensive public liability and property damage insurance insuring against any loss, liability, cost, damage, and expense (including expense of legal defense) incurred or arising out of any death, personal injury or property damage suffered or alleged to be suffered by any Person or Persons within the Developer Mall Stores. Such policy or policies shall include contractual liability insurance for the indemnification obligations of Developer under Section 13.2 above and shall insure the other Parties against any cost incurred in the legal defense of any such claim.

13.5 LIABILITY INSURANCE - COMMON AREA. Developer, as Operator, and each Person succeeding Developer as Operator, shall maintain a policy or policies of comprehensive public liability and property damage insurance insuring against any loss, cost, liability, damage and expense (including the expense of legal defense) incurred or arising out of any death, personal injury or property damage suffered or alleged to be suffered by any Person or Persons within the Common Area. Such policy shall include contractual liability insurance for the Operator's indemnity obligations set forth in Section 13.1 above.

13.6 GENERAL PROVISIONS FOR PUBLIC LIABILITY INSURANCE. Each policy of insurance required to be maintained under Sections 13.3, 13.4 and 13.5 above shall comply with the following requirements:

13.6.1 Limits of Coverage. Each policy of liability insurance required to be maintained hereunder shall be kept in full force and effect during the term of this REA in an initial combined single limit of not less than Five Million Dollars (\$5,000,000) per occurrence; subject, however, to Section 13.6.3 hereof.

13.6.2 Additional Insureds. Each policy shall name each of the other Parties, and any Mortgagee holding a Mortgage on the insuring Party's Tract, as additional insureds;

13.6.3 Review of Limits. The liability limits of each policy shall be periodically reviewed by the Parties for

the purpose of mutually increasing or decreasing the minimum limits of such insurance from time to time to amounts which may be reasonable and customary for first class, high quality, open air regional shopping centers located in Southern California.

13.6.4 Insurers. Each policy shall be issued by insurers of recognized financial responsibility. Such insurers shall be licensed or permitted to do business in the State of California, provided, however, a Party that is satisfying its insurance obligations hereunder through self-insurance pursuant to Section 13.14.2 shall not be subject to the foregoing requirement.

13.6.5 Certificates of Insurance. Each Party shall deliver upon request, certificates of insurance evidencing the insurance required to be maintained hereunder to the other Parties or Persons named as additional insureds under such policies. The certificates of insurance shall specifically provide that the insurance may not be cancelled or the amount of coverage reduced without at least thirty (30) days prior written notice to each of the Parties named as additional insureds.

13.7 INTENTIONALLY DELETED.

13.8 WORKER'S COMPENSATION INSURANCE. Each Party severally covenants and agrees to maintain or cause to be maintained a policy or policies of worker's compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure all persons employed by such Party in the Center. Such insurance shall cover full liability for compensation under the Worker's Compensation Act, as amended from time to time, based upon death or bodily injury claims made by, for or on behalf of any Person incurring or suffering injury or death in connection with work or employment for such Party in the Center.

13.9 CASUALTY INSURANCE.

13.9.1 Common Area. Upon commencement of construction of the Common Area and thereafter during the term of this REA, Developer shall carry or cause to be carried broad-form all risk casualty insurance in an amount equal to not less than ninety percent (90%) of the full insurable value of the Common Area insuring against "all risks" (except loss or damage by earthquake, war or nuclear incident) including, but not limited to, loss or damage by fire, flood (if flood insurance is available at commercially reasonable rates), windstorm, cyclone, tornado, hail, lightning, explosion, riot, riot attending a strike, civil commotion, malicious mischief, vandalism, aircraft, vehicle, smoke damage and sprinkler leakage.

13.9.2 Developer Mall Stores. Upon the commencement of construction of the Developer Mall Stores and thereafter as long as Developer is required to Operate the Developer Mall Stores in accordance with Section 17.2 hereof, Developer shall carry or cause to be carried broad form all-risk casualty insurance in an amount equal to not less than ninety percent (90%) of the full insurable value of the Developer Mall Stores insuring against "all risks" (except loss or damage by earthquake, war or nuclear incident), including, but not limited to loss or damage by fire, flood (if flood insurance is available at commercially reasonable rates), windstorm, cyclone, tornado, hail, lightning, explosion, riot, riot attending a strike, civil commotion, malicious mischief, vandalism, aircraft, vehicle, smoke damage and sprinkler leakage.

13.9.3 Stores of Majors. Effective upon the commencement of construction of its Improvements, and so long thereafter as each Major is required to Operate its Store in accordance with the Operating covenant set forth in Section 18.1 or 18.2, as appropriate, and during any period that such covenant is extended, each Major shall carry or cause to be carried broad form all-risk casualty insurance in an amount equal to not less than ninety percent (90%) of the full insurable value of its Improvements, insuring against "all-risks" (except loss or damage by earthquake, war or nuclear incident), including, but not limited to, loss or damage by fire, flood (if flood insurance is available at commercially reasonable rates), windstorm, cyclone, tornado, hail, lightning, explosion, riot, riot attending a strike, civil commotion, malicious mischief, vandalism, aircraft, vehicle, smoke damage and sprinkler leakage.

13.9.4 Full Insurable Value. The term "full insurable value" as used in this REA shall mean the actual replacement cost (excluding the cost of excavation, foundations and footings below the ground level and without deduction for depreciation) of the Common Area or the respective Improvements, as appropriate, as adjusted from time to time to reflect changes in the actual replacement costs less such deductibles as are reasonable and customary for insurance maintained on first class, high quality, open air regional shopping centers located in Southern California.

13.10 REQUIREMENTS OF CASUALTY INSURANCE POLICIES. Each casualty insurance policy required to be maintained pursuant to Sections 13.9.1, 13.9.2 and 13.9.3 hereof shall comply with the following requirements:

13.10.1 Review of Limits. The limits of each policy shall be periodically reviewed by the Parties for the purpose of mutually increasing or decreasing the minimum limits of such insurance from time to time to amounts which may be reasonable and customary for first-class, high quality, open air regional shopping malls located in Southern California.

13.10.2 Insurers. Each policy shall be issued by insurers of recognized financial responsibility licensed or permitted to do business in the State of California, provided, however, a Party then satisfying its insurance obligations hereunder through self-insurance pursuant to Section 13.14.2 shall not be subject to the foregoing requirement.

13.11 INTENTIONALLY DELETED.

13.12 MUTUAL RELEASE AND WAIVER OF SUBROGATION. Each Party hereby releases and waives any claims against each other Party from any liability for any death, personal injury or property damage, including any resulting loss of rents or profits of such Party or of any Occupant claiming its right of occupancy by or through such Party, which loss or damage is of the type covered by the insurance required to be maintained by it under Section 13.9, regardless of any negligence on the part of the released Persons which may have contributed to or caused such death, personal injury or property damage, and each Party on behalf of its insurance carrier, waives any right of subrogation that may arise therefrom. If a Party's insurance policy does not permit the foregoing waiver of liability, each Party severally covenants that it will obtain for the benefit of the other Parties a waiver of any right of subrogation which the insurer of such Party may acquire against any of the other Parties by virtue of the payment of any loss covered by such insurance.

If any Party is by law, statute or governmental regulation or for any other reason unable to obtain or otherwise fails to obtain a waiver of the right of subrogation for the benefit of the other Parties, then, during any period of time when such waiver is unobtainable, or has not been obtained for any reason, said Party shall be deemed not to have waived any right of subrogation of its insurance carrier against the other Parties, and during the same period of time the other Parties shall be deemed not to have waived the right of subrogation of their respective insurance carriers against such Party who has been unable, or failed for any reason, to obtain such waiver from any claims their respective insurance carriers may assert which otherwise should have been waived pursuant to this Section 13.12.

Developer covenants to and with each of Broadway and Nordstrom that the leases for the Developer Mall Stores will require the Developer Mall Store tenants to obtain for the benefit of each Party a waiver of any right of subrogation which the insurer of any such tenant may acquire against any Party by virtue of the payment of any loss to such tenant covered by the tenant's insurance, provided that if any such tenant will furnish such waiver only if there is a reciprocal waiver by one or more of the Parties, such Parties hereby agree to such waiver in favor of the tenant who actually has waived the right of subrogation as to such Parties.

13.13 DISPOSITION OF PROCEEDS.

13.13.1 Disposition of Proceeds for Restoration. If a Party ("Insured Party") is required or elects to restore its Improvements in accordance with the terms of this REA after the occurrence of damage or destruction and such Party does not meet the standards for self-insurance pursuant to the Section 13.14.2 hereof, and the insurance proceeds payable as a result of such damage or destruction exceed Two Hundred Fifty Thousand Dollars (\$250,000), such insurance proceeds shall be applied as follows:

13.13.1.1 Restoration Cost. Prior to the receipt of any insurance proceeds, the Insured Party shall furnish to Agency and any Mortgagee holding a Mortgage on the Insured Party's Tract, satisfactory evidence (a) of the cost of Restoration, (b) of any funds in addition to the insurance proceeds required for Restoration, and (c) that the amount of the insurance proceeds and such additional funds are sufficient to pay the full cost of Restoration.

13.13.1.2 Trustee. The insurance proceeds received as a result of the damage or destruction, less costs, fees and expenses incurred in collection thereof, including attorneys' fees and expenses, shall be paid to the Mortgagee holding a Mortgage on the Tract of the Insured Party or to a bank or trust company qualified to do business in the State of California as designated by the Insured Party, Agency, and Mortgagee. The recipient of such proceeds shall hereinafter be referred to as the "Trustee." Any Trustee's fees shall be paid from the insurance proceeds. To the extent the insurance proceeds are in fact paid to the Insured Party and its Mortgagee, if any, the Insured Party and such Mortgagee shall promptly deliver such insurance proceeds to the Trustee for disposition in accordance herewith.

13.13.1.3 Progress Payments. The Trustee shall pay the insurance proceeds from time to time as the Restoration progresses to the Insured Party, or to such Persons as the Insured Party may direct, upon receipt of written request of the Insured Party, accompanied by a certificate of an independent architect satisfactory to Agency and Mortgagee stating that the amount requested has been paid or is then due and payable and is properly a part of the cost of Restoration, that there are no mechanic's liens or similar liens for labor or materials supplied to the Restoration or that such liens have been paid in full, and that the balance of the proceeds remaining after making such payment are sufficient to pay the remaining cost of the Restoration.

13.13.1.4 Final Payment. Upon receipt by Agency and Mortgagee of satisfactory evidence that the Restoration has been completed and that there are no mechanic's liens or other liens against the Insured Party's Tract by

reason of the Restoration, and either the period within which a lien may be filed has expired or proof has been submitted that all costs of work theretofore incurred have been paid, and that the cost of Restoration has been paid in full, the Trustee shall pay the balance of the insurance proceeds, if any, to the Insured Party or as the Insured Party and Mortgagee may have agreed in their respective Mortgage.

13.13.2 Disposition if Restoration not Required. If the Insured Party is not required to repair or restore after damage or destruction to its Improvements pursuant to Article 15 hereof or the terms of its Separate Agreement, and the Insured Party does not elect to repair or restore, then the proceeds received by reason of damage to the Improvements of the Insured Party shall first be used to pay the cost of leveling, clearing and improving such Party's Tract as Common Area pursuant to the provisions of Section 15.7 hereof. The balance of such insurance proceeds shall be paid directly to the Insured Party, or to the holder of the Mortgage on the Insured Party's Tract, as their interests may appear.

13.14 BLANKET INSURANCE AND SELF-INSURANCE.

13.14.1 Blanket Insurance. Any insurance required to be carried by any Party pursuant to this Article 13 may be carried under a policy or policies covering other property. Each Party shall, upon request, furnish to each other Party required to be named as an additional insured under a policy required by this Article 13, prior to the effective date of any such policy, a certificate evidencing such policy or policies of blanket insurance. Each Party agrees that such blanket policies shall contain a provision that the same may not be cancelled without at least thirty (30) days' prior written notice being given by the insurer to the other Parties required to be named as additional insureds hereunder.

13.14.2 Self-Insurance. Any Party may satisfy its insurance obligations under Sections 10.10, 13.3, 13.4, 13.5, 13.8 and/or 13.9 hereof, as appropriate, through a plan of self-insurance maintained from time to time by such Party. Any Party desiring to self-insure pursuant to this Section 13.14.2 shall give thirty (30) days written notice of such intent to the other Parties. As a condition precedent to satisfying its insurance obligations through self-insurance, the self-insuring Party shall have and maintain at all times during the period it self-insures, a net worth of not less than Three Hundred Million Dollars (\$300,000,000) and net current assets of not less than One Hundred Million Dollars (\$100,000,000). A self-insuring Party's net worth shall be evidenced by its current annual report audited by an independent certified public accountant showing current net worth, or through such other financial material as deemed satisfactory by the other Parties hereto. Evidence of net worth shall be delivered to each of the other Parties along with the self-

insuring Party's notice of its intent to self-insure. Thereafter, on an annual basis, upon the request of any Party, the self-insuring Party shall deliver to the requesting Party a copy of its current annual report or other financial material as deemed satisfactory by the requesting Party evidencing its then current net worth. If a self-insuring Party's net worth and current net assets fall below the minimum limits set forth above at any time while such Party is self-insuring, it shall deliver a written notice of such fact to the other Parties and immediately discontinue its plan of self-insurance. Any plan of self-insurance used by a Party to satisfy its insurance obligations hereunder shall provide each of the other Parties with no less rights, protections and benefits than the other Parties would have obtained if the self-insuring Party had obtained a contractual policy of insurance from a third party insurer. If a self-insuring Party discontinues a plan of self-insurance, such Party shall immediately give written notice of such action to the other Parties hereto and shall immediately comply with all of the requirements of this Article 13 with respect to insurance required to be carried by such Party.

13.15 EFFECT ON INSURANCE REQUIREMENTS. Nothing contained in this Article 13 shall relieve any Party of its obligation to comply with any insurance requirements applicable to such Party or its Tract that may be set forth in such Party's lease with the Agency. As between Agency and the Majors, Agency shall have the right to enforce the provisions of this Article 13 to the extent such provisions are incorporated by reference in the Broadway Lease and the Nordstrom Lease. Agency shall not have the right to enforce provisions of this Article 13 as against Developer, but nothing contained herein shall limit Agency's right to enforce the obligations of Developer to comply with the insurance requirements set forth in the Developer Lease.

ARTICLE 14 MAINTENANCE AND ALTERATIONS

14.1 MAINTENANCE. Broadway and Nordstrom shall at all times during the term of this REA from and after the completion of construction of their respective Improvements keep and maintain, or cause to be kept and maintained, all portions of their respective Improvements in good order, condition and repair in accordance with the standard customary for first-class, high quality, open air regional shopping centers located in Southern California. Developer shall at all times during the term of this REA from and after the completion of construction of the Developer Mall Stores keep and maintain, or cause to be kept or maintained, all portions of the Developer Mall Stores in good order, condition and repair in accordance with the standard customary for first-class, high quality, open air regional shopping centers located in Southern California. The improvements on the Rehabilitation

Parcel, if incorporated into the Center, shall be kept and maintained by Developer in good order, condition and repair in accordance with the standard customary for first-class, high quality, open-air regional shopping centers located in Southern California; provided, however, that nothing contained herein shall be construed to require Developer to make any substantial alterations to existing buildings on the Rehabilitation Parcel, or to perform any act not permitted by existing contracts. Developer shall use reasonable efforts to cause any Contiguous Owner subject to an Easement Covenant and Restriction Agreement to maintain the improvements on its Contiguous Parcel in accordance with the standards set forth in such agreement.

14.2 ALTERATIONS. No Party shall make any material exterior alteration of, addition to or change in the Improvements on its Tract that would affect the exterior elevations or size, bulk and scale of the buildings in the Center without the prior written approval of each of the other Parties and Agency. In addition, any alterations by a Major of the structural portions of its respective Improvements that are physically integrated with or have a material effect on the Common Area, the Developer Mall Stores, the other Major's Store or the Onsite Parking Structure shall require the prior written approval of the Party or Parties affected, and Agency if Agency is operating the Onsite Parking Structure as a public parking structure in accordance with the Parking Covenants at the time the alteration is made. Any alterations by Developer of the structural portions of the Common Area or Developer Mall Stores that are physically integrated with or have a material effect on the Improvements of Broadway or Nordstrom or the Onsite Parking Structure shall require the prior written approval of the Party or Parties affected, and of Agency if Agency is operating the Onsite Parking Structure as a public parking structure in accordance with the Parking Covenants at the time the alteration is made. All approvals required by any Party or Agency hereunder shall be made in accordance with Section 14.4 hereof. Except as required by Section 15.7 or 16.6.1, no Party shall demolish any Improvements on its Tract without the prior written approval of the other Parties and Agency.

14.3 PERMITTED ALTERATIONS. Notwithstanding anything contained in Section 14.2 above, each Party may perform the following work or make the following alterations without the prior written approval of the other Parties or Agency:

- (a) Routine maintenance and repairs;
- (b) Removal, replacement or construction of interior tenant improvements;

(c) Interior alterations or exterior alterations not materially affecting the exterior elevations, materials or size, bulk and scale of the Improvements;

(d) Any alterations required by law, ordinance, rule or regulation, or for the continued safe and orderly operation of the Improvements; or

(e) Any removal, construction or reconfiguration of demising walls for the Developer Mall Stores in connection with the Developer's leasing program.

14.4 APPROVAL OF PLANS AND SPECIFICATIONS. If any Party desires to modify its respective Improvements upon reconstruction after the occurrence of damage or destruction or condemnation, or make any alterations requiring the approval of Agency or the other Parties pursuant to Section 14.2 above, such Party (hereinafter in this Section 14.4 referred to as "Requesting Party") shall submit detailed plans and specifications for the modifications or alterations to each of the other Parties and Agency, along with an explanation of the reason and need for such modifications or alterations; provided, however, that a Party shall only be required to submit such plans and specifications with respect to modifications or alterations that require the approval of the Parties and Agency pursuant to Section 14.2 hereof. The other Parties and Agency shall approve or disapprove of such plans and specifications within thirty (30) days after receipt thereof. All plans and specifications submitted to any Party or Agency for approval shall be accompanied by a cover page listing the date the plans and specifications were mailed and stating that approval of the recipient of such plans and specifications is required in accordance with Section 14.4 of the REA and that such plans and specifications shall be deemed approved unless the recipient gives written notice of disapproval thereof within thirty (30) days after receipt. All such approvals or disapprovals shall be in writing. Failure by any Party or Agency to give written notice of disapproval of the plans and specifications within said thirty (30) day period shall be deemed approval thereof by such Party or Agency. Any notice of disapproval shall state in writing the reasons for the disapproval and the changes in such plans and specifications required by such Party or Agency for its approval. Upon receipt of a written notice of disapproval from any Party or Agency, the Requesting Party shall revise such plans and specifications so as to satisfy the objections contained in the notice of disapproval. Revised plans and specifications shall be resubmitted to each of the Parties and Agency to the extent such Persons have approval rights, who shall have thirty (30) days after receipt of such revised plans and specifications in which to approve or disapprove such plans. Failure of any Party or Agency to give written notice of disapproval within said thirty (30) day period shall be deemed approval of the revised plans and specifications by

such Party or Agency. The approval required under this Section 14.4 shall not be unreasonably withheld or delayed. Approval of the plans and specifications by the other Parties and Agency shall not excuse Requesting Party from obtaining all necessary governmental permits and approvals required in connection with the modifications or alterations to be performed by Requesting Party.

14.5 PERFORMANCE OF MODIFICATIONS OR ALTERATIONS. Any modifications or alterations made by any of the Parties shall be constructed in accordance with the plans and specifications approved by the other Parties and Agency, to the extent such approval is required hereunder. All work shall be performed in a good and workmanlike manner and shall comply with the requirements of Article 10 hereof as well as all applicable governmental laws, codes, regulations, rules and orders. All modifications or alterations shall be constructed at the sole cost and expense of the Party making such alterations and modifications.

14.6 RIGHTS OF ENFORCEMENT. Agency shall have the benefit of, and shall be subject to the specific rights and obligations granted to Agency hereunder.

ARTICLE 15
DAMAGE AND DESTRUCTION; REPAIR AND RESTORATION

15.1 DEVELOPER MALL STORES AND COMMON AREA.

15.1.1 Period 1. If the Developer Mall Stores or the Common Area are damaged or destroyed during the period commencing with the date that either Major is required to Operate its Store under a specified name ("Covenant Commencement Date") and ending on the later of (i) fifteen (15) years after the Covenant Commencement Date or (ii) the last day of a Ten Year Name Covenant Extension (as defined below) automatically extended in accordance with this Section 15.1.1, unless the Major's covenant to Operate is sooner terminated ("Period 1"), the following provisions shall apply:

15.1.1.1 Insured Casualty. Developer shall restore the Developer Mall Stores and the Common Area if the damage or destruction was caused by a casualty required to be insured by Developer under Article 13.

15.1.1.2 Uninsured Casualty. If the damage or destruction was caused by a casualty for which Developer is not required to insure under Article 13, Developer shall nevertheless restore the Developer Mall Stores and the Common Area if and only if:

(a) The cost of Restoration of the Developer Mall Stores and the Common Area is less than the greater of five percent (5%) of the full insurable value of

the Developer Mall Stores and the Common Area or One Million Five Hundred Thousand Dollars (\$1,500,000) (the "De Minimus Amount"), or

(b) The cost of restoration of the Developer Mall Stores and the Common Area equals or exceeds the De Minimus Amount in which event each Major's covenant to Operate under a specified name shall be automatically extended, whether or not such Major's Improvements were damaged, in accordance with Section 15.1.5 below if necessary to assure that such covenant will be in effect for a ten (10) year period (the "Automatic Ten Year Name Covenant Extension") commencing with the date of completion of Restoration of the Developer Mall Stores and the Common Area. Each Major shall be subject to only one Automatic Ten Year Name Covenant Extension in accordance with this Section 15.1.1.2.

15.1.2 Period 2. If the Developer Mall Stores or the Common Area are damaged or destroyed during the period commencing with the end of Period 1 and continuing through the thirtieth year after the Covenant Commencement Date ("Period 2"), the following provisions shall apply:

15.1.2.1 Insured Casualty. If the damage or destruction was caused by a casualty required to be insured by Developer under Article 13, Developer shall restore the portions of the Developer Mall Stores and Common Area specified below if and only if:

(a) The cost of Restoration of the Developer Mall Stores and the Common Area is less than ten percent (10%) (the "Minimal Amount") of the full insurable value of the Developer Mall Stores and the Common Area in which event Developer shall restore those portions of the Developer Mall Stores and Common Area immediately adjacent (defined in Section 15.1.6) to the Store of each Major which is operating Floor Area of at least forty thousand (40,000) square feet under a single name (or restoring to Minimum Floor Area in the event its Store is damaged or destroyed), or

(b) The cost of Restoration of the Developer Mall Stores and the Common Area equals or exceeds the Minimal Amount, in which event Developer shall restore those portions of the Developer Mall Stores and Common Area immediately adjacent to the Store of each Major which voluntarily agrees to extend its covenant, to Operate under a specific name, whether or not such Majors Improvements were damaged, in accordance with Section 15.1.5 below, if necessary to assure that such covenant will be in effect for a ten year period (the "Voluntary Ten Year Name Covenant Extension") commencing with the date of completion of restoration of the Developer Mall Stores and the Common Area.

15.1.2.2 Uninsured Casualty. If the damage or destruction was caused by a casualty for which Developer is not required to insure under Article 13, Developer shall restore the portions of the Developer Mall Stores and Common Area specified below if and only if:

(a) The cost of Restoration of the Developer Mall Stores and the Common Area is less than the De Minimus Amount, in which event Developer shall restore those portions of the Developer Mall Stores and Common Area immediately adjacent to the Store of each Major which is operating Floor Area of at least forty thousand (40,000) square feet under a single name (or restoring to Minimum Floor Area in the event its Store is damaged or destroyed), or

(b) The cost of Restoration of the Developer Mall Stores and the Common Area equals or exceeds the De Minimus Amount but is less than the twenty-five (25%) of the full insurable value of the Developer Mall Stores and the Common Area ("Substantial Amount"), in which event Developer shall restore those portions of the Developer Mall Stores and Common Area immediately adjacent to the Store of each Major which gives a Voluntary Ten Year Name Covenant Extension.

Developer shall not be required to restore the Developer Mall Stores or Common Area if the cost of Restoration from an uninsured casualty exceeds the Substantial Amount.

15.1.3 Period 3. If the Developer Mall Stores or the Common Area are damaged or destroyed during the thirty-first through the sixty-fifth years after the Covenant Commencement Date ("Period 3"), the following provisions shall apply:

15.1.3.1 Insured Casualty. If the damage or destruction was caused by a casualty required to be insured by Developer under Article 13, Developer shall restore the portions of the Developer Mall Stores and Common Area specified below if and only if:

(a) The cost of Restoration of the Developer Mall Stores and the Common Area is less than the Minimal Amount, in which event Developer shall restore those portions of the Developer Mall Stores and Common Area immediately adjacent to the Store of each Major which is operating Floor Area of at least forty thousand (40,000) square feet under a single name (or restoring to Minimum Floor Area in the event its Store is damaged or destroyed), or

(b) The cost of Restoration of the Developer Mall Stores and Common Area equals or exceeds the Minimal Amount, in which event Developer shall restore those portions of the Developer Mall Stores and Common Area immedi-

ately adjacent to the Store of each Major which gives a Voluntary Ten Year Name Covenant Extension.

15.1.3.2 Uninsured Casualty. If the damage or destruction was caused by a casualty for which Developer is not required to insure under Article 13, Developer shall restore the portions of the Developer Mall Stores or the Common Area specified below if and only if the cost of restoration of the Developer Mall Stores and the Common Area is less than the De Minimus Amount in which event Developer shall restore those portions of the Developer Mall Stores and Common Area immediately adjacent to the Store of each Major which gives a Voluntary Ten Year Name Covenant Extension.

15.1.4 Period 4. If the Developer Mall Stores or the Common Area are damaged or destroyed after the sixty-fifth year after the Covenant Commencement Date ("Period 4"), Developer shall not be required to restore the Developer Mall Stores or the Common Area.

15.1.5 Ten Year Name Covenant Extension. If a Major is subject to an Automatic Ten Year Name Covenant Extension or gives a Voluntary Ten Year Name Covenant Extension (collectively hereafter referred to as a "Ten Year Name Covenant Extension"), such Major shall be required to covenant to Operate for the additional period required by the Ten Year Name Covenant Extension under the specified name and otherwise pursuant to the terms and conditions of its fifteen (15) year Operating covenant set forth in Sections 18.1 or 18.2, as the case may be, in which event any reference to such covenant to Operate under a specified name for such fifteen (15) year period shall be deemed a reference to such covenant for such period as so extended. Notwithstanding the above, each Major shall only be subject to one (1) Automatic Ten Year Name Covenant Extension in accordance with Section 15.1.1.2 hereof. If a Major is subject to an Automatic Ten Year Name Covenant Extension during the period of such Major's fifteen (15) year Operating covenant, such Major's covenant to Operate pursuant to Section 18.1 or 18.2 during the five (5) year period commencing with the termination of the fifteen (15) year covenant to Operate under a specified name shall be extinguished to the extent that the Automatic Ten Year Name Covenant Extension overlaps the period of such additional five (5) year covenant. If the Developer Mall Stores or the Common Area are damaged or destroyed during an Automatic Ten Year Name Covenant Extension, neither Major shall be subject to an additional Automatic Ten Year Name Covenant Extension but Developer shall restore the Developer Mall Stores or Common Area in accordance with Section 15.1.

15.1.6 Immediately Adjacent. For purposes of this Agreement, with respect to Broadway, the term "immediately adjacent" shall refer only to the portion of the Developer Mall Stores and the Common Area extending from De La Guerra

Place to the Broadway Tract. Similarly, with respect to Nordstrom, the term "immediately adjacent" shall refer only to those portions of the Developer Mall Stores and the Common Area extending from De La Guerra Place to the Nordstrom Tract.

15.1.7 Definition of Terms. As used in this Article 15, the following terms shall have the following meanings:

(a) "Restoration" shall refer to the work of restoration, replacement, rebuilding, alteration, addition, temporary repair and property protection for any damaged Improvements following any event of damage and destruction.

(b) The term "full insurable value" shall have the same meaning as defined in Section 13.9.4.

15.1.8 Restoration of Rehabilitation Parcel. If the improvements on the Rehabilitation Parcel are damaged or destroyed by a casualty of the type required to be insured by Developer under Section 13.9 hereof, and Developer retains a fee or leasehold interest in the Rehabilitation Parcel after the occurrence of such damage and destruction, Developer shall restore the improvements on the Rehabilitation Parcel to the same extent as Developer would be required to restore the Developer Mall Stores and the Common Area in accordance with this Section 15.1. Any such Restoration shall comply with the provisions of Section 15.6 hereof. If Developer is not required or elects not to repair or restore any damaged improvements located on the Rehabilitation Parcel, Developer shall clear such damaged improvements in accordance with Section 15.7 hereof, or improve such area as Common Area and thereafter maintain the Rehabilitation Parcel or portion thereof in accordance with the maintenance standards for the Common Area set forth in Section 12.1 hereof until (i) such time as Developer elects to build new improvements on the Rehabilitation Parcel or (ii) so long as Developer, or any Person or entity controlling Developer, or which directly or indirectly is controlled by or under common control with Developer, retains a fee or leasehold interest in the Rehabilitation Parcel.

15.2 DAMAGE OR DESTRUCTION TO MAJOR'S IMPROVEMENTS.

15.2.1 Period 1. If a Major's Improvements are damaged or destroyed during Period 1, the following provisions shall apply:

15.2.1.1 Insured Casualty. Such Major shall repair and restore, or cause to be repaired and restored, the Improvements on its Tract if the damage and destruction was caused by a casualty required to be insured by the Major under Article 13 hereof.

15.2.1.2 Uninsured Casualty. If the damage or destruction was caused by a casualty for which the Major is not required to insure under Article 13 hereof, the Major shall nevertheless restore the Improvements on its Tract.

15.2.2 End of Period 1 Through End of Operating Covenant. If a Major's Improvements are damaged or destroyed during the period commencing with the end of Period 1 and ending with the termination of such Major's covenant to Operate in accordance with Sections 18.1 or 18.2, as appropriate, the following provisions shall apply:

15.2.2.1 Insured Casualty. Such Major shall repair and restore, or cause to be repaired or restored, the Improvements on its Tract if the damage and destruction was caused by a casualty required to be insured by the Major under Article 13 hereof.

15.2.2.2 Uninsured Casualty. If the damage or destruction was caused by a casualty not required to be insured by such Major under Article 13 hereof, the following provisions shall apply:

(a) If the cost of Restoration of the Major's Improvements is less than the greater of five percent (5%) of the full insurable value of the Major's Improvements or One Million Five Hundred Thousand (\$1,500,000) (the "Major's De Minimus Amount"), such Major shall repair or restore, or cause to be repaired or restored, the Improvements on its Tract, or

(b) If the cost of Restoration equals or exceeds the Major's De Minimus Amount, such Major shall not be required to repair or restore the Improvements on its Tract.

15.2.2.3 Effect of Ten Year Name Covenant Extension. If a Major is subject to an Automatic Ten Year Name Covenant Extension that extends through the end of the twentieth (20th) year after the Covenant Commencement Date, the provisions of Section 15.2.2 shall not apply, and the provisions of Section 15.2.1 shall govern the restoration obligations of the Major.

15.2.3 After Expiration of Covenant to Operate. If a Major's Improvements are damaged or destroyed after the expiration of such Major's covenant to Operate pursuant to Sections 18.1 or 18.2, as appropriate, as such covenant may be extended pursuant to Section 15.1 hereof, such Major shall not be required to repair or restore its Improvements. From and after the date that a Major is released from its covenant to Operate pursuant to Section 18.4 hereof, the provisions of this Section 15.2.3 shall govern such Major's obligation to repair and restore its Improvements following an event of damage or destruction.

15.2.4 Notice of Covenant Extension. Within ninety (90) days after the occurrence of damage or destruction to the Developer Mall Stores and the Common Area, Developer shall notify each of the Majors in writing (i) of the extent of such damage and destruction, (ii) whether Developer is required to restore the damaged Developer Mall Stores and Common Area in accordance with this Article 15, (iii) whether each Major is subject to an Automatic Ten Year Name Covenant Extension in accordance with Section 15.1.1.2 hereof, (iv) if Developer is not required to restore unless a Major grants a Voluntary Ten Year Name Covenant Extension, whether Developer is requesting such Voluntary Ten Year Name Covenant Extension, and (v) whether Developer elects to have the Envelope Mall Stores located within the shell of a Major's Store restored if such Major is required or elects to restore. Developer's notice may request each Major to notify Developer in writing: (a) whether such Major is required to restore or intends to restore its Improvements if such Improvements have been damaged or destroyed, (b) whether such Major will require Developer to restore the portion of the Developer Mall Stores and Common Area immediately adjacent to such Major's Store by giving Developer a Voluntary Ten Year Name Covenant Extension, and (c) the amount of Floor Area that will be operated by the Major after completion of restoration of its Store, or if the Major's Store is not damaged, after completion of restoration of the damaged Developer Mall Stores and Common Area. Each Major shall respond to Developer's notice within sixty (60) days after the date thereof, and shall, if it elects to do so, give a Voluntary Ten Year Name Covenant Extension and/or written notice of its intent to restore, if at all, within said sixty (60) day period. Failure to respond to Developer's notice within said sixty (60) day period shall be deemed Major's election not to deliver a Voluntary Ten Year Name Covenant Extension or restore its Improvements.

15.2.5 Restoration of Envelope Mall Stores. If either Major is required to restore its Improvements under this REA, or if such Major so elects to restore, it shall also, if Developer so elects by written notice to such Major within the time set forth in Section 15.2.4 above, restore the structural elements and shell of the Envelope Mall Stores located within the shell of its Store to the extent such portions of the Envelope Mall Stores have been damaged or destroyed. The cost of such Restoration shall be allocated between Developer and such Major in the same manner as the allocation of cost for the original construction of such Envelope Mall Stores and such allocation shall be set forth in a Separate Agreement. If a Major is not required to restore its Improvements hereunder, and does not elect to restore such Improvements, the Major shall have no obligation to restore the Envelope Mall Stores included within the shell of its Store. Notwithstanding the above, if a Major is required or

elects to restore its Improvements, but Developer does not elect within the time set forth in Section 15.2.4 above to have the Envelope Mall Stores located within the shell of such Major's Store restored, such Major may elect, within sixty (60) days after the expiration of the notice period set forth in Section 15.2.4 hereof, to restore such Envelope Mall Stores and incorporate the Floor Area thereof into its Store. In such event, Agency, Developer and such Major shall promptly (i) take such action as may be necessary to amend the Parcel Map for the Project Site to include the Envelope Mall Stores within the Major's Tract, and exclude the same from the Developer Tract and (ii) execute such amendments as may be necessary to delete the Envelope Mall Stores from the Developer Lease, if the Developer Lease is still in effect, and include the Envelope Mall Stores in such Major's Lease. From and after the date of the Major's election, the Envelope Mall Stores shall for purposes of this REA be considered to be a part of the Major's Improvements.

15.3 DAMAGE AND DESTRUCTION TO COMMON BUILDING COMPONENTS. The following provisions shall apply to the repair and restoration of Common Building Components:

15.3.1 Repair of Common Building Component. Agency and each Party owning or leasing any Improvement within the Project Site that contains a Common Building Component shall, if Agency or another Party owning or leasing an Improvement which is benefited by the subject Common Building Component repairs or restores its Improvements, or notifies Agency or such Party of its intent to restore its Improvements and actually commences restoration of such Improvements, repair and restore, or cause to be repaired and restored, the Common Building Component to a condition that will permit the Common Building Component to have the capacity to be used in common with the benefited Improvement in question.

15.3.2 Burden on Common Building Component. Agency and each Party owning or leasing any benefited Improvement that utilizes any Common Building Component shall not by reason of Restoration of the benefited Improvement place upon the subject Common Building Component any burden that is in excess of the capacity of the subject Common Building Component, or that will prevent the use of the Improvement containing the subject Common Building Component for its intended use.

15.3.3 Liability for Repair. Agency or any Party repairing and restoring a Common Building Component shall not be liable to the Party or Agency, as appropriate, owning or leasing an Improvement benefiting from the Common Building Component for any inconvenience, annoyance, disturbance or loss of business to Agency or such other Party (or its Occupants), as appropriate, arising out of the performance of the work of repair and restoration (except that Agency or the

Party performing such work, or its agents, if negligent, shall be liable). Agency or the Party repairing and restoring the Common Building Component shall make all reasonable efforts to keep any such inconvenience, annoyance, disturbance or loss of business to the minimum reasonably required by the work in question.

15.4 DAMAGE AND DESTRUCTION TO AUTOMOBILE PARKING STRUCTURES. The repair and restoration of the Onsite Parking Structure and the Offsite Parking Structures following an event of damage or destruction shall be governed by the Parking Covenants.

15.5 DAMAGE AND DESTRUCTION TO ARTS COMPLEX. Developer shall only be obligated to Agency with respect to Restoration of the Arts Complex, and only pursuant to the terms and conditions of the Developer Lease. If Developer does not restore the Arts Complex in accordance with the Developer Lease, Developer shall either (i) raze the damaged Arts Complex in accordance with Section 15.7 hereof or (ii) improve the area formerly occupied by the Arts Complex as Common Area or additional Floor Area for retail or other uses subject to the approvals required by Section 12.4 hereof; provided, however, that such additional Floor Area shall not exceed the original square footage of the Arts Complex. Upon completion of the razing or restoration, Developer shall thereafter maintain such area and any improvements thereon in first-class condition and repair in accordance with the standards set forth in this REA. Each Major shall have the right to enforce the obligations of Developer contained in the preceding two sentences.

15.6 RESTORATION.

15.6.1 Plans and Specifications. If any Party is required or elects to restore its Improvements after the occurrence of damage or destruction, the Restoration shall, to the extent feasible, be in accordance with the Approved Plans and Specifications for such Improvements together with any alterations, modifications and additions that may be requested by the Party owning such Improvements and approved by the other Parties and Agency pursuant to Section 14.4 hereof, and such modifications as may be required by then-effective building codes, except as provided below. If Developer is required or elects to restore, Developer shall restore the Developer Mall Stores to at least the Minimum Floor Area set forth in Section 11.1 above, unless Developer shall have the right hereunder to restore a smaller portion of the Developer Mall Stores. If Developer is required to restore the Floor Area contained in any damaged improvements located on the Rehabilitation Parcel in accordance with Section 15.1.8, such Restoration shall comply with this Section 15.6. If a Major is required or elects to restore, such Major shall restore its Store to at least the Minimum Floor Area set forth in Section

11.1 hereof. Each Party which does not meet the standards for self-insurance set forth in Section 13.14.2 hereof shall require any insurance proceeds received as a result of such damage or destruction to be paid to the Trustee in accordance with Section 13.13.1 above for payment of the cost of the Restoration.

15.6.2 Prosecution of Restoration. Each Party restoring its Improvements pursuant to this Article 15 shall cause such Restoration to be commenced as soon as reasonably possible after the event of damage or destruction and the settlement of insurance proceeds, if any. The Restoration shall be prosecuted with due diligence and completed as soon as reasonably possible, but in any event, not later than eighteen (18) months after the commencement of Restoration, subject to the provisions of Article 28 (Force Majeure).

15.6.3 Construction Contracts and Bonds. All Restoration shall be performed by a general contractor licensed by the State of California. Prior to commencement of the Restoration, each restoring Party shall comply, and shall cause its contractor to comply, with the contract and bonding requirements of Section 10.3 hereof, to the extent applicable to such restoring Party.

15.6.4 Construction Phasing Plan. If one or more Parties are required to restore or elect to restore their Improvements at the same time, the restoring Parties and Agency shall meet prior to the commencement of Restoration and cooperate in good faith to devise a construction phasing plan for the Restoration of the damaged Improvements. The construction phasing plan shall provide for, among other things, any temporary use of a portion of the Common Area, of another Party's Tract, or a portion of the Onsite Parking Structure in connection with the Restoration, a schedule for the Restoration, designation of construction employee parking areas and truck access routes and schedules. Each restoring Party covenants to comply with the construction phasing plan in the prosecution of its Restoration. Each restoring Party shall make all reasonable efforts to keep any inconvenience, annoyance, disturbance or loss of business to the minimum reasonably required by the Restoration. If any Party uses a portion of the Common Area, another Party's Tract, or the Onsite Parking Structure in connection with the Restoration, the restoring Party shall promptly restore the portions of the Common Area, other Party's Tract, or Onsite Parking Structure so used upon cessation of the Restoration to the condition in which the same were prior to the time of commencement of such use, including the clearing of such area of all loose dirt, debris, equipment and construction materials. The restoring Party shall also restore, at its sole cost and expense, any portion of the Common Area, of another Party's Tract, or of the Onsite Parking Structure that may have been damaged by such Restoration promptly upon the occurrence of such

damage. The restoring Party shall at all times during the Restoration keep all portions of the Shopping Center, except that portion of the restoring Party's Improvements upon which the Restoration is being performed, and except for the portions of the Common Area, of another Party's Tract or of the Onsite Parking Structure being utilized for such Restoration, free from and unobstructed by any loose dirt, debris, equipment or construction materials related to the Restoration.

15.6.5 Construction Barricades. During the prosecution of any Restoration, each restoring Party shall barricade the unrestored portion of its Improvements with a solid plywood barricade of appropriate height completely sealed and painted in colors approved by the Operator.

15.6.6 Workmanship; Construction Requirements; Compliance With Laws. All Restoration shall be performed in a good and workmanlike manner and shall comply with the requirements of Article 10 hereof as well as all applicable requirements of laws, codes, regulations, rules and regulations of governmental agencies, including the Project Approvals, and of insurance underwriters.

15.6.7 Expense of Restoration. To the extent not covered by insurance proceeds, each Party shall complete all required Restoration of its Improvements at its sole cost and expense.

15.7 CLEARING OF DAMAGED IMPROVEMENTS. If any Party is not required or elects not to restore its Improvements in accordance with this Article 15, such Party shall, at its sole cost and expense, raze the Improvements, or the portion thereof that have been damaged or destroyed, clear its Tract of all debris, and all portions of the Tract not restored shall be leveled, cleared and improved as Common Area of the same quality and standard as the remainder of the Common Area of the Center. Thereafter, the cleared area shall become a portion of the Common Area and shall be maintained at the expense of the nonrestoring Party, until such time as the nonrestoring Party elects to rebuild thereon. Notwithstanding the above, if a Major is not required to restore and elects not to restore in accordance with the terms of this REA, such Major shall give written notice to such effect to Developer in accordance with Section 15.2.4 hereof.

Notwithstanding anything contained in this Article 15, each Party shall, upon the occurrence of any damage or destruction to the Improvements on such Party's Tract, immediately perform and complete, or cause to be performed and completed, such work as may be necessary to place the damaged Improvements in a safe condition pending Restoration or demolition thereof. All such work shall be performed at the sole cost and expense of the Party owning the damaged Improvements,

regardless of whether insurance proceeds are available to pay the cost of such work, but subject to reimbursement from such insurance proceeds when they become available.

15.8 LIABILITY OF MORTGAGEES. If a Mortgagee acquires the Tract of any Party by foreclosure, deed in lieu of foreclosure, or by termination of a leaseback in a Sale and Leaseback transaction, the obligation of such Mortgagee or purchaser at a foreclosure sale to comply with the restoration obligations of Section 15.1 or 15.2 following damage or destruction shall be limited in accordance with this Section 15.8; provided, however, the following limitations shall apply for the benefit of such Mortgagee only if such Mortgagee or purchaser permits such insurance proceeds as are available to be used for Restoration in accordance with this Article 15:

15.8.1 Damage Occurring Prior to Acquisition. The Mortgagee or purchaser at a foreclosure sale shall not be required to repair any damage or destruction occurring prior to the date of such foreclosure sale or conveyance, or termination of leaseback, unless the damage and destruction was caused by a peril for which the Party whose interest was acquired was required to maintain insurance under Section 13.9 hereof, in which case the Mortgagee or purchaser shall restore the damage or destruction in accordance with this Article 15 to the extent of the insurance proceeds received as a result of such casualty.

15.8.2 Restoration Not Required. If such Mortgagee or purchaser at a foreclosure sale is not required pursuant to this Article 15 to restore any damaged or destroyed Improvements, and does not elect to do so, then such Mortgagee or purchaser shall raze the damaged Improvements and clear the Tract in accordance with Section 15.7 hereof.

Nothing contained in this Section 15.8 shall be construed to relieve the Party whose interest was acquired by the Mortgagee or purchaser of its obligations under this Article 15.

15.9 AGENCY'S RIGHTS AND OBLIGATIONS. Agency shall have the right to enforce the rights expressly granted, and shall be subject to the obligations expressly conferred upon, Agency by Sections 15.3, 15.6, 15.7 and 15.8 hereof. As between Agency and each of Broadway and Nordstrom, Agency shall have the right to enforce the provisions of this Article 15 that are expressly incorporated into the Broadway Lease and the Nordstrom Lease, respectively. Agency shall have no right to enforce the provisions of Sections 15.1 against Developer, but nothing contained herein shall prohibit Agency from enforcing the Restoration obligations of Developer as set forth in the Developer Lease.

ARTICLE 16
EMINENT DOMAIN

16.1 DEFINITION OF TAKING. As used herein, the term "Taking" shall refer to a taking of all or any part of a Tract of any Party pursuant to the exercise of the power of eminent domain, including a voluntary conveyance in lieu of court proceedings, by or to any agency, authority, public utility, person or entity empowered to condemn property.

16.2 NOTICE OF TAKING. In case of a Taking of all or a part of a Tract of any Party, or the commencement of any proceedings or negotiations that might result in a Taking, the Party whose Tract is affected by such Taking shall give written notice thereof to each of the other Parties. The notice shall generally describe the nature and extent of the Taking and the nature of the proceedings or negotiations that might result therefrom.

16.3 TOTAL TAKING OF A TRACT. For purposes of this REA, a "Total Taking" shall be defined as a Taking of an entire Tract. In the event of a Total Taking, this REA shall terminate as to the Tract taken as of the date title vests in the condemning authority or the date the condemning authority is entitled to possession of such Tract ("Date of Taking"), whichever occurs first.

16.4 SUBSTANTIAL TAKING. A "Substantial Taking" shall occur if there is a Taking of a substantial portion of a Tract or of an easement for support for the benefit of a Tract that results in the remainder of the Tract being unsuitable or economically unfeasible for continued use in the manner in which the Tract was used prior to such Taking. The determination that a Substantial Taking has occurred shall be made by the Party whose Tract is affected by the Substantial Taking in its good faith discretion. If a Party determines that a Substantial Taking has occurred with respect to its Tract, such Party shall deliver written notice of the determination to each of the other Parties within sixty (60) days after the Date of Taking. If either of the other Parties disputes the determination that a Substantial Taking has occurred, such Party may submit the matter to arbitration in accordance with Article 23 hereof within sixty (60) days after the date of notice of the Substantial Taking. The arbitrators shall uphold the Party's determination of a Substantial Taking unless they determine that there was no reasonable basis for the Party to find that the Taking rendered the remainder of such Party's Tract unsuitable or economically unfeasible for the continued use of such Tract in the manner in which it was used prior to such Substantial Taking. If no Party disputes the determination that a Substantial Taking has occurred within sixty (60) days after notice of determination of a Substantial Taking, the Party whose Tract is affected by the Substantial Taking may terminate this REA as to the Tract by

delivering written notice of termination to the other Parties hereto and subject to the following sentence, the REA shall terminate as to such Tract as of the date of such notice. Notwithstanding the termination of the REA, the easements burdening such Tract granted pursuant to Article 3, the provisions of Section 11.7 relating to prohibited use, and the provisions of Article 14 relating to maintenance and alterations of Improvements shall remain in full force and effect with respect to the uncondemned portion of the Tract, and shall constitute a burden upon such uncondemned portion that shall run with the land for the remainder of the term of this REA. The Party owning the uncondemned portion of such Tract, and its successors and assigns, shall not interfere with the use and the easements granted pursuant to Article 3, nor use such portion of such Tract for any use prohibited by Section 11.7 hereof nor construct additional Improvements or modify any existing Improvements thereon without first complying with the provisions of Article 14 hereof.

16.5 PARTIAL TAKING. For purposes of this REA, a "Partial Taking" shall be defined as any Taking other than a Total Taking or Substantial Taking. Upon the occurrence of a Partial Taking of any portion of a Party's Tract, this REA shall terminate as to the portion of the Tract that is taken, but shall remain in full force and effect as to the portion of the Tract not taken. The Party owning such Tract shall cause the remaining Improvements to be restored as nearly as possible to the value, condition and character that existed immediately prior to the Partial Taking in accordance with Section 16.6.2 below.

16.6 DISPOSITION OF CONDEMNATION AWARD. Awards and other payments on account of a Taking, less costs, fees and expenses incurred in the collection thereof ("Net Awards and Payments") shall be applied as follows:

16.6.1 Total Taking and Substantial Taking. As between the Parties, Net Awards and Payments received on account of a Total Taking shall be paid to the Party whose Tract is taken. Notwithstanding the above, a Party whose Tract is subject to a Substantial Taking shall first apply the Net Awards and Payments received as a result of such Substantial Taking to either (i) Restoration of the Improvements on the uncondemned portion of such Tract in accordance with Section 15.6 hereof as nearly as possible to the value, condition and character that existed immediately prior to the Substantial Taking with such additions or modifications as may be required by the Substantial Taking, or (ii) to the cost of razing and clearing the Improvements remaining on the uncondemned portion of the Tract in accordance with Section 15.7 hereof.

16.6.2 Partial Taking. Except as provided below, Net Awards and Payments for any Partial Taking shall be paid

to the Trustee and held in trust for the benefit of the Party whose Tract is taken for Restoration of the remaining Improvements on the Tract. The Trustee shall disperse the Net Awards and Payments during the course of Restoration of the Improvements on the Tract in accordance with Section 13.13.1.3 hereof. Notwithstanding the above, a Party who satisfies the net worth standards for self-insurance and, upon request, delivers evidence of such satisfaction to the other Parties pursuant to Section 13.14.2 hereof shall not be required to pay any Net Awards and Payments received as a result of a Partial Taking on its Tract to the Trustee, but shall to the extent required for Restoration, use such Net Awards and Payments for Restoration of its Improvements in accordance with this Section 16.6.2. All Restoration shall be performed in accordance with the Approved Plans and Specifications for such Improvements to the extent possible, together with any alterations, additions and modifications that may be requested by the restoring Party and approved by the other Parties and Agency in accordance with Section 14.4 hereof, and with such modifications as may be required by then effective building codes. In addition, the Restoration shall be subject to all of the requirements of Section 15.6 hereof. Restoration shall be commenced as soon as reasonably possible and, in any event, completed not later than eighteen (18) months after the Date of Taking, subject to Article 28 (Force Majeure). As between the Parties, any Net Awards and Payments remaining after payment of all Restoration costs shall be paid to the Party whose Tract is taken.

16.6.3 Award for Common Area. No Party, other than Developer, shall have any right to receive any portion of the Net Awards or Payments received as a result of a Taking of the Common Area.

16.7 TEMPORARY TAKING. As used in this REA, the term "Temporary Taking" shall mean a Taking of all or a portion of a Party's Tract by military or other public authority for any purpose arising out of an emergency or other temporary circumstance which does not exceed one hundred eighty (180) days. In the event of a Temporary Taking, this REA shall not terminate with respect to the portion of the Tract taken, but all of the rights and obligations of the Parties hereto with respect to such portion taken shall be suspended for the duration of the Temporary Taking. All Net Awards and Payments arising out of a Temporary Taking shall be paid to the Party whose Tract is subject to the Temporary Taking.

16.8 TAKING OF ARTS COMPLEX. The Taking of all or any portion of the Arts Complex shall be governed by the Developer Lease. All Net Awards and Payments resulting from a Taking of the Arts Complex shall be paid to Developer and Agency as their interests appear, and the Majors shall have no right to receive any portion of the Net Awards or Payments awarded for a Taking of the Arts Complex.

16.9 MORTGAGEE PARTICIPATION. Nothing herein contained shall be deemed to prohibit any Mortgagee from participating in any eminent domain proceedings on behalf of or in conjunction with any Party on whose Tract such Mortgagee holds a Mortgage, provided the same does not reduce the Net Awards and Payments to any such Party for the Restoration of the remaining Improvements on such Tract in accordance with Section 16.6 hereof.

16.10 INVERSE CONDEMNATION. Should any inverse condemnation of a Tract result by reason of the actions of a public authority, including without limitation any acts or actions of any environmental protection act or regulations, and a judgment of a competent court of jurisdiction shall so determine, then the rights of the Parties shall be the same as though a Taking had occurred.

16.11 TERMINATION OF BENEFITS. In the event of a Taking by condemnation or inverse condemnation of any Tract or portion of a Tract in the Center, all easements appurtenant to the Tract or portion thereof so condemned shall, upon the Taking of such Tract or portion thereof, terminate to the extent they are appurtenant to the portion condemned, but shall continue as to any portion not so condemned.

16.12 AGENCY'S RIGHTS AND OBLIGATIONS. As between Agency and each of the Majors, Agency shall have the right to enforce the provisions of this Article 16 that have been expressly incorporated into the Broadway Lease and the Nordstrom Lease, respectively. Agency shall not have the right to enforce the provisions of this Article 16 with respect to Developer, provided, however, that nothing contained herein shall prohibit Developer from enforcing any condemnation provisions set forth in the Developer Lease.

ARTICLE 17 COVENANTS OF DEVELOPER

17.1 STANDARDS. The Parties acknowledge that it is the purpose of the Project, and in their mutual best interests, that the Project Site and each respective Tract therein be developed and maintained as a first class, high quality, regional shopping Center containing a combination of Occupants that (i) offer a sound and balanced diversification of merchandise, (ii) are well qualified and willing to direct an intensive and continuous merchandising and promotional program, (iii) will be of strong financial condition and good repute, and (iv) will fixture, decorate and maintain their respective Stores in a tasteful and decorous manner, having regard for the general standards of appearance prevailing in the Shopping Center. In furtherance of such purpose, the Parties have agreed to the provisions of Articles 5, 6, 7, 8, 9, 10, 11, 12, 13, this Article 17 and Article 18.

17.2 MANAGEMENT COVENANTS. Developer covenants and agrees with each Major, subject to the provisions of Articles 15 (Damage and Destruction) and 16 (Eminent Domain) of this REA, and subject to the other provisions of this Article 17, that, during the period that the Majors are required to Operate pursuant to Article 18, and so long thereafter as at least one (1) Major is Operating, it will maintain a quality of management and Operation of the Common Area and Developer Mall Stores not less than that generally adhered to in first class, high quality, open-air, regional shopping centers located in Southern California, and that it will manage and Operate, or cause to be managed and Operated, the Common Area and the Developer Mall Stores, in the following manner:

1. As a complex of retail stores and commercial and service enterprises which is a part of a first class, high quality, open-air regional shopping center development and in no other manner.

2. So as to the extent possible by using due diligence and good faith efforts, to:

(a) Have the Floor Area occupied and open for business in its entirety; and

(b) Have a diversified mixture and balance of Occupants.

3. Under the name of Paseo Nuevo and under no other name, without the prior approval of Agency and each Operating Major, which approval shall not be unreasonably withheld or delayed.

4. So as to maintain Floor Area in the Developer Mall Stores of not less than the Minimum Floor Area provided in Section 11.1; provided, however, that if at any time after the period the Majors are required to Operate pursuant to Sections 18.1 or 18.2, as appropriate, or as a result of damage and destruction in accordance with Article 15 hereof, there shall be only one (1) Major Operating in the Center, Developer shall only be required to maintain the Floor Area in the Developer Mall Stores located between De la Guerra Place and such Operating Major's Store.

5. In accordance with rules and regulations for the Center prescribed in Article 19, as revised from time to time.

6. So as to maintain the layout of the Common Area as specifically set forth in the Common Area Site Plan set forth in Exhibit "C," and so as not to substantially change, modify or alter the Common Area, the Improvements in the Common Area, or the exterior of the Developer Mall Stores without the prior approval of each Operating Major, which approval shall not be unreasonably withheld or delayed, except